

BOARD OF SELECTMEN
Minutes of December 19, 2005

MEMBERS PRESENT: Chairman Roger Hohenberger called the meeting to order at 7:05 PM. Selectmen Galen Stearns, Bruce Breton, Alan Carpenter and Margaret Crisler were in attendance. Town Administrator David Sullivan was also in attendance. Following the Pledge of Allegiance, Mr. Hohenberger read the agenda into the record.

ANNOUNCEMENTS: Mrs. Crisler stated that the Senior Christmas Party, organized by Shirley Pivovar, was held the previous week and had been well attended by close to 300 seniors.

Mr. Breton stated that the Christmas Tree lighting had been well attended by 500 +/- people, and congratulated Recreation Coordinator Cheryl Haas on an excellent job.

Mrs. Crisler announced that the Planning Board had approved the CIP plan the previous Wednesday.

SWIMMING @ CANOBIE LAKE: Mr. Sullivan explained that a petition had been submitted by area residents to allow swimming in Canobie Lake, and presented Salem's response in opposition to the request. Mr. Hohenberger clarified that the petition had been submitted by two Windham residents, and that Salem was strongly opposed.

Mrs. Crisler stated that she had been surprised that such a petition had been presented, and Mr. Carpenter noted that while it may offer minimal benefits to a small group of people, it may prove detrimental to many and would impact another community's drinking supply. Mr. Stearns and Mr. Breton echoed Salem's opposition, and Mr. Hohenberger did not support allowing swimming in a critical source of water.

Mr. William Schroeder, Canobie Lake Protective Association, approached to state that the CLPA was also opposed to lifting the no swim rule. He noted that there are several lakeside residents who use water from the lake in direct supply, and that the current ban is on all direct human contact with the water. Mr. Schroeder pointed out that Canobie Lake is a valuable asset to the Town as it is, and that there are other lakes in both communities available for swimming.

Mrs. Elizabeth Dunn, 30 Woodvue Road, approached and noted that the CLPA and majority of Canobie residents have consistently opposed any change to the rule. She noted that, if swimming were allowed, it would then lead to water-skiing and an influx of power boats. Mrs. Dunn stated such turbulence could alter the ecology of the lake, and that swimming could also introduce viral matter into the lake. She further noted that Hayes Hart Road, West Shore Road, and Rolling Ridge Road would likely be the primary accesses for swimming, which would introduce such issues as litter to those areas.

Mrs. Dunn then noted that the petitioners had claimed there has been swimming in Canobie for generations, and pointed out that in her 30 years of residence there she had not found it to be common and that the rule is strictly enforced. She stated the rule had been in effect for over 100 years, and caused no hardship or surprise to area property owners.

After further, brief discussion, Mr. Carpenter moved and Mrs. Crisler seconded that staff craft a letter to the Department of Environmental Services declaring the Board's strong opposition to granting the petition to allow swimming in Canobie Lake. Passed unanimously.

PUBLIC HEARING/NATURE CONSERVANCY: Mr. Hohenberger read the public hearing notice into the record. Mr. Sullivan noted that this matter is still under review by Counsel, and stated that the intent of this hearing was to determine whether or not the Board wished an article placed on the Town Warrant regarding this property and, if not, the Conservation Commission would then have time to insert a petition article.

Mr. Hohenberger then read into the record correspondence received from Mr. Karl Dubay. In it, Mr. Dubay expressed concerns with the easement and possible detrimental effects of transferring the property to the Nature Conservancy, including: the possibility of having to buy back the property for future municipal needs and disruption of recreational uses by the residents of Windham.

Mr. Jim Finn, Chairman of the Conservation Commission approached, noting it was the Commission's hope that all the properties, both Town and State, would be put under the Nature Conservancy. Mrs. Crisler inquired whether the draft easement had been written for the Town or State property, and Mr. Finn replied it was for the State, but could be modified for the Town as necessary.

Mr. Finn further explained that the Commission strongly supports this agreement. He noted it is difficult for the Commission to monitor the property, and the State would provide funds to do so in perpetuity.

Mr. Carpenter clarified for those watching that the parcels in question were: the Town parcels, purchased with Town funds, as posted: 25R-7010, 25R-7025, 25R-103, 25R-6500, and 25R-8000. In addition, the State owns several abutting mitigation properties, and has been working with the Town to consolidate all as one conservation tract. Mr. Carpenter stated that, if the Board supports insertion of the warrant article, only if passed by the voters would the agreement then be executed.

Mrs. Margaret Case approached. She advised the Board that she had previously served 13 years on the Conservation Commission, and stated her opposition to this easement. She felt it would restrict the rights of the residents to utilize the property, and stated the Board could not know what might happen in the future and need for the land might arise. Mrs. Case urged the Board not to place this article on the warrant.

Mrs. Lisa Linowes, Conservation Commission, approached to give a brief history of the properties in question. She noted that the State currently owns 275 acres, which were not part of the discussion that evening. She noted that the Town's five parcels comprised approximately 195 acres, which were very wet, landlocked, and unsuitable for any other development but residential houses. Mrs. Linowes noted it was unlikely that the Town parcels could be developed for municipal purposes, and stated that the School Board had looked into it as a potential school site and found it to be unbuildable. She urged the Board to protect the parcels.

Ms. Ruth-Ellen Post, Planning Board, approached stating she was a former member of the Nature Conservancy. She stated that their main purpose is to identify areas representative of bio-diversity and felt that, if they were focusing on these parcels, then there is something special about them worthy of protecting. Ms. Post stated that the Conservancy is one of the most well-funded, financially stable, and prestigious of all the conservancy organizations. She agreed that restrictions are a concern, but felt whatever they were they would be scientifically based and that more details should be obtained about them by the Board.

Mr. Al Turner, Planning Director, approached with several concerns regarding the agreement including: the presence of a large red maple swamp in the area, a breeding ground for mosquitoes, that the spraying of is not allowed; inconsistencies between sections prohibiting such things as

ditching and draining, and the Town's ability to request authorization for trails, etc.; and the prohibition of cutting/removing plants, which is in direct conflict with other sections allowing the Town to cut fire breaks and maintain around the historic cellar hole. Mr. Turner urged the Board to clear up these conflicts prior to finalizing the agreement.

Mr. Dennis Senibaldi, Conservation Commission, reiterated his previous objections, citing possible future need of the property. Mr. Senibaldi stressed that, once placed in the Nature Conservancy, the Town can never get the land back other than by eminent domain, forcing them to pay for it a second time. Mr. Senibaldi stated that if a five or ten year time limit were placed on the agreement that would be acceptable. He then urged the Board not to support this proposal.

Ms. Carolyn Webber approached in support of the agreement. She stated that if the land were only good for residential development, then the Town loses nothing. Ms. Webber felt this was an all around good thing for the Town, and felt the Board should place the article on the warrant.

A discussion ensued amongst the members regarding whether a recommendation by the Board would be placed on the article if voted to support. It was the consensus of the Board to make a recommendation should they place the matter on the warrant.

Mr. Wayne Morris approached noting that, while he wished to see the property remain conservation forever, he also had concerns with the agreement. He noted that Section 10 seemed to state that the Town would be responsible for anything that may happen on the land.

Mr. Hohenberger stated that this may not be the proper time to review the document, as it was quite lengthy and would likely undergo several changes. He noted that the Board should be determining just whether they were in support of going forward with this possibility.

Mrs. Crisler stated that the whole purpose of conservation land is that it remain as such forever, and a third party agreement would ensure that it can't be overturned. She also stated that she favored the Nature Conservancy, but had several concerns with the draft agreement.

Mr. Stearns disagreed with the concept, feeling that it was Town property purchased with Town funds and there would be no sense in the Town paying for the property again should it be needed in the future. Mr. Stearns also noted there was no way of knowing what changes the Conservancy might undergo in the future, and felt that the Town was doing fine in managing the property.

Mr. Carpenter voiced his support for the proposal, pointing out that if the article were passed, a satisfactory agreement would then be negotiated and executed over the ensuing months. He also noted that Windham is not a young community, and is nearing build-out, however there is other town-land available if necessary in the future.

Mr. Hohenberger stated his support of conservation and understanding of the need for a third party, however, he stated he would like to see the document structured to allow the Town to take back the property at no cost in a case of extreme need. He also noted that he would like to see the article language revised before it goes to the warrant.

Mr. Breton echoed Mrs. Crisler's comments, and stated he has walked the site in the past. He noted that the Commission has worked hard to conserve the land, and stated their idea is a good one. Mr. Breton felt, however, that more meetings and/or workshops with the Conservation Commission will be necessary to finalize the agreement.

Mrs. Gail Webster approached to agree that the land should be preserved, but that the agreement needed much work.

A discussion ensued whether it was more prudent to place the Article on the March ballot or wait until the details of the agreement had been worked out. Mr. Sullivan suggested that the Board could change the article to non-binding in nature.

Mr. David Moffett, Nature Conservancy, approached to note that this agreement is a standard one used by them, but that it is negotiable. A brief discussion ensued.

Mr. Peter Griffin approached to inquire whether the Town's conservation land is adequately protected by the ordinances/regulations currently in place, and suggested that this issue should prompt a discussion and review of the Town's procedures.

A discussion ensued regarding moving forward with a non-binding article versus reviewing the Town's regulations, and maintenance and monitoring requirements of the property. Mr. Carpenter pointed out that these parcels differed from other Town conservation land, as they were partnered with the State property. He suggested the article be drafted as voting to support the Board proceeding to investigate the idea of granting a third party easement.

Mr. Sullivan suggested the article could be amended to require re-submission of the agreement to Town meeting, and a discussion ensued whether entering into the agreement should be the Board's responsibility to address. Mr. Hohenberger also suggested the language be non-binding regarding whether the Town is interested in the Board pursuing entering into an agreement to preserve the properties.

After further brief discussion, Mr. Carpenter moved and Mr. Breton seconded to include in the Town warrant the non-binding article as drafted and read by Mr. Sullivan. Passed 4-1, with Mr. Stearns opposed.

The Chairman called for a five minute recess.

BUDGET WORKSHOP: The Board, Mr. Sullivan, and Finance Director Dana Call reviewed several budget line items as presented in the proposed budget, including:

- The Searles operating budget. No changes were made.
- Capital Improvements, including road improvements, ambulance purchase, Lowell Road bike path, and the salt shed.

Mr. Carpenter suggested that the full cost of the Lowell Road bike paths be included in the warrant language for clarification, and Mr. Hohenberger asked that the word "reconstruction" also be inserted. Mr. Wayne Morris approached, suggesting the word "rehabilitation" be used instead. Mr. Sullivan will follow-up.

Mr. Sullivan noted that a Committee was being formed to study the options for the salt shed construction, and discussion ensued regarding postponing this installment, the second of three, for one year.

Mr. Carpenter moved and Mr. Stearns seconded to reduce Article #19 as proposed, down to \$5,000 for the salt shed. Passed 4-1, with Mrs. Crisler opposed.

Mr. Stearns moved and Mr. Hohenberger seconded to reduce the road improvements line item to \$200,000. Failed 2-3, with Mr. Breton, Mrs. Crisler, and Mr. Carpenter opposed.

- Recreation: Mrs. Haas, Recreation Coordinator, presented a prioritized list of project goals to the Board for review. A brief discussion ensued regarding rearranging the prioritization of the Tokanel and Nashua Road fields, and the proposed engineering for Griffin Park.
- Rockingham Planning Commission: Mr. Sullivan discussed the elimination of the RPC's funding to allow for \$10,000 to fund impact fee studies and the feasibility of joining the Southern NH Planning Commission. Mr. Sullivan noted that the RPC had since expressed a willingness to fund up to \$6,000 for the studies, and that returning the entire RPC funding to the budget would result in a \$3,500 impact.

A lengthy discussion ensued regarding the Town's disappointment with RPC response to certain items, such as the Wall Street connection RFP's, and the Board's possible desire to change regions.

Mr. Cliff Sinnott, RPC, conceded that it may be time for the Town to assess whether the Rockingham Planning Commission is the right membership region, but urged the Board to delay the switch for at least one year. He noted that the RPC and Town are currently involved in several projects including Wall Street, the impact fee study, CTAP, and the van pool bus service, which should be seen through. Mr. Sinnott indicated that an additional \$6,000 would not need to be appropriated for the impact fee study, as the RPC will fund 100%.

Discussion continued regarding the incomplete nature of past projects, and the apparent focus of the RPC on the seacoast region. Mr. Sinnott assured the Board he will do whatever he can in 2006 to ensure that communication and contact between the RPC and Town is improved.

Mrs. Annette Stoller and Mr. Peter Griffin, Windham Representatives to the RPC, urged the Board to remain with the RPC for 2006, stating that lack of communication does appear to be an issue and citing the complexity of switching regions.

Mr. Carpenter then moved and Mr. Breton seconded to reconsider the Board's previous motion regarding RPC funding. Passed unanimously.

Mr. Stearns moved and Mrs. Crisler seconded to retain the funding of \$9,510 for RPC dues, and reduce the special studies account to \$5,000.

A discussion ensued regarding the latter part of Mr. Stearns motion, and the funding coverage intended by the RPC.

Mr. Stearns amended his motion and Mrs. Crisler her second to reduce the special studies account by \$6,000 to \$4,000. Passed unanimously.

Mr. Sullivan advised the Board that, on January 9th, the Board would be discussing the van pool proposal, which would add \$3,000 to the budget.

- Mosquito Control: Mr. Turner will compile details of the process and cost to apply for a state permit to spray when necessary, funding for which will be considered at a later date.

- Cemetery: Discussion ensued regarding plowing of the Windham Cemeteries by the Highway Department or outside vendor, and funding for same.

It was the consensus of the Board that the \$3,000 currently in the proposed Highway budget for plowing of the cemeteries be returned to the Cemetery budget, and that the Trustees contract their own vendor to plow and sand.

Mr. Carpenter then moved and *Mrs. Crisler* seconded to send the budget as determined to Public Hearing. Passed 4-1, with *Mr. Breton* opposed.

NEW BUSINESS: *Mrs. Webster* requested that the Board waive the bid process regarding the purchase of cemetery lot markers, as they are specialty items. She then presented two proposals to the Board for review.

Mr. Breton moved and *Mr. Stearns* seconded to waive the bid process. Passed unanimously.

After a brief discussion, *Mr. Breton* moved and *Mr. Stearns* seconded to approve \$3,149 for the purchase of grave markers from Kernco, Inc. Passed unanimously.

OLD BUSINESS: None.

CORRESPONDENCE: *Mr. Hohenberger* read into the record Deputy Clerk *Sean Boylan's* resignation. *Mr. Carpenter* then moved and *Mr. Stearns* seconded to accept. Passed unanimously.

Remaining correspondence was tabled.

MINUTES: None.

Mr. Sullivan reminded all that the Board's year-end meeting would be held on December 29th at 4:00 P.M. at the Planning and Development Department.

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

Mr. Sullivan presented the Board with all applications received in response to the Fire Chief recruitment for their review. No decisions were made.

The Board and *Mr. Sullivan* discussed the Police Chief's travel stipend as previously authorized. It was the consensus of the Board that *Mr. Sullivan* proceed to reimburse Chief *Lewis* the sum of \$200.

Mr. Sullivan recommended that a stipend be approved for Captain *Yatsevich* in response to his assuming responsibility for the Department between Chief *Lewis'* and *Moeckel's* employ, as well as his interim duties of Police Prosecutor. After a brief discussion, *Mr. Carpenter* moved and *Mr. Stearns* seconded to approve payment of a \$1000 stipend. Passed unanimously.

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

The meeting was adjourned at 11:15 p.m.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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