

BOARD OF SELECTMEN
Minutes of January 23, 2014

CALL TO ORDER: Chairman Phil LoChiatto called the meeting to order at 6:30 PM. Selectmen Ross McLeod, Al Letizio, Kathleen DiFruscia, and Roger Hohenberger were present; as was Town Administrator David Sullivan. Mr. LoChiatto opened with the Pledge of Allegiance.

PETITIONED ARTICLES:

Mr. Sullivan noted receipt of the following petition (Article 27): *“By Petition of Stefan Dapergolas and others, “Petition pursuant to RSA 231:43-45 for the official “discontinuance” of Class VI (paper street) Pine Hill Rd., Windham, NH from the point where Pine Hill Rd. abuts town property at the intersection of Lot 6-C-290 and Lot 6-C-200 (approximately .2 miles east of intersection of N. Lowell Rd. and Londonderry Rd.) southeasterly to the surveyed location ending at the point where Pine Hill Rd. intersects with the Sheffield Road easement, but not encroaching upon or into the easement. This petition is submitted in order to preserve the environmentally fragile ecosystem in the abutting wetlands, eliminate a class VI paper street that has been certified as lacking proper grade to be developed into a street, and to cause the half of Pine Hill Rd. abutting town property to be absorbed into the existing abutting town property as land for walking or other environmentally friendly recreation. There is no costs associated with approval of this petition; Pine Hill Rd. does not show on GPS devices given its status as a Class VI road.”*

Mr. Sullivan advised that the petition had been verified as having the required 25 signatures, and that the petitioner was present. He went on to indicate that this request had previously been discussed by the Board, who had opted not to include the discontinuance as a Town article; resulting in submission of the petition. Mr. Sullivan noted that, per the Board’s Rules of Procedure, they needed to reflect a recommendation on the Article. He then reviewed the area being proposed for discontinuance with the Board, and advised that all abutters have been notified via certified mail that this article will be on the Town Warrant.

Mr. LoChiatto then advised the Board that, due to an active working relationship with Mr. Dapergolas, he was recusing himself from this discussion. Mrs. DiFruscia assumed the Chairmanship.

Mr. Hohenberger moved and Mr. McLeod seconded to accept the petition. Passed 4-0.

Attorney James Steiner, representing Mr. Dapergolas, approached and reviewed photographs of the current Class VI road with the Board; clarifying the location of a stream which runs adjacent to Pine Hill off of North Lowell, where Pine Hill extends into the woods, and where it abuts the town parcel. Atty. Steiner indicated that the discontinuance would only affect that portion which abuts Town property; adding that one half of the discontinued roadway would then become part of said conservation parcel and would thus not interfere with the trail access.

Attorney Steiner then pointed out the location of the well that currently supports the Sheffield Road area, noting the importance of considering same, and advised that the other Class VI roads which used to be in this same area have previously been discontinued. He indicated that, in response to concerns raised regarding impacts to the abutters east of North Lowell Road, the petition had been adjusted and no longer requested discontinuance out to North Lowell.

Attorney Steiner went on to note that only one abutter had not signed the petition, as she was in Florida, however there is no impact to her property as it fronts on Sheffield. He then reiterated that the intent is to preserve the wildlife corridor/conservation land; adding this will not serve as a connector via Wall Street as shown by the study ten (10) years ago. He noted that any development in the area would pose a contamination risk to the Sheffield well, and that discontinuance alleviates the potential for same.

Mr. Hohenberger inquired what the advantage of this discontinuance was to Mr. Dapergolas. Attorney Steiner replied that it continues to preserve the quiet of the area as it exists, as well as the conservation area. Discussion ensued in that there was no monetary or other gain to Mr. Dapergolas, and that the project referenced by Mr. LoChiatto in his recusal related only to an addition to Mr. Dapergolas' home. Attorney Steiner then advised that Mr. Dapergolas had endeavored to get an updated wildlife study of the area, but was unable to do so due to the season; adding that conservation land increases the value of existing homes.

Mr. Jim Finn, Conservation Commission, approached noting he applauded the petition, as it would protect the area as much as possible; adding he believed all members would support it.

Mrs. Betty Dunn, Woodvue Road, approached to inquire whether input had been sought from the Planning Board. Mr. Sullivan advised there is no legal requirement that it be submitted to the Planning Board, however, the Selectmen could ask them to weigh in on it. Mrs. Dunn indicated that the petition looks good on its face, however, she felt there was always a need for conversation between boards as it pertained to interconnectivity and other such issues. Discussion ensued regarding the Wall Street corridor study, and interconnectivity relative to Sheffield Street.

Mr. Wayne Morris, Conservation Commission, approached noting he believed it had been presented to the Planning Board; adding that the Conservation Commission had reviewed it, as well, as part of a request for directional boring for a new well in the area. Mrs. DiFruscia sought clarification that the discontinuance would have no effect thereon, and Mr. Morris confirmed it would not. Discussion ensued regarding the petitioner's previous intent to discontinue Pine Hill all the way out to North Lowell, which would not have allowed access to the Town Conservation land from North Lowell Road, in that this is no longer an issue with the revised language.

Mr. McLeod indicated he was reluctant to give up an area that could serve as future access; noting he did not see that there was a pressing concern or need to close it to prevent something from happening in the area. Mr. Hohenberger concurred. Mr. Letizio indicated he would support the petition based on the purpose behind it being conservation of the area. He added it would be a challenge to connect through there and questioned what the value would be of doing so, even from an economic development standpoint. Discussion ensued regarding the previous study, and that a connection from Wall Street would have served to relieve congestion on Route 111; as well as the challenging topography in the area.

Mr. Letizio noted that the discontinuance would also discourage more residential development which, along with preservation of the conservation area, is a benefit. Mrs. DiFruscia concurred, adding that the concerns she had previously had with respect to impacts to the abutters have been addressed via the change in the petition. She added that the area encompasses a very fragile ecosystem, and any type of connection in that area would have detrimental impact.

Mr. Sullivan then clarified that, per the Board of Selectmen Rules of Procedure, the members must make a recommendation on the petition unless the majority votes otherwise. Mr. Hohenberger moved to not place a recommendation on the article. There was no second.

Mr. Letizio moved and Mrs. DiFruscia seconded to "recommend" the article. Mr. McLeod sought clarification that the signers of the petition had been verified, and Mr. Sullivan replied in the affirmative. Motion passed 2-2, with Mr. Hohenberger and Mr. McLeod opposed. Discussion then ensued as to how to reflect these results on the ballot, and Mr. Sullivan clarified that in the case of a split vote the recommendation has always gone to the positive. After further discussion, it was Board's determination that the warrant will reflect "Recommended by 2 – Not Recommended by 2."

Mr. LoChiatto resumed the Chairmanship. Brief discussion ensued, and it was the consensus of the Board that the Planning Board be asked to weigh in on this article.

Mr. Sullivan noted receipt of the following Citizen Petition (Article 28): *“To see of the town will vote to urge: That the New Hampshire State Legislature join nearly 500 local municipalities and 16 other states, including all other New England states, in calling upon Congress to move forward a constitutional amendment that 1) guarantees the right of our elected representatives and of the American people to safeguard fair elections through authority to regulate political spending, and 2) clarifies that constitutional rights were established for people not corporations.*

That the New Hampshire Congressional delegation support such a constitutional amendment.

That the New Hampshire State Legislature support such an amendment once it is approved by Congress and sent to the State for ratification.

The record of the vote approving this article shall be transmitted by written notice to the Town of Windham’s congressional delegation, and to the Town of Windham’s state legislators, and to the President of the United States informing them of the instructions from their constituents by the Board of Selectmen’s Office within 30 days of the vote.”

Petitioner Neelima Gogumalla approached to give a brief background of the petition, noting it pertained to a decision made by the Supreme Court relative to the undeniability of free speech. She indicated that there is a grass roots movement underway to pass resolutions and referendums asking Congress for a Constitutional amendment to do away with Citizens United. Ms. Gogumalla indicated that this petition will be on the ballots in approximately fifty (50) New Hampshire towns, and that all other New England states have passed the same by referendum. As NH is not a referendum state, it must be passed by ballot.

Mrs. DiFruscia noted that she had read the Supreme Court decision in question, and it did appear to open the door widely for major corporations to donate large sums of money without having to disclose same; adding that she understood that was the underlying purpose of the movement. Discussion ensued regarding this being the only avenue to change the process, and that it is a request to the State legislature to address the issue.

Mr. McLeod opined that this applies to Federal Statutes, and does not affect those on the State level. Ms. Gogumalla disagreed in that it would impact State elections. Discussion ensued.

Mr. McLeod then noted this relates to a highly political issue, however, the Selectmen are not a political Board. Discussion ensued regarding the existing ability to regulate political spending, whether this petition was a political issue or not, and previous requests made of the Board regarding constitutional issues.

Ms. Gogumalla indicated she was not seeking a recommendation from the Board; just that it be placed on the Town warrant. Mr. LoChiatto noted it was going to the Warrant regardless as it was a petition, and concurred with Mr. McLeod that the Selectmen should not weigh in on it. Discussion ensued regarding the non-partisan nature of this effort. Mr. Hohenberger noted that many times in the past the Board has reached out to the legislature on behalf of the Town requesting their support, and he did not see this as being any different.

Mr. Hohenberger then moved to not include a recommendation on Article 28. Mr. McLeod seconded for discussion, which ensued regarding previous requests from the Board to the legislature; which Mr. McLeod noted usually pertained to tangible issues impacting the Town, such as I-93.

Mrs. DiFruscia sought clarification that the petition essentially would send a message to the State and Federal representatives that the Town supports a constitutional amendment, and Ms. Gogumalla replied in the affirmative. Mrs. DiFruscia indicated that while she would personally support such an amendment, she was concerned it was not the purview of the Selectmen to get involved in making such a recommendation.

Ms. Gogumalla reiterated that the petitioners just wanted an opportunity to have it on the ballot; adding it had already been approved by sixteen (16) states. After further discussion, motion to not include a recommendation on the warrant article passed 4-1, with Mr. Letizio opposed.

Mr. McLeod then moved and Mr. Hohenberger seconded accept the petition as submitted and send same to the Warrant. Passed unanimously.

PUBLIC HEARING: Mr. Sullivan read the following petition as received (Article 5) into record: *“To see if the Town will vote to raise and appropriate the sum of Eight Hundred and Sixty Thousand and no 100ths (\$860,000.00) Dollars for the purpose of purchasing the property at 137 Kendall Pond Road, Tax Map 1-C-100, known as the Campbell Farm, said lands to be designated as conservation land under the control of the Conservation Commission, as well as payment of costs associated with the financing of said purchase; said sum to be in addition to any federal, state or private funds made available therefor, and to raise the same by issuance of not more than \$700,000.00 in bonds or notes in accordance with the provisions of the Municipal Finance Act (RSA Chapter 33) and to authorize the Selectmen to issue and negotiate such bonds or notes and to determine the rate of interest thereon, and to apply toward the cost any interest earned from the temporary investment of any bond or note and to take any other action as may be necessary to carry out and complete financing of this project, with the balance of \$150,000 to come from the Conservation Fund.”* Mr. Sullivan then read the public hearing notice into the record, as follows: *“In accordance with RSA 33:8-A, the Board of Selectmen will hold a Public Hearing on a citizen’s petition for a proposed bond issue in the amount of \$700,000 for the purpose of purchasing lot 1-C-100 for conservation purposes, on Thursday January 23, 2014 at 6:30 pm at the Community Development Department. The total cost of the purchase is estimated to be \$860,000.”*

Mr. Sullivan advised the Board that this petition had been received on January 14th and, in keeping with requirements to give seven (7) days notice of a hearing to be held at least fifteen (15) days prior to Deliberative Session, this public hearing had posted. However, RSA 40:13(c) which pertains to the municipal budget law, such same to be held “by January 21”. He indicated he had consulted with Town Counsel, and conferred with the State, and that no one had heard of this situation arising before; wherein the latter statute bars submission of any monetary petitions requesting bonding such as this. Mr. Sullivan noted that, if the petition is supported at town meeting, one of two measures can then be taken: 1) holding of a curative town meeting in which ratification would be sought and, if supported by 2/3, the affirmative vote would stand and be legally binding, or; 2) a State Representative could be asked to bring forth a special act of the legislature in order to ratify the vote of the meeting.

Mr. Sullivan then noted that, as a third option, the petitioners could amend their article to request the full amount as taxable dollars, in one year, with no bond. He indicated he had met with the petitioners and that Counsel’s opinion had been shared; adding if the article does not pass then this becomes a moot point.

Mr. Wayne Morris, Chairman of the Conservation Commission, approached noting that the purpose of the bond would be to purchase Campbell Farm, located on Kendall Pond Road; which encompasses 64 acres and was established circa 1733 via a King’s Grant to the Campbell family. Mr. Morris noted that, on a national scale, conservation is something people look for. He then advised that the Commission had intended to bring this request to the Selectmen as a town initiative, but had not received the letter of intent until two weeks ago and thus had to submit same as a petition. Mr. Morris then reviewed maps/photographs of the Farm with the Board; noting that it fronts on Kendall Pond Road and also has over 5,100 feet of frontage on Beaver Brook. He indicated that the purchase price, as agreed, is \$860,000, and that \$160,000 is currently available in the Conservation Land fund. Mr. Morris clarified that the intent of the Commission is to expend future current use monies/conservation funds to pay off the bond.

Mr. Letizio pointed out that the balance of current use funds available at year end was shown as \$639,383; and inquired why the petition requested financing of \$700,000 in new money. Mr. Morris clarified that \$480,000 of that remaining balance is earmarked for the purchase of 30 acres of land abutting the Town Forest on Route 28.

Discussion ensued regarding the average annual income of \$135,000/year into the Conservation Land fund versus what would be an \$80,000/year bond payment; and that taxpayers will be responsible to pay the bond should the income in any given year not be adequate to cover it.

Mr. Morris noted that the Commission's main focus would be to pay off the note over the ten (10) year period; adding that any purchase Conservation makes requires approval of the Board of Selectmen. He indicated that there are checks and balances in place to maintain and ensure that the \$80,000 is available each year for the bond payment. Discussion ensued regarding the collection of current use funds and the impending water supply grants which will be received relative to parcels on Route 28; totaling \$144,000.

Mr. Sullivan sought clarification as to whether the Commission intended to amend the warrant article to reflect those grant funds, and Mr. Morris replied in the negative as they have yet to be received. Mr. Morris then noted that there is currently \$146,000 billed out for current use taxes. Discussion ensued.

Mr. Hohenberger inquired whether the Tax Assessor had been consulted regarding potential funds remaining for collection, and Mr. Morris replied in the negative; adding however that the Commission had consulted with engineers approximately 4 years ago who estimated same at \$4M. Mr. Sullivan added that Mr. Norman has not calculated same, as it is unknown when the land will come out of current use.

Mr. Sullivan then noted that, with interest estimated at 3.69%, the bond payment would be \$84,986; and that he had recommended to the Commission that they not prepay during above average years but rather keep the money in case of below average collections. Discussion ensued.

Mr. Hohenberger inquired how many lots Campbell farm could generate, and Mr. Morris replied estimates range from 6-14, and a discussion ensued regarding the Commission "Cost of Community Services" study. Mr. Hohenberger then inquired why the ten year bond period was not spelled out in the warrant article, and Mr. Sullivan replied it would be up to the Board to negotiate the terms.

Mr. Sullivan noted that he had received many questions about what would happen to the house itself, and Mr. Morris noted that the 1868 home would be part of the purchase, however, what would happen to it has yet to be determined. Discussion ensued, and Mrs. DiFruscia noted that she supports the conservation of the Farm, and inquired whether the Commission had looked into any grant funding or similar regarding the home itself. Mr. Jim Finn, Conservation Commission, approached noting he has spoken to various historic agencies regarding the building, but more information is needed regarding grant availability. Discussion ensued regarding placement on the historic registry.

Mr. Letizio inquired whether there were a sense of urgency regarding purchase of this parcel, and Mr. Finn replied in the affirmative. Discussion ensued regarding the loss several years ago of the Abdinor Farm due to that Board's hesitation.

Mr. LoChiatto noted that he supports conservation, however, he has concerns regarding potential impacts to the taxpayer; particularly since the house and whatever costs/liability it entails are part of the purchase. Discussion ensued, and Mr. Sullivan clarified that Conservation Funds would also go towards the latter. It was noted that the house lot could also be subdivided off and sold.

Mr. Hohenberger noted that this request is very similar to the Searles bond and felt there was little probability that the annual payment couldn't be maintained provided the Selectmen were diligent. He then moved, and Mrs. DiFruscia seconded, to "recommend" Article 5. Mr. McLeod concurred with Mr. Hohenberger, noting he had come in to the meeting prepared not to recommend the article; however his concerns had been addressed. Mrs. DiFruscia also concurred.

Mr. Letizio expressed concerns that there is no definitive stream of funding for the bond payment. Discussion ensued regarding the mechanics of the current use program and upswing in residential development. Mr. Sullivan clarified that, between impending grants and current use billables, \$326,000

will be coming in at some point; which is nearly four bond payments. Further discussion ensued regarding previous Conservation purchases/disbursements, and that the Board of Selectmen has the ultimate approval on purchases.

Mr. McLeod noted that of the three prime conservation properties in Town two, Taylor and Abdinoor Farm, are both gone. He indicated there was not as much need to purchase landlocked parcels as there was Campbell Farm.

Mrs. Betty Dunn noting the beauty of the property and adding that she has spoken to conservation and historic over the years about what can be done to protect it. She indicated now is the time to act, as it would be a terrible loss.

Mr. Letizio noted that the Board's responsibility is still to the taxpayer; adding that the Searles bond was different as that represented a commercial enterprise with a predictable revenue stream. He then inquired whether the article could be amended at Deliberative Session. Mr. Sullivan replied in the affirmative, adding that February 10th would then be the Board's final opportunity to change their recommendation.

Mr. Bob Coole approached noting the possibility that the Farm could generate funds as well, ie. by haying, adding that the house itself might be a nice meeting location. He noted there are not too many large parcels left in Town, that this parcel will be needed by the Town, and that it should be preserved.

Mrs. DiFruscia noted that, while she is also very much concerned about the taxpayers, she could not think of a better investment than this for the future and for the value it adds to the town. Brief discussion ensued regarding the procedural issues as outlined by Mr. Sullivan at the beginning of the discussion.

Motion then passed 3-2, with Mr. LoChiatto and Mr. Letizio opposed.

Mr. Hohenberger moved and Mrs. DiFruscia seconded accept article 5 and move same to the Town warrant. Passed unanimously.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mr. Letizio seconded to enter into nonpublic session in accordance with RSA 91-A:3 II a. Roll call vote - all "yes". The topic of discussion was personnel and the Board and Mr. Sullivan were in attendance to discuss a personnel matter related to leave. No decisions were made.

Mr. Hohenberger moved and Mr. Letizio seconded to adjourn. Passed unanimously.

Meeting was adjourned at 8:50 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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