

BOARD OF SELECTMEN
Minutes of March 3, 2008

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

ANNOUNCEMENTS: Mr. Carpenter announced the sad passing of Mrs. Elizabeth Wilder, wife of Russ Wilder, and requested a moment of silence be observed.

Mrs. Crisler advised that members of the Board had met that morning with Dr. Bass and several others regarding the lack of support by the Department of Education for 30% funding for the second access road to the High School. Mrs. Crisler highlighted the following from the discussion:

- 30% funding would be available for an emergency access only built to Fire Chief standards.
- State funding could not be used for a Town road. If 30% funding were granted, the public cannot utilize the roadway, which would need to be gated/signed accordingly.
- School District would have to own/maintain the roadway, and betterment fees could not be assessed to offset costs to construct.

Lengthy discussion ensued regarding the removal of the article regarding the roadway from the Town Warrant, the inability to change the warrant at this time, betterment fees versus School purchasing the roadway, and options available to resolve this matter. This matter will be discussed at the next School Board meeting.

Fire Chief McPherson announced that the Annual Firefighters' Ball the previous weekend had been very well attended, and extended congratulations to the Fire Association for a successful event.

Fire Chief McPherson noted that he had been advised that the Department would be receiving the SAFER Grant through Homeland Security for an additional four (4) firefighters. He noted the Department would work on public outreach regarding this grant prior to the March 11 vote. Chief McPherson stated that the award of this grant was evidence that the Committee had made a compelling argument on behalf of the Town, as only a few NH communities to date had been a recipient.

Recreation Coordinator Cheryl Haas announced that there are no tickets remaining for the Annual Daddy/Daughter Dance, which is scheduled for Friday March 7th at Promises to Keep.

Ms. Haas reminded all that the Annual Easter Egg Hunt is scheduled for Saturday March 15th, rain, snow or shine, at the Town Hall.

Ms. Haas announced that Town and School staff would be facing the Court Jesters on March 21st at Windham Middle School. Tickets are free, but space is limited. Residents should contact the Recreation Office for more info.

LIAISON REPORTS: Mrs. Crisler advised that the Local Government Center Committee for Government Affairs continues to discuss issues with the NH Retirement System. A series of regional dinners have been scheduled in the future, which she urged the Board members to attend.

Mrs. Crisler noted that the Planning Board had conducted a public hearing regarding Impact Fees the previous Wednesday. After a lengthy discussion and public input regarding the fees for public safety, the Planning Board had voted 5-2 to implement the fees immediately. Discussion ensued regarding the current warrant article, which will not be affected by this decision.

Mr. Breton then indicated he had been approached by a resident inquiring whether the Town was continuing their Strategic Planning efforts. Mr. Sullivan replied in the affirmative, and indicated a goal setting session would be scheduled with the new Board in the future. A brief discussion ensued.

Mr. Breton deferred to Mr. Poulson for the Joint Loss Management Committee report. Mr. Poulson, Chairman, indicated that the JLMC had been working toward complying with the 3-phase training process required as part of the Town's Health and Safety Policy. Training sessions have been scheduled regarding emergency preparedness/security breaches, in keeping with Phase 1. Phase 2 will consist of facility audits, and phase 3 will encompass mock drills. Mr. Poulson then congratulated Deputy Fire Chief Leuci and Police Sergeant Carl Wagner for the excellent job they have done conducting the training sessions.

Mr. Carpenter then inquired of Chief McPherson as to the Town's status of readiness for any flooding this Spring. Chief McPherson replied that the Highway Agent was working to clear culverts, drains, etc. in preparation, and that the Town had fared very well in the recent weather event.

MINUTES: Mr. Hohenberger moved and Mr. Breton seconded to approve the minutes of January 22nd, January 28th, February 3rd, and February 11th as written. Passed unanimously.

CORRESPONDENCE: Request received from Mr. Wayne Morris to be appointed as a regular member of the Conservation Commission. Discussion ensued regarding the need to post for all committee vacancies. No action was taken.

Letter received from the NH Department of Transportation relative to the Castle Hill Road bridge. This matter is scheduled as an agenda item.

Letter received from Mr. Sullivan regarding the non-union employees' cost of living allowance for 2008.

Letter received from Mr. Sullivan regarding collective bargaining. Mr. Sullivan requested the Board review this matter for discussion the following week.

Copy received of an application for an air quality permit for Meadowcroft Development for their site at Ledge Road. Discussion ensued regarding the status of the blasting update, and mud/erosion control at the site.

CASTLE HILL BRIDGE ENGINEERING: Mr. Sullivan advised that the State has given the Town preliminary approval to proceed with repairing the bridge, subject to compliance with two further issues; which he deferred to Mr. Thom Marshall of SEA Consultants to explain further.

Mr. Marshall approached as project manager, and noted the following: the preliminary design for the repair is complete; the NHDES wetlands permit application is nearing completion, including a shore land protection permit; and a sub-consultant is working to complete an historic eligibility assessment of the existing bridge.

Mr. Marshall explained that the plan essentially maintains the existing horizontal and vertical alignments of the impacted 300' +/-, and that the roadway will be widened to 24'. The bridge span will be increased and shallower foundations used in order to minimize project costs, and will consist of pre-cast concrete deck beams similar to those used at the Tallant Road bridge in Pelham.

Mr. Hohenberger inquired whether 300' was enough to repair the damage in its entirety, to which Mr. Marshall replied in the affirmative. Mr. Carpenter inquired how SEA could be sure the bridge could sustain a similar incident if the capability to handle water flow were not being dramatically increased. Mr. Marshall replied that the majority of the damage was actually to the bridge approaches, and not the bridge itself.

Mr. Marshall then reviewed the NHDOT's preliminary plan comments, which included:

- If the road/bridge is raised out of the flood plain, the opening of the bridge must be increased in order to accommodate the additional flow that currently passes over the roadway during storm events.
- The 100-year flood elevation upstream and downstream cannot be increased.
- DES does not support significant changes to the ordinary high water velocity and elevation.
- The Castle Hill Road bridge is more of a convenience than a necessity, given its proximity to the Tallant Road bridge.

Mr. Marshall indicated that, as a proposed solution, a context sensitive design had been developed and that the DOT was requesting a waiver letter from Pelham and Windham relative to the proposed lack of compliance with 50-year flood plain requirements.

Mrs. Crisler noted that the Planning Board's primary concern since the bridge had been damaged pertained to emergency/mutual aid access. Mr. Marshall indicated that designing the repair for a 50-year flood would require heavy environmental impacts and right-of-way work.

Mr. Hohenberger expressed concerns that the undermining of the bridge would occur again in the future, noting that the timber bridge had held up during the event and the roadway had been the issue. He inquired of Mr. Marshall how the plan would better protect the roadway. Mr. Marshall replied that additional armoring is planned for the areas where significant damage occurred last time. A discussion ensued regarding the water being

forced into the banking and the need to consider downstream impacts of opening up the channel, the probability of reduced costs to repair the bridge in the event of another 100-year event, and the possibility of extending the rip rap armoring onto the downstream (Pelham) side.

Mr. Sullivan noted that the project is at a critical point, and that the waiver is necessary. He encouraged the Board to support proceeding noting that, if not, the Town may be required to reimburse up to \$75,000 to the State for engineering costs.

After a brief discussion, Mr. Senibaldi moved and Mr. Breton seconded that the Board continue to support the Castle Hill Bridge project as presented; acknowledging the differences in the 50/100 year flood requirements, and authorizing Mr. Sullivan to sign a waiver letter regarding same. Passed unanimously.

Mr. Marshall then inquired as to the Board's preference regarding erection of fencing along the platform behind the upstream bridge rail. After a brief discussion, it was the consensus of the Board that no fencing be installed.

Discussion then moved to curbing along the bridge. It was the consensus of the Board that concrete curbing be utilized.

Mr. Marshall then indicated that the intent, if all goes as planned, is to construct the bridge this year. The Board thanked Mr. Marshall for attending.

SOLID WASTE: Mr. Poulson gave a brief update on the Town's participation in a regional MRF, noting that the project is on hold pending budget approval for equipment purchases. Mr. Poulson also noted that the proposed Manchester facility is relocating, and will hopefully open in the Fall. Once the Manchester facility is under way, Mr. Poulson will put the project out to bid. A brief discussion ensued regarding bundling of services, tipping fees, and transportation.

Discussion then moved to enforcement at the Transfer Station. Mr. Poulson noted that this topic had been discussed numerous times over several workshop sessions, and that a primary problem of enforcement is the Town's Solid Waste ordinance. Mr. Breton noted that the ordinance had not been updated since 2003 and that he, Mr. Senibaldi, and Mr. Poulson had spent the previous Saturday monitoring traffic at the station. Mr. Breton noted that, of 237 vehicles that passed through their checkpoint, only one had been from outside of Windham. In addition, only approximately 70 decals had been handed out. Mr. Breton felt that public education and making obtaining decals more convenient will resolve the issue of non-resident use of the facility.

Mr. Poulson pointed out that the requirement to obtain a sticker is in the Town ordinance, has been posted several times, and is displayed at the Transfer Station. Mr. Carpenter suggested that residents be required to obtain a sticker by a date specific, such as April 1st, and that notice of such be displayed on the large marquee at the Transfer Station.

Discussion ensued regarding the need to restrict the number of stickers issued, that the origin of waste will continue to be an issue, demolition disposal, and the possible need to monitor the Station on another day as Saturday had been snowy.

Mr. Breton suggested a large sign be installed bearing the Town seal and announcing “Windham Residents Only. Permit Required.” Discussion ensued regarding arranging for public awareness handouts at the polls, sign language, and tying of permits to license plate numbers.

Discussion then moved to monitoring of the demolition trailer and a previous suggestion by Mr. Scannell that it be chained and opened for access by staff. It was the consensus of the Board to table this matter to a future meeting.

Mr. Sullivan advised that Mr. Scannell had offered to volunteer to monitor vehicles at the Transfer Station and that, if the Board concurred, a vote authorizing him to do so would be necessary.

Mr. Breton then moved and Mr. Senibaldi seconded to accept Mr. Scannell’s offer to volunteer to check Transfer Station permits. Passed unanimously.

WELL WATER AGREEMENT: Mrs. Crisler advised that she had requested this item be placed on the agenda to afford her the opportunity to offer her comments/concerns for the record before leaving the Board.

After a brief discussion regarding the lack of an agreement and whether Mrs. Crisler would be offering statements or concerns, Mrs. Crisler offered the following input:

General Concerns:

- Water shall not be used anywhere off site except the Windham Village Center District as defined in Zoning regulations March 2007, or bottled for commercial sale.
- Wherever “community water system” is in the document, it should be replaced with Windham Village Center community water system.
- Unclear how water is to be shared with other sites in Village Center, (ie: how system to be tied in, location of water piping, pumping, and general infrastructure).
- Also not mentioned is how original developer will be reimbursed by other users for his capital expenditure.
- What infrastructure will be needed on Town property and where will it be located.
- No provision made for repair, removal, or restoration of infrastructure and/or equipment, or for obsolescence.
- Any and all legal agreements, formal or informal, must be reviewed by Town Counsel before the Board of Selectmen takes action. Mr. Sullivan clarified that the agreement has been referred to and reviewed by Town Counsel.

Document Concerns:

- Page 2: The statement that the “water source on Town property shall justify the development of a community water system” - “justify” should be changed to “support a Windham Village Center community water system”.
- Section 1 (a) refers to easements over Town property and should better define the location and purpose of these easements, and that the Town approve these locations.
- Section 1 (c) refers to all work done by Lowell Road being done by properly licensed and insured workmen/contractors. The words “in the State of NH” should be added.
- Section 2 (b) refers to Lowell Road paying for the construction of the Windham Village Center community water system. The words “all other related construction and approvals” should be added after “...water system...”
- Section 2 (c) refers to who designs the water system. The words “...and reviewed by a Town independent audit paid for by Lowell Road and approved by the Town.” should be added.
- Section 2 (d) refers to the drop lines to service existing Town buildings. The words “...and future...” should be inserted after “...existing...”. In this same paragraph, the words “... in perpetuity...” should be inserted after the words “... at no cost...”, and the words “... as long as the system was owned by Lowell Road...” deleted. Mrs. Crisler noted that, as Lowell Road states elsewhere in the document that they plan to turn the system over to Pennichuck immediately after completion, then the commitment to provide water to Town buildings would immediately terminate at that time.
- Section 2 (e) refers to the Town’s right to inspect all work performed to ensure that it meets state and local construction and operating standards. This section should include an additional sentence after “...operation standards...” to read “Lowell Road, at their expense, would bring any identified nonconformance(s) to specification and correct any and all deficiencies noted, both by Town inspectors and any other qualified inspector.”
- Section 3 (b) states that the Town shall have the opportunity to review any contract between Lowell Road and Pennichuck. The words “... and approve...” should be added after “review”.
- Section 3 (d) refers to the remaining capacity of water above the 38,000 gallons to be made available for future development within the Windham Village Center District. The words “... upon terms and conditions agreed upon by the Town and Pennichuck East Utilities, Inc.” should be deleted, as Pennichuck is under no obligation under this agreement to negotiate with the Town.

Discussion ensued regarding Mrs. Crisler’s comments, and the Board’s continuing support of this project despite it being temporarily dropped by Mr. Mesiti.

Mr. Carpenter then offered his input on the Agreement for the record:

- That, as a town resource would be being utilized for a select group, some way to compensate the Town for the water should be determined.
- That any agreement should be bound to a specific plan for the development of the Village Center District that establishes a number of units and square footage, as there are no setback requirements in the VCD.

OLD/NEW BUSINESS: Mr. Sullivan updated the Board on the status of requests to purchase three lots from the Town, noting that input had been solicited from the Planning Board, Conservation Commission, and Cemetery Trustees. To date, only the Planning Board has responded. Mr. Sullivan will notify all parties in writing when this matter is scheduled as an agenda item.

Mr. Sullivan sought the Board's decision relative to the 2008 COLA increases for non-union staff, which includes Department Heads and Administrative staff. Mr. Sullivan noted that the CPIU, on which the COLA's have been based for several years, came in on 12/31 at 1.9%. The Fire and Municipal Unions have been contracted at a minimum of 2%, and the Police Union a minimum of 3%. Mr. Sullivan noted that all COLA's for 2008 had been budgeted at 3%.

Discussion ensued, and it was the consensus of the Board to wait until after the March 11th vote to decide this matter.

Mr. Sullivan inquired whether the Board wished to execute their second year option with Dave's Septic, noting that staff has been very pleased with their services. After a brief discussion, Mr. Senibaldi moved and Mr. Hohenberger seconded that the Town stay with Dave's Septic for a second year as bid. Passed unanimously.

Mr. Sullivan advised the Board that he had forwarded a letter to Town Counsel clarifying which staff had the authorization to contact him, that being he and Mr. Turner. Mr. Sullivan noted that Zoning Board of Adjustment Chairman Mark Samsel was present to discuss this with the Board, as he felt he should have the authority to contact Attorney Campbell directly, as well.

Mr. Samsel indicated that, over the past year as Chairman, he had contacted Attorney Campbell several times directly as he thought he had the authority to do so. A discussion ensued regarding the need for control and where authority would stop if the ZBA were granted permission.

Mr. Samsel indicated that the ZBA does occasionally need an immediate response, and that Attorney Campbell is only contacted in those cases. Mr. Samsel stressed that the ZBA does need to have such a resource available. Mr. Sullivan indicated he would like to maintain the current policy, and stated he had assumed Mr. Samsel had been obtaining permission from Mr. Turner.

Discussion ensued, and it was the general consensus of the Board that all contact to Town Counsel go through Mr. Sullivan or Mr. Turner. Mr. Carpenter felt that, as the ZBA is the first level court in the State, they are different from other Boards and should be authorized to contact Town Counsel provided they notify Mr. Sullivan first through email.

After further discussion regarding budgetary concerns, whether permission had ever been denied, and the possibility of the ZBA contracting their own counsel, it was the general consensus of the Board that the current policy to contact Town Counsel be maintained, and that the ZBA compile data for next year's budget season regarding separate counsel.

Mr. Senibaldi noted the Spruce Pond project had been approved by the ZBA the previous week, and would now be moving to the Planning Board. He inquired whether the Board would consider waiving any Planning Board fees related to the recreational area, as they had the ZBA fees.

After a brief discussion, Mr. Senibaldi moved and Mr. Hohenberger seconded to waive the Spruce Pond Planning Board fees, up to \$500, as related to the recreational area. Passed unanimously.

Mr. Rob St. Laurent, 32 Range Road, presented two (2) protest petitions related to proposed Zoning Amendments currently on the Town Warrant. Mr. Sullivan indicated the petitions had been accepted and would become relevant only if the articles passed by more than 50% but less than 66 2/3%.

NON-PUBLIC SESSION: Mr. Breton moved and Mr. Hohenberger seconded to enter into a non-public session in accordance with RSA 91A:3 IIc. The topic of discussion was reputations, and the Board, Mr. Sullivan and Ms. Devlin were in attendance.

Mr. Senibaldi discussed a procedural matter related to staff and the housing authority. No decisions were made.

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

The meeting was adjourned at 10:05 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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