

BOARD OF SELECTMEN
Minutes of September 13, 2004

ROLL CALL: Chairman Alan Carpenter called the meeting to order at 7:50 pm. Those present included Selectmen Bruce Breton, Christopher Doyle, and Galen Stearns. Mr. Sullivan was also present. Mr. Hohenberger was excused. Mr. Carpenter explained that the meeting had been delayed as the Board had been in conference with Town Counsel, to whom he deferred for an overview of the discussion.

TOWN COUNSEL: Atty. Campbell stated that he had reviewed with the Board their actions on August 23 pertaining to the collection of fees by the Planning Board. The Board had, at that time, made two motions: 1) to return the fees collected to date, and; 2) to cease any further collection.

Atty. Campbell believed that, after review, the Board of Selectmen should suspend both motions to allow for further review and possible judicial determination of the status of the fees and the Board's authority to return them to the payers.

Mr. Stearns moved and Mr. Breton seconded to suspend the motions of August 23 to return the fees collected by the Planning Board and to instruction staff to stop collection. Passed 4-0.

Mr. Carpenter read the remainder of the agenda into the record.

ANNOUNCEMENTS: Mr. Carpenter extended thanks to Chief Messier and the members of the Fire Department for hosting the 9/11 Memorial ceremony on Saturday.

Mr. Carpenter encouraged the public to vote at tomorrow's election.

LIAISON REPORTS: None.

RECREATION: Mr. Dennis Senibaldi, Recreation Committee Chair, updated the Board on the status of replacement bushes for the Town Beach, where several were broken and one was stolen by vandals. He indicated Mr. Breton had spoken to the owner of a local company who appeared to be willing to donate the replacements and possibly additional bushes for other recreational areas.

Although he could not state which company was offering the donation, as Recreation had yet to speak to the donor directly, Mr. Senibaldi requested approval from the Board to proceed with the plantings upon confirmation. The consensus of the Board was that Recreation could proceed.

Mr. Sullivan clarified state statute requires a public hearing for any donations over \$500, however, if the donations were being received at different times for different locations then one should not be necessary.

Mr. Senibaldi thanked Mr. Breton for his efforts on behalf of the Recreation Committee.

A brief discussion ensued regarding the 2004 funds budgeted for concrete trash receptacles at Griffin Park.

WATER/SEWER DISCUSSION: Mr. Carpenter opened the topic by indicating that this was a continuation of a lengthy Planning Board discussion, which members of the Selectmen had wished continue.

Mr. Charlie McMahon began the discussion by expressing his concerns about the impacts upcoming projects such as the High School will have on the taxpayers, and suggesting the Board consider identifying a performance zone for sewer and water as part of the Town's Master Plan.

A discussion ensued regarding the potential economic revenue benefits as a result of water and sewer availability; zoning concerns; whether there was an economic need for water and sewer; and placement of the pipes as part of the 93/111 projects.

Mr. Carpenter stated that he was convinced that the NH Courts would not allow the Town to selectively zone and provide municipal services.

Mr. Kevin Waterhouse approached the Board to express his agreement with Mr. McMahon, feeling the pipes should be laid as part of the 111 project as well as conduits under 93 during the expansion.

Mr. Wayne Morris inquired as to whether the Planning Board had been invited to attend this discussion. Mr. Sullivan indicated that they had by memo. Mr. Morris felt that the Selectmen were overstepping their bounds, and that water and sewer was too important an issue to discuss without the Planning Board's input. He suggested a public hearing be scheduled with the Planning Board at a future date.

Mr. Carpenter asked if the Board wanted to schedule a workshop with the Planning Board to discuss this issue. Mr. Breton and Mr. Doyle did not feel it was necessary to schedule a hearing, as the Planning Board had been invited for this meeting and not attended. Mr. Carpenter stated that he felt the issue was the purview of the Planning Board.

Mr. McMahon reiterated that he was primarily urging the Board to include sewer and water in the Master Plan and not discount it in the future.

Mr. Stearns agreed we should plan for the future and have pipes in place if they were to be used. Prior to actually turning them on, however, more planning would be required.

Mr. Tom Case expressed his feeling that the issue should be supported by both the Board of Selectmen and the Planning Board. He also felt that a workshop should be scheduled between the two to allow for an in-depth discussion of the issue.

Mr. Stearns suggested a letter be sent to the Master Plan Committee requesting that they and the Planning Board research what would be needed to put zoning in place to restrict sewerage for residential development, but that the Board of Selectmen would go forward to request the State lay pipe through the barrel area for possible future usage, if any.

Mr. Carpenter questioned what the cost to the Town might be to proceed. Mr. Stearns noted that, when the Board had spoken previously to Commissioner Murray, the laying of pipe as an economic mitigation to the Town as part of the project had been discussed. Mr. Carpenter felt a workshop should be scheduled with the DOT and the Planning Board to discuss what we're asking for, the cost to the Town, and how it might be utilized.

Mr. Stearns moved and Mr. Doyle seconded to send a letter to the Planning Board and the Master Plan Committee stating that the Board of Selectmen are discussing a sewer and water connection in the Route 111/93/28 areas, and that the Board would like the Planning Board to consider zoning to

restrict the use of water and sewage to ponds and industrial areas. Also, that a meeting be scheduled with the DOT and the Planning Board to discuss the Route 28 water connection and the water and sewer line connection through the Rte 93/111 area. Passed 4-0.

STAIRWAY/ROCKY RIDGE ROAD: Mr. Al Schommer of 10 Rocky Ridge, builder of the stairway in question, approached the Board to give a brief description of the right-of-way and his reasons for constructing the stairway. He stated he had constructed the stairway to allow the abutters access to Cobbetts Pond as the right-of-way was impassable, and had not known at the time that he needed permission from the Town.

Mr. Sullivan advised the Board that, as the stairway was within a Town owned right-of-way, the Selectmen would have to grant approval for it to remain. Mr. Schommer noted that the Town also needs to be able to access the Pond, which he felt they could not do without the stairway due to the condition of the area. Mr. Carpenter noted that Planning Director Al Turner had voiced additional concerns regarding the stairway, including that it failed to meet required codes.

Mr. Turner felt that; although the right-of-way is not supposed to be obstructed; as the stairway provides access to the pond Town Counsel should be consulted before the Board made its decision. He stated that Mr. Tierney had reviewed the area for compliance.

Mr. Doyle inquired of Mr. Turner whether the stairs should be blocked off based on the safety issues and code issues. Mr. Turner agreed they should and reiterated that he felt Town Counsel should be consulted in this matter.

Mr. Doyle requested that the stairs be blocked and stated that, if okayed by Town Counsel, the Town should accept the stairway as a donation and complete the necessary work to bring them to code.

Atty. Mark Kanakis, representing Mr. Jacobs of 9 Rocky Ridge Road, provided the Board with pictures of the right-of-way and stairway. He then discussed the following concerns with the Board: that the Town has an ordinance in place restricting building within rights-of-way; that the construction of the stairs was beyond the intent of permissions contained with Mr. Schommer's and the other abutters' deeds; and that the steps themselves were in violation of required codes. He also noted that several others issues have arisen with the right-of-way, such as dock expansions and its use as a storage area.

After further discussion, Mr. Doyle suggested that Town Counsel be consulted prior to the Board making a decision. Mr. Stearns suggested that the Board's maintenance responsibilities be ascertained, as well.

Mr. Kanakis stated the right-of-way in question was not for usage Town-wide, but was limited to just the 5 area owners. Mr. Stearns disagreed, stating that when it became Town-owned property it became a public right-of-way. Mr. Sullivan confirmed that Mr. Stearns was correct.

After further brief discussion, Mr. Stearns moved and Mr. Doyle seconded that staff send a letter to Town Counsel requesting his advice on the following: the existing stairway; the continued use of the right-of-way; and the Town's obligation to maintain the area. Passed 4-0.

Mr. Carpenter called for a five minute recess.

SKATE PARK REGULATIONS: Mr. Stearns read the proposed signage into the record as follows:

USE OF THIS FACILITY IS AT YOUR OWN RISK
HOURS OF PERMITTED USE ARE DAWN TO DUSK DAILY, EXCEPT DURING WET OR ICY CONDITIONS WHEN THE AREA IS CLOSED.

1. HELMETS ARE REQUIRED! Use of other safety equipment (elbow/knee pads, proper footwear) is strongly suggested.
2. NO bikes or scooters allowed. Skateboards or rollerblades only.
3. Users must provide their own equipment in good working order.
4. No one under age ten (10) allowed without adult supervision. No other non-skaters allowed inside the skate area.
5. No makeshift items/modifications to existing ramps allowed.
6. Only one (1) user allowed per ramp or item at a time. No more than three (3) allowed on the waiting platform.
7. No food or beverages are allowed in the skating area.
8. No alcohol or tobacco products are allowed in the skating area.
9. Litter must be properly disposed of in trash receptacles.
10. IN CASE OF EMERGENCY DIAL 9-1-1

THE TOWN OF WINDHAM RESERVES THE RIGHT TO REVOKE USER PRIVILEGES FOR THOSE WHO ARE DISORDERLY, DISOBEY THE RULES, USE IMPROPER LANGUAGE, OR OTHER JUST CAUSE.

DEFACING OR VANDALIZING THIS PARK WILL RESULT IN PROSECUTION TO THE FULLEST EXTENT ALLOWED BY LAW.

Please report maintenance issues or concerns to the
Town of Windham Administration at 432-7732.

Concerns were expressed by Mr. Breton, Mr. McMahon, and Mr. Case about #6: the need for it and the means to enforce it.

Mr. Joe Faro of Farmer Road, approached the Board with concerns that his children, who have been enjoying the park, can no longer use it because they ride bikes. He stated he had discussed the situation with several other parents, and felt perhaps alternating days could be established for bikes/scooters and skateboards/in-line skates, feeling the skate park had been built for all. He also expressed concerns with the number of people in the skate area at any given time.

Mr. Breton stated the park had been intended for skateboarders and in-line skaters only, and that bikes were currently there only because no rules had been established. He also noted that two meetings had been held during the design phase of the park, and no input had been received from the bikers.

Mr. Faro disagreed with the idea of prohibiting bikes, believing that alternate days was a workable solution and stating that the population of bikers was fairly equal to the number of skaters.

Mr. Stearns concurred with Mr. Breton, stating his dismay at the amount of markings on the new surface already; before it has even been finished. He also felt that language should be added to the sign, stating the Board reserves the right to “close” the park for disorderly behavior, etc.

Mrs. Janice Kirata of Searles Road expressed concerns that if bikes were not allowed at the skate park, children such as her son would have no place to go to ride. She also stated that Litchfield had similarly banned bikes upon opening their skate park, but had later changed the rules to allow them, in part because bikes actually cause less damage to the skating surface.

Amir Kirata noted that very few of the skid marks are from bikers, as it is not generally a “trick” they perform. He stated he has often seen mopeds skidding on the skate park.

Mr. Mark Hertzner, owner of Cycles Etc., agreed that the bikers were a bit behind in getting in the loop, but urged the Board to allow them an opportunity to contribute to and participate in the skate park. He felt that, although the park may have been designed for only one thing, the Board should re-consider.

Mr. Case felt that some good points had been raised by the residents, and the Board should attempt to find a means of accommodating both groups.

Mr. Dennis Senibaldi, Recreation Chairman, extended his thanks to those members of the public in attendance. He agreed with Mr. Stearns about the appearance of the surface and stated he had been monitoring the skate park for over several days. He felt that if bikes were to be allowed, a separate time would have to be established; although he didn't personally feel they should be there.

He noted that, while he was observing, nearly every suggested rule had been broken at the skate park, and felt that the Police Department needed to be given authority to enforce the rules. He also suggested the Board decide whether the skate park should be limited to Windham residents only.

A discussion ensued regarding residency limitations and means of enforcement; closure of the park for violations; fencing of the area; and the possibility of future amendments to the regulations.

Mr. McMahon approached to clarify that the skate park had been originally designed and intended as Mr. Breton had stated. He also noted that he and Mr. Nickerson would be approaching the Board at a later date about installation of a fence and visual separation of the interior portions into novice and expert, also as originally intended. He felt that, until the issue of fencing is determined permanent signs should not be made or installed.

It was the consensus of the Board that items 3 and 6 should be removed from the regulations, and Mr. Stearns again requested that closure language be added.

Mr. Stearns moved and Mr. Breton seconded to instruct Mr. Sullivan to have temporary signs made as amended by the Board. Passed 4-0.

Mr. Stearns suggested that the bike representatives draft a set of rules pertaining to bikes for the Board's review that would protect all users and the facility. He stated that, if the group was willing to work on such a presentation, the Board will certainly listen and consider their position.

Mr. Carpenter requested that the Board allow Mr. Tom Furlong to address the Board, as he had been waiting a substantial amount of time. The Board concurred.

TOM FURLONG: Mr. Furlong, resident, addressed several concerns he had with the recent painting of the Town Hall. He felt that the specifications had not been adhered to, and was concerned whether references had been obtained from the sole bidder on the project.

Mr. Sullivan advised Mr. Furlong that the Historic District/Heritage Commission will be involved in the final punch-list, and that several issues had been reviewed with the vendor and the Commission.

Mr. Carpenter requested that Mr. Sullivan make sure the Mr. Furlong is advised of the date of the final review.

OLD BUSINESS: Mr. Sullivan noted that the Board and Recreation Committee had been presented with the proposed set of regulations pertaining to dogs on Town property for review. He stated that if the Board and Committee had no further comment on the draft document, he would like to post the regulations on the website for the public to review and schedule a public hearing to adopt them on September 27th. Mr. Senibaldi's only comment was that a condensed version would need to be developed at some point for posting at Griffin Park. Mr. Sullivan will post the draft on the website, as well as at the kiosk at Griffin Park.

BOND RELEASES:

Windham Animal Hospital: Mr. Doyle moved and Mr. Stearns seconded to release a trenching bond in the amount of \$2,500 to Windham Animal Hospital. Passed 4-0.

Ryan Farm Road: Mr. Doyle moved and Mr. Stearns seconded to authorize the partial release of \$57,720 to Herbert Associates. Passed 4-0.

Timberlane Road Extension: Mr. Doyle moved and Mr. Stearns seconded to authorize the partial release of \$83,508 to Herbert Associates. Passed 4-0.

Heritage Hill Road Extension: After a brief discussion regarding completion of the area and sufficiency of remaining funds, Mr. Doyle moved and Mr. Stearns seconded to authorize the partial release of \$318,248.40 to Herbert Associates. Passed 4-0.

Rogers Auto Body: Mr. Stearns moved and Mr. Doyle seconded to fully release the amount of \$4,200 to Labrador Enterprises. Passed 4-0.

TOM CASE: Mr. Case discussed several issues of concern with the Board including the status of the skate park and whether it was officially open or closed. Mr. Stearns stated the area was still under construction and had never been officially opened, and that the Town had done everything it could do to keep people from using it.

Mr. Case then sought a response from the Board to a letter of concern he had sent regarding what he felt was unprofessional treatment of him by a member of the Town staff. Mr. Sullivan responded that, as the matter had pertained to one of his subordinates, he had addressed it with the employee and advised Mr. Case as such via a letter. Mr. Case acknowledged receiving the letter, but felt that an additional follow-up should have been received by him, advising him what the final outcome had been.

The third topic broached by Mr. Case pertained to the Town employees' intra-net site, which he had accidentally accessed. Mr. Case stated he had reviewed the site and felt that it contained inappropriate content and links; in particular a joke he found offensive.

Mr. Sullivan noted that the site is designed for access by the employees of the Town, is not publicly advertised or referred to in any way, and consists of items such as Administrative information and links to governmental and employee-related sites. He advised the Board that the joke in question had since been removed from the site. Mr. Case did not feel that some of the other links were those that employees should be looking at during working hours, such as Priceline.com. He then suggested that the site be passworded to prevent public access.

HIGHWAY SAFETY COMMITTEE: Mr. Sullivan updated the Board on the request for reduced speed and “No Thru Trucking” signs on Hardwood Road. He noted the Police department had conducted a traffic study from August 31 to September 8, which showed an average of 13-1400 cars per day at an average speed of 33-35 MPH. Mr. Sullivan then noted that, although the Highway Safety Committee had not reviewed the report yet, historically they have not endorsed lowering of a speed limit without supportive evidence. A discussion ensued regarding the types of trucks and axle counts as depicted in the traffic report, with input from Captain Yatsevich clarifying the results.

Mr. Steve Christensen and Ms. Eliza Baldrige, both area residents, urged the Board to lower the speed limit and look into better means of enforcement.

Mr. Carpenter reminded the Board that the limit had been lowered to 25 MPH on Cardinal and Oriole roads, and that lowering Hardwood would make the area consistent throughout. Mr. Stearns suggested the counter be placed on Cardinal or Oriole roads to see if the change had made an impact.

Mr. Doyle moved and Mr. Breton seconded to lower the speed limit on Hardwood Road to 25 MPH.

A discussion ensued regarding the effectiveness of lowering the limit and the difficulty of maintaining such a low speed in the area, particular as one descends the hill toward Route 111.

Chief Moeckel noted that, in light of the lowering on Cardinal and Oriole, he would suggest making Hardwood consistent.

The motion passed 3-1, with Mr. Stearns opposed.

Based upon the truck counts in the traffic study, the Highway Safety Committee will discuss the issue of “No Thru Trucking” and make formal recommendation to the Board for future discussion.

CORRESPONDENCE: Letter received by the WRTA from NHDOT Commissioner Carol Murray regarding the ongoing development of the Rockingham Recreational Trail and the possible paving of the area.

Mr. Mark Samel, WRTA, stated the Alliance had submitted the letter in efforts to keep the Board updated, and to seek the Board’s support in the WRTA moving forward with DRED and the DOT to develop the design.

The consensus of the Board was the WRTA should proceed with DRED and the DOT, returning to the Board when the plan was completed.

Mr. Nassar requested that the WRTA engineer work also with his engineer as it pertains to the crossings in the Orchard area, stressing that information needs to be exchanged to ensure appropriate crossings.

Mr. Sullivan inquired as to how the Board wished him to proceed with the Cooperative Agreement. The Board agreed that it should be tabled until further notice.

Letter received from Chief Moeckel announcing his retirement effective April 1, 2005. Mr. Stearns voted to accept the Chief’s letter of retirement, with tremendous thanks for all his years of dedicated service to the Town. The motion was seconded by Mr. Doyle and passed 4-0.

Letter received from Senator Sapareto offering his assistance toward the efforts of the WRTA in improving the Windham section of the Rockingham Recreational Trail.

Letter received from the Merrimack Valley Regional Water District advising the Town that the District has officially been formed and requesting an opportunity to meet with the Board of Selectmen to discuss the District's goals.

Invitation received from the Greater Salem Chamber of Commerce to the 2004 installation of officers and presentation of the Distinguished Person of the Year award, to be held on October 7 at Castleton.

Letter received from the NH DOT regarding the I-93 Traffic Incident Management Plan and ITS stakeholders, inviting representatives of the Board to attend the first Stakeholder Workshop on September 15, 2004 at Promises to Keep.

Planning Department correspondence was postponed due to the lateness of the hour and to allow for determination if emails can be considered proper correspondence for purposes of reading into the record.

MINUTES: Mr. Doyle moved and Mr. Stearns seconded to approve the minutes of August 16, 2004 as written. Passed 4-0.

Mr. Doyle moved and Mr. Stearns seconded to approve the minutes of August 30, 2004 as written. Passed 4-0.

The minutes of August 23, 2004 were tabled.

NON-PUBLIC SESSION: Mr. Doyle moved and Mr. Stearns seconded to enter into a non-public session in accordance with RSA 93-A:3 d. Roll call vote – all members “yes”. The topic of discussion was land acquisition. The Board, Mr. Sullivan, and Dennis Senibaldi and Lisa Linowes of the Conservation Commission were present.

Ms. Linowes updated the Board on an ongoing mitigation issue. The Board determined that the pending purchase of the land by the State should proceed.

Mr. Breton moved and Mr. Doyle seconded to adjourn. Passed unanimously.

The meeting was adjourned at 11:45 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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