

**BOARD OF SELECTMEN**  
**Minutes of October 17, 2005**

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

Mr. Hohenberger announced that the meeting had been opened at 6:08 PM at the intersection of Mitchell Pond Road and the discontinued portion of Hopkins Road, where he, Mr. Breton, and Mrs. Crisler had conducted a site walk to the railroad bed and back.

Mr. Hohenberger then read the agenda into the record. Mrs. Crisler arrived at 7:05. Following the Pledge of Allegiance, Mr. Hohenberger requested a moment of silence in memory of Library Trustee/TAC member Mr. Paul Keller, who recently passed away. Birthday wishes, along with a chorus of "Happy Birthday" were then offered to Mrs. Crisler by those in attendance.

**ANNOUNCEMENTS:** Mr. Breton announced that the previous weekend's Harvest Festival had been a great success, and extended congratulations to Mrs. Cheryl Haas, Recreation Coordinator.

*Mrs. Crisler* announced that the Planning Board would be holding a public hearing on Wednesday to discuss the Village Center District plans, of which she provided copies to the other Board members. Public input will be welcome.

**BID AWARD/FD SMALL EQUIPMENT:** Chief Messier advised the Board that the new tanker truck would be in early the following morning. He explained that this bid award pertained to related tools and equipment for the new vehicle.

Chief Messier advised the Board that four bids had been received and reviewed to equalize the equipment bid. After analysis, the low bid for the equipment was \$14,461 and the high bid \$18,037. Chief Messier recommended, however, that the bid be awarded to the second lowest bidder, with whom the Department has dealt with several times.

Mr. Hohenberger inquired whether this equipment would be funded through residual grant monies from the tanker truck, and sought clarification what the equipment consisted of. Chief Messier replied in the affirmative, and noted the bid consisted of small hand tools, adapters, extinguishers, etc.

Mr. Carpenter moved and Mr. Breton seconded that the purchase of equipment as presented be awarded to Fire Barn for their bid amount of \$14,853.85. Passed unanimously.

Mr. Carpenter inquired when the tanker would be available for viewing. Chief Messier replied that, when the vehicle is in-service, a small open-house will likely be held. He did note that the residents may see it out on the road around town for driver training.

**PUBLIC HEARING/HOPKINS ROAD:** Mr. Hohenberger read the public hearing notice into the record, followed by two pieces of correspondence, from Planning Director Al Turner and the Nolans. Mr. Hohenberger also noted that a petition had been received, with three signatures, in opposition to the reclassification.

Mr. Joe Maynard, Benchmark Engineering, was present on behalf of the petitioner Brian Harvey. Mr. Maynard gave a brief history of Hopkins Road, and the previous efforts for reclassification. He also reiterated information presented previously, regarding efforts to establish a connection to Windham

Depot Road in Derry, and the concerns of the Derry Planning Board regarding the Kilrea Road intersection.

Mr. Maynard pointed out that the joint meeting between the Windham and Derry Planning Boards has been scheduled for late November, and the impression given by Derry to the applicant is they would prefer Windham to handle access to this subdivision.

Mr. Maynard then briefly highlighted some key points of the reclassification, including: the routing of Hopkins Road out of the right-of-way on Mr. Harvey's land; that Hopkins Road would run along the edge of, rather than through, an open space area; H&B Homes intention to preserve the wildlife corridor and open space along Hopkins Road; the availability of an updated traffic survey, compiled upon completion of the Anderson Subdivision, which shows the impacts of Hopkins Road would be minimal; and the connectivity for the neighborhood that the reclassification would offer.

Mr. Maynard pointed out that Hopkins Road was no different than any other "stub" in Windham, and that Haskell Road had been re-opened under very similar circumstances in the 1990's, over the railroad corridor.

Mr. Jack Szemplinski, Benchmark, noted that Derry appeared to feel that Windham was forcing their traffic through Derry. Mr. Breton disagreed, and read a portion of the Derry Planning Board minutes into the record regarding an informal poll of the members, the majority of whom cited a lack of information as their main concern. Mr. Szemplinski explained that they had first approached the Derry Highway Safety Committee, who had recommended to the Derry Planning Board that a gated connection to Windham Depot Road be approved, until the Kilrea intersection was improved. Mr. Szemplinski stated the Derry Planning Board had then been approached regarding gated access for emergency use only. A lengthy discussion then ensued regarding Benchmark's presentation to the Derry Planning Board.

Mr. Jim Finn, Conservation Commission Chair, approached to voice the Commission's ongoing opposition to the reclassification. He stated the members preferred access be gained through Windham Depot Road, citing the extensive length of pavement and the Commission's desire to preserve the entire area and related trail network.

Mr. William Bolton approached on behalf of his mother, Helen Bolton. He noted that his family has a vested interest in this project, as his mother is the seller of the land to be developed. Mr. Bolton urged the Board to support the reclassification, believing the development to be good for the both existing neighborhood and future growth alike. He also supported the access plan developed by Benchmark.

Ms. Kristina Mearls, 13 Mitchell Pond Road, presented a petition containing eighty-eight (88) signatures to the Board, along with two letters of opposition which Mr. Hohenberger read into the record.

Ms. Mearls then noted that when Fox Crossing was completed, the Mitchell Pond subdivision will be twice the size as the last time the Hopkins Road reclassification was denied. She felt that the upgrading of Hopkins would exacerbate the traffic issues in the area, and urged the Board to consider those residents who will have to live with the Board's decision.

Mr. Bob Coole approached noting that Morrison Road is already in need of repair due to use by heavy construction equipment. He felt that, if safety were the basis of the Board's decision, the faster emergency vehicle access would still be via Depot Road. He then inquired who owns Hopkins Road and how much revenue would be garnered from the timber clearing if the road were reclassified. Mr. Hohenberger replied that the Town owns

Hopkins Road, and no revenue would be generated from the timber if cleared.

Mr. Coole inquired whether any betterment costs would be assessed to the abutters, to which Mr. Stearns replied the entire cost to improve the road would be borne by H & B Homes. Mr. Coole then inquired whether an environmental impact study had been completed, and the Board replied that would fall under the purview of the Planning Board. When asked what the future maintenance costs would be, the Board noted it would not be outside the norm for any Town road.

Mr. Coole inquired of Mr. Maynard why the developer wished to open Hopkins Road now, noting that only 12 houses are being constructed per year. He suggested that, as the Kilrea Road intersection was scheduled for repair in 2013, the developer make the Windham Depot Road access a dedicated road and build the subdivision out to meet it. Mr. Carpenter noted that is not an adequate solution, as it would require the developer to exceed the maximum cul-de-sac length during the build-out. Mr. Szemplinski noted that the Depot access was a planned part of Phase II of the subdivision, and even if Hopkins Road were reclassified, they would still pursue its inclusion with Derry.

Mr. Coole then urged the Board to consider the well, detention basin, and setback impacts of reclassifying Hopkins Road, and requested that the two (2) Board members who had not attended the site walk earlier that evening abstain from voting.

Mrs. Lisa Linowes approached clarifying that, while the discontinuing of Hopkins Road and several others had been presented to Town Meeting, the “gates and bars” proviso had actually been an amendment to the original warrant article. She then stated the closings had exhibited the Town’s interest in and support of conservation.

Mrs. Linowes inquired what the linear footage of pavement would be where no homes were planned, to which Mr. Maynard replied approximately 2000’. Mrs. Linowes then noted that, in 2003, this matter had been discussed at length by the Planning Board, who had clearly expressed their expectation that the connection would be out to Windham Depot Road.

Mrs. Linowes then noted that opening Hopkins Road would not increase access times and felt that, if that were the basis for the “public good”, then it did not meet the necessary criteria for discussion.

Mr. Wayne Morris, Trails Committee, approached to note that the Committee preferred that the railroad bed not be crossed, but if it must be he asked that the Board of Selectmen, Planning Board, and Conservation Commission work with Benchmark to minimize impacts through reduced pavement width, sheet drainage, etc.

Chief Messier approached in support of the reclassification, noting that access is a greater issue than response time. He stressed that, if an incident occurs, the Fire Department must be able to get to the scene. He noted that this new subdivision will include 200 homes, with an estimated 600 people, and that it is the Town’s responsibility to ensure that access to them is there.

Mrs. Crisler inquired whether Hopkins Road would improve access to the development, and Chief Messier replied it would provide an additional access, which is important. He then cited, as an example, an incident prior to the construction of the Mitchell Pond Road extension, in which a large portion of that area had been inaccessible for over 8 hours due to an accident. Such an occurrence was, he felt, unacceptable.

Mr. Sam Nassar approached to state that he did not believe that the 1979 closings were related to conservation as claimed by Mrs. Linowes, but rather were related to the inadequacy of the roads. He stated that connectivity was recognized as a necessity even then, and thus the article was amended to include "gates and bars", which kept the roads as legal, but not maintained, town roadways. Mr. Nassar also noted that a large portion of the trail network in the area of Hopkins Road is actually on private property.

Mr. Al Lemay approached expressing concerns regarding blind corners and speed issues. He questioned why the current crossing was cut down so low. Mr. Hohenberger noted that it was done so to allow for a gradual decline.

Mr. Lemay then noted that, per Town regulations, a 150' site line was required for driveways, which cannot be met in the area. He then expressed concerns that the Mitchell Pond area has streets that are safe for children to ride their bikes on and an extensive trails network. He did not feel it made sense to turn such an asset into pavement. Mr. Lemay then expressed concern that his property does not meet the current set back requirements, and that the grading required on Hopkins would negatively affect his property.

Mr. Lemay inquired whether the Town had clear title to Hopkins Road, to which Mr. Hohenberger replied in the affirmative. A discussion ensued regarding the area deed descriptions and width of the right-of-way.

Mr. Turner noted that Hopkins was originally a two-rod road, and that a 50' right-of-way was later reserved in the upper portion. He noted that it appears that Hopkins Road, in its entirety, lies within the planned subdivision.

Mr. Lemay felt that the Planning Board should have conducted a site walk and a public hearing, as well, and stated that the cons of reclassification far outweigh any pros. He urged the Board to deny H & B's request.

Mr. Chris Rosetti approached to express concerns that opening Hopkins Road and the additional traffic it would bring would detract from the rural character of the neighborhood and impact property values. He also noted that Morrison Road is treacherous already, and questioned whether increasing traffic in the area was wise. Mr. Rosetti then encouraged the Board to deny the request.

Ms. Kim Cowan reminded the Board of the high number of accidents on Morrison Road, and discouraged the invitation of more traffic to a road that is not conducive to it.

Ms. Nancy Costa urged the Board to consider a different option, as Morrison Road cannot handle the increased traffic load. She then presented an additional petition in opposition to the Board.

Mr. Dennis Senibaldi approached to express his disappointment that this possibility was again being discussed. He did not feel that any new information had been presented to warrant Mr. Carpenter's changing his previous vote and supporting further discussion. Mr. Senibaldi did not feel that emergency vehicle access was an issue, as they can come in via Searles Road now, if necessary.

Mr. Senibaldi then inquired why the developer had to be accommodated, noting that the Board's responsibility was to represent the public. Mr. Carpenter clarified that new information had been presented, including the developer's conversations with Derry and the impending joint meeting with the Derry Planning Board.

Mr. Jeff Robertson approached in opposition, noting that he utilizes the Hopkins Road area quite often as he believes it was intended to be, for walking the trails, etc.

A discussion ensued regarding the Planning Board's intent for access during its approval of the Spruce Pond subdivision. Mr. Breton revealed an email from 2003, which seemed to indicate the consensus of the Planning Board was to achieve a connection from Spruce Pond to Derry. Mrs. Crisler then pointed out that the Hopkins Road connection was, however, included in the Windham Master Plan.

Mr. Maynard reiterated that they have been attempting to connect to Derry, however the traffic issues need to be resolved as they relate to the Kilrea intersection. He stressed that the developer had always been clear about attempting to establish both connections, and continued to work toward that end with Windham, Derry, and the Department of Resource and Economic Development.

Ms. Laurie Rauseo, Independent Traffic Engineer, approached on behalf of H & B Homes to discuss the results of the traffic study. She pointed out that numerous studies had been conducted throughout the development, and that Spruce Pond's main access was off of Route 28. Ms. Rauseo stated it did not make sense for those residents to utilize Hopkins Road, and as such its reclassification would primarily serve to provide neighborhood connectivity and emergency services access. She noted that 280 daily trips are estimated on Hopkins Road and suggested that, if approved, the Board consider requesting further off-site improvements by the developer at the bad Morrison Road corner.

Ms. Rauseo then pointed out that the traffic on Morrison Road has doubled over the last two years to approximately 1200/day. She stated that while the corner issue does need to be addressed, this level is not an unacceptable one.

A discussion ensued regarding the traffic estimates presented as part of the Castle Reach project versus Ms. Rauseo counts, and the acceptability of the current counts and estimated impacts.

Mr. Steve Couture expressed concern that Morrison Road cannot handle this amount of traffic.

Mr. Mike Gagnon approached to state that the current volume is not acceptable to residents of the area. He also inquired of Ms. Rauseo whether anything besides volume was measured, and whether traffic to Exit 4 had been taken into account. Ms. Rauseo replied that only volume had been studied, and that 25% of Spruce Pond traffic is estimated to head north, however greater volume in that direction will come from Morrison Road.

Mr. Sullivan interjected in an attempt to address Mrs. Linowes earlier concerns regarding an appropriate occasion to discuss this reclassification. Attorney Peter Bronstein supplied relevant case law to Mr. Sullivan, which was read into the record as follows: "Rodgers Development Co. v. Town of Tilton... The Supreme Court briefly reviewed the history of highway layouts and pointed out that determining whether occasion exists is a two-step process. The first step is to balance the public interest in the layout against the rights of affected landowners. The second step is to balance the public interest in the layout against the burden it imposes upon the town. The court noted that the public interest in question encompasses a spectrum of levels of necessity ranging from "exigency," meaning urgency, to mere "convenience" and includes intermediary levels of requirements such as "need".

Mr. Carpenter sought clarification of the required wetland crossings. Mr. Maynard replied that three (3) simple crossings would be required, at approximately 2000sf each.

Mr. Breton inquired of Chief Messier which connection he preferred. Chief Messier reiterated his earlier comments, and stated that he believed if the Board approved the reclassification of Hopkins Road, Derry would then approve the Windham Depot access.

Mr. Carpenter inquired why this was being presented to Windham, if Derry had not been officially approached to date. Mr. Szemplinski explained that the developer had been actively pursuing both connections for over two (2) years.

A discussion ensued regarding the Board's options, the rights of the residents to appeal the Board's decision, the sensibility of the reclassification in concert with the Windham Depot access for connectivity and response time, and the Board's ability to attach conditions for off-site improvements.

Mr. Hohenberger indicated he would like the Board to review the engineering for the reclassification if this matter was going to proceed. A discussion ensued regarding the appropriateness of Mr. Hohenberger's request, as such review would be the purview of the Planning Board.

Mr. Stearns moved and Mrs. Crisler seconded to conditionally approve the Hopkins Road layout, subject to approval by the Derry Planning Board of the Windham Depot Road connection.

A discussion ensued regarding possible, necessary amendments to Mr. Stearns motion. Mr. Sullivan clarified that the Board would only be approving the laying out of Hopkins Road, which would then be subject to review by the Planning Board and all other related Town regulations.

Mr. Stearns amended his motion, and Mrs. Crisler her seconded, that approval also be conditional upon adherence to the Windham Planning Board process. Motion failed 2-3, with Mr. Breton, Mr. Hohenberger, and Mr. Carpenter opposed.

Mr. Carpenter moved and Mrs. Crisler seconded to continue the public hearing to the first meeting after the Derry public hearing, currently being December 5, 2005. Passed 4-1, with Mr. Stearns opposed.

Mr. Hohenberger extended his thanks to all participants, and called for a five minute recess.

**BOARD OF HEALTH/21 FISH ROAD:** Mr. Stearns moved and Mr. Carpenter seconded to enter into the Board of Health. Roll call vote – all members “yes”. Mr. Hohenberger read the public hearing notice into the record.

Mr. Turner explained that, in completing research previously requested by the Board, the applicant had discovered an additional waiver was required. Mr. Turner noted that the applicant's original paperwork had been withdrawn, and this hearing was related to a new application for which all abutters had been notified.

Mr. Turner explained that the owners were now seeking a waiver to install the septic system 75' from their own, relocated well. Mr. Turner noted that the distance to the nearest abutting well was 92', and that installation was allowed within 20' of the property line provided the owner executed the appropriate waiver with the State of NH. Mr. Turner then presented a revised plan, which included all information requested previously by the Board. Mr. Turner pointed out that all area wells were depicted, the owner had obtained plans for all the surrounding properties, and that he had verified all the information as submitted. He then reiterated that only one well, and no septic system, was within the 100' radius.

Mr. Rick Barry, abutter, approached to point out that the owners' current well and septic are in place and functioning. He questioned why the owners wished to replace them, and why they wished to relocate the well from the rear of the house to such a wet area. Mr. Barry did not see a reason to be re-hearing this request, as the regulations in place had previously been upheld by the Board.

The property owner, Mr. Brian Keenan, approached to clarify that his current well is not in the rear of the property. Mrs. Cheryl Keenan approached to ensure the Board noted that the plan submitted had been completed by a certified engineer as requested.

Mr. Carpenter inquired how much of a concern it was to be within 12' of the property line, as opposed to the 20' allowed. Mr. Turner replied that this particular requirement is in place primarily to protect the well from the impacts of neighboring properties. He then noted, in response to Mr. Barry's concerns, that the run-off in the area of the proposed well had been tested and no concerns noted. Mr. Turner also pointed out that the well head is required to be at least 12" above ground.

Mrs. Crisler questioned why the Keenan's were applying to upgrade the property's well and septic system. Mr. Turner explained that the Keenan's wished to convert the property to year-round, and these upgrades were a Town requirement. Mr. Turner further noted that this issue had gone to court, which had ruled in the Town's favor, and that the Keenan's currently were not residing in the house year-round. This application is the first of two steps to successfully convert the property.

Mr. Carpenter expressed concerns that the public hearing had been posted, and the abutters notified, for October 24<sup>th</sup>. Mr. Sullivan noted that the posting for the new application had been proper, and the abutters notified accordingly, so no issues existed.

Ms. Kathy Rondeau approached to note that, while the Keenan's have done a good job upgrading the property, it is seasonal and should remain that way. Mrs. Crisler inquired whether there were any year-round homes in the area, and Ms. Rondeau replied there was only one.

Mrs. Crisler inquired whether conversion to year-round would be under the purview of the Zoning Board of Adjustment, and Mr. Turner replied in the negative, noting the property is simply being brought up to code.

Mr. Barry approached to note that this area has been privately maintained by the residents since 1922, and inquired whether the Town would assume maintenance if year-round residency was going to be allowed. When the Board replied in the negative, Mr. Barry then urged them to allow the residents to continue as they have been.

Mr. Keenan advised the Board that two of the abutter notices had been returned by the post office, but that he had spoken to both owners and neither was opposed. He asserted that, as the owners, he and his wife have a right to improve their property.

Mr. Hohenberger inquired what the proximity was to the pond, and Mr. Keenan replied approximately 120'.

Ms. Marie Brown approached to voice her continued opposition, as well as that of Mr. Bonfilio, who was unable to attend. Ms. Brown shares a well with Mr. Bonfilio, and theirs is the only one within the 100' radius.

Mrs. Keenan approached to point out that their property is zoned residential, which allows for an expansion of use such as is being requested. She also pointed out that the Board has granted similar waivers in the past.

After further discussion and review of the submitted plans, Mr. Carpenter moved and Mr. Breton seconded to approve the well and septic improvements as presented. Passed 4-1, with Mr. Hohenberger opposed.

Mr. Carpenter clarified his position by stating that the Board has approved 75' applications in the past, and there are no apparent impacts to neighboring properties. Mr. Hohenberger explained that his opposition was related to the proximity to Cobbetts Pond.

**BOARD OF HEALTH/27 FIRST STREET:** As Mr. Hohenberger read the public hearing notice into the record errors were discovered in the posting which prevented the Board from hearing this matter.

Atty. Brian Germaine, representing the owners, advised the Board that time constraints are an issue for the owners, due to ongoing litigation. Mr. Turner advised the Board and Atty. Germaine that he would contact Town Counsel and inform him of the posting error, and request that no fines be levied for the additional time.

Mrs. Crisler moved and Mr. Stearns seconded to exit the Board of Health. Passed unanimously.

**OLD BUSINESS:** Mr. Breton updated the Board on the status of the bathroom facilities at the Griffin Park multi-purpose building, and recommended that they be opened at approximately 3:00 P.M. Mr. Breton stated that, while a new well may still be needed, if used sparingly the facilities should be fine. He also noted that the well had been inspected, and the pump, etc., were fine. Mr. Sullivan will follow-up with Mr. Barlow regarding the opening of the bathrooms.

*Mr. Breton* raised the issue of Continental Paving utilizing a portion of the railroad bed, as previously approved by the Board. Mr. Breton pointed out that the Board had been unaware that approximately 500,000 yards of fill was being transported, and inquired whether the Board should reconsider their approval. Mrs. Crisler noted that the Planning Board had recently discussed this matter, as well, and had requested plans from Continental regarding placement of the fill. Mr. Sullivan suggested the Board consider sending a letter to the State regarding the magnitude of fill.

Mr. Breton moved and Mr. Carpenter seconded to send a letter to the NH Department of Transportation indicating that, without further information regarding the amount of fill and a formal plan for placement, the Board will not support use of the area by Continental Paving. Passed unanimously.

*Mr. Sullivan* advised the Board that American Excavating had deferred the Marblehead Road project until spring of 2006. He further noted that a letter should be sent to American, confirming that they will hold their previously awarded bid price. Mr. Hohenberger requested that a deadline for completion be included, as well.

Mr. Breton moved and Mr. Stearns seconded that a letter be sent to American Excavating to confirm their bid price will be held over. Passed unanimously.

**MINUTES:** Mr. Carpenter moved and Mrs. Crisler seconded to approve the minutes of September 12, 2005 as written. Passed unanimously.

**CORRESPONDENCE:** Tabled.

**NON-PUBLIC SESSION:** Mr. Carpenter moved and Mr. Stearns seconded to enter into non-public session in accordance with RSA 93-A:3 IIa and e. Roll call vote, all members "yes". The topics of discussion were personnel and legal.

*Personnel:* The Board, Mr. Sullivan, Chief Lewis, and Ms. Devlin were present. After a brief discussion, Mr. Carpenter moved and Mr. Breton seconded to approve the hiring of two (2) dispatch candidates as recommended by the Chief, subject to successful completion of required background checks. Passed unanimously.

*Personnel:* The Board, Mr. Sullivan, Mr. Turner, and Ms. Devlin were present. Mr. Turner and Mr. Sullivan updated the Board on the hiring of the new Building Inspector. No decisions were made.

*Legal:* The Board, Mr. Sullivan, and Ms. Devlin were present. The members discussed board appointments. No decisions were made.

*Personnel:* The Board, Mr. Sullivan, and Ms. Devlin were present. Mr. Sullivan updated the Board on an ongoing personnel matter. No decisions were made.

Mr. Carpenter moved and Mr. Stearns seconded to adjourn. Passed unanimously.

The meeting was adjourned at 12:15 AM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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