

BOARD OF SELECTMEN
Minutes of December 16, 2013

CALL TO ORDER: Chairman Phil LoChiatto called the meeting to order at 7:00 PM. Selectmen Al Letizio, Kathleen DiFruscia, and Roger Hohenberger were present; as were Town Administrator David Sullivan and Assistant Town Administrator Dana Call. Selectman Ross McLeod was excused. Mr. LoChiatto opened with the Pledge of Allegiance.

ANNOUNCEMENTS/LIAISON REPORTS: Chief McPherson approached, noting the importance of performing snow removal around household vents and of generator safety as they pertained to carbon monoxide dangers. Further, he reminded all of the “Adopt-A-Cistern/Hydrant” program, wherein residents can assist the Department by clearing cisterns/hydrants near their homes of snow.

Mr. Letizio advised that the Economic Development Committee meetings are now being televised; and thanked cable volunteer Bob Coole who has been assisting in the airing of the early morning meetings.

CORRESPONDENCE: Three (3) Right-of-Way Permit requests from RH White were received for trenching activities on Telo and Almas roads, the shoulder of Leni Road, and on Farrwood Road. Mr. LoChiatto noted that bonds were in place for all, and that they were related to utility conduit installation/repairs. Mr. Sullivan further clarified that all were submitted on behalf of PSNH, and that the Highway Agent supports their approval.

Mrs. DiFruscia moved and Mr. Letizio seconded to approve the permit requests as submitted. Passed 4-0.

MINUTES: None.

Mr. LoChiatto indicated that, although not all members were in attendance, he hoped the Board would move forward to complete the budget that evening; although if necessary another meeting would be scheduled. Mr. Sullivan noted that the Board could meet again on the 23rd, if necessary, but that staff recommended posting the budget as it was resolved that evening. He indicated that, then, those items that needed further clarification could be addressed on the 23rd, if necessary. Brief discussion ensued.

PUBLIC HEARING/POLE LICENSES: Mr. Sullivan read the public hearing notice into the record as attached. Mr. LoChiatto noted the petition was received on 11/18 from the Tax Assessor, and deferred to Mr. Norman for further clarification of the facts therein.

Mr. Norman approached and advised that submission of this petition had been recommended by Counsel at Donahue Tucker & Ciandella as part of their handling of the FairPoint lawsuit; and would serve to make adjustments to the licensing in order to meet statutory criteria. Mr. Norman noted that the Town licensing fees were modified a couple of years ago, and that this represented more of a language amendment; which Donahue Tucker & Ciandella assures will bring the Town into compliance with the law.

Mr. Hohenberger inquired whether this would bring the Town in compliance prior to the April deadline, and Mr. Norman replied that Town was already in compliance and this would simply modify the language of the license itself. He added that the case is still pending relative to the value issue and that FairPoint continues to maintain it should not be taxed. Discussion ensued in that this will serve to ensure uniform language across the communities involved in the event the tax is found to be constitutional.

Mr. Sullivan noted that notifications had been sent via certified mail to all utilities on the poles in Windham, and that only one response had been received from PSNH. He indicated they had advised that they do not object to fair taxation, however, they do object to the proposed conditions relative to notification requirements; which are not required by statute. Mr. Sullivan then noted that Counsel recommends that the Board move forward as petitioned by Mr. Norman. Discussion ensued regarding the FairPoint case as it relates to the proposed language change.

Mr. LoChiatto then inquired whether any member of the public, or current license holders who received notification, wished to speak. Ms. Kath Mulholland of First Light Fiber approached noting that the latter owns some poles in town; however, she offered no commentary on the petition itself.

Mr. LoChiatto then closed the public hearing and sought a motion from the Board. Mrs. DiFruscia moved and Mr. Hohenberger seconded to approve the amendment as petitioned. Passed 4-0.

BID AWARD/HIGHWAY LOADER: Mr. McCartney approached and noted that, after further review of the bids as previously announced, his recommendation would be to award the bid to Winmill Equipment of Windham for Option #2; a 2012 Komatsu at a price of \$129,870 after trade-in. He went on to explain that this recommendation was based upon Winmill being a local vendor, as well as the high level of satisfaction with their service over the years; noting that the Town has never been without a loader when dealing with Winmill as the company affords the Town the opportunity to obtain one even after hours in an emergency. Mr. McCartney then noted that, should the Board wish to go with the low bidder instead, he would recommend that the existing loader be kept as a back-up for the winter and then auctioned off in the Spring.

Discussion ensued, and Mr. Hohenberger noted he understood Mr. McCartney’s rationale for recommending the Board go with the higher bidder. He then inquired as to the year/hours on the current loader. Mr. McCartney indicated it was a 2002 with approximately 5600 hours on it. Further discussion ensued, and Mr. LoChiatto sought clarification as to how many hours per year the Town averages. Mr. McCartney replied 400-500/year. Mrs. DiFruscia inquired as to any warranty on the recommended loader, and Mr. McCartney indicated the bid price included a one (1) year warranty with 100% coverage.

Mr. LoChiatto sought clarification as to why the \$79,000 bid had not been considered, and Mr. McCartney replied that it was a smaller machine that did not meet bid specifications. Discussion ensued.

Mr. Letizio expressed his support for Mr. McCartney’s recommendation based upon Winmill’s track record and being a local business. He then moved, and Mrs. DiFruscia seconded, to award the bid for the purchase of a Highway loader to Winmill for option 2, at a net cost of \$129,870. Mr. Hohenberger also noted the importance of being able to get a backup machine at any time, which negates the need for the Town to maintain its own backup equipment. The motion passed 4-0.

Mr. Sullivan then asked that the Board consider a motion to authorize staff to negotiate the terms of and execute the documents related to the vehicle lease. Mrs. DiFruscia moved and Mr. Letizio seconded to authorize staff to proceed. Passed 4-0.

BID AWARD/DIESEL FUEL: Mr. Sullivan advised the Board that a third bid had been received via fax from Irving. He explained that faxed submissions were not normal procedure per the specifications, and inquired whether the Board wished to waive the bid requirements and formerly accept the bid. Mr. Hohenberger moved and Mr. Letizio seconded to waive the bid procedure and accept the bid from Irving. Passed 4-0. The bids received were as follows:

Vendor	Index	Index plus \$/Gal	Dec 6 price (for illustration)	Notes:
B&H Oil, Salem NH	Irving Revere Rack	\$.15	\$3.3923 + \$.15 = \$3.5423	Add \$0.184/gal Fed tax, which Town is reimbursed
Dennis K. Burke, Chelsea MA	Journal of Commerce Boston Low	\$.359	\$3.1812 + \$.359 = \$3.5402	
Irving, Portsmouth NH		\$.072	\$3.55	

Mrs. Call then explained that bids had been solicited on a rack plus option, which is how on-road diesel is purchased now. She noted that the Board had previously discussed placing this out to bid in order to ensure the fuel was being obtained at a reasonable cost. Mrs. Call noted that staff recommends the bid be awarded to B & H Oil; noting the value of and satisfaction with their service. Discussion ensued.

Mrs. DiFruscia moved and Mr. Letizio seconded to award the bid for on-road diesel to B & H Oil based upon the minimal differential in bid price and staff recommendation. Passed 4-0.

DONATION ACCEPTANCE: Postponed, as Ms. Scott was delayed.

BUDGET WRAP-UP: Mr. Sullivan noted there were two (2) specific items yet to be finalized, those being the funding request for a water study and a number of new funding requests from the Health & Human Services budget. He indicated that, in addition, the Board could discuss any other questions they may still have; adding that currently the budget stands at an overall 6.41% increase; down from 10.5% as presented at the first Board discussion.

Mr. Ralph Valentine, Chairman of the Economic Development Committee, approached and briefly reviewed the Committee's request for \$35,000 in funding to conduct a water study; noting that the EDC Infrastructure subcommittee is pleased with their progress thus far regarding this issue. Mr. Valentine noted that he had previously made a presentation to the Selectmen regarding this funding request, at which the Board had unanimously supported inclusion of a warrant article for same at Town Meeting. Mr. Valentine noted that since that presentation, new information had become available to the EDC regarding more than forty (40) residentially owned properties that are experiencing natural arsenic contamination. He noted that these property owners were prepared to tie into Pennichuck, at substantial expense, but they were now holding off doing so in light of the warrant article.

Mrs. DiFruscia inquired whether these properties were in an area that the EDC was proposing would be serviced by future Town water, and Mr. Valentine replied that they potentially could be. Mrs. DiFruscia sought clarification as to whether a particular area was being designated for water, and Mr. Valentine replied it was reflected in the warrant article language. Discussion ensued as to the area of Route 111 in question, which could be serviced if the water were to come from Hudson. In response to Mrs. DiFruscia's request for further information, Mr. Valentine noted that the owners in question had asked not be identified.

Mr. Valentine then noted the extent of the EDC's presentation and their ongoing efforts to educate the public via press releases. Regarding the latter, Mr. Sullivan noted the articles released thus far were very good, however, he cautioned that the EDC avoid taking a political stance on the article as they are a Town Committee. He clarified that the articles should be factually-based only, without blatant endorsement.

Mr. Hohenberger clarified that his previous position had been that the only way he would support the study funding request was through a warrant article, however, he did not express support for study itself or for municipal water. He went on to note that only a small portion of the community would benefit, yet all will bear the cost. Discussion ensued regarding Pennichuck's current service in Windham and the potential for future additional service from them, as well as likely places to obtain water in town.

Mr. LoChiatto noted that he felt bringing water into town would be a good thing, citing such benefits as feeding the aquifer and reduced insurance costs to homeowners. He also noted that commercial property is a benefit to the town as it pertains to the tax base.

Mrs. DiFruscia concurred with Mr. Hohenberger, adding that she also did not support the study itself, but rather it going on as a separate warrant article versus budgeted funds. She then inquired whether the EDC has defined those questions they want covered as it pertained to the scope of the study. Mr. Valentine noted that the EDC has drafted a scope of work for a request for proposals. Discussion ensued, and it was clarified that this study would be placed out to RFP similar to any other engineering bid.

Mrs. DiFruscia inquired of Mr. Valentine how the figure of \$35,000 had been established, and Mr. Valentine replied it came via consultation with an engineering firm. She then sought clarification as to whether the EDC had looked into any other funding opportunities, and Mr. Valentine replied in the affirmative; citing grant opportunities that were missed and consultation with the Planning Commission. Mrs. DiFruscia felt that the EDC could continue to pursue those opportunities if they had the time and Mr. Valentine agreed they could, however, the Committee did not want to wait to do so.

Mrs. DiFruscia then inquired about a presentation by Pennichuck to the EDC at which potential costs to bring water to Town was discussed. Mr. Valentine noted that the process is not at a stage to discuss that; adding that a study will provide that information. Discussion ensued.

Mr. Sullivan clarified that draft warrant article reads as follows: *“To see if the Town will vote to raise and appropriate the sum of \$35,000 for the purpose of completing a water supply study which will evaluate the feasibility of supplying municipal water in the areas including the Route 93-Exit 3 interchange and Route 111. The study will provide an estimate water demands, identify and evaluate water sources, rank the alternative sources, develop opinions of probable costs and identify sources of funding. This will be a non-lapsing account per RSA 32:7, VI and will not lapse until the project is complete or for a period of two (2) years, whichever is less.”*

Mrs. DiFruscia expressed concern that, as she understood it, Pennichuck estimated a cost of \$1M/mile to bring water into Windham, and that there were also issues raised regarding public utilities as it pertained to same. Mr. Valentine reiterated that the Committee is only on step 3 of a very lengthy process, and that all those questions would be answered in the future. Mrs. DiFruscia then noted she also had concerns regarding the potential for increased density and contamination, as this would be in the area of the Pond, and that further, as it pertained to commercial development and the tax rate, approximately \$100M in commercial revenue would be needed to reduce the tax rate by \$1/thousand. Lengthy discussion ensued regarding the Pond, the watershed ordinance regarding same, potential and existing issues regarding salt/stormwater runoff and blasting, and whether there was a necessity for municipal water to have development in that corridor of the community.

Mr. Letizio noted that one of the purposes of the EDC is to encourage positive development in Town to the benefit of the residential tax base; adding that the EDC’s survey indicated that people are in favor of same. He noted that the EDC is motivated to move forward based upon concerns expressed by the community regarding taxes, and that the EDC study revealed that the top votes regarding which community Windham is envisioned being the most like were Bedford, NH and Andover, MA; both of whom had commercial tax bases of 20%. Mr. Letizio noted that Windham currently has a 92% residential tax base, which is the reason for high taxes as opposed to expenditures.

Mr. Letizio went on to note that all that is before the Board at this time is a study, not the water itself, and that he felt the former will provide the answers that are being sought. He noted that a homeowner with a \$10K tax bill will only pay approximately \$5 for the study; adding that the lack of water is the #1 deterrent to development in Town. Mr. Letizio indicated that the Planning Board and School Board have unanimously supported this study, and that no objections have been expressed by any group regarding same; adding that the CPIA took a neutral position but did acknowledge the potential benefits of town water as it pertained to aquifer recharging. Lengthy discussion ensued regarding the two distinct surveys conducted by the EDC, the tax rates in Andover and Bedford, and whether or not development has been impacted by the lack of Town water.

Mr. Sullivan noted that there is no need for the Board to establish a recommendation regarding this article until the public hearing on the Warrant; rather the immediate question before them was whether the article was going to be included. He noted that if the Board did not wish to place the article on the warrant, that they confirm as such in order to afford the EDC time to proceed with a citizen petition prior to the deadline. Discussion ensued.

Mr. Letizio moved to place the water study on as a warrant article. Mr. Hohenberger seconded for discussion and, after same, the motion failed 2-2 with Mrs. DiFruscia and Mr. Hohenberger opposed.

Mr. LoChiatto advised Mr. Valentine that, as the motion had failed to place the water study on as a Town article, the EDC should pursue it as a petitioned article if they so choose. Mr. Sullivan clarified that the deadline for submission is January 14th, and that 25 signatures from registered voters are required.

Health and Human Services: Mr. Sullivan noted that the Town has been approached by new agencies requesting funding, however, staff does not recommend appropriating funds for same in the interest of curbing spending. Discussion ensued. Mrs. Call clarified that staff was recommending that some funding be appropriated for Child & Family Services, based upon the services that they provide to the Town; adding that she would recommend adding the funds to the budget as opposed to moving it from somewhere else. Discussion ensued.

Mrs. DiFruscia moved and Mr. Letizio seconded to level fund the current ten (10) organizations, and to add an appropriation in the amount of \$1,000 for Child & Family Services. Mr. Hohenberger indicated that, while he believed the group provides an excellent service, he would prefer to shift funding from within the budget for them rather than appropriating additional monies. Discussion ensued, and the motion passed 3-1 with Mr. Hohenberger opposed.

Mr. Hohenberger then moved to remove \$15,000 from the Community Development budget for the master plan study. Ms. Scott approached to clarify that this funding was related to the requirement that the Master Plan be redone in 2015, and the recommendation to phase it over a two year period to allow time for public participation. Discussion ensued regarding the 10-year requirement, the timing of beginning the process, and that impact fees and the CIP are tied to the Master Plan.

Mrs. DiFruscia inquired how much of the \$13,500 would be to contract with an outside vendor, and Ms. Scott replied all of the funds would go toward same. Discussion ensued as to the problems of delaying the Plan, including the need to fund it in its entirety next year, and Ms. Scott's efforts to trim the cost down to \$13,500.

Mr. Letizio seconded Mr. Hohenberger's motion for discussion and, after same, motion failed 1-3 with all opposed but Mr. Hohenberger.

Mrs. DiFruscia then moved and Mr. Letizio seconded to move the \$13,500 for the Master Plan to public hearing. Motion passed 3-1, with Mr. Hohenberger opposed.

Mr. Letizio then indicated that he would like to reserve the right to reconsider the Board's earlier vote on the water study. Mr. Sullivan clarified that the Board's options are to keep the decision as it is and let the EDC move forward with a petitioned article; or the Board reconsiders their vote and then votes to place it on the warrant. As to the latter, Mr. Sullivan indicated that the Board could then vote again and remove it from the warrant on the 30th if Mr. McLeod does not support its inclusion; which would still allow time for a petition. Discussion ensued as to whether the Board wished to reconsider, however, no motion was offered.

Mr. Letizio excused himself from the meeting.

Mrs. DiFruscia moved and Mr. Hohenberger to move the balance of the warrant items to public hearing. Passed 3-0.

Mr. Sullivan then advised that the following would be discussed as part of the hearing on the 30th:

- The rescinding of three (3) Town ordinances as previously discussed by the Board, as well as the Credit Card ordinance which is no longer required by statute.
- Repurposing of the Library Expansion Capital Reserve Fund; which does require a 2/3 majority vote. Mr. Sullivan clarified that these funds, totaling \$48,000 will otherwise sit unexpended unless a new library is built.
- The Conservation Commission is requesting to establish a portion of the SE Lands as an official Town forest in order to allow for harvesting and, further, to authorize them to act as a Forestry Committee regarding same.

- Changing the position of Town Clerk from fee-based to salaried with benefits; analysis for which will be provided to the Board regarding the cost differentials between the two. The Town clerk has been advised of this proposal and is open to reviewing the concept.

Discussion ensued regarding the old police station, which the Planning Board is not proposing to re-zone this year, and whether it is more prudent to wait to sell it until it is rezoned. The Board will discuss this further on the 30th.

DONATIONS: Ms. Scott requested that the Board accept donations from the following toward the 2nd Annual Shopping Extravaganza held on 12/7:

Raffle donations were provided by the following local businesses: Anakalia SUP, Currier Homes of Windham, Osborne Books & More, Danielle Bustamante Photography, The Happy Hippy, Black Moose Country Store, Corporate Relief, Susan Creacy, Crystal Hills Water Systems, The Epicure's Jar, Fitness for Life Worksite Wellness, Mary Kay Cosmetics, Mary Lou's Collectibles, Ma's Italian Biscotti, Massage Chi Holistic Fitness Center, MW Solutions LLC, Napa East Wine Lounge & Shop, Outsourced Elf Gift Wrapping, Paint Party LLC, Debbie Pitocchelli, Windham Crossing Learning Center, Connie Plourde, Rodan & Fields, Sensationally Sweet Bakery, Stella & Dot, Sweet Chocolate RSVP, Tastefully Simple, Thamer Photography, Tupperware, Windham Pilates, Silpada Designs, Simply Stunning Inc, Canobie Lade Veterinary Hospital, Training Effects & Creative Fitness for Woman, Golden Crane, Pool Tables Unlimited, Dance Connection, and Knottyboys Embroidery & Crafts.

Donations of time, entertainment and services were also provided by Windham Crossing Learning Center, Mobil on the Run, Windham Crossing Church, Bill Rockwell of Burlington Self-Storage and Danielle Bustamante Photography.

Mrs. DiFruscia moved and Mr. Hohenberger seconded to accept these generous donations with gratitude. Motion passed 3-0.

OLD/NEW BUSINESS: Mr. Sullivan announced that, in efforts to cap the earned time liability and adjust accumulations of same for new employees, changes are being proposed to the Town's personnel policies. He explained that these amendments to limit existing earned time are in keeping with the union contracts as proposed; and that agreements are in place for payouts to those four (4) management employees currently over their caps.

Mr. Hohenberger sought clarification that the payouts are all within the funding reimbursed from the Local Government Center, and Mr. Sullivan replied in the affirmative. Discussion ensued. Mr. LoChiato expressed that he believed this to be a prudent use of the monies received from the LGC in efforts to reduce the liability going forward. Mr. Sullivan presented the agreements to the Board for signature, explaining that they clarify the employees will be paid down to 800 hours and that, consistent with the pending changes to the Personnel Policy, they will not accrue hours in excess of 960 or they will lose same.

Mrs. DiFruscia moved and Mr. Hohenberger seconded to execute the four (4) agreements as presented. Passed 3-0.

Mr. Hohenberger inquired whether a press release on this matter could be issued to clarify what the LGC funds are being used for, Mr. Sullivan replied staff could draft one. After a brief discussion, it was the consensus of the Board that staff draft a press release.

Mr. Sullivan advised that a draft release deed has been received relative to the pre-school building that the School District is no longer using which, per the 1998 Town warrant article, the Town will now be taking back. He indicated that once the deed is signed by the School District, it will be presented to the Selectmen. Discussion ensued regarding the facility, which Mr. Sullivan indicated will be winterized and minimally maintained.

Mr. Sullivan advised that there was a proposal before the Planning Board relative to making a portion of Delahunty Road two (2) lanes which the Board will have to approve; asking that they review same for possible future discussion.

Mr. McCartney approached and clarified that he believed there was an approved plan in place, but the State has deferred to the Town relative to the developer's driveway permit and improvements to Delahunty Road. He noted that if the Town does not approve, then the State will not either; adding that he does not have any issues with the proposal. Mr. LoChiatto inquired how much pavement was proposed to be added, and Mr. McCartney replied approximately 6'.

Mr. Hohenberger expressed concerns that this is premature in light of Delahunty Road being the access to the adjacent large, undeveloped parcel, and Mr. McCartney noted that the road itself will not be moved but could change. Discussion ensued, however, no decision was made pending further review at a future meeting.

CORRESPONDENCE CONTINUED: Mr. Sullivan advised that a letter of resignation had been received from Recreation Chairman Tim Kelleher, effective 12/9/2013. Mrs. DiFruscia moved and Mr. Hohenberger seconded to accept with regrets. Brief discussion ensued regarding quorum for the Committee and advertising for a new member. Motion passed 3-0.

Mr. LoChiatto asked that a letter of thanks be sent to Mr. Kelleher.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mrs. DiFruscia seconded to enter into a nonpublic session in accordance with RSA 91A:3, II, a. Roll call vote – all “yes”. The topic of discussion was personnel, and the Board and Mr. Sullivan were in attendance.

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

Mr. Hohenberger moved and Mrs. DiFruscia seconded to adjourn. Passed unanimously.

Meeting was adjourned at 10:00 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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