

BOARD OF SELECTMEN
Minutes of March 23, 2009

MEMBERS PRESENT: Chairman Galen Stearns called the meeting to order at 7:00 PM. Selectmen Bruce Breton, Roger Hohenberger, Charles McMahon, and Ross McLeod were present, as was Town Administrator David Sullivan. Mr. Stearns read the agenda into the record, followed by the Pledge of Allegiance.

ANNOUNCEMENTS: Police Chief Lewis approached to advise the Board that the Department had been awarded a Federal grant based upon crime statistics reports, and explained that the program provides funds to municipalities for police equipment and similar items.

After a brief discussion, Mr. Hohenberger moved and Mr. McMahon seconded to allow the Chief to proceed to accept the grant funds. Passed unanimously.

Chief Lewis then advised the Board that the COPS program, last active in the 1990's, has been re-started. He explained that this is a universal hiring grant program, which provides 100% of the salary/benefit costs over a three year period to hire new officers. Chief Lewis noted that the only condition is, at the end of the three year period, the Town must retain the staff for a minimum period of twelve months. He indicated the deadline to apply is April 14th and involves a lengthy application process, and inquired whether the Board had any interest in his pursuing this possibility.

Discussion ensued regarding the current staffing levels, current obligations facing taxpayers versus available revenue, and the Community Resource Officer coverage, it was the consensus of the Board that the Chief not pursue application to the COPS program at this time.

Mr. McLeod advised the Board that he had attended a meeting the previous week at the Local Government Center, at which several recent New Hampshire Supreme Court cases had been reviewed with attendees and their impacts to municipalities explained. He then provided a copy of the handouts he had received to Mr. Sullivan for distribution to the Board.

LIAISON REPORTS: None.

MINUTES: Mr. Hohenberger moved and Mr. Breton seconded to approve the minutes of March 2nd and 9th as written. Passed 4-0-1, with Mr. McLeod abstaining.

Mr. McLeod then moved and Mr. Breton seconded to approve the minutes of March 16th as written. Passed unanimously.

ANNOUNCEMENTS CONTINUED: Mr. Dennis Senibaldi approached to request the Board consider authorizing him to serve as a liaison to work on a plan to repair the existing draining issues at the Griffin Park Playground, advising he had spoken to Mr. Sullivan, Maintenance Supervisor Al Barlow, and Recreation Coordinator Cheryl Haas about this request. Mr. Senibaldi explained that the rubber coating needs to be replaced, however, the manufacturer will not guarantee the repair unless the drainage has been repaired. Mr. Senibaldi then noted there would no cost to the Town for the project, as he had been approached by a local organization offering to donate the cost of completion.

Mr. Stearns indicated he would like to postpone discussing this matter, and schedule it as an agenda item so that all staff members can be present. Mr. Senibaldi agreed, and requested that the proposed bridge to the soccer field also be scheduled for discussion.

Mr. McLeod requested that Jennifer Colvin, who had led the Committee to construct the playground, also be invited to attend. He noted that the drainage has always been an issue at the playground, due to lack of Planning Board involvement in the project, and asked that Town Planner Laura Scott also be involved in the discussion.

CORRESPONDENCE: Letter received from Assistant Town Administrator Dana Call relative to CTAP funding. This matter will be discussed under Old/New Business.

CHARLES MCMAHON: Mr. McMahon indicated that he requested this time on the agenda, per Mason's Rules, in response to comments made regarding the veracity of the Board. Mr. McMahon stated that his commitment as a Selectman was to transparency on the Board, however some things do need to be discussed in non-public per RSA 91-A. He indicated a comment had recently been made in the paper that implied the Board was not being open with the public, and that he wished to state that was not and will not be the case. Mr. McMahon then stated that if anyone has any questions regarding the integrity and honesty of the current Board of Selectmen, they should feel free to say so immediately.

Mr. Stearns echoed Mr. McMahon's statements, adding that the Board is not protected by RSA 91-A and any questions or comments are welcomed and will be discussed in public.

Mr. McLeod also concurred with Mr. McMahon, and added that anyone who feels they are not getting the necessary information or details should also feel free to contact the Town Administrator.

Mr. Stearns then noted that an offer of employment had been made for the position of Director of Community Development, which the individual had turned down, and indicated there are no further candidates pending.

MARGARET CASE/COMCAST AGREEMENT: Mrs. Case advised that she was seeking an amendment to the Comcast franchise agreement recently approved by the Board relative to certain fees included in the franchise fees. Mrs. Case explained that, as currently defined, the 5% franchise fee includes advertising and shopping channel revenues, which the Cable Advisory Board had lobbied to have included. She noted, however, that at the time the Board did not realize that Comcast was passing these costs onto the consumer. Mrs. Case explained that the consumer cost was equal to \$0.41 on the basic digital plan, and that removal of these fees from the over 5% would represent a total loss in revenues to the Town of approximately \$29,000.

Mr. Hohenberger inquired what the total franchise fee received for the year had been, to which Mrs. Case replied \$207,711.77. Discussion then ensued regarding an anticipated reduction in revenues for the ensuing year due to consumers changing plans.

Mr. McMahon inquired what the benefit was to the consumer of removal of these fees, and Mrs. Case noted it would be approximately \$5.00/year each. Discussion ensued regarding shopping and other non-subscriber fees and the disparity of the franchise fee percentage versus the percentage assessed to consumers.

Mr. Hohenberger then moved and Mr. McLeod seconded to execute the amended contract as requested to redefine "gross revenues". Passed unanimously.

Mr. McMahon then advised Mrs. Case that he had been contacted by two (2) residents who had been waiting several months for cable hook up at their new homes. Mrs. Case indicated she had spoken to both residents, as well as Comcast who was looking into the matter.

CLARK FARM NORTH PROTEST PETITION: Mr. Sullivan gave a brief background of events leading up to this discussion, noting that a protest petition had been received relative to Article 3, Petition 1. Mr. Sullivan advised that, preliminarily, Mr. Peter Zohdi of Herbert Associates had been contacted regarding mapping for validation of the protest petition. However, once it was determined that the Town's tax maps had to be used, in order to avoid any conflict Mr. Sullivan indicated he had contacted acting Chairman Breton and Mr. Karl Dubay of MHF Designs had been retained to undertake the required mapping.

Mr. Sullivan then reviewed the results of Mr. Dubay's work, noting that State statute requires that for the protest petition to be validated, the owners of at least 20% of the area within 100' of the proposed area to be re-zoned must have signed the petition. Mr. Sullivan noted that parcel 14-B-100, open space for the Clark Farm South development, had been excluded from the calculation as records showed it as still being owned by the Developer. Mr. Sullivan noted that the 100' buffer included a total of 519,062 square feet and, calculations indicated that owners of 26% of the area within 100' had signed the petition and it was recommended by staff and Town Counsel that the Board validate the protest petition accordingly. Mr. Sullivan noted, if validated, it would mean that the warrant article will be deemed failed, as it did not receive a 2/3 vote, and that the determination of validity must be made by the Board of Selectmen.

Mr. Hohenberger inquired as to the handling of Town property. Mr. Sullivan clarified that the property is counted within the buffer, but not as a vote on the petition.

Mr. McLeod clarified that the validation is a three step process: 1) determine the correct tax maps to utilize, 2) verify the radius as established by Mr. Dubay, and 3) verify the ownership of those properties within the radius.

Atty. Steve Clark, representing the Partingtons, approached to inquire why the open space (14-B-100) had been excluded. Town Counsel Bernard Campbell replied that the Declaration of Covenants for Clark Farm South stated ownership of the open space was to be conveyed to a homeowners' association as opposed to individual/fractional ownership by all. Atty. Campbell noted that, to date, no association has been formed and the title to land is under the development corporation's name, thus no one with legal authority to represent the parcel had signed the petition.

Atty. Clark indicated he was only pointing this out as he believed the zoning change proponent was part owner of the open space. He then noted that covenants are often referenced in deeds and plans, and pointed out specifically that item #9 of plan D-34346 for the Clark Farm South subdivision stated that each will own a 1.33 part of the open space. Atty. Campbell noted that Section 2.1(a) of the Declaration stated that the open space lot(s) shall be held for use of lot owners and owned by an Association. He further noted that, in a different context, the owners could possibly argue successfully that they have an equitable interest in the property, however, in this case and in the most legal sense they did not.

Mr. Sullivan then requested that Attorney Campbell address lot 9-A-780, which was owned by a Trust but signed for by Mr. Wheeler. Attorney Campbell clarified that the deed indicates the property is owned under a revocable trust, for which Mr. Wheeler is both trustee and settlor. Atty. Campbell indicated that there was substantial evidence that Mr. Wheeler is the owner of the property without him signing as "Trustee" based upon RSA 564 and that, under a revocable trust the settlor does reserve some rights and authorities.

Attorney John Cronin approached on behalf of Mr. Brian Bauchman, and stated that he believed that those tax maps created by Mr. Bob Thorndike were the most accurate, as opposed to CDM's maps created via a flyover, noting a big discrepancy between the two. He also opined that Mr. Wheeler's signature was not appropriate, and stated that there were issues with the buffer corners across the streets as depicted. Atty. Cronin indicated he would like to hear more from the Tax Assessor about the Town's tax maps, and stated the Board did not need to make a decision that evening.

Atty. Campbell approached and noted that RSA 31:95 requires that tax maps be updated annually and, further, that the Supreme Court case involving the Town of Hooksett was very clear as to what the appropriate tax maps were to use in such cases. Atty. Campbell noted that, in the Hooksett case, the Town had utilized outside data as opposed to the Town's tax maps, and the court had taken issue with that. Atty. Campbell stated that he believed the court's decision required the Town to use the same data available to the petitioners to validate the protest petition. A brief discussion then ensued regarding the boundaries.

Atty. Cronin then pointed out that Mr. Thorndike's maps are the only ones on file at the Registry of Deeds in Brentwood.

Mr. Mike Schulz then approached to inquire whether the town collects taxes from the home owners in lot 14B-100. Tax Assessor Rex Norman replied in the affirmative, noting the amount is built into their tax assessment.

Atty. John Ratigan, representing Rapala Development, approached to indicate that there were four (4) individuals who had failed to sign as "Trustee", and that he believed those signatures should be invalidated. He then noted that the Thorndike maps were in use by the Town consistently from 1967 to 2006, when the Town had moved toward providing online services. Atty. Ratigan felt that this conversation had offered two opportunities for error in the final maps: 1) during the digitization, 2) while adjusting them to match aerial flyover data. He then requested that Mr. Norman explain how and which tax maps are used, and clarified that the maps wouldn't be a matter of discussion if the survey and Thorndike maps didn't show that the petitioners did not have the required 20%.

Mr. Breton requested that the results of the various boundaries be announced. Attorney Campbell noted that, with the Thorndike maps, the petitioners obtained 16.31%, while the survey map showed a shortfall of 200SFT. Attorney Campbell then stated that while the question of ownership were up to the Board of Selectmen, under the NH title standards a "Trust" is not the owner of a property. Rather an individual, the "Trustee", is the owner.

Attorney Campbell then noted that the survey bears out the current, CDM maps more than the Thorndike maps, and that there is no requirement that maps be on file at the registry. He reiterated that they must, however, be updated on an annual basis and that the CDM maps were those available at the Assessor's counter and online. Discussion ensued.

Mr. Stearns inquired of Mr. Norman which maps he utilizes, to which Mr. Norman replied that he uses the CDM maps for assessment purposes. He further noted that the Thorndike maps are a valuable resource, as are plans on file at the Registry.

After further, brief discussion, Mr. Hohenberger moved and Mr. McLeod seconded to concur with the calculation of 26% and find that the protest petition is valid. Passed 4-1, with Mr. Breton opposed.

The Chair called for a five minute recess.

OLD/NEW BUSINESS: Mrs. Call discussed a proposed memo to Cliff Sinott of the Rockingham Planning Commission relative to uses for the Town's Phase I CTAP funds expiring in May of 2009, of which \$8000 remains. Mrs. Call suggested that the \$5000 for Underwood Engineering and the sewage study would use up the majority, and suggested some could be used towards the CURP/Economic Development work. Mrs. Call also noted that uses for the Phase II funds also need to be worked on. Brief discussion ensued.

Mrs. Call noted that Mr. Sinott will be attending an upcoming meeting to discuss the CTAP "road mapping" and to brainstorm future CTAP fund uses.

Mr. McMahon then moved and Mr. Breton seconded to support Mrs. Call's letter as discussed. Passed unanimously.

Mrs. Call distributed proposed amendments to the Town's Purchasing Policy for the Board's review and discussion at a future meeting, noting the only substantial amendment proposed was an increase in the purchasing levels.

Mr. Sullivan, at the Department Heads' request, asked that the Board consider delaying the Strategic Planning meeting scheduled for April to May, noting the Department Heads feel that by that time concrete assessment numbers will be available to them for discussion. The Board concurred.

Mr. Sullivan advised the members that the Town's lease for Herbert Field is expiring in April, and can be extended for an additional two years at the current rate/year. After a brief discussion regarding the upkeep of the field and its suitability for various uses, Mr. Hohenberger moved and Mr. McMahon seconded to continue the lease for Herbert Field for two (2) years. Passed 4-1, with Mr. Stearns opposed.

Mr. Sullivan advised the Board that he had received a response from the School Board relative to the Selectmen request that they delay the final coat of pavement on the access road from Route 111 to the High School. He noted that the School Board had presented three options to the Town, as suggested to them by Harvey Construction, as follows: 1) the School District completes the final coat; 2) Harvey Construction prepares a change order for the project, issues a credit to the School District to be turned over to the Town, and the Town paves the roadway; or 3) Harvey agrees to delay the final coat of pavement until later in the summer as requested by the Board. Mr. Sullivan indicated that Harvey's contract with the School District ends in June of 2009, and suggested the Board wait to see what the credit amount might be before making a decision.

Discussion ensued regarding the status and condition of the roadway, and it was suggested that Town Planner Laura Scott and CLD both inspect the road for issues.

Mr. Breton requested a letter be obtained from CLD stating that the road has been constructed to Town specifications. Mr. Sullivan replied such a letter could be obtained, but the biggest concern should be that the Town does not have a bond for the road, nor is he aware whether the School does.

After further discussion, it was the consensus of the Board that Mr. Sullivan draft a letter to the School District clarifying whether they have a bond and/or warranty with Harvey, and what the amount of the credit would be. Mr. McMahon requested that the District also be instructed to move the construction gate to the High School driveway. Discussion ensued regarding the previous Highway Safety Committee request that the District do so and who has possession of the keys. Mr. McMahon asked that the Board support his request to move the gate, and Mr. Hohenberger indicated his concurrence. Mr. McLeod asked that the Board wait a week before doing so.

Mr. McMahon then moved Mr. Breton seconded to request that the School Department move the gate to the High School entrance immediately per the Highway Safety Committee recommendation. After a brief discussion, the motion passed 4-1, with Mr. McLeod opposed.

Mr. McMahon then moved and Mr. Breton seconded that the requested action items relative to the paving be forwarded to the Superintendent as detailed by Mr. Sullivan. Passed unanimously.

Mr. McLeod indicated that he would like the Board to consider scheduling two (2) workshops with the School Board to discuss upcoming project/funding issues, one to be hosted by each Board respectively. Discussion ensued regarding the impending Strategic Planning meeting with Department Heads and possible timing of the workshops.

Mr. Sullivan suggested that the Board meet the first week of May with the Department Heads, then in late May and again in September with the School Board. The Board concurred.

Mr. Breton moved and Mr. McMahon seconded to adjourn. Passed unanimously. The meeting was adjourned at 9:30 PM.

Respectfully submitted, Wendi Devlin, Administrative Assistant

Note: These minutes are in draft form and have not been submitted to the Board for approval.