

BOARD OF SELECTMEN
Minutes of April 18, 2016

CALL TO ORDER: Vice-Chairman Ross McLeod called the meeting to order at 7:00 PM. Selectmen Bruce Breton, Jennifer Simmons, and Roger Hohenberger were present; as was Town Administrator David Sullivan. Chairman Joel Desilets was excused. Mr. McLeod opened with the Pledge of Allegiance.

ANNOUNCEMENTS: Mrs. Simmons extended thanks to Recreation and Ms. Haas for another successful Mother/Son night; noting a fun time was had by all.

Mrs. Simmons extended congratulations to the eleven Windham residents who had run in the Boston Marathon. Mr. McLeod echoed these sentiments.

Mr. Breton noted that a Windham Scout had recently won \$5,000 in the Shaw's Monopoly game, which he had donated to the Shepherd's Pantry.

Ms. Scott announced there would be a free business networking event at the Village Bean on the 19th from 5:30-7PM. Also, a well water education session on the 27th at Town Hall from 6:30-8P, and a free How to Succeed in Business with Wine event on 5/10.

Ms. Scott then noted that the Adopt-a-Spot program will kick off in mid-May.

Ms. Scott advised that the Welcome to Windham sign at the former Rogers Service Station had been installed that day.

TRUSTEE OF THE TRUST FUND APPOINTMENT: Mr. McLeod reminded all that this position had been omitted from the Ballot and, upon advertising to fill the vacancy, no one had signed up to do so. Brief discussion ensued as to whether former Selectman Kathleen DiFruscia would be interested, and she indicated she will speak to Mr. Sullivan about it further.

PUBLIC HEARING - OFF-ROAD VEHICLE ORDINANCE: Mr. McLeod noted that since the last discussion, there were three items outstanding to be clarified, including the definition section. Mr. Sullivan then read the public hearing notice into the record as follows: *"The Board of Selectmen will hold a public hearing on April 18, 2016 at 7:00 pm at the Community Development Department for the purpose of considering amendments to the Ordinance governing Use of Off-Road Vehicles On Town Property (#WIN 3:00:11:02). Changes being proposed within the ordinance are available for review on the Town website at WindhamNH.gov, or in hard copy at the Administrative Offices, 4 North Lowell Road. Proposed new language is reflected via underlined text; while language to be deleted is struck through."*

Mr. McLeod went on to note that Section V needed clarification regarding motor vehicles being registered for use on public ways and deletion of the exemption allowing ATV's in the Depot Parking lot. Mr. Sullivan then read into the record an email from the Windham Rail Trial Alliance in support of the amendments

Mr. Norm Babineau approached suggesting that in Section IV, motorized vehicles be removed from the exceptions, as they should not be mingling with pedestrians. Discussion ensued, and Mr. Hohenberger noted that there had been a long discussion on this and he further expressed concerns with opening it up to amendment as, currently, it all worked very harmoniously (eg, bikes, pedestrian, horses). He indicated he did not wish to change the document any further, and Mr. Breton and Mrs. Simmons concurred.

Mr. Breton then moved and Mrs. Simmons seconded to approve the Ordinance as posted, subject to removal of Section IV A, 5-8 as posted. Passed 4-0.

PUBLIC HEARING – CDD FEES: Mr. Sullivan read the public hearing notice into the record, as follows: *“In accordance with RSA 41:9A, the Board of Selectmen will hold a Public Hearing on April 18, 2016 at 7:00 PM at the Community Development Department for the purpose of amending/adopting those fees charged by the Community Development Department as follows. Zoning Board of Adjustment Fees, Variance Extension Application: Existing fee - N/A, Proposed fee - \$100.”* Mr. Sullivan indicated that Town Counsel has recommended such a fee be put in place.

Mr. Breton moved and Mr. Hohenberger seconded to approve the fee as proposed. Passed 4-0.

TRANSFER STATION LIGHTING RETRO-FIT: Mr. McLeod indicated a request had been received from staff to allow for a waiver of the bid process to proceed with a sole source vendor to complete this project.

Mr. Dennis Senibaldi, Transfer Station Supervisor, explained that based upon the Local Energy Committee’s recommendation as well as an energy audit, it was recommended that the lighting be changed; the Town portion of the cost to be \$9,000. He indicated the grant funds for this project cannot be guaranteed past April and further explained that EverSource had bid out these retro-fits and selected the vendor in question.

After brief discussion regarding the anticipated savings of \$3,000 with the new lights, Mr. Hohenberger moved and Mr. Breton seconded to waive the bid process and allow the use of a sole source vendor, LRS of Wilmington, MA, to complete the lighting retrofit at the Transfer Station and, further, to authorize Mr. Sullivan to execute the contract. Passed 4-0.

Mr. Sullivan requested that the Board address the Fire Chief’s similar request at this time.

OLD/NEW BUSINESS: Chief McPherson approached to request that the Board waive the bid process and authorize the annual purchase of five (5) sets of PPE equipment through Bergeron Equipment in an amount not to exceed \$11,198.64.

Mr. Hohenberger inquired whether anyone was monitoring pricing to ensure that Bergeron’s costs remained competitive. Chief McPherson replied in the affirmative, noting that Bergeron is the only local vendor for the Global brand. He indicated that a cost comparison was last done approximately 4 years ago, and would be done again in the next year or two. Mr. Breton noted that this brand is manufactured in NH and is utilized by 60-70% of the area departments.

Mr. Hohenberger moved and Mrs. Simmons seconded to waive the bid process to purchase five sets of PPE, cost not to exceed \$11,198.64, and to authorize the Chief to pursue a contract for same. Passed 4-0.

Mr. McLeod noted that there were three pieces of legal correspondence related to the upcoming Planning Board request, and inquired whether the confidentiality of same had been waived. Mr. Sullivan and Ms. Scott replied in the affirmative that they were publicly available.

ECONOMIC DEVELOPMENT COMMITTEE: Mr. Ed Gallagher, Chairman, reviewed the attached presentation with the Board; outlining their recommendations regarding economic development and a dedicated position to foster same. Mr. McLeod noted the presentation offered much to digest, and suggested that workshop be scheduled for the future.

Mr. Hohenberger sought clarification as to how much new development would be required to reach a level of 15% commercial based; and Mr. Gallagher replied it would be a substantial amount. Mr. Hohenberger noted that may mean bringing in box stores, that people have been waiting for the I-93 project to be completed, and that 15% may not be attainable.

Mr. Gallagher noted that it isn’t about opening up new parcels for development, but rather developing the existing; adding there are four large areas open. He indicated that we have been “good” but want to be “great” and a dedicated individual is a way to move the needle towards that end.

Discussion ensued regarding similar positions/communities. Mr. Breton pointed out that Londonderry is very business friendly with no impact fees, and that budget fees would be required in order to send our Director to such things as trade shows. He indicated that Ms. Scott does a great job. Further discussion ensued, with input from Ms. Scott regarding her efforts. Mr. Gallagher suggested that the Board review the CURP study, and consider the commercial parcels that are open today and whether they wanted to leave their development to chance or drive the outcome. Brief further discussion ensued, and Ms. Scott advised that the full CURP study is available on the website. No decisions were made.

PLANNING BOARD – SPECIAL TOWN MEETING REQUEST: Mr. McLeod noted that letters in support of a Special Town meeting to address the outcome of Zoning Citizens Petition #1 had been received from the following: Tom Leclair, CPIA; Patrick Corbin, Shawn Harrington, Peter Coffin, Gina Ferrante, and Karen Casper. He went on to note that the Planning Board had voted 4-2-1, to request said Special Town Meeting. Mr. Sullivan indicated that he had also received an email from Ken Eyring, who indicated he was not in favor of a Special Town Meeting as to overturn the will of 4,000 voters for a few hundred was not democratic.

Mr. Breton questioned whether the merits of the Article were going to be debated or a Special Town Meeting only; indicating the former would be a lengthy discussion. Mr. McLeod noted there was no need for a long discussion, as the Board was to decide only whether a Special Town Meeting should be held thus the language should not be belabored.

Kathleen DiFruscia approached noting that the Planning Board had requested that she make a presentation to the Board justifying the need for a Special Town Meeting, and that she had invited Mr. Bob Hartsell of Geo-Syntec to talk about the science involved and the repercussions to the Lake and the Pond of the petition article. Mrs. DiFruscia explained that the petition amends the Zoning Ordinance in reference to exempting roof areas in calculating impervious surfaces when clean water is diverted.

Mrs. DiFruscia then noted that the Planning Board recognized this request would essentially subvert the voters, however, they believe there are compelling reasons to warrant same. She indicated they are not here because they lost the vote; rather it is because the language conflicts with the zoning ordinance and has enforceability issues. Mrs. DiFruscia advised that the Planning Board had voted unanimously to not recommend the petition, and not one person had spoken in support of it; nor was it supported by science. She indicated that, historically, voters have never voted for a petition that was not recommended by the Planning Board.

Mrs. DiFruscia explained that the basic premise of the language is that rain water is clean, however, science does not support that; adding that the Department of Environmental Services includes roofs in their calculations. She indicated that there is no definition on the local or state level of “clean” and, if an applicant were to come before the Planning Board under this provision, without such a definition, there will be questions as to who will enforce it, who will do testing, etc. Mrs. DiFruscia noted that the CDC speaks to the contamination of rainwater, and the petition was contrary to the spirit of the watershed ordinances that are based on sound, scientific data. She indicated there is a possibility of litigation and the longer this goes without correction, the more likely it will occur.

Mrs. DiFruscia noted that the Planning Board wants good economic development that doesn't compromise natural resources and conforms to our regulations; adding that Cobbetts Pond is listed as an endangered water body and Canobie is Salem's drinking water supply.

Mrs. DiFruscia advised she had spoken to Dave Scanlon at the Secretary of State's office and with Town Clerk Nicole Bottai, and neither recommended holding a Special Town Meeting as part of the September primary. She indicated that, to Mr. Eyring's point, there is no way to control how many might show up.

Mr. Bob Hartsell then reviewed the attached powerpoint presentation with the Board outlining the scientific data and possible repercussions of the petition.

Mrs. Margaret Crisler approached noting that the Planning Board allowing the article to go to ballot with 7-0 vote was confusing. She indicated that the language will cause a great deal of hardship for the Planning Board, applicants, and the Town; adding that the Planning Board holds hearings, etc., to fully vet their amendments, which does not happen with petitions. Mrs. Crisler noted this is a no win situation, and is inconsistent with the Master Plan and historic voter support in protection of our water resources. She indicated that in her 20 years of volunteering she has disagreed with the voters many times, however, this is different as she had no doubt the voters were confused and the outcome was an honest mistake deserving of a do-over.

Mr. Tom Leclair, CPIA, approached noting that the Association was very disappointed the petition had passed. He indicated he believed it was a hastily crafted, reckless petition from an out of state developer which will result in dire consequences to the Pond. Mr. Leclair noted that the watershed ordinance is key to preserving the Pond for future generations, and thus the CPIA supported a Special Town Meeting.

Mr. Bill Schroeder, Canobie Lake Protective Association, approached indicating they are also very concerned regarding the potential damage this could do; expressing support for a Special Town Meeting.

Mr. Bob Coole approached seeking clarification as to whether a Special Town Meeting would need court approval. Mr. Sullivan replied in the negative, as no monies were involved. Mr. Coole sought clarification as to the mechanics, and Mr. Sullivan noted that there would be Planning Board hearings, a warrant drafted, and then a vote without a deliberative session. Discussion ensued regarding the timing of 120 days for same, and traditional town meeting versus Senate Bill 2 procedures.

Mrs. Barbara Coish approached in opposition to a Special Town Meeting; as she believed the vote was the vote.

Ms. Kathy Senter approached in favor; echoing concerns regarding voter confusion. Ms. Erin Kirby approached in concurrence and support, as well. Discussion ensued in that "confusion" related to the use of the word "disapproved" and that, although both articles looked the same, the other had failed.

Mr. Ralph Valentine approached to read a letter from Attorney Cronin on behalf of Mashop Development.

Mr. Ken Eyring approached to speak in opposition of the request, noting the record voter turnout and that it should not be the position of the Selectmen to interpret the intent of the voters. He pointed out that the school had failed by 3%, and questioned should they push through for a Special Meeting? Mr. Eyring acknowledged this was a serious issue and the Board was in a difficult position, however it was his position that the voters had spoken. Brief discussion ensued.

Ms. Audrey Breer approached in support of the Special Town Meeting, expressing she had found the article confusing, as well.

Ms. Ginny Campiola approached noting the petition had been railroaded through by an out of townner in response to opposition to their development. She noted efforts have been ongoing for years to try and protect the water and now, with I-93 completed, there are three large projects coming before the Planning Board; stressing this cannot wait 120 days.

Mr. Gallagher approached to take exception to earlier comments made regarding this petition and economic development; indicating the Committee seeks positive development that does not disturb natural resources. He went on to note that, perhaps, this is indicative that the ordinances should be revisited and a hybrid solution developed; expressing concerns regarding overturning the vote without something better planned.

Mrs. DiFruscia then approached and summarized the Planning Board's request and reasons therefor, before Mr. McLeod closed public input.

Mr. Hohenberger noted that he had spoken to several regarding this issue, and that he is fully in favor of protecting the Pond; adding that the issue, however, is there were 1834 "yes" votes and he is never going to presume to know what those voters were thinking. He also indicated that he understood the confusion, as he had had to read it twice, and the potential impacts. Mr. Hohenberger then noted unless it could be done as part of the September primary, he would not support the request, as 300 voters is not representative of the Town.

Mrs. Simmons inquired what would happen if the outcome of a Special Town Meeting were to be the same, and discussion ensued with Mr. Breton noting that Town Counsel is not concerned going forward, and that all articles are reviewed by the Attorney.

Mr. Breton noted that the petition was signed by Town residents, as well, and the Board cannot tell the intent of the voters. He indicated that, if the confusion were based on the 7-0 position then the other would have failed as well. Further discussion ensued.

Mr. McLeod noted that, by statute, the Planning Board must "approve" or "disapprove" however, the Planning Board does not actually have the authority to "approve"; adding that historically the ballots have always read "recommended" or "not recommended". He indicated that there is a 120 day window to hold a Special Town Meeting, and the Planning Board would prefer 11/14; noting that this only impacts Cobbetts Pond and Canobie Lake. Mr. McLeod noted that the voters' opposition to Citizens Petition #2 tells him they knew what they were voting on. Discussion ensued regarding DES requirements, recharge rates, etc.

Mr. McLeod noted that, to Mrs. Crisler's earlier point, 8 times over the last 7 elections the voters had voted contrary to the Planning Board's recommendations; which displays a clear pattern of their applying independent judgement to the warrant articles. He expressed support for the Planning Board working to correct this for the March election.

Mrs. Simmons noted she understood the consequences and concerns, as she also loves the Pond, however she felt the residents and the way they voted must be respected.

After brief discussion, Mr. Hohenberger moved to hold a Special Town Meeting on the day of the primary. There was no second.

The Board took no action on the Planning Board's request; and thanks were extended to all for their input and attendance.

Mr. McLeod called for a ten minute recess.

HEALTH OFFICER: Mr. Hohenberger moved and Mr. Breton seconded to appoint Ms. Scott as Health Officer for a period of three years. Passed 4-0.

SNHPC ENERGY CONSORTIUM: Mr. McLeod noted this was a continuation of discussions from 3/7 and 3/21 as to whether to continue with the consortium. Mr. Breton noted for the record that he thought this would be going out to bid; indicating the Secretary of State's website shows that 120+/- brokers are available in the State. He indicated that he was very taken aback that the Commission did not put this out to bid, and that he was certain he would be able to locate an RSA or other legislation that required it to be; adding he also could not find the minutes of the SNHPC meeting.

Mr. Peter Griffin, Commissioner, explained that the Commission is made up of several subcommittees, however he is not on the particular one Mr. Breton is referring to. He advised he had asked Mr. Preece why it hadn't been put out to bid, and he had indicated it was a decision of the subcommittee. Mr. Sullivan added that Mr. Preece had advised that there was a meeting to which Mr. Sullivan was late to and Mr. Desilets was in attendance at, during which the Town representatives were polled regarding

their satisfaction with the current broker. Mr. Sullivan indicated that Mr. Preece had determined, based upon the response and within his authority, to not go out to bid. Discussion ensued in that the Board is not being asked to act on the broker or bid, but whether or not stay with the consortium. Mr. Sullivan clarified that the SNHPC is staying with the current broker who is obtaining bids from suppliers, and that the current request is to stay in the consortium and, if the bid price comes in at \$0.075, or less then to stay with them.

Mr. Hohenberger moved and Mrs. Simmons seconded to stay with the SNHPC regional energy consortium, at 100% green. Passed 3-0-1, with Mr. Breton abstaining. Mr. Sullivan indicated he will advise of the green pricing once the bids are received.

HOUSING AUTHORITY: Mr. Sullivan advised that the Authority is not at a place in the process to request a lease; thus they are not present.

LIAISON ASSIGNMENTS: The Board made the following decisions regarding their annual liaison assignments:

- Mr. Breton moved and Mr. Hohenberger seconded to make the following liaison appointments: Mr. McLeod Planning Board; Mr. Hohenberger CIP and Mr. Desilets CIP Alternate; Mr. Desilets EDC and Mrs. Simmons EDC Alternate; Mr. Hohenberger Cable, and Mr. Desilets Cable Alternate; Mrs. Simmons Recreation; Mrs. Simmons Searles Trustees; Mrs. Simmons HDC; Mrs. Simmons Route 111 Beautification; Mrs. Simmons JLMC; Mr. Desilets Local Energy Committee; Mr. Desilets Technical Advisory Committee; Mr. Breton Haz-Mat District; Mrs. Simmons and Mr. Desilets Welfare Overseers, and; Mr. Breton Housing Authority and Mr. Desilets Housing Authority Alternate. Passed 4-0.
- Mr. Breton moved and Mrs. Simmons seconded to appoint Mr. Hohenberger as Depot Advisory Committee liaison. Passed 4-0.
- Mr. Breton moved and Mr. Hohenberger seconded to appoint Mr. Desilets as Town Center Beautification Subcommittee liaison. Passed 4-0.
- Mr. Breton moved and Mr. Hohenberger seconded to appoint Mrs. Simmons as Planning Board Alternate liaison. Passed 3-1, with Mr. McLeod opposed citing Mr. Desilets efforts and continuity.
- Mr. Hohenberger moved and Mr. Breton seconded to appoint himself and Mr. Breton as liaison to all three unions. Failed 2-2, with Mr. McLeod and Mrs. Simmons opposed as both felt Mr. Desilets should have one position.

Mr. Hohenberger then moved and Mrs. Simmons seconded to appoint Mr. Hohenberger and Mr. Breton as liaisons to the Police and Fire Unions, and Mr. Breton and Mr. Desilets as liaisons to the Municipal union. Passed 4-0.

BOARD GOALS: Mr. Sullivan asked that the Board review a spreadsheet provided by him in preparation for the next meeting.

BID AWARD – COMMAND VEHICLE: Mr. Sullivan advised that a bid had been received which the Board would need to reject as it exceeded the available budget; adding that, in addition, other bidders did not have their 2017 pricing available. Mr. Hohenberger moved and Mr. Breton seconded to reject the bid. Passed 4-0. Chief McPherson advised that the vehicle has been placed back out to bid.

OLD/NEW BUSINESS: Mr. McLeod noted that at the last meeting the Board had contracted with Mr. Manioan to provide the Town with interim assistance in the Community Development Department, however, he had since taken another position. As such, the Board would need to determine whether to proceed with Mr. Fougere, Mr. Keach, or some combination of the two. Discussion ensued in that the Planner Position is currently being advertised and this is interim assistance only.

Ms. Scott recommended she be allowed to contract with both, noting if neither can attend the meetings she will do so and that Mr. Fougere can offer office hours whereas Mr. Keach cannot. Discussion ensued.

Mr. Hohenberger moved and Mr. Breton seconded to proceed in accordance with Ms. Scott's recommendation dated 4/15. Passed 4-0.

CORRESPONDENCE: Mr. Sullivan advised that the Scouts were requesting authorization to hold a campfire at the Town Beach; and that there have been no issues with similar requests from them in the past.

Mrs. Simmons moved and Mr. Breton seconded to approve the Scout's request contingent upon coordination with the Recreation Coordinator and Fire Chief. Passed 4-0.

Mr. Sullivan discussed the upcoming joint meeting with the Planning Board. It was the consensus to schedule same for the May 16th Board of Selectmen meeting. Ms. Scott advised that the Planning Board would like to discuss water in the Village Center District, the road layout process, the Master Plan of the Route 111 corridor, and the Master Plan. Mr. McLeod suggested that the topics be narrowed to those items which are within the Selectmen purview. Brief discussion ensued regarding the water/well issue in the VCD, for which an agreement was previously authorized by Town Meeting that has since expired.

OLD/NEW BUSINESS: Mr. Breton indicated he would like to poll the members as to whether they would support changing the meetings' start time to earlier. It was the consensus of the Board they would not support same.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mr. Breton seconded to enter into nonpublic session in accordance with RSA 91-A:3 II b, c, d and e. Roll call vote - all "yes". The topics of discussion were personnel, reputations, land acquisition and legal.

The Board, Mr. Sullivan, Ms. Scott, and Ms. Devlin were in attendance in the first session. Mr. Hohenberger moved and Mr. Breton seconded to hire the recommended Planning Board minute taker. Passed 4-0.

The Board, Mr. Sullivan, and Ms. Devlin were present in the remaining sessions.

Mr. Sullivan updated the Board on a matter relative to a tax deferral for which the proper paperwork had not been completed. Mr. Hohenberger moved and Mr. Breton seconded to deny the deferral as recommended. Passed 4-0.

Mr. Sullivan updated the Board on a potential legal matter relative to a property easement. No decisions were made.

Mr. Sullivan updated the Board on the sale of Town property. Mr. Breton moved and Mrs. Simmons seconded to authorize Mr. Sullivan to enter into the purchase and sale contracts as described. Passed 3-1, with Mr. Hohenberger opposed.

Mr. Hohenberger updated the Board on a matter relative to an elderly exemption. Mr. Sullivan will follow-up to garner more information from the DRA.

Mr. Sullivan updated the Board on a personnel matter. No decisions were made.

Mr. Hohenberger moved and several seconded, to adjourn. Passed unanimously.

Meeting was adjourned at 11:10 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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