

BOARD OF SELECTMEN
Minutes of October 27, 2008

MEMBERS PRESENT: Chairman Dennis Senibaldi called the meeting to order at 7:05 PM. Selectmen Bruce Breton, Galen Stearns, Charles McMahon and Roger Hohenberger were present, as was Town Administrator David Sullivan and Town Counsel Bernard Campbell. Mr. Senibaldi read the agenda into the record, followed by the Pledge of Allegiance.

ANNOUNCEMENTS: Mr. Sullivan announced that the Town had, for the third time in four years, won first place in the Local Government Center's "Excellence in Annual Reports" Contest. He congratulated all Town staff for their efforts and, in particular, Mrs. Call and Ms. Devlin.

Recreation Coordinator Cheryl Haas advised that Harvest-Fest had been a great success, and extended thanks to the following: Joel Dube, Sam Nassar and Apple Acres, Girl Scout Troop 232 and Jack Donohue, Girl Scout Troop 2644 and Anne Sheehan, Windham Women's Club and Ruth Belizzi, Windham MOMs Club, Dr. Dickerson's Dentistry Office of Salem, Jennifer Brackesy, Jim Joyce, Lynn and Barry Goldman, Belinda and Ralph Sinclair, Woof Woof Professional Dog Services, Lions Club and Becky Brown, Jay Yennaco and Delahunty's, Lee Maloney and CART, Al Barlow and the Maintenance Department Staff, Windham Fire Department, Firefighter Bill Merrill, Firefighter Lisa Decker, Canobie Lake Park and Spooky World, McDonny's Farm, Scott Kepnes, Bruce Breton, and Dennis Senibaldi.

MR. MESSINA/MANOR MOTEL: Mr. Sullivan noted that Mr. Messina had approached the Board approximately three months ago with ongoing concerns regarding discussions between him, Chief Lewis, Prosecutor Newell, and the Town and Mr. Messina's counsel regarding guests at the Manor Motel. Mr. Sullivan indicated that Mr. Messina had requested this meeting with the Board, as he remains unsatisfied with the response regarding evictions at the Motel, and suggested that the discussion be limited to that subject matter.

Mr. Messina approached, noting that he had been owner of the Manor Motel for thirty years and wished to discuss the Innkeeper Law and how it was being applied by the Police Department. He noted that this law enables eviction for issues such as damage or non-payment and, in the past, the Police Department has worked cooperative with him to do so. Mr. Messina stated this had changed in the past year, however, and gave as an example a couple who had not paid for six weeks that the Police would not evict citing RSA 540 (tenant rights). He also cited a case involving a stabbing, which he felt was the result of police not removing the individuals in question.

Mr. Messina noted there is a new, lengthy list of criteria being used to determine the status of guests, and that various officers are advising him differently. Mr. Messina further noted that the attorneys have gone back and forth on this issue, and he is unsure where the issue stands at this time. He indicated he would like to review the criteria list and RSA 353 Innkeeper Law, and reach some uniformity in the Police Department.

Town Counsel Campbell approached noting there are several issues going on at once. He agreed there may have been a procedural change in the Department at some point, which was based on external factors including an opinion issued by Judge Korbey relative to when residents of the Motel became "tenants" and therefore gained protection under RSA 540.

Atty. Campbell indicated that, in those cases where resident has tenant status, the Police Department must take notice of that as ignoring the ruling by Judge Korbey places the Town at peril of litigation for civil rights violations. Atty. Campbell noted that, in December of 2007, Prosecutor Newell had generated a memo to Police Department staff outlining the criteria to consider in establishing whether a resident was a tenant, which he had reviewed and taken no issue with. Since that time, Mr. Messina had begun corresponding with the Town and his Attorney with Attorney Campbell.

Atty. Campbell noted that the issue is further complicated by zoning issues, as the property is zoned as a motel and not apartments. He indicated that Mr. Messina claims to treat the property as a motel through this zoning, however, the Police Department has to protect the rights of the residents.

After briefly discussing the Innkeeper Statute, Atty. Campbell advised that Prosecutor Newell had developed a set of guidelines for use in responding to the Motel to establish whether the individual is a 'guest' governed by the Innkeeper statute, or a "resident" protected under RSA 540. Atty. Campbell indicated his understanding that Mr. Messina may be unhappy with the status of this issue, but he did not believe the Town can take any other action and that the Police Department should proceed as is.

Mr. Stearns inquired whether there were any hard and fast rule to delineate between a guest and a tenant. Atty. Campbell replied that the only statutory deadline discussed is tenancy less than thirty (30) days. However, an individual can establish a residence by demonstrating intent through things such as statements of intent, witness statements, use as mailing address, or lack of any other permanent address. Atty. Campbell also indicated other criteria could include no date of departure given at time of registration, the presence of personal belongings, or working from or at the Manor. He noted that anyone living at the Motel as a resident is given the protection of RSA 540 per Judge Korbey's ruling.

Mr. McMahon inquired whether, if no other permanent address is given at the time of registration, RSA 540 applied immediately. Atty. Campbell replied that the Innkeeper Statute may apply if there less than thirty days. Mr. McMahon then noted that Mr. Messina was seeking direction from the Board and sought clarification as to whether: 1) the hotel/motel needed to specify a vacate date, and; 2) did residents have to meet all criteria established by Prosecutor Newell.

Atty. Campbell replied that the Innkeeper Statute requires a vacate date to be provided by the guest at the time of registration, and that Mr. Messina's attorney had been advised as such. He further noted that the criteria was established based upon Judge Korbey's ruling of residency status under RSA 540, which was a direct result of a resident's challenging an eviction. Atty. Campbell then noted it has been suggested to Mr. Messina's attorney that Mr. Messina consider approaching the Planning Board to establish some of his units as apartments, which would provide him with different tools such as security deposits.

Mr. Hohenberger inquired whether, if multiple issues exist such as being a public nuisance, there could be any change in a resident's status. Atty. Campbell replied there are a whole realm of statutes regarding such things as vagrancy or public nuisance, but that does not affect one's room. He indicated that if Mr. Messina were to lock a resident out, he runs the risk of penalties under RSA 540.

Atty. Newell approached, indicating that this issue first came to her attention in 2006 and that the process has undergone a change in the last year. She noted that, subsequent to Judge Korbey's ruling, she had spoken to the officers and found that, in the past, they were essentially aiding Mr. Messina in bill collecting. Atty. Newell noted that the area is zoned strictly for use as a motel, however, how Mr. Messina runs his business may differ for purposes of enforcement. Atty. Newell disagreed with Mr. Messina's assertion that the officers will no longer enforce the Innkeeper Law, however they will not wrongfully evict tenants.

Atty. Newell went on to say the issue arose from the Pelletier case, long-term residents of the motel. She indicated that Mr. Messina did not agree with the list of reasons that the Pelletiers had been deemed residents by Judge Korbey, and desired a bright line rule regarding guest status which does not exist. Atty. Newell stated that, until that happens, the officers will continue to respond and investigate at the motel, and determinations of residency status will be made based upon the totality of the circumstances. She indicated that every case is different, and not every criteria has to be met, however, the Department's concern is liability if subjects are unlawfully evicted. Atty. Newell indicated that RSA 358 provides for harsh penalties for wrongful eviction, including up to \$1000/violation and each day constitutes a new violation.

Mr. McMahon inquired what Atty. Newell's recommendation was to avoid any cases stemming from the Manor. Atty. Newell explained that was where the list came from, noting that the ruling speaks to non-transient purposes. Atty. Newell advised that a fairly extensive list of items for Mr. Messina to consider had been developed, including requiring a vacate date, however, if residency can be established by Mr. Messina's conduct through actions such as continuously extending said date, the Innkeeper law will not apply.

Mr. Breton inquired whether the Department had a list of registered vehicles, voters, or students for the Motel, which might aide in establish who is transient and who is not. Atty. Newell was unsure whether the Department had such a list, however, she indicated she is aware of several individuals residing there who don't have vehicles or licenses. Mr. Breton noted it would, however, be a way to establish some of the residents, to which Atty. Newell and Chief Lewis agreed. Brief discussion ensued regarding voting and welfare regulations regarding privacy. Atty. Newell indicated that such information would be helpful to the Police Department, but would not likely aide Mr. Messina.

Mr. Hohenberger then requested that Atty. Newell summarize the list of criteria being utilized. Atty. Newell noted that other factors may apply, as well, and detailed the list as follows:

1. Statement from the occupant regarding intent when came to Manor Motel.
2. Statements from other individuals regarding occupant's permanent address/intent.
3. Statements from other witnesses/employees of the Manor.
4. Length of stay of the occupant.
5. Mailing address on file at the post office.
6. Address used for Court documents.
7. Whether occupant is there for recreation or vacation purposes.
8. Whether occupant is there on temporary job assignment.

9. Whether the occupant is there temporarily, as a result of some sort of tragic situation (ie. House burned down, being rebuilt etc).
10. Whether or not there is a vacate date listed at the time of registration.
11. Whether or not there have been subsequent contracts between occupant and Manor Motel regarding payments after registration and what those agreements entail.
12. What address is used on applications for assistance from the Town/State from the occupant.
13. Whether or not their personal belongings are there.
14. Whether or not the individual also works at the Manor Motel, address on application, etc.

Atty. Newell then stated she believed this list provides several opportunities for Mr. Messina to make changes to his operations to keep individuals under the Innkeeper law.

Chief Lewis noted that the Department has tried extensively to work with Mr. Messina and provide assistance, however, over the years there have been many different rulings and behaviors in responding which was unfair to all. He indicated there had been a need to establish a fair and neutral means of investigating, and took exception to Mr. Messina's claim that the stabbing was a result of the Department's failure to evict. He further disputed that the Department will not respond to noise complaints, noting that the Department responds to every call, but will not evict based upon a noise.

Chief Lewis indicated the Department is trying to be consistent in every case, and now have a system in place to address calls. He noted Mr. Messina may not like the process, but now it is consistent. Mr. Stearns sought clarification that each officer is using the guidelines, and referring to Atty. Newell as necessary. Chief Lewis replied in the affirmative, noting the same process is utilized each time.

Atty. Newell pointed out that not all calls require or involve immediate police action. As to the stabbing, Atty. Newell noted that the suspects had fled prior to the officers' responding and an arrest warrant was being drafted at the time the suspects returned to stab the victim. She noted that, legally, not all actions can be taken immediately. Atty. Newell then indicated that, nine times out of ten, she is consulted by the responding officers as all are very concerned that the requirements are being met.

Mr. McMahon inquired when the change was implemented and whether any guests had been removed since. Chief Lewis replied the criteria was implemented in late spring of 2008, and Ms. Newell was unsure whether any removals had occurred. Chief Lewis indicated that calls continue to be received, officers continue to respond, and several individuals have been deemed tenants.

Mr. Stearns requested more information regarding the Pelletier case. Atty. Newell replied that the Pelletiers had brought suit against Mr. Messina based upon their removal from the Manor and disposal of personal items.

Mr. Senibaldi inquired what the Board could do, if anything, noting that a process is in place and this seems to relate to civil matters between Mr. Messina and his tenants. Mr. Sullivan replied that, if the Board feels the Town and Police Department have addressed Mr. Messina's concerns and

are responding appropriately then they should advise him as such. If not, then staff should be advised accordingly.

Mr. Messina approached indicating he understood the reasoning behind the criteria, but sought to clarify that the ruling of Judge Korbey cited this evening involved a decision of one resident being deemed as “non-transient” based upon their years of residence in the house on the Manor property and was unrelated to the Pelletier issue. He indicated the list of criteria is good, provided all officers adhere to it. He then noted that under RSA 353, all hotel keepers may cause to be immediately removed any guest causing a disturbance, and inquired why it would not apply in cases of constant disturbance at the motel. A discussion ensued regarding the application depending on whether or not the nuisance individuals were deemed residents.

Mr. McMahon inquired whether Mr. Messina had changed any of his procedures, such as requiring a vacate date. Mr. Messina replied he had previously been unaware of this requirement, but now established one automatically. Brief discussion ensued.

Mr. McMahon then inquired whether Mr. Messina was satisfied as a result of this discussion, and Mr. Messina replied in the affirmative.

OLD/NEW BUSINESS: Chief Lewis requested the Board consider the acceptance of a donation from Mrs. Sharon Allen of a Bowflex machine, valued at approximately \$750, to the Department.

Mr. McMahon moved and Mr. Breton seconded to accept the donation with thanks. Passed unanimously.

ABATEMENTS: Tax Assessor Rex Norman approached with two (2) abatements for TY2007. He noted that these are the final abatements for the year, and that the applicants have elected not to appeal these decisions and would have no recourse should the Board deny them.

17 Castle Hill Road: Mr. Norman indicated he had inspected this property in May and, based upon grade and listing errors, he recommended an abatement of \$959.56.

After a brief discussion, Mr. Stearns moved and Mr. McMahon seconded to approve the abatement as recommended. Passed unanimously.

4 Meetinghouse Road: Mr. Norman advised that this abatement had been requested by the applicant based solely upon impacts from the Ledge Road blasting site, which Mr. Norman did not take into account as he has yet to determine related guidelines/percentages related to blasting impacts. He did, however, note listing/grade errors upon inspection of the property, and recommended an abatement in the amount of \$549.01.

Mr. Breton moved and Mr. McMahon seconded to approve the abatement as recommended. Passed unanimously.

PUBLIC HEARING: Mr. Senibaldi read the public hearing notice into the record. Mr. Stearns moved and Mr. McMahon seconded to release the bond for Bear Hill Road in the amount of \$75,000 as recommended. Passed unanimously.

Mr. Stearns moved and Mr. McMahon seconded to accept Bear Hill from station 22+00 to 41+60 as a Class V road. Passed unanimously.

Mr. Breton moved and Mr. Hohenberger seconded to post Bear Hill Road as 25MPH. Discussion ensued, and Highway Agent Jack McCartney pointed out the Town already owns portions of Bear Hill Road.

Mr. Breton withdrew his motion, and Mr. Hohenberger his second, as this new section of Bear Hill Road is in the middle portion.

Mr. Breton then requested that Chief Lewis conduct a traffic study on the beginning portion of Bear Hill Road. Chief Lewis noted that the accepted standard for such neighborhood roads is 30MPH. That can, however, be lowered if a study exhibits a need.

Mr. Hohenberger then moved and Mr. Breton seconded to accept as a Class VI road an unnamed right of way beginning at its intersection with Bear Hill Road and running northwesterly to lot 20-D-1600. After a brief discussion regarding this area's status as a paper road for future connection purposes, the motion passed unanimously.

PUBLIC HEARING: Mr. Senibaldi read the public hearing notice into the record. After a brief discussion, Mr. Breton moved and Mr. McMahon seconded to release the bond for Lancelot Road contingent upon reimbursement of related legal fees. Passed unanimously.

Mr. McMahon moved and Mr. Breton seconded to accept Lancelot Road from station 00+00 to 6+50 as a Class V road. Passed unanimously.

Mr. Breton moved and Mr. Hohenberger seconded to post Lancelot Road from Station 00+00 to 6+50 as 25MPH. Passed 3-2, with Mr. Stearns and Mr. McMahon opposed.

OLD/NEW BUSINESS: Mr. McCartney approached and requested the Board reconsider their bid award for winter sand, explaining his request was based on samples obtained from the each of the bidders and the quality thereof. Mr. Stearns moved and Mr. Hohenberger seconded to reconsider their bid award to Thibeault Corporation for winter sand. Passed unanimously.

Mr. McMahon then moved and Mr. Stearns seconded to award the bid for winter sand to Brox for their bid price, as recommended by Mr. McCartney. Passed 4-1, with Mr. Hohenberger opposed.

SKATE PARK PROPOSAL: Mr. Senibaldi indicated that the Recreation Committee had been discussing making the skate park "residents only". He then deferred to Mr. Scott Mueller, Recreation Committee member, for presentation. Mr. Mueller explained that this change was being proposed in efforts to address ongoing issues at the skate park, and that several options had been reviewed and discussed by the Committee. He indicated that the Board's input was being sought this evening, and that an informational meeting had been scheduled for November 6th at 7:00 PM at the Town Hall to garner public input. Mr. Mueller noted that the Recreation Committee will then return to the Board with a final proposal.

Mr. Hohenberger expressed his support for the concept and the public meeting. He then inquired as to the means the Committee was proposing to implement the change. Mr. Mueller noted several items, including: establishment of sticker system, obtainable from the Town Clerk or Park Rangers at specific times; visitor permits; sensor lighting for evening purposes to inhibit vandalism; and increased signage.

Mr. McMahon inquired whether the Committee had discussed eliminating food in the skate park area, and Mr. Mueller replied in the negative. Mrs. Haas clarified that this is already an established rule. Mr. McMahon then inquired about a non-resident permit, and Mr. Mueller indicated that the Committee was proposing guest passes only.

Mr. McMahon then sought clarification from Chief Lewis regarding “trespasses” at the Park as noted in the police logs. Chief Lewis explained that the 31 trespass incidents logged pertained to individuals that officers had banned from the area for a period of time.

Mr. Stearns indicated his support for resident use only, and suggested that a penalty schedule was also needed. He then inquired whether a fee would be imposed for the permit. Mr. Mueller replied in the negative, noting that charging for use of the park would increase the Town’s liability. Mr. Sullivan concurred.

Mr. Breton noted he did not support this proposal, as he didn’t feel anybody should be excluded from use of the park. He further noted that, considering the usage, 31 incidences of removal was not bad. Mr. Breton felt that the current rules and enforcement are working, and that it remained a matter of educating the users. Brief discussion ensued regarding the helmet requirements and if they should be eliminated. Mr. Mueller noted that permit process would provide a means of communication, such as email, between the Town and the users.

Mr. Senibaldi inquired as to any impacts to the Police Department this may pose. Chief Lewis replied it would provide the officers with a better definition of who should be in the area, noting that a large percentage of those ejected from the park are non-residents who tend to be vulgar and confrontational. Chief Lewis indicated that the overall contact with Windham users has been positive and most issues arise from older, non-residents. Chief Lewis then concurred with Mr. Breton that older skaters should have the option of wearing a helmet or not, at their own risk.

Mr. McMahon indicated he supported the need for decorum at the park, and concurred with Chief Lewis and Mr. Breton regarding the helmet requirements. He further noted, however, that he didn’t feel the Town should be exclusionary as long as the rules were followed.

Further, brief discussion ensued, and it was the consensus of the Board that Recreation proceed and return to the Board for further discussion.

CONSERVATION COMMISSION/EASEMENT: Mr. Sullivan explained that various deadlines are approaching to finalize this matter, and that public meetings will need to be posted.

Mr. Breton noted that there was an overwhelming mandate by the voters to proceed with this easement, and he felt hearings should be scheduled by the Conservation Commission to finalize a draft agreement for presentation to the Board of Selectmen. Mr. Sullivan concurred.

Conservation Commission Chairman Jim Finn indicated the Commission could hold the public meetings, but would like the Board’s input, as well. Mr. Hohenberger noted he had ongoing concerns regarding the eminent domain requirements to regain the land, and felt that language should be added regarding forfeited funds being returned to the Conservation Commission for future land purchases.

Discussion ensued regarding these points, as well as clarification of “low impact” uses, removal of references to Christmas Tree farms, and the inclusion of hunting as a permitted use.

It was the consensus of the Board that a joint meeting be scheduled between the Board of Selectmen and the Conservation Committee on November 20, 2008.

The Chairman called for a five minute recess.

OLD/NEW BUSINESS CONTINUED: Finance Director Dana Call updated the Board on revenues received to date, noting that they are in good shape overall. Specific items discussed included:

- Yield/Excavation taxes: Mr. Breton inquired why this figure was so low compared to the previous year given the Ledge Road project. Mr. Sullivan indicated that the majority of this figure relates to timber tax versus excavation tax, but that he would check with Mr. Norman to confirm. Mr. Breton requested Mr. Sullivan also confirm that the fill amount reported from the site matched the amount paid.
- Building permit revenues are trending down.
- Interest revenues are down due to falling rates.

Audit Services: Mr. Breton requested that the Town’s independent audit services be placed out for bid in 2009 for the 2010 audit season. After a brief discussion regarding the timing of the audit, the Board members concurred.

Legal Services: Mr. Breton requested the Town’s legal services be placed out to bid. Mr. Sullivan indicated that the Town is currently in the final year of a three (3) year contract. Discussion ensued as to how the services could be bid without termination of the current contract and why the service would be bid if it weren’t going to be terminated.

It was a 3-2 consensus that the Town’s legal services be bid if the current contract did not need to be terminated to do so, with Mr. Hohenberger and Mr. Stearns opposed. Further discussion ensued regarding the precedent the Board was setting and the current tax increase versus falling revenues. Mr. Hohenberger then clarified that, if the Board’s intent was strictly taxpayer savings, then he was not opposed to bidding the services.

Town Inspections: Mr. Breton asked that the Board request the Planning Board put road inspection services out to bid. After a brief discussion, Mr. McMahon moved and Mr. Breton seconded that a recommendation be sent to the Planning Board to consider placing road inspection services out to bid. Passed unanimously.

Mr. McMahon advised the Board that Long Range Capital Improvement Committee would be meeting that week to discuss the surplus Delahunty and golf course land. He then provided the members with a transcript of the previous meeting for their review, at which the LRCIC discussed and rejected bids received for both properties. After a brief discussion regarding the State’s purchase prices and current zoning and appraisals, Mr. Breton moved and Mr. McMahon seconded to request that the Planning Board consider conducting a public hearing on the rezoning of those properties in the area of 57 Range Road to Commercial A. After a brief discussion, motion passed 3-2, with Mr. Stearns and Mr. Hohenberger opposed.

Mr. Breton then requested the Board consider rezoning of several parcels from Business Technology District. Mr. Senibaldi asked that Mr. Breton send his proposed changes to the Board members for discussion at a later meeting.

Mr. Senibaldi advised that he had met with Mr. Barlow, Mr. Mueller, and Mr. Zohdi regarding the playground and swale at Griffin Park, and sought the Board's permission to work with Mr. Zohdi to develop a plan to repair the area. It was the consensus of the Board that Mr. Senibaldi proceed as requested.

Mr. Sullivan advised that the Town had been approached by a representative of Merrimack Valley Wood Products with an offer to donate twenty (20) wooden voting booths. Mr. Sullivan noted that the Town does have a need for more booths, and that each was valued at approximately \$100. Mr. Hohenberger moved and Mr. Stearns seconded to accept the donation of voting booths with thanks. Passed unanimously.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mr. McMahon seconded to enter into a non-public session in accordance with RSA 91-A:3-IIc, d and e. Roll call vote – all members “yes”. The topics of discussion were reputations, land acquisition, and legal.

The Board, Mr. Sullivan, Ms. Devlin, and Mr. Carl Depaolo were in attendance in the first session, during which the Board interviewed Mr. DePaolo for possible appointment to the Conservation Commission.

The Board, Mr. Sullivan, and Ms. Devlin were in attendance in the remaining sessions.

No decisions were made on Mr. DePaolo's appointment, and staff will follow-up with him.

Mr. Sullivan discussed an ongoing personnel matter with the Board. No decisions were made.

Mr. Sullivan updated the Board on a legal matter relative to land acquisition. Mr. Sullivan was instructed to follow up with all parties accordingly.

Mr. Hohenberger moved and Mr. McMahon seconded to adjourn. Passed unanimously. The meeting was adjourned at 11:10 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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