

BOARD OF SELECTMEN
Minutes of January 19, 2009

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 Assistant Town Administrator Dana Call. Mr. Senibaldi read the agenda into the record, followed by the Pledge of Allegiance.

PUBLIC HEARING/BUDGET AND WARRANT: Mr. Sullivan noted that the Board had gone through the warrant the previous week however, no recommendations had been made as a full Board had not been present. He inquired whether the absent members had any questions before the Board proceeded to make recommendation.

Mr. Hohenberger questioned the amount being requested for the Salt Shed in Article 4, noting that in August the CIP Committee had received a request from the Highway Agent estimating \$800-900K to complete. He expressed concerns that the project had grown to include a maintenance facility, and did not believe four (4) bays were needed. Mr. Stearns agreed, indicating he would like to return to the main purpose, which was to construct a salt shed.

Mr. Senibaldi inquired whether there was time to consult with Mr. McCartney prior to having to post the warrant, and Mr. Sullivan replied in the negative. Mr. Sullivan noted that the conceptual plan had been endorsed by the Board, and requested that in deference to Mr. McCartney the article be sent to the Deliberative Session as written. Mr. Sullivan noted that, if the Board wished to change the article after speaking with Mr. McCartney, they can do so at the Deliberative Session.

Mr. Hohenberger requested that a cost estimate to reduce the number of bays be obtained for the Deliberative Session, and Mr. Sullivan indicated he would work to compile one.

Mr. McMahon then moved and Mr. Breton seconded to “recommend” Article 4 as written. Passed unanimously.

Discussion ensued regarding the final CIP Plan and possible removal of references to items being included therein from the warrant until the Deliberative Session.

Mr. McMahon then moved and Mr. Breton seconded to add the following language to Article 4: “This article is part of the Capital Improvement Program.” Passed unanimously.

Mr. Hohenberger requested that Mrs. Call offer a brief explanation of the funding of Article 5. Mrs. Call explained that future Conservation Commissions cannot be bound to pay the requested \$5M bond out of current use funds, and that the creation of a special account via Article 13 is not a guaranteed means either, as that money can be expended by the voters toward any other item. Lengthy discussion ensued regarding the Conservation Commission intent, which includes preservation of the few remaining farms in Windham, and future current use monies that may be available.

Mr. Hohenberger felt to bond \$5M in this environment was risky, and suggested the amount be reduced. Mr. Wayne Morris, Conservation Commission member noted that the Commission had voted to support the three articles as written, however the potential did exist to reduce or even

zero out the \$5M at the Deliberative Session. He further indicated that the only potential change to the language that the Commission had since discussed was increasing the percentage to be allocated per Article 14. A discussion then ensued regarding articles 13 and 14, and the possible addition of language noting that if either fails Article 5 would be moot.

Mr. McMahon then moved and Mr. Stearns seconded to “not recommend” Article 5 as written. Mr. McMahon clarified that his motion was based upon the expected addition of language at the Deliberative Session by the petitioners. Passed unanimously.

Mr. Hohenberger then clarified that he did support the concept of preserving the farms, however, he did not support a \$5M bond.

Mr. Senibaldi tabled the remainder of the discussion in order to proceed with the next agenda item.

PUBLIC HEARING/COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS: Mr. Sullivan read the public hearing notice into the record, explaining that three (3) consecutive hearings would be held and that informational packets were available to those in attendance.

Mr. Breton moved and Mr. McMahon seconded to open the public hearing. Passed unanimously.

Ms. Donna Lane explained that Community Development Block Grant (CDBG) funds are available to municipalities through the NH Community Development Finance Authority (CDFA). She noted that up to \$500K is available annually through a competitive process for use towards economic development, public facility and housing projects, and emergency activities that directly benefit low and moderate income individuals. Ms. Lane noted that up to \$12K is available for feasibility study grants.

Ms. Lane noted that this hearing dealt with a proposed implementation application to the NH CDFa for up to \$500K in CDBG funds, the majority of which would be subgranted to the Windham Housing Authority (WHA) to finance a portion of the site work related to construction of a new, affordable 20-unit housing development as proposed off of Fellows Road. Ms. Lane indicated that this project conforms with the Windham Housing and Community Development Plan goal of encouraging a varied stock of safe, sanitary, decent, and affordable housing for persons of all ages and income groups. Ms. Lane then inquired as to whether the Board members or public had any questions.

Mr. Hohenberger inquired whether this represented a shared grant, and Ms. Lane replied in the negative. She further noted that \$25K of the funding is set aside to cover any related Town costs, such as legal fees, and that there is no cost impact to the Town.

Mr. Hohenberger then sought clarification that, as these would be Federal funds, the Town cannot restrict the occupancy to residents only. Ms. Lane replied in the affirmative, noting however that residents usually sign up first.

Mr. Senibaldi then inquired whether the public had any input. Mr. Wayne Morris approached to ask if the plan would be going to the Planning Board. Mr. McMahon replied that if the application for NH Housing Finance Authority (HFA) and CDBG funds to build the facility are approved, the plans will then be presented to the Planning Board. Mr. McMahon noted that the firm of Grinnell & Johnson is currently doing the site work and

engineering plans. Ms. Lane clarified that CDBG funds can only be utilized toward the site work, and that NH HFA funds would go toward the building.

There being no other public input, Mr. Hohenberger moved and Mr. McMahon seconded to close the public hearing. Passed unanimously.

Mr. Breton moved and Mr. Hohenberger seconded to open the public hearing to discuss the proposed Housing and Community Development Plan, which Ms. Lane explained must be in place in order to request funding.

Ms. Lane then reviewed the proposed plan, which cites the following goals:

- Encourage a varied stock of safe, sanitary, decent and affordable housing for persons of all age and income groups.
- Encourage economic development activities to increase quality industrial and commercial development. Encourage the expansion and retention of employment opportunities for residents.
- Encourage municipal and private water and wastewater systems that are safe, sanitary and that meet DES regulations.
- Preserve and promote the town's historically and culturally significant structures.
- Promote activities that protect the health and safety of residents and visitors.

The Plan also provides that, as a matter of policy, Windham will minimize the involuntary displacement of households from their neighborhoods; that these goals are consistent with the Town's Master Plan and ordinances; and that any Federal CDBG grant funds awarded to address any of these goals will be expended consistent with national objectives and, at a minimum, will provide improved housing in accordance with Section 8 standard, and be used for public facility projects, employment opportunities, or feasibility studies. The Plan states in conclusion that all CDBG funded projects must primarily benefit low and moderate income persons or households, and shall not benefit moderate income persons to the exclusion of low income persons.

Mr. Senibaldi inquired as to whether there was any input from the public on this matter, and Ms. Donna Morrow, resident approached to ask whether the impacts of these "goals" to the Town had been explored. She also asked whether this Plan would be voted on by the voters, noting that Windham is primarily a bedroom community and these goals appear to require Commercial development.

Ms. Lane explained that the Plan does not obligate the Town to do anything, rather it just establishes goals. Mr. Senibaldi clarified that this form is a formality to the grant process, as without this Plan in place the WHA cannot apply for funding.

Mrs. Betty Dunn, resident, approached noting that the Plan states that the goals are consistent with the Master Plan and Ordinances, and noted that the goals are in no way contrary to either.

Mr. Hohenberger indicated he didn't understand the need to tie the Plan or the project to commercial development, and suggested that item #2 be removed. Discussion ensued regarding the Town's Master Plan.

There being no further input, Mr. Breton moved and Mr. McMahon seconded to close the public hearing. Passed unanimously.

Mr. Breton moved and Mr. McMahon seconded to open the public hearing to discuss the Residential Anti-Displacement and Relocation Assistance Plan. Passed unanimously.

Ms. Lane explained that, although this project does not involve any displacement or relocation of persons or businesses, this Plan would be followed by the Town if it were to undertake a CDBG project that did. She noted that, although it doesn't apply in this case, the Plan must be adopted in order to apply for grant funds.

There being no public input offered upon Mr. Senibaldi's invitation to approach, Mr. Hohenberger moved and Mr. Breton seconded to close the public hearing.

Mr. Breton moved and Mr. McMahon seconded to adopt the Housing and Community Development Plan as amended to add "or households" following the word persons in the last sentence of the final paragraph. Passed unanimously.

Mr. Breton moved and Mr. Stearns seconded to adopt the Residential Antidisplacement and Relocation Assistance Plan as written. Passed unanimously.

Mr. McMahon moved and Mr. Breton seconded to approve the submittal of the grant application; to authorize the Town Administrator to sign and submit the application; and, upon approval of the CDBG application, to authorize the Town Administrator to execute any documents which may be necessary to effectuate the CDBG contract. Passed unanimously.

Mr. Hohenberger moved and Mr. McMahon seconded to authorize the Chair to execute the HUD disclosure form, certifying that none have a financial interest in this project. Passed unanimously.

Mr. McMahon then extending his thanks to Ms. Lane for her efforts and for attending.

PUBLIC HEARING: Mr. Sullivan read the public hearing notice into the record, and advised that this hearing pertained to Article #13 of the warrant relative to creation of a separate fund from the general fund for current use monies called the Land Use Change Tax Fund.

Mr. Stearns indicated he would not recommend an increase to the percentage of current use revenues allocated to this proposed Fund, due to the possibility that if funds were collected in excess of the bond amount, that money would roll into the General Fund.

Mr. Morris explained that the goal was to try to bind future Conservation Commissions, via this mechanism, to pay the \$5M.

Mrs. Dunn approached to inquire whether the Article language had been reviewed by Town Counsel. Mr. Sullivan replied in the affirmative, and noted that the language itself was statutorily framed.

Mr. Sullivan then explained that this would be a holding fund for 100% of the current use monies collected. At year-end, whatever percentage has been approved to go into the Conservation Fund would then be transferred out

and the balance would stay in the Land Use Fund until the following Town Meeting. At that meeting monies could be expended from the Fund for any lawful purpose with any balance remaining after Town Meeting being then considered as general fund revenue. Discussion ensued regarding the possible impacts of the failure of #13 or #14, the appropriate percentage to fund for the bond payment, and anticipated current use monies.

Mr. Stearns moved and Mr. Hohenberger seconded to close the public hearing. Passed unanimously.

Mr. Hohenberger then moved and Mr. Stearns seconded to “recommend” Article #13. Failed 2-3, with Mr. Breton, Mr. McMahon, and Mr. Senibaldi opposed.

Mr. McMahon then moved and Mr. Breton seconded to “not recommend” Article #13. Passed 3-2, with Mr. Stearns and Mr. Hohenberger opposed.

Mr. Hohenberger then moved and Mr. Stearns seconded to “recommend” Article #14. Failed 2-3, with Mr. Breton, Mr. McMahon, and Mr. Senibaldi opposed.

Mr. McMahon then moved and Mr. Breton seconded to “not recommend” Article #14. Passed 3-2, with Mr. Hohenberger and Mr. Stearns opposed.

2009 PROPOSED BUDGET/WARRANT CONTINUED: Mr. Breton moved and Mr. Stearns seconded to “recommend” Article #6. Passed unanimously.

After a lengthy discussion regarding the need for this article, Mr. Breton moved and Mr. McMahon seconded to “recommend” Article #7. Passed 3-2, with Mr. Stearns and Mr. Hohenberger opposed.

Mr. McMahon moved and Mr. Breton seconded to “recommend” Article #8. Passed unanimously.

Mr. Breton moved and Mr. McMahon seconded to “recommend” Article #9. Passed unanimously.

After a lengthy discussion regarding the operations of the CIP program, Mr. Hohenberger moved and Mr. Stearns seconded to “recommend” Article #10. Passed unanimously.

Mr. McMahon moved and Mr. Breton seconded to “recommend” Article #11. Discussion ensued regarding the language. Motion passed unanimously.

Mr. Stearns moved and Mr. Hohenberger seconded to “recommend” Article #12. Passed unanimously.

Mr. McMahon moved and Mr. Breton seconded to “recommend” Article #15. Discussion ensued regarding the nature of the fund, and how contracted service monies go in and details are paid out. Passed unanimously.

Mr. McMahon moved and Mr. Breton seconded to “recommend” Article #16. Passed unanimously.

After discussion regarding the use of “access” versus “easement”, Mr. Breton moved and Mr. McMahon seconded to “recommend” Article #17 as written. Passed unanimously.

Article #18: Mr. Greg Burton, petitioner, approached to explain his reasons for requesting removal of the pedestrian easement abutting his property. Mr. Burton noted that he did not find out about the easement until 2007, and does not want it there. He noted that the area in question is very wet, and dredge and fill work would likely be necessary to elevate the portion to be used; use of the easement is a safety concern for him; and the intended beneficiaries of the easement, residents in the Simpson and Candlewood neighborhoods, do not wish it to remain either as evidenced by their signature on his petition.

Mr. Hohenberger inquired how many individuals Mr. Burton had witnessed using the easement, and Mr. Burton replied none. Mr. Burton further noted that former Assistant Planner Shaun Logue had reviewed the area in the past, and found no evidence of a trail.

Mr. Wayne Morris, Trails Committee, approached to explain that in 2007 the committee had sent out letters to advise owners of these trailheads, and that they were going to be surveyed at some point in the future. Discussion ensued regarding similar easements in Town, the topography of the area, and previous, similarly petitioned articles. Mr. Burton indicated he was aware the other petitions had failed, but felt this situation differed from those as this area is very isolated.

Mr. Sullivan noted he had advised Mr. Burton that his petition only referenced his property, at 26 Simpson Road, and not his neighbors' which also encompass the easement, however this could be amended at the Deliberative Session for clarification purposes.

After further, brief discussion, Mr. Breton moved and Mr. Hohenberger seconded to "recommend" Article #18. Passed 4-1, with Mr. Stearns opposed.

Operating Budget: Mr. Skinner approached to request that the Selectmen amend this article to raise the ballot clerk pay to, at least, the current minimum wage of \$7.75/hour. Discussion ensued, and Mr. Sullivan indicated he believed that this change could be absorbed by the budget as it is, if the Board of Selectmen were inclined to increase the rates.

Mr. Stearns moved and Mr. Hohenberger seconded to increase the pay rate for ballot clerks to \$7.75/hour. Passed 4-1, with Mr. Senibaldi opposed.

After a brief discussion regarding the need for a Special Town Meeting to replace the Representative seat vacated by Mr. Pearson, Mr. Hohenberger moved and Mr. McMahon seconded to "recommend" Article #19 as written. Passed unanimously.

Mrs. Elizabeth Dunn, resident, approached to request that the Board of Selectmen place an additional article on the ballot as follows:

"To see if the Town will vote, pursuant to RSA 41:25, to pay the Town Clerk a salary and benefits in amounts to be negotiated by the Clerk and the Board of Selectmen. All fees collected by the Town Clerk will be deposited in the General Fund."

Mrs. Dunn explained that she was announcing her intention to run for the position of Town Clerk, and was proposing this article on principal and in the interest of fairness to all. Discussion ensued.

Mrs. Dunn noted that this matter has been discussed and rejected before because the incumbent clerk had been opposed to the change, and questioned if not changed now, then when? Mr. Senibaldi expressed concerns with discussing this matter without Mrs. Tuck and Miss Merrill in attendance to offer their opinion.

Mr. Sullivan clarified for the record that staff was not bringing this proposal forward for consideration. After discussion amongst the Board members, it was the consensus of all to not support placement of the article on the warrant as requested.

Lengthy discussion then ensued regarding Article #2 and the petition to rezone certain parcels from Professional Business District to Commercial A, with input from Mrs. Dunn and Mr. Patrick Poor. Both expressed concerns regarding the public hearings relating to same and the advice of Town Counsel, and the lack of clarity in that portions of these parcels are not zoned PBD, but rather are Residential A. Mr. Poor, in particular, questioned any intention by the Board to add any clarifying language to the article of that fact, which he did not believe State statute permitted.

Mr. Hohenberger moved and Mr. Stearns seconded to release Town Counsel's opinion regarding this article. Passed unanimously.

Mr. Karl Dubay approached as a signatory on the petition, and clarified that he had understood at the time that it was only the PBD portion of the parcels that would be rezoned. After further, lengthy discussion, Mr. Breton moved and Mr. McMahon seconded to, in keeping with Town Counsel recommendation, add the following language to Article #2, Petition #2: "[Note: Subsequent review has determined that portions of Lots 18-L-300, 18-L-400, and 18-L-480 are not currently Professional Business and Technology District. Portions of said lots are Residence A District..." and, further, to add "...and shall remain Residence A.]" Passed unanimously.

CORRESPONDENCE: Site Bond Release: Mr. Breton moved and Mr. McMahon seconded to release the site bond in the amount of \$7,300 to Carr Landscaping. Passed unanimously.

Mr. Stearns and Mr. McMahon stepped away from the meeting momentarily.

OLD/NEW BUSINESS: Mr. Sullivan inquired whether the Board wished to contact the State relative to the need to conduct a special election to replace State Representative Pearson. Mr. Breton moved and Mr. Hohenberger seconded to send a letter to the State as recommended. Passed 3-0.

Mr. Sullivan discussed the Federal Stimulus program with the Board, and sought their input of any shovel ready projects for possible inclusion in the Town's submission. Items discussed included: the Town salt shed; Spruce Pond fields; and Depot improvements.

Mr. Sullivan announced that residents can contact Comcast to request a credit for days they were without service during the December ice storm.

Mr. Sullivan advised the Board that, procedurally, the Board of Selectmen will have to layout Londonbridge Road again, as the first process was contingent upon funding being obtained at the Special Town Meeting.

Mr. Senibaldi read into the record a petition to layout Londonbridge Road, and Mr. Sullivan stressed that the beginning anew of this process was strictly procedural.

Mr. Breton then moved and Mr. McMahon seconded that Town Counsel proceed with the related title search and notification requirements to begin laying out Londonbridge Road. Passed 4-0-1, with Mr. Stearns abstaining.

School Board Chairman Barbara Coish approached on behalf of the School District's engineers to request that Mr. Zohdi be asked to contact Mr. Davis to arrange a meeting with Appledore. Mr. Sullivan indicated he had already advised Dr. Bass to have Appledore contact Mr. Zohdi directly.

LONDONBRIDGE ROAD BIDS: Mr. McMahon moved and Mr. Breton to waive the bid process for engineering and to authorize Mr. Zohdi to move forward to engineer the project for a cost not to exceed \$117,000 for engineering and contingencies. Passed unanimously.

Mr. Breton moved and Mr. McMahon seconded to award the bid for construction of Londonbridge Road to American Excavating of Derry NH for their bid price of \$728,510, with no exclusions, subject to a successful layout hearing. It was noted that exclusions for pavement escalator and underdrains of \$16,000 would be added as needed.

After a brief discussion regarding funding for the project and whether it should be referenced in the motion and second, motion passed un-amended 3-2, with Mr. Hohenberger and Mr. Stearns opposed.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mr. Breton seconded to enter into a non-public session in accordance with RSA 91-A:3-II a, c, and e. Roll call vote – all members “yes”. The topics of discussion were personnel and legal and the Board, Mr. Sullivan, and Ms. Devlin were in attendance in all sessions.

The Board discussed a legal matter. No decisions were made.

Mr. Sullivan discussed a personnel matter with the Board relative to job duties. No decisions were made.

Mr. Sullivan discussed a personnel matter relative to compensation. The Board took no action.

The Board reviewed various job descriptions and discussed personnel matter relative thereto. No decisions were made.

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

The meeting was adjourned at 12:30 AM.

Respectfully submitted, Wendi Devlin, Administrative Assistant

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