

BOARD OF SELECTMEN
Minutes of May 9, 2005

MEMBERS PRESENT: Chairman Roger Hohenberger called the meeting to order at 7:00 PM. Selectmen Bruce Breton, Galen Stearns, Margaret Crisler and Alan Carpenter were present. David Sullivan, Town Administrator, was also in attendance. Mr. Hohenberger read the agenda into the record.

ANNOUNCEMENTS: Dave Poulson, Public Relations Committee Chairman, announced that the Town would be hosting a "Workforce Appreciation Day" for its employees on May 18, 2005. In order that staff may attend, the Transfer Station will be closing at noon and all other offices will be closing at 1:00 PM. Mr. Poulson assured the public that there would be no interruption in emergency services during this closing.

Linda German of the Windham Garden Club presented the first ever grant awards under the Club's newly established Community Investment Fund. This Fund was established by the Garden Club to contribute to horticultural projects in Town, and funds are distributed through a grant application process. Ms. German presented the first grant to the Friends of Windham Historic, for use toward a continuation of the late Nancy Surette's landscaping project around the West side of the Searles School and Chapel. Mrs. Marion Dinsmore accepted the funds on behalf of the Friends.

Ms. German presented the second grant to the Windham Rail Trail Alliance, for use toward stabilization of the banking along the 4.1 mile Rockingham Recreational Trail through planting of wildflowers and other indigenous plants. Mr. Wayne Morris and Ms. Diana Fallon accepted the funds on behalf of the Alliance.

Mrs. Crisler reminded all of the Annual Garden Club Plant Sale on May 21, as well as the ongoing raffle to benefit the Nancy Surette Scholarship fund.

Mrs. Barbara Coish, Sister City Committee announced that she and Mr. John Breda had recently returned from a trip to Suzdal. Mrs. Coish highlighted some of their activities on this most recent trip, and presented the Board, Mr. Sullivan, and Mr. Sullivan's staff with small gifts purchased in Suzdal.

BID AWARD: Transfer Station Manager Dave Poulson announced that, after extensive advertising and mailing out of ten bid packages, one bid had been received for the Transfer Station trash trailer as follows:

Stetco, Dorchester, MA \$46,875

Mr. Poulson explained that the bid price as proposed was \$3,125 below the CIP allocation, and recommended the Board award the bid accordingly.

After a brief discussion, Mr. Stearns moved and Mrs. Crisler seconded to award the bid to Stetco for the Transfer Station trash trailer. Passed unanimously.

ANNOUNCEMENTS, CONTINUED: Mr. Hohenberger announced that a public information meeting regarding the Lowell Road bike path was scheduled for May 26th beginning at 7:00 PM at the Town Hall.

OLD BUSINESS: None.

NEW BUSINESS: Mr. Sullivan advised the Board that NH Public Radio had requested to rent the Town Hall for a public broadcast regarding growth in New Hampshire. After a brief discussion, it was the consensus of the Board to approve the request.

Mr. Sullivan advised the Board of a change in the Town's Diversified plan requiring the Town have a custodian for funds not immediately rolled over by employees at the time of leaving the Town's employ. *Mr. Sullivan* explained that there is no liability to the Town in doing so, nor any related costs, and recommended the Board authorize him to execute an agreement with Diversified that they act as custodian on the Town's behalf.

After a brief discussion, *Mr. Carpenter* moved and *Mr. Stearns* seconded to authorize *Mr. Sullivan* to sign the agreement naming Diversified custodian of these funds. Passed unanimously.

Mrs. Crisler announced that the Planning Board would be conducting a discussion on May 11 regarding the Village Center District.

CORRESPONDENCE: Letter received from the Merrimack Valley Regional Water District extending an invitation to the Town to join prior to June 1, 2005, after which the Town's membership would need to be approved by the Board of Directors.

Letter received from Adelpia notifying the Town of the sale of substantially all Adelpia assets to Time Warner, Inc. and Comcast Corporation. *Mr. Hohenberger* inquired if the Windham Cable Advisory Board was aware of the sale, and *Mr. Sullivan* replied that a copy of the letter would forwarded to the WCAB.

Letter of resignation received from Dispatcher Paul Whittemore. *Mrs. Crisler* moved and *Mr. Breton* seconded to accept *Mr. Whittemore's* resignation with regret. Passed unanimously.

Mr. Hohenberger noted that many letters/emails had been received regarding the trail discussion, which the Board would address later in the evening.

BOARD OF HEALTH: *Mr. Breton* moved and *Mr. Stearns* seconded to adjourn to the Board of Health portion of the meeting. Roll call vote: all members "yes". *Mr. Hohenberger* read the public hearing notice into the record.

Planning Director *Al Turner* presented a detailed map of the area, and explained that the owner was proposing replacement of the current septic system and its relocation toward the back property line. *Mr. Turner* further explained that the request required a waiver of the 100' setback requirement to within 75'.

Mr. Turner noted that the well on the adjacent property was 150' away, and as the septic for the diagonal abutting property was shown to be in the rear on the plan, the well there was assumed to be in the front. *Mr. Turner* stated the application did meet all other requirements for setback, etc.

Mr. Joe Chamberlain, licensed septic designer, was present on behalf of the owner *Mr. Rosetti*. He stated that the state required a 75' setback, and that *Mr. Rosetti* had contacted each of his abutters to inquire about the location of their wells, and all were over 100' away from the septic system. *Mr. Chamberlain* explained that the current septic was located on the side of the property, and was now being proposed for the rear due to run-off from the road. *Mr. Chamberlain* further explained that the owner had tried to replace the system "in kind", but could not as the water table was only 2' away from the requirements.

Mr. Hohenberger indicated he would like to see the abutting wells detailed on the recorded plan. *Mr. Chamberlain* indicated he could comply with that request.

Mrs. Crisler inquired about the wells across Range Road, and Mr. Chamberlain indicated that, as the distance to the lot line was 125', they were well outside the requirements.

Mr. Carpenter inquired if all abutting property wells were over 100' from the proposed septic. Mr. Chamberlain replied in the affirmative. Mr. Turner indicated that the owner has also executed a release accepting all responsibility for any issues.

Mrs. Crisler inquired about the depth of the owner's well. Mr. Chamberlain indicated that the exact depth was not known, but that it was an artesian and not a shallow, dug well.

After further, brief discussion, Mrs. Crisler moved and Mr. Stearns seconded to grant the Rosetti's request for waiver from Section 2.6 of the Water Supply Regulations subject to inclusion of the abutting wells on the recorded plan.

Mr. Carpenter noted that, since similar requests had been denied in the past, the Board might wish to state their reasons for support of the request for the record. The members cited the following: the project being within the 75 foot setback required by the State; lack of impact on neighboring properties; lack of impact to the lake; current, year-round status of the property; and lack of impact to future use of the abutting properties.

The motion passed unanimously.

NON-PUBLIC SESSION: Mr. Stearns moved and Mr. Carpenter seconded to enter into non-public session in accordance with RSA 93-A:3 II c. Roll call vote, all members "yes". The topic of discussion was reputations. The Board, Mr. Sullivan, and Ms. Devlin were in attendance.

The Board discussed three (3) tax deeding issues. Mr. Stearns moved and Mr. Breton seconded that Mr. Sullivan forward a letter to the Tax Collector requesting these properties not be deeded due to known and/or unknown liabilities. Passed unanimously.

The Board discussed a request to forgive interest due on a welfare lien.

Mr. Stearns moved and Mr. Carpenter seconded to seal the minutes of the non-public session due to the sensitivity of the welfare issue. Passed unanimously.

The meeting reconvened in public session, and a five (5) minute recess was called by the Chairman.

RECREATION: *Recreation Coordinator Advertisement/Job Description:* Mr. Hohenberger read the advertisement into the record, and discussion moved to the Coordinator job description.

Mr. Hohenberger noted that he would like the development of a Master Plan for recreation, and the detailing of inventory and future needs included within the job description. Mr. Carpenter suggested this could be an assigned task upon hire, rather than a part of the duties. Mr. Breton noted that the first several duties in the job description pertained to strategic planning for recreation. Mr. Sullivan suggested language to "develop a master plan in conjunction with others" be included. The Board concurred.

The Board discussed budget development and the importance of working with Administration to do so, as well as submittal of bills and other administrative duties. Also discussed was the need to re-address the Recreation Committee charge subsequent to hiring of the Coordinator.

Mr. Dennis Senibaldi, Recreation Committee Chairman, presented those changes to the job description proposed by the Committee. These included: ongoing assessments of facilities as well as programs; requirement to work

with Town sports groups as well as local civic support groups; addition of “all other duties as required” or similar language; change requirement to lift/carry over 50 pounds from “rarely” to “occasionally”; addition of small/medium tools and equipment to required controls and equipment; change “not required” under tasting and smelling to “necessary for general awareness of surroundings”; and, allow six months to obtain CPR/First Aid certification under license/certification requirements.

Mr. Stearns suggested that language be included that the Coordinator recommending staffing and compensation levels for recreation staff. The Board concurred. Mr. Senibaldi inquired whether the Recreation Committee would still be involved in the process. Mr. Stearns replied in the affirmative.

Mr. Sullivan noted that, as “carry 11 to 25 pounds” was currently noted as being “constantly required”, lifting of 11 to 25 pounds should be changed from “occasionally” to “constantly” for consistency. The Board concurred.

After further, brief discussion, Mr. Breton moved and Mr. Carpenter seconded to approve the Coordinator’s job description with changes as discussed. Passed unanimously.

A discussion ensued regarding postponement of the fee discussion due to the lateness of the hour. It was the consensus of the Board to post the fee schedule as recommended by the Recreation for public hearing on May 23rd. Mr. Sullivan will do so accordingly.

COMMERCIAL HAULER FEES: Mr. Poulson gave a lengthy explanation of the reasons behind implementation of a fee for commercial haulers of residential waste, citing in part the lack of a formal agreement with commercial haulers; 90% of the scale use being by commercial haulers, and related costs of the scale; and the resultant necessity of immediate, large-scale sorting operations. Mr. Poulson also noted that the proposed fee related to processing of the waste, rather than tipping, etc.

Mr. Hohenberger read a letter of opposition from John Augusta, owner of Ideal Disposal, in which Mr. Augusta stated his belief that the \$1000 was “excessive and unfair and would eventually have to be passed on to our customers as a transportation assessment charge.”

Mr. Hohenberger and Mrs. Crisler supported a fee of some amount, but felt \$1000 may be excessive. Mr. Carpenter inquired how many commercial haulers currently used the Transfer Station. Mr. Poulson replied there were only two (2), but that 1/3 of the waste stream was generated by them. Mr. Poulson also noted that all commercial entities using the Station currently pay some fee to the Town, except the commercial haulers.

Mrs. Gail Webster approached to voice her support of the fee. Mr. Senibaldi approached to express his concerns regarding effects to smaller commercial hauler entities.

A lengthy discussion ensued regarding Transfer Station and private sector operations, and processing and volume of waste.

Mr. Scott Buchanan of Atlantic Waste Systems approached to voice his opposition to the fee. He noted that Atlantic runs only one truck in Windham, and brings only Windham waste to the Station. He further noted that the commercial haulers are just a vehicle to get the trash to the Station.

Mr. Walter Kolodziej, resident, approached to state that, even without the commercial haulers, the trash would still have to be processed, along with his belief that no extra charges were incurred as a result of the haulers.

Mr. Bill Conatin, resident, approached with concerns about whom would determine what classifies as a commercial hauler. He also inquired whether

the \$2000 collected from the two (2) commercial haulers in question would go toward the Transfer Station.

After further, brief discussion, Mr. Breton moved and Mr. Stearns seconded to approve the commercial hauler fee as posted. Passed 3-2, with Mr. Hohenberger and Mrs. Crisler opposed.

WRTA: Mr. Hohenberger again noted that several letters/emails had been received regarding the WRTA project. After a brief discussion, the members read all letters/emails received into the record (copies attached).

Mr. Mark Samsel, President of the Windham Rail Trail Alliance (WRTA), thanked those who had attended the meeting that evening, and those who had taken the time to write letters regarding the project. He then gave a lengthy review of the project to date, as discussed at several previous Selectmen meetings, closing his review by requesting the Board approve the mutual agreement with a language change to include shared liability with the Department of Transportation pertaining to winter uses of the trail.

Mrs. Crisler requested that Mr. Samsel respond to several concerns noted by Ms. Liane Deranian in her letter (see attached). Mr. Samsel replied that parking will be available at the Depot; multiple points of access are planned for the trail with further improvements in the future; trash removal would be the responsibility of the WRTA; trespassing issues would be no different than currently; hunting occurs more toward the Mitchell Pond area, and is declining due to development; and, signage will be in place in addition to development of informational packets about the Trail.

Mr. Hohenberger noted that the WRTA had previously had concerns about parking at the Depot, which was now posted in several areas. Mr. Samsel stated that the summer ATV use had prompted the previous concerns, and that he did not believe this was the same situation.

Mr. Hohenberger inquired about enforcement, citing a paid detail had been necessary for the ATV regulations. Mr. Samsel stated that, while enforcement was not necessarily needed, police presence was welcome, and grants were available for funding.

Mr. Hohenberger read into the record a petition in support of the WRTA efforts and the development of a paved trail as signed by 194 Windham residents (copy attached).

Representative Kevin Waterhouse extended thanks to the WRTA for their hard work on the project. He urged the Board to support the mutual agreement, believing the trail would be good for tourism, economic development, and a great asset to the Town.

Ms. Mabel Brown, 36 Governor Dinsmore Road, expressed concerns regarding wildlife impacts, the trail's proximity to her back yard, and potential costs of patrols. She suggested gravel be used as opposed to pavement.

Mr. Michael Peterson, 60 Morrison Road, voiced support for the project, but suggested the amount of pavement be limited or that recycled asphalt be used. He also noted that the proposed 2'-10'-4' layout will not work for equestrian users, and that the trail should be open to all users and not just the largest segment of the population.

A brief discussion ensued regarding possibly changing the layout to 10'-6'. Mr. Bob Sperol of the Department of Resource and Economic Development (DRED) noted that the 2' area is designed as a safety zone, and eliminating it would increase the hazards on the trail. Mr. Rob Jacobellis, 130 North Lowell Rd., noted that, with two-way traffic, the hazard would increase the narrower the pavement was.

Mrs. Sandra Mangan, 1 Depot Road, approached to counter the concerns regarding wildlife, stating that its presence in her area had not decreased at all due to traffic or pavement since she moved to Depot Road.

Mr. Peter Griffin commended the WRTA for their efforts, but stated his opposition to pavement. He believed that parking would be an issue, and noted that that this was not a Windham-only trail. He noted that restoration of service to the Manchester/Lawrence line was being considered, and that rail service will be restored in Nashua by 2008. He wondered how marketable Windham would be as a community once other surrounding towns have returned to alternative transportation. He urged the Board to look at the larger picture.

Mrs. Lisa Linowes noted several concerns including: liability without ownership; possible attempts to ban horses from the trail in the future; snowmobile damage to the asphalt; and future costs. She also pointed out that ¾" crushed stone is ADA compliant.

Mr. Senibaldi approached with several comments, including: wildlife ability to adapt to development; inadequacy of alternative surfaces; and, the need for a larger paved area for bike/pedestrian traffic, as their use exceeded equestrian use.

Mr. Michael Hatem, 5 Heath Road, stated that pavement would allow the widest group of users. He noted that it is nearly impossible to ride the trail as it is. He also stated that the Recreational Use statute offers nearly 100% immunity to the Town, except in cases of gross negligence.

Ms. Lee Maloney urged the Board to support the agreement and the 2'-10'-4' layout. She noted the trail would encompass the same liabilities as any park in Town, and opined that the re-establishment of rail service was highly unlikely.

Mr. Wayne Morris, WRTA, approached to introduce Mr. Jim Gove, the WRTA's wetlands consultant. Mr. Gove clarified several areas of concern that had been brought to his attention at various times. He noted that no curbing was planned for the trail, and a full study had not been completed and, if wildlife issues such as nesting should arise, those areas can be enhanced to lessen the impacts. Mr. Gove also addressed the assumption that hard pack gravel offers less run-off, stating that as it compresses, hard pack becomes an essentially impervious surface. He also noted that, for permitting purposes, hard pack is treated the same as asphalt.

A discussion ensued regarding run-off, benefits of paving to the wetlands, and curbing.

Ms. Barbara Robinson, 15 Morrison Road, voiced her opposition to the project as a horse owner/rider. She noted that bicycles and horses do not mix well together, and read an excerpt from the State's opinions on Greenway designs. She noted that there are fewer trails available in Windham for horse riders, and that this project will severely limit their use.

Mrs. Crisler inquired of Ms. Robinson if 4' on either side, or 6' on one side would be better suited to horse use. Ms. Robinson stated 6' would be her preference.

Ms. Nancy Costa, 11 Morrison Road, approached to note that horse riders generally go out in groups, and that 4' would force them to ride single file with no room for 2-way travel. Ms. Costa also noted that steel horseshoes would damage the pavement. She then stated that, while the project was a great idea, the needs of all should be considered in the design.

Mr. Morris approached noting that in the SCORP study of recreational usage rates, horseback uses encompassed only 15%. He stated that the trail would be multi-use and all-inclusive, and that etiquette and education of users would be big part of the project.

Mr. Glenn Kimball, 5 Depot Road, approached to thank the Board for their consideration of the project and the WRTA for their efforts. He stated that he and his family were excited at the prospect of the trail being paved, due primarily to the resultant ease of use by the elderly and disabled. He believed that, without pavement, a large group of people would then exist who would never be able to enjoy the area.

A discussion ensued between the Board members regarding liability and immunity, Town Counsel opinion, and increased premium cost. Mr. Sullivan clarified that that there would be no increased cost in insurance premiums, as it would be improved land similar to the ballfields.

After a lengthy discussion regarding incorporating language regarding shared liability and resubmission of the mutual agreement to the State, Mr. Carpenter moved and Mrs. Crisler seconded to approve the spirit and intent of the project as presented by the WRTA, and to draft a revised mutual agreement between the Town, the WRTA, DRED, and the DOT including the following edits: incorporate language regarding shared liability, and incorporate all ancillary verbiage changes from Town Counsel: and to submit to DRED and DOT for approval. Passed 4-1, with Mr. Breton opposed.

Mr. Breton requested that a written agreement be established with the WRTA to ensure that the project is properly overseen in the future. Mr. Sullivan will schedule a discussion regarding such an agreement for a future meeting.

Mr. Breton moved and Mrs. Crisler 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.