

**BOARD OF SELECTMEN**  
**Minutes of October 21, 2013**

**CALL TO ORDER:** Chairman Phil LoChiatto called the meeting to order at 7:00 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, led by Eagle Scout Devin Bushey.

**ANNOUNCEMENTS/LIAISON REPORTS:** Mrs. DiFruscia extended thanks to Recreation Coordinator Cheryl Haas and all others who helped make the Harvest Fest another successful event.

Mrs. DiFruscia reminded all that on 11/2 the Windham Endowment would host their annual fundraising event at Promises to Keep beginning at 6PM. Tickets can be obtained at [windhamendowment.org](http://windhamendowment.org).

**CORRESPONDENCE:** Mr. Sullivan advised that a request had been received from Windham Actors Guild to utilize the Searles facility for their annual production; reminding the Board that a similar request had been granted last year at a cost of 25% of WAG's ticket sales. Correspondence was received from the Searles Coordinator, indicating general support of the request for an adjusted fee. Discussion ensued regarding the list of exempt groups, and Mr. Sullivan clarified that such exemptions are generally for meeting use as opposed to event uses.

Mrs. DiFruscia moved and Mr. McLeod seconded to charge WAG a fee equal to 25% of their ticket sales. Passed unanimously.

*Mr. Sullivan* advised that the State of NH was offering the Town the right of first refusal relative to a parcel of state owned land on Lamson Road; and that comments were being sought from the Planning Board, et al. He indicated that he would recommend the Board advise the State that the Town has no interest in this parcel; barring any differing opinion from those who have yet to respond.

Mr. Letizio moved and Mr. McLeod seconded to advise the State there is no interest and that they place the parcel out for sale. After a brief discussion, Mr. Letizio amended his motion and Mr. McLeod his second to make same contingent upon no receipt of a differing opinion. Passed unanimously.

*Bond release – Londonbridge Road Trenching.* After a brief discussion, Mr. McLeod moved and Mr. Letizio seconded to release the bond in the amount of up to \$5,000 as requested. Passed unanimously.

*Memo received* from Community Development Director Laura Scott regarding the zoning of the old Police Station on Route 111. Ms. Scott suggests that this parcel be re-zoned to Neighborhood Business District. Discussion ensued regarding the timing of the drafting of zoning ordinances, and future use of this facility. Mr. LoChiatto reiterated that he would like to see a teen center in this facility to cover a gap in recreational services. It was ultimately the consensus of the Board that Planning Board and Economic Development Committee look into the possibility of re-zoning this parcel as suggested and submit their comments to the Board.

**EAGLE SCOUT PRESENTATION:** Mrs. Barbara Coish, President of Windham Seniors Inc., introduced Devin Bushey to the Board; noting he is proposing a project at the Senior Center as his Eagle Scout Project.

Mr. Bushey approached and advised that he was proposing to build a garden area in the rear of the center to benefit both the Seniors and the Town. He indicated that the area would be 20'x35', planted with year round blooms, and will also include a path to the area as well as two benches. Mr. Bushey indicated that he would like to begin this project in the fall, with planting to take place in the spring. He went on to detail his fundraising plans, noting that any excess funds therefrom would be donated to the Center.

Discussion ensued regarding the type of plantings, and that Mr. Bushey could also reach out to the Garden Club for assistance. Mr. Letizio noted the many, evident achievements that Mr. Bushey has reached already at only 15 years of age. After further, brief discussion, Mr. Letizio moved and Mrs. DiFruscia seconded to approve Mr. Bushey's proposal as presented. Passed unanimously.

**LOT RESTORATION REQUEST/63 RANGE ROAD:** Mr. Sullivan read the public hearing notice into the record; adding that Tax Assessor Rex Norman was in attendance and that Counsel had provided his opinion to the Board. Mr. LoChiatto noted for the record that he has utilized the legal firm representing the applicant in the past,

however, he did not think it constituted a conflict. There was no challenge noted to Mr. LoChiatto remaining on the Board for this matter. Attorney Daniel Muller approached on behalf of the applicant, explaining that:

- On the 1960 subdivision plan, the lots in question were depicted as numbers 2, 3, and 4; adding that there is also a small remainder parcel depicted as #1, which they are not seeking to unmerge from #3.
- Historically, these lots have been referred by these numbers, and two have been sold separately.
- The house was built in 1951, and although the position of the driveway would suggest that 3 and 4 were combined, in 1963 they were still shown as separate lots on a Planning Board approved Plan.
- There is an old cellar hole on #4, while #2 remains unimproved.
- The applicant is seeking restoration of all three or, at a minimum, restoration of #2.

Mrs. DiFruscia sought clarification that, in 2005, the parcels had been conveyed separately; which Atty. Muller confirmed. Discussion ensued regarding the position of #1 and the driveway. Mr. Sullivan indicated that it seems there is no question regarding restoration of #2, but the Board must determine what to do about number 3 and 4. He then inquired where the septic tank was located. Mr. Mike Hammer, surveyor for the applicant, approached and indicated that they had endeavored to locate the system but could find nothing beyond the actual tank; adding there were no records of same at the State or local level. Atty. Muller noted that the tank cover is just to the right of the existing dwelling.

Mr. Hohenberger moved and Mr. McLeod seconded to unmerge lot #2 as requested, but to leave #3 and #4 merged based upon the driveway crossing same which shows an intent to merge. Discussion ensued, and Mr. LoChiatto noted for the record that they still are shown as two distinct lots on the 1963 plan. Mrs. DiFruscia then inquired whether #2 will meet frontage/size requirements. Atty. Muller indicated it would become a pre-existing, non-conforming lot subject to relevant zoning requirements.

Further discussion ensued regarding #1, which was not being merged by the stated motion as they are all currently merged, and that #2 will need to obtain a curb cut from the State in order to be developed. Motion passed 4-1, with Mr. LoChiatto opposed as he felt all the lots should have been unmerged as requested.

**ADOPT-A-SPOT UPDATE:** Ms. Scott deferred to Ms. Lisa Ferrisi, project manager for the first year of the program. Ms. Ferrisi reviewed a slideshow presentation with the Board detailing the program. Highlights included:

- 27 participants adopted a total of 34 locations
- Approximately 49 hours were spent at each site
- Suggestions received from participants included: site appropriate plants, online maps showing spots, online registration, and combination of some sites

Mr. Letizio indicated he would like to see London Bridge added to the list of spots; noting it had been improved as part of an Eagle Scout project but neglected since. Discussion ensued regarding expanding/combining offers, and Ms. Scott indicated that London Bridge could be added to list of spots. She also indicated that the possibility of accepting monetary donations/sponsorships was being explored for areas such as the By-pass. Mr. LoChiatto also noted that signs were needed, as well, at a minimum at high visibility areas. Brief, further discussion ensued, and Ms. Scott thanked Ms. Ferrisi for her efforts.

**POLICY UPDATES:** Ms. Scott advised that the Policy Committee was recommending repeal of the Town Ordinance regarding Tattoo/Body Piercing, as the Department of Health and Human Services regulates these types of establishments quite extensively. She noted that the Town should not be, and currently doesn't, regulate same however if the Board wished to do so, the Committee would suggest they do so via more of a business license process. Discussion ensued regarding prohibitive Town regulations currently in place, and the lack of staff availability to monitor same.

Mr. Letizio then moved and Mr. Hohenberger seconded to send the ordinance to Town meeting for repeal, as recommended. Passed 4-1, with Mrs. DiFruscia opposed.

*Ms. Scott* then noted that the Committee was recommended amendments to the Ordinance governing Land Application of Sewage Biosolids to bring it in line with other involved governmental agencies; which ultimately expands the coverage of the ordinance.

Mr. Letizio moved and Mr. Hohenberger seconded to post for a public hearing to adopt amendments to the Ordinance Restricting Land Application of Sewage Biosolids. Passed unanimously.

**INTERMUNICIPAL AGREEMENT:** Mr. Joe Maynard approached indicating that his is the final portion of the Spruce Pond development approved in 2007; which allows the cul-de-sac for Nathan Road to end in the Town of Derry. He noted that, via this agreement, the Town of Derry is requesting that the Town provide only winter maintenance; adding that eventually Nathan Road will be extended and the Town of Derry will assume all other responsibility for their side. Mr. Sullivan advised the Board that Highway Agent Jack McCartney is comfortable with agreeing to provide winter maintenance to the area which totals approximately 200'.

Lengthy discussion ensued regarding the termination clause as written versus language that was suggested by Town Counsel and the possible implications of same; the former of which requires mutual withdrawal. Mr. Maynard indicated that the agreement requires only winter maintenance, thus Derry provides all other maintenance. Further discussion ensued, and Mr. Sullivan suggested a possible amendment to read "... to include only plowing..." which would remove any concerns regarding possible drainage repairs, etc.

Mrs. DiFruscia then moved and Mr. McLeod seconded to accept the agreement inclusive of the clarification as stated by Mr. Sullivan. Passed unanimously.

**FINANCE DIRECTOR:** Mrs. Call presented her Q3 financial update to the Board, as attached. Highlights of the ensuing discussion included:

- Earned Time Trust versus the unfunded liability; and that a special warrant article would be required to allocate a portion of the Town's Undesignated Fund Balance towards the Earned Time Trust.
- Overtime: Chief Lewis and Chief McPherson both approached and clarified for the Board their ongoing efforts to balance overtime expenses while covering absences due to disability/workman's comp issues.

**2014 BUDGET:** Mr. Sullivan advised that for the last three years an essentially 0% budget has been presented to the Board for consideration, however, that is not something staff can do this year; adding that as of this point the proposed budget is already \$500,000 over last year's when considering just three items: the CIP allocation to the Town, retirement increases, and a 53<sup>rd</sup> week of payroll which occurs every five years. He asked that, if the Board had some idea of a parameter that they wished the budget to come in at, they advise staff as such. Discussion ensued regarding the CIP versus the operating budget, and presentation of a responsible budget for the Board to fully vet out.

Mr. Sullivan indicated that, if the Board is comfortable doing so, the CIP will be kept separate from the operating budget when looking at the overall impacts. Discussion ensued, and Mr. Hohenberger expressed concerns that doing so poses the possibility that the balance of the CIP, as intended, is not met.

Mr. Sullivan then inquired whether the Board wished to utilize their off Mondays for budget hearings, and the Board concurred. Mrs. Call then sought clarification that the Board was comfortable with receiving their budgets electronically, and the Board concurred with this, as well. The kick-off budget meeting will be held on November 18<sup>th</sup>.

**OLD/NEW BUSINESS:** Ms. Scott approached advising that staff had established the appropriate vesting/grandfathering dates relative to the collection of impact fees and that, since 2008, \$37,283 in Public Impact fees had gone uncollected. She noted that these were mostly due to grandfathering and that all pertained to residential development.

Ms. Scott indicated that the vesting statute is unlike any other relating to zoning, and has changed many times over the years. Lengthy discussion ensued regarding the intricacies of the statutory requirements, that going

forward the issue is being addressed, and that this pertained to public safety impact fees only. Ms. Scott clarified that 23 residential lots since 2008 should have paid and did not; adding that the charting of the data is completed, with all approval dates established. She indicated that staff is hoping to do the same for the School Impact fees, noting that this is always collected but they need to verify the correct amount was paid.

Further, lengthy discussion ensued regarding those who may have paid more than they should have for the Spruce Pond subdivision in terms of public safety and school impact fees since August of this year, and refunding of the differences. Ms. Scott advised that Town Counsel revised his earlier opinion as to the vesting date for this subdivision and now recommends the town refund any payment differences. Discussion ensued.

Mr. Letizio moved to refund those funds collected, contingent upon Mrs. Call clarifying which lots were involved and the amounts. Mr. Hohenberger suggested the Board review all of Town Counsels memos regarding same before making any motions. The motion was withdrawn.

Ms. Scott noted that the Department has revised their processes to ensure that such situations do not occur again and that, as time allows, the same analysis will be done for the School Impact fees. Mrs. Call added that staff will also provide lot by lot data. Further lengthy discussion ensued regarding the logistics of the impact fee statutes and the timing of the school analysis; which will be after the start of the new year.

### **RAIL TRAIL IMPROVEMENTS:**

*Mr. Mark Samsel*, Rail Trail Alliance, approached indicated that the donated work as accepted by the Board along the rail trail is now complete and the area is ready for pavement. He indicated that the Alliance has received an donation in the amount of \$24K which, along with their funds of \$15K, will complete this first part of the remaining portion of the trail. Mr. Samsel then reviewed with the Board the options for completion of the second part, which is estimated to cost \$100K. He noted that a TE grant could be used, for which the Town's portion would be \$25K, or proceed without the grant. Discussion ensued.

Mr. Hohenberger moved and Mr. McLeod seconded to the authorize the Alliance to work on Town property in order to finish Phase I. Passed unanimously.

Mr. Sullivan asked for clarification that the cost to prep and pave the 2<sup>nd</sup> phase would be \$45K; and Mr. Samsel replied in the affirmative. Lengthy discussion ensued regarding the option of doing so with Town funds or placing it as warrant article for a TE grant in the amount of \$100K, \$25K to be the Town's cost.

Mr. Sullivan suggested that the Board hold off on any decision in order to allow staff to obtain more information regarding the timing and whether the Town can withdraw from the TE process at this point. Further discussion ensued, no decisions were made.

**NON-PUBLIC SESSION:** Mr. Hohenberger moved and Mr. Letizio seconded to enter into nonpublic session in accordance with RSA 91-A:3 II b and d. Mr. Sullivan advised that a non-meeting would follow to discuss union matters, and that the Fire Union and Town have reached a tentative agreement for April 2011-March 2017. Mr. Letizio moved and Mr. Hohenberger seconded to support same. Passed unanimously.

Roll call vote to enter into non-public, all members "yes". The topics of discussion were personnel and land acquisition.

The Board, Mr. Sullivan, Ms. Scott, and Ms. Devlin were in attendance in the first session.

The Board discussed the vacant minute taker position. Mrs. DiFruscia moved and Mr. Hohenberger seconded to hire the recommended candidate. Passed unanimously.

*The Board*, Mr. Sullivan, Mr. Wayne Morris of the Conservation Commission, and Ms. Devlin were in attendance in the remaining session.

The Board discussed a potential land purchase. No decisions were made.

Mr. Hohenberger moved and Mr. McLeod seconded to adjourn to a non-meeting in accordance with RSA 91-A:2, I (a) to discuss collective bargaining matters. Passed unanimously.

Meeting was adjourned at 10:45 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.*