

BOARD OF SELECTMEN MEETING

Minutes of August 11, 2003

MEMBERS PRESENT: Galen Stearns , Alan Carpenter, Christopher Doyle, Roger Hohenberger and Bruce Breton. David Sullivan, Town Administrator, was also present. Meeting commenced at 5:30 pm .

SITE WALK: The Board and Planning Director, Alfred Turner, walked the Hopkins Road area to be considered at their Public Hearing on August 18, 2003 .

NON-PUBLIC SESSION: Mr. Doyle motioned to go into non-public session in accordance with RSA 91-A:3, IIa. Mr. Hohenberger seconded. Roll call vote – all members – yes. The subject was personnel. The Board, Mr. & Mrs. Cotton, Mr. Turner and Mr. Sullivan were in attendance. The Board announced that no further action was required.

ANNOUNCEMENTS; None.

LIAISON REPORTS: Mr. Breton reported that the Recreation Committee is discussing impact fees, specifically whether they will ask for them and how they would be used.

It was also noted that the town beach was closed for a few days last week due to high ecoli counts in the water. The water was tested daily and the beach was closed appropriately. The Board agreed that when the water testing is done to post the results at the beach. Also discussed was that the raft is in need of repair – cost and length of time for repair are unknown at this time.

Mr. Hohenberger stated that there was a letter in the Windham Independent from a Windham resident regarding the need for repairs at the tennis courts on Meadow Road . The Recreation Committee has been notified of the problems and the resident informed of this action.

ADELPHIA – ROBERT NELSON, GENERAL MANAGER: Margaret Case, Chair of the Cable Advisory Board, stated that the Committee met with the Selectmen in May regarding the following issues and after which the Board sent a letter to Adelphia addressing the same:

1. Disagreeing with Adelphia that it has the right to increase the 3% fee they were line iteming for the franchise fees on the monthly cable bills to 5% without simultaneously reducing the subscribers' rate by an equivalent amount.
2. Adelphia is required by Windham 's Franchise to notify all Windham subscribers 30 days in advance of any impending rate increase and notify the Franchising Authority of any rate increases at least 15 days prior to all changes in services. The Board argued that Adelphia did not comply with this provision in regards to increase the franchise fee by 2% as noted above on the monthly bills.
3. Fee on fee issue.
4. Cable modem revenues.

Franchise Fee: Mr. Nelson explained Adelphia's position – He stated that during an audit it was discovered that Adelphia was paying the Town 5% in franchise fees but only billing the subscribers 3%. He stated that they are allowed to charge subscribers the complete 5% and they feel that under

FCC regulations they do not have to give advance notice of the increase as it is not a “rate” increase. The Board stated that the Town’s Franchise agreement with Adelphia states any increase is to be given advance notice. The Cable Board also stated that they believe this 2% is embedded in the present rate charged and has been since inception of the cable service. Mr. Nelson stated that the 2% was never embedded.

Mr. Carpenter stated that this seems to be a breach of our agreement and suggested the Town conduct an audit. Mr. Carpenter asked the Board to table this portion of the discussion until the other items were discussed.

Fee on Fee: The “Fee on Fee” refers to a 5% charge on the 5% franchise fee. Mrs. Case told the Board that they can direct Adelphia to stop the fee on fee charge by sending a letter to Adelphia so instructing. She noted that the Cable Board recommends that the Board do this. Mr. Breton moved to have the Board send a letter to Adelphia instructing them to cease calculating the fee on fee charge. Mr. Doyle seconded. Passed unanimously.

Cable Modem Revenues: Mr. Nelson stated that the 9th Circuit Court’s opinion was that internet services were classified as “information” not “video”, and therefore in Adelphia’s view, they may charge an additional rate for this. The Board disagrees as it is provided over the cable lines.

Mr. Hohenberger motioned to have the Cable Board and Mr. Nelson amend the franchise agreement to eliminate the charge being applied for internet connection. Mr. Carpenter seconded. Passed unanimously.

Mr. Carpenter moved to instruct staff to send a letter to Adelphia stating that they are in breach of our agreement by increasing the franchise fee and further that they have 30 days to cure by ceasing and desisting and refunding the months of charges. Mr. Hohenberger seconded. Passed unanimously.

Per a request from Mrs. Case, the Board agreed to a 30 day hold on the letter referenced above, to allow staff, Cable Committee and Adelphia to attempt to work out these issues.

YARD WASTE: David Poulson, Transfer Station Manager, presented options to the Board for providing a Yard Waste Program for Windham . He suggested the following:

- Privatize or out-source the service using a private company.
- Increase staff at Transfer/Recycling Station to provide more service and hours at the landfill.
- Seek volunteer organization(s) to oversee program, i.e., Garden Club and provide more hours.

Mr. Poulson stated that presently yard waste can be brought to the Marblehead Road landfill on the 2nd and 4th Saturdays from noon to 3:30 pm . Mr. Poulson asked the Board to consider what type of services and the hours of same they wished to support. The consensus of the Board was to have Mr. Poulson work with the volunteer organizations on days and hours they could work basing the need of this service from thaw to frost each year. It was also noted that this service does **not** include brush, logs or stumps, as this materials is not accepted at our facility.

HIGHWAY SAFETY ISSUES: 3 West Shore Road – Installation of Guardrail Request – This request was made by the owners of 3 West Shore Road due to two vehicles hitting their house in recent years. Mr. Sullivan told the Board that the Highway Safety Committee recommends denying this

request based on the need for a guardrail not being warranted given the present road profile. He further stated that the Committee was uncertain that a guardrail would have prevented these accidents or made them worse. Cindy Adrizzone, property owner, stated she felt the guardrail is needed. The Board tabled this matter until their meeting on August 18th allowing them to view the property in question.

Bridle Bridge Road : Request considered from the owners of 21 Bridle Bridge Road for placement of a street light, lowering of speed limit and signage to restrict heavy truck traffic. The Highway Safety Committee made the following recommendations.

Street Light – Not to install a street light as the Committee has tended to only consider street lights at street intersections or dangerous curvy roadways. Board agreed.

Speed Limit – The Committee requested the police department conduct a traffic survey in the area to determine whether the present speed limit is warranted and report back to the Selectmen upon completion of survey. After discussion, Mr. Doyle motioned to lower the speed limit on Bridle Bridge Road to 30 mph and so post. Mr. Hohenberger seconded. Passed unanimously. The traffic survey is no longer needed at this time.

Truck Signage – The Committee understood that this area was already posted for no thru trucking, however they will insure that signage is installed. Mr. Stearns stated that years ago the bridge was posted for no trucks until it was repaired, not the road. Based on this information, the Highway Safety Committee will reconsider this request.

MINUTES: Minutes of July 28, 2003 . Mr. Breton noted the minutes should be amended to show a non-public session on personnel from 7 pm to 7:10 pm with no decisions. Mr. Carpenter motioned to approve the minutes of July 28, 2003 as amended. Mr. Hohenberger seconded. Passed unanimously.

Mr. Hohenberger motioned to approve the minutes of August 4, 2003 as presented. Mr. Doyle seconded. Passed 4-0-1 with Mr. Carpenter abstaining as he was not present.

CORRESPONDENCE: Letter received from Erin Upton and Glenn Williams asking the Selectmen to take initiative to save the blueberry field on Harris Road from being wiped out or left unattended by the Route 111 by-Pass road construction and to ask the State to allow Mr. Jarosky to continue to farm this field. Mr. Doyle motioned to have the planning staff review this matter with the DOT to ascertain if the blueberry field can be saved. Mr. Doyle withdrew his motion. Mr. Breton motioned to have Mr. Doyle and the Conservation Commission look into this matter. Mr. Doyle seconded. Passed unanimously.

Notice received from the DOT stating that they will be surveying on Lowell Road from NH 111 to 1.5 miles south of Golden Brook Road as part of the Lowell Road Bike Path Engineering Study.

Request for final release of a road bond for Morrison Road to Hancock Road was received. Mr. Doyle motioned to approve the release of \$8875 for Morrison Road to Hancock Road contingent on final release of the road for acceptance. No seconded. Mr. Doyle tabled his motion until next meeting to allow staff to provide more information.

Letter received from Alfred Turner, Planning Director, stating that the Planning Board has not increased their fees since 1992 and asking the Board to schedule a Public Hearing to increase them. The letter outlined the increases. The Board will discuss this further at their meeting next week with Mr. Turner.

OLD BUSINESS: Crosswalk – Mr. Hohenberger asked the status of the request for a crosswalk from the Bartley House to the Town Hall. Mr. Sullivan stated that he contacted the DOT and is awaiting a

reply.

Griffin Park Drainage - Mr. Sullivan, Mr. McMahon, Mr. Doyle, Mr. Turner and representative from Hillside Landscaping reviewed the drainage at Griffin Park and recommend the following:

Extending the present swale on the right hand side of the walkway and to install a shallow swale from behind the fence of the first baseball field down the left side of the walkway, thus diverting the water flow into the large swale between the baseball and soccer fields. In addition, additional sand will be tilled into the infields to facilitate drainage. A recommendation to add a geo-textile fabric at third base on the large baseball field was recommended to be tabled until a later date. If this solution did not resolve the problem, the fabric could be added at additional cost.

Mr. Doyle motioned to approve the plan as described above and to allow staff to expend up to \$3400 from the property maintenance fund. Mr. Breton seconded. Passed unanimously.

Searles Building - Mr. Sullivan told the Board that he met with George and Marion Dinsmore earlier today and that they reported based on further structural analysis that there are were no unexpected problems discovered. Due to previously booked rentals, he also announced that construction will not begin until January. Finally, Mr. Sullivan requested permission to pay Mr. Dinsmore and other "volunteers" minimum wage to some minor work now before the project is awarded to a contractor. Mr. Sullivan suggested that these volunteers be paid minimum wage in order to be covered by Workmen's Compensation. Mr. Hohenberger motioned to approve the minor work with workers being paid minimum wage and further that work not interfere or be done during rentals. Mr. Doyle seconded. Passed unanimously.

Mr. Sullivan told the Board that the Historic Committee also wished to have the project done with a Construction Manager and could they waive the bid process so that a particular individual could be used who's work they were knowledgable of. The Board agreed to construction management but would not waive the bid process. Mr. Sullivan will begin the bid process under this procedure.

Church Street Culvert – Mr. Sullivan told the Board that the contractor was two weeks ahead of schedule until the recent bad weather. This may delay the project's completion.

NEW BUSINESS: Mr. Sullivan spoke with the Board concerning their recommendations for funding in the CIP for 2004. He suggested the following items and prioritization in order presented: Griffin Park completion, Second phase of renovations to the Bartley House, Castle Hill Bridge repairs, Lowell Road Bike Path, Town Amphitheater and the Shared Paved Path to be constructed over the Manchester to Lawrence railbed from NH 111 to Depot Road. He asked the Board to review this and provide him with their comments by August 15th.

NON-PUBLIC SESSIONS: Mr. Doyle motioned and Mr. Hohenberger seconded to go into non-public session in accordance with RSA 91-A:3. Iic and d. Roll call vote – all members – yes. The subjects were reputations and land acquisition.

Reputations – The Board and Mr. Sullivan discussed tax issue and Mr. Sullivan will follow up.

Land Acquisition – The Board, Mr. Sullivan and the following members of the Conservation Commission: Pam Skinner, Dennis Senibaldi, Bruce Anderson and Lisa Linowes.

Mr. Carpenter motioned and Mr. Doyle seconded to send a letter to a private landowner indicating that the Board was in support of the Conservation Commission effort's to attain this land and that the Town was exploring all avenues available to bring this about in a timely manner. Passed 4- 1 with Mr.

Stearns opposed.

Mr. Carpenter motioned and Mr. Doyle seconded to send a letter to Mr. Cass at the DOT indicating that the Board supported retaining the ownership of Lot 25-R-103 provided the State of NH acquired four other parcels in the Southeast lands identified by the Conservation Commission. If the State was not able to acquire these parcels, then the State would need to reimburse the Town of Windham for the purchase of Lot 25-R-103. Passed unanimously.

Mr. Doyle motioned and Mr. Hohenberger seconded to adjourn. Meeting adjourned at approximately 11:30 pm .

Respectfully submitted,

Kathleen Davis, Administrative Assistant

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

