

BOARD OF SELECTMEN
Minutes of August 15, 2011

MEMBERS PRESENT: Vice-Chairman Bruce Breton called the meeting to order at 7:00 PM. Selectmen Phil Lochiatto, Kathleen DiFruscia, and Roger Hohenberger were present; as was Town Administrator David Sullivan. Chairman Ross McLeod was excused. Mr. Breton opened with the Pledge of Allegiance.

ANNOUNCEMENTS: Mrs. DiFruscia noted that Recreation had received several letters of thanks from residents regarding the conditions/maintenance of the Town beach.

Mr. Lochiatto advised that the CIP had met the previous week and heard from the Fire Department, Nesmith Library, and Recreation.

Mr. Sullivan advised that the scheduled agenda item relative to request for lights at Griffin Park was being postponed pending input from the Recreation Committee.

Mr. Sullivan recognized Fire Lieutenant Bill Brown for 50 years of service to the Town.

Mr. Sullivan noted that staff had hosted another successful Senior Picnic and extended thanks to Mrs. DiFruscia and Mr. Hohenberger for attending. He also extended thanks to Recreation Coordinator Cheryl Haas for organizing the event.

LIAISON REPORTS: None.

MINUTES: None.

CORRESPONDENCE: *Request received* from the RPC for a letter of endorsement from the Town regarding the Sustainable Cities Grant. Mr. Sullivan noted that the Town had sent a similar letter last year. It was the consensus of the Board to forward a letter of endorsement as requested.

Resignation received from Dispatcher Deanna Denman, effective 8/13. Mrs. DiFruscia moved and Mr. Hohenberger seconded to accept with regrets. Passed 4-0.

Request received from the Windham Endowment to have a cash bar at the Searles facility as part of their annual fundraiser. Mr. Sullivan noted that this would be a one-day waiver and that the Endowment does have the necessary insurance in place. Discussion ensued, and Mr. Hohenberger moved and Mr. Lochiatto seconded to grant the Endowment's request. Passed 4-0.

Mr. Breton then requested that Representative David Bates provide an update to the Board of goings on at the State level. Mr. Bates noted that there is currently not much activity, as the House just returned from a break; however, the legislation will meet on the 14th and the full session will be underway in January.

Mr. Breton extended thanks to the Representatives and Senator Rausch for their efforts regarding education funding, and a lengthy discussion ensued regarding the Governor's budgets cuts, house financing, and efforts to reinstate those funds.

PUBLIC HEARING: Mr. Sullivan read the public hearing notice in the record as follows: "*The Board of Selectmen will hold a public hearing at 7:00 pm on August 15, 2011 at the Community Development Department to consider the acceptance of the following as public roads:*

Clarke Farm:

Buckhide Road from Station 00+00 to 14+20.18

Clarke Farm Road from Station 00+00 to 17+41.04

Scotland Road from Station 00+00 to 4+46.45"

Mr. Sullivan noted that the proper documentation and signatures were in place for each, and Mr. Lochiatto then moved and Mr. Hohenberger seconded to accept the roads as listed per the recommendation of the Planning Board, Community Development Director, and Highway Agent. Passed 4-0.

Mr. Lochiatto then moved and Mr. Hohenberger seconded to release the related bond in the amount of \$43,207.70 plus interest. Passed 4-0.

Mr. Hohenberger then moved and Mr. Lochiatto seconded to post the three roads as accepted at 25MPH. Passed 4-0.

PUBLIC HEARING/LOT LINE MERGERS: Mr. Sullivan suggested that the Board discuss the proposed process prior to the fees, and the Board concurred. Mr. Sullivan reviewed the proposed application process, noting that it details those items which must be provided in support of the restoration (ie: deeds, as built, plans, etc.), as well as notification time lines, abutter notification requirements, and public hearing requirements. He then suggested that Article 7 be amended to add that the Board may determine that a review of title records is required. Discussion ensued.

Mr. Breton expressed concerns with the length of the document and the fees, noting that the Town of Gilford addresses this issue with a single paragraph. Ms. Scott replied that the proposed application tries to encompass all possibilities as well as protecting the owner and the Town. Discussion ensued.

Mr. Lochiatto inquired whether the applicant would still be required to provide an as-built if the necessary information exists in the Community Development files, and Mrs. Scott replied that the applicant could use those departmental files. Discussion ensued, and Mr. Sullivan suggested an amendment to add “unless otherwise available”.

Discussion ensued regarding the legislation versus the proposed application, as well as the proposed fees. Representative Bates approached to clarify the intent of the legislation and offer background into the historic practice of merging lots by the Town. He noted that the law says, very simply, that at the request of a property owner the Town must unmerge the lots, and expressed concerns that the fees as proposed were onerous as it should not be burdensome to the owner to be made whole again.

Mr. Bates went on to note that he had concerns regarding notification of the abutters, in that it may give the impression that those individuals have a say in the restoration of the lots, which they legally do not. He indicated that it is not a matter of process or discretion, as the Town has the obligation to restore the lots and, if a process is going to be adopted, it should be as succinct and low cost as possible. He then encouraged the Board to hear Mr. Roberts pending request as, even if the policy is adopted, his request is already in place. Lengthy discussion ensued as to the need to protect the Town and the owners need to present proof of the pre-merger status. Mr. Lochiatto requested that Mr. Roberts’ case be heard prior to discussion of the policy, however, no action was taken.

Mrs. DiFruscia inquired whether Mr. Joe Maynard of Benchmark Engineering, who was present with Mr. Roberts, had any input regarding the proposed policy. Mr. Maynard noted that he understood the Town’s desire for proof in order to protect all parties, however, as proposed the process is lengthy and expensive. Discussion ensued regarding the need for plot plans, voluntary merger of the lots by owners via things such as structures straddling the lot lines, and the requirements of the law.

Mr. Lochiatto noted the time consuming nature of the abutter notifications and appeals process, and inquired whether they could be eliminated. Discussion ensued. Mr. Charles Roberts approached and read a lengthy statement in opposition of the proposed process/fees into the record (copy attached). Discussion ensued regarding Mr. Roberts lots.

Mr. Lochiatto suggested that references relative to documentation of underground items be eliminated. The Board concurred. Discussion ensued regarding abutter notification, which will remain, and amendment of the time required to 10 and 45 days respectively. The Board concurred.

Mr. Sullivan suggested that additional language be added relative to requirements for a title search to reference the use of town counsel to do so if needed and to deduct the costs associated with same from the escrow fee. Discussion ensued and it was the consensus of the Board to amend as suggested by Mr. Sullivan, with the exception of deducting the amount from escrow fee.

Mr. Hohenberger then moved and Mrs. DiFruscia seconded to adopt the lot merger regulations as amended. Motion was withdrawn to allow discussion of the proposed fees.

Mr. Sullivan read the public hearing notice into the record as follows: *“In accordance with RSA 41:9A, the Board of Selectmen will hold a Public Hearing on August 15, 2011 at 7:00 PM at the Community Development Department for the purpose of adopting fees charged by the Town as follows:*

<i>Selectmen/Assessing Fees</i>	<i>Existing</i>	<i>Proposed</i>
<i>Request to Restore Involuntarily Merged Parcel/Lots</i>		
<i>Application Fee</i>	<i>None</i>	<i>\$ 100</i>
<i>Newspaper Notification</i>	<i>None</i>	<i>\$ 25</i>
<i>Abutter Notifications</i>	<i>None</i>	<i>\$6/abutter</i>
<i>Escrow Accounts – Legal Reviews</i>	<i>None</i>	<i>\$1,500”</i>

Ms. Scott approached advising that the proposed fees were based upon current departmental fees, adding that the escrow fee would cover recordings/legal fees with any remainder being returned to the applicant. Mr. Sullivan noted that the possibility of a \$500 fee for two lots with \$200/additional lot for escrow had also been discussed. Mrs. DiFruscia expressed concerns that the fees as proposed were too high, but did feel some fees were needed. Mr. Lochiatto disagreed, feeling the applicants should not have to pay to correct something that was done by the Town. Mr. Breton concurred with Mr. Lochiatto. Discussion ensued with input from Mr. Maynard, who also disagreed with the imposition of any fees.

Mrs. Betty Dunn, Woodvue Road, approached noting that, for the most part, all the owners in question have been paying less in taxes and have thus benefitted from the mergers. She felt that personal responsibility should also be considered, in that none had come forward in the 30-40 years since the lots had been merged. Discussion ensued.

Mrs. DiFruscia then moved and Mr. Hohenberger seconded to eliminate the escrow fee. Motion was withdrawn and discussion ensued. Mr. Lochiatto suggested a \$50 application fee, \$6/abutter notification, and \$25/legal notice. Mr. Bates approached to reiterate that he believed any fees were contrary to the spirit of the legislation. He suggested that, if the fees were imposed, they be returned to the parties in the event the applicant’s request is substantiated/granted. Discussion ensued.

Mr. Lochiatto then moved and Mr. Hohenberger seconded to adopt the procedure for restoration of involuntary lot merger as amended along with the following fees: \$50/application, \$6/abutter, and \$25/legal notice. Mr. Sullivan noted that two motions would be in order. Mr. Lochiatto withdrew his motion and Mr. Hohenberger his second.

Mr. Lochiatto then moved and Mrs. DiFruscia seconded to adopt the following fees relative to restoration of involuntary lot mergers: \$50/application, \$6/abutter, and \$25/legal notice. Passed 3-1, with Mr. Breton opposed.

Mr. Lochiatto then moved and Mr. Hohenberger seconded to adopt the procedures as amended relative to restoration of involuntary lot mergers. Discussion ensued relative to item VII. Passed 3-1, with Mrs. DiFruscia opposed.

The Chair called for a five minute recess.

NH DOT UPDATE: Mr. Peter Stamnas of the NH Department of Transportation presented an update to the Board on the I-93/Route 111 projects, highlights of which included:

- In mid-September the new southbound off ramp will be open and the signals on Route 111 activated
- Mid to late October the traffic pattern will change on the southbound mainline with a shift to the new bridges
- Upcoming work for Exit 3 includes reconstruction of two sister bridges to the new southbound lane over 111 and 111A, and; 3.5 miles of construction from Brookfield Road in Salem to just south of the weigh station, including 1.4 miles of Route 111 from the Village Green to the interchange. Overall, this work will be completed in 2014.
- The Route 111 relocation will require a large amount of blasting along that section, 25% of the total of which will be in close proximity to Early Years Kindergarten. To minimize impacts, the State is proposing requiring the blasting to be done on Saturdays only. While this is a little more costly and will take longer it will lessen the impacts and risks. The DOT has spoken to both the owner of Early Years and the Fire Chief regarding this proposal.

Mrs. DiFruscia inquired about the potential for structural damage to the Kindergarten, and Mr. Stamnas noted that the size of the blasts will need to be reduced in order to keep within the regulations as it pertains to vibration levels. He added that surveys will be done of all structures within 1000' of the blast zone. Mrs. DiFruscia inquired what the distance was to Early Years, and Mr. Stamnas replied that the corner of the property line was within 100-150' of the blasting. Discussion ensued as to any other structures within the 1000' radius, which include the DOT field office and another by the Kindergarten, and any considerations/accommodations for those businesses impacted. Mr. Stamnas noted that accommodations were being made for the Kindergarten as discussed due to the number of children, and further discussion ensued regarding the hours of blasting and number of blasts per week, which Mr. Stamnas indicated would be 1-2/week. He also added that the State will continue to monitor wells in advance of and during the blasting.

Mr. Hohenberger noted that 1000' will also encompass homes across Route 111, and sought clarification that the DOT will be following the State's blasting requirements as opposed to the Town's. Mr. Stamnas replied in the affirmative, noting that the Town's are too restrictive/costly. He added that the State's specifications, coupled with Best Management Practices, have been proven to work; and that the Town's bonding requirements alone are very costly.

Mr. Hohenberger sought assurance that the DOT will respond to/act on any issues immediately, and Mr. Stamnas replied in the affirmative; noting that all complaints received will be reviewed for legitimacy. Discussion ensued regarding the blast zone extending to the edge of the pond, the timing/coordination of the new traffic signal, and any potential impacts to the historic Indian Rock. It is not expected there will be any impacts regarding the latter, as it is a large outcropping.

Mr. Stamnas then advised that the State intends to reclassify three (3) sections of roadway that will be bypassed as part of these projects as Town roads, including: Range Road east (current old section), Range Road west, and Indian Rock Road. He noted these roads will be local traffic only and therefore no longer meet the requirements for a state road, and that more information will be forthcoming in the future. Discussion ensued.

Mr. Lochiatto noted that he hoped the State would consider the condition of these roadways prior to their reclassification, and Mr. Stamnas indicated these areas would, at a minimum, be resurfaced and problem areas identified. Further discussion ensued.

Mr. Breton extended thanks to Mr. Stamnas and Commissioner Campbell.

NEW BUSINESS: Mr. Lochiatto noted that he had been contacted by Ms. Amy Spencer, owner of Niralambaya, regarding an innovative use of the Searles facility which has garnered the support of the Historic Commission. Ms. Spencer approached and explained that she has been teaching yoga in town for the last six years and is losing her current location. She is proposing to utilize the Searles facility for a 25% portion of her proceeds.

Mr. Hohenberger inquired when Ms. Spencer would need the facility, and she replied her classes would run on Thursday evenings from 6:30 to 7:45 PM and on Saturday mornings. Mr. Hohenberger inquired whether Ms. Spencer would be willing to give up the space in exchange for a paying function, and she replied in the affirmative.

Mr. Hohenberger indicated his only concern would be going forward as it pertained to other business. Mrs. Marion Dinsmore, Historic Commission Chairman, noted that any other for profit proposal would have to be looked at separately. She noted that this proposal had come forth rather quickly, and reminded the Board that the Commission was due to return in September to review the revised fee structure. Discussion ensued.

Ms. Sally D'Angelo, Historic Commission, approached noting that the fee structure as it was pertained to one-time events rather than ongoing uses. She noted that ongoing enterprises may be a new venue that the Commission would have to consider. Mr. Sullivan inquired about set-up/maintenance costs, noting that the proposed revenue from Ms. Spencer's use would not cover those fees. Ms. Spencer noted that neither would be required. Mr. Sullivan went on to note that, logistically, Ms. Spencer's clients should pay Niralambaya and Ms. Spencer then make payment to the Town for the 25%. Ms. Spencer concurred, adding that she intends to still pay the 25% regardless of whether she is bumped from the facility for a function.

Mrs. Dinsmore noted that there is also a 30-day out clause as part of the agreement with Ms. Spencer, and Mr. Hohenberger responded that a policy would still need to be written. Mr. Sullivan noted that the Board does have the authority to approve this use via the existing waiver clause and adjustment of fees provision, and that the proposed contract covers all potential issues. Discussion ensued with input from Mrs. Betty Dunn regarding the proposed language.

Mrs. DiFruscia then moved and Mr. Lochiatto seconded to amend the fee schedule for the use of the Searles facility per paragraph P of the Searles Rules to allow use of the facility by Amy Spencer dba Niralambaya with a special contract to be negotiated between the Historic Commission and Ms. Spencer. Passed 4-0.

Workforce Housing Audit: Mr. Lochiatto recused himself from the Board. Ms. Laura Scott approached to request that the Board authorize reallocation of Community Development funds to conduct a workforce housing audit. Mrs. DiFruscia expressed concerns regarding ongoing litigation and discussion of this matter in public. Ms. Scott clarified that her request does not have to do with specific cases, but rather a potential town meeting article as discussed at the Planning Board and whether a fair share assessment should be completed. Discussion ensued.

Mr. Sullivan noted that Ms. Scott was present only relative to reallocation of funds and if the Board were concerned about ongoing cases then perhaps the matter should be postponed and input sought from Town Counsel. Discussion ensued, and it was the consensus of the Board that Ms. Scott forward the pertinent information to Attorney Campbell and obtain an opinion letter; returning to the Board for further discussion on the 29th. Brief discussion ensued regarding a proposal from Keach Nordstrom Associates regarding this issue and whether it had been presented to the Planning Board, which Ms. Scott indicated it had not; rather it had been given to the Planning Board Chair and the Workforce subcommittee only.

Ms. Scott then reviewed with the Board a proposed amendment to the Zoning Ordinance language for Town Meeting relative to clarification of who enforces the building code. Discussion ensued, and it was the consensus of the Board that Ms. Scott proceed with the amendment.

OLD BUSINESS: Mrs. DiFruscia indicated she had been contacted by several individuals regarding the Griffin Park project and removal of the stone wall/trees. She indicated that she had found that RSA 472:6 provides that the stone wall cannot be moved if used as the property's boundary marker and added that, if the Town is not exempt from this statute, it may be an issue for the project. Discussion ensued. Ms. Scott noted that the stone wall does serve as the property boundary, as the pins are in the wall, however it can be moved if the State agrees.

Ms. Carol Pynn, HDC, approached to clarify that the Commission would like the wall to remain as it is on the historic list and has been a part of the farm for a very long time. Discussion ensued as to the need to establish if the Town is exempt and the possible rebuilding of the wall. Mr. Lochiatto noted that, if the wall is rebuilt, the plan will need to be revised as the proposed drainage is going in that location. Further discussion ensued, however, no decisions were made.

Mr. Bob Coole approached expressing concerns with the Board's earlier vote to post the accepted roadways as 25MPH in that it was done as part of the public hearing. Mr. Breton and Mr. Sullivan clarified that the speed limit had been established as a motion separate from the acceptance, and that the Board has final determination of the speed limit.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mr. Lochiatto seconded to enter into non-public session in accordance with RSA 91-A:3 II c, d and e. Roll call vote all "yes". The topics of discussion were reputations, land acquisition and legal.

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

Ms. Scott reviewed a personnel matter with the Board. Mrs. DiFruscia moved and Mr. Hohenberger seconded to remove Tim Corwin, Code Enforcement Officer from probationary status. Passed 4-0.

Ms. Scott updated the Board on a legal matter. No decisions were made.

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

Mr. Sullivan updated the Board on a land acquisition matter. No decisions were made.

Mr. Lochiatto recused himself from the meeting.

Mr. Sullivan updated the Board on a legal matter. No decisions were made.

Mr. Hohenberger moved and Mrs. DiFruscia seconded to adjourn. Passed 3-0.

The meeting was adjourned at 11:00 PM.

Respectfully submitted,
Wendi Devlin, Administrative Assistant

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

Good evening, my name is Charles Roberts, 25 Cobbetts Pond Road, Windham. I stand tonight in opposition to the Board establishing any fees to be charged to the Victims of Involuntary Lot merging.

Regarding fees in general, the Legislators who were involved in crafting HB316 over many, many months, were extremely careful not to create an unfunded mandate upon the towns. It was agreed that the least expensive manner in which to publish notice was in the town's annual report and a simple wall notice at the tax collectors office.

Regarding the proposed fees specifically, by its very definition: an involuntary merger is just that! Created by an administrative action, no notice to abutters, and moreover, no notice to the property owner, and certainly no notice published in a newspaper of any kind. Why would the administrative action to undo what was done require any fee or notice at all? These proposed fees look more like the schedule for zoning applications and in fact are equal to the application for a junkyard permit! Interestingly, the town's fee schedule for a Merger Application is for recording fees only; \$12 for the first page and \$4 for each additional! Although there is a provision for the town to charge for legal review unless the application is submitted by counsel, I cannot protest strongly enough that any escrow for legal review to be charged the Victims of Involuntary Merging is unconscionable. As stated before, this was an administrative error made in the past and should be nothing more than an administrative correction; with no direct or indirect payment to town counsel. The law clearly states that unless an owner in the chain of title has voluntarily merged his land as provided under RSA 674:39a, the land should be restored to reflect its description in the deed books and all tax and zoning maps updated to reflect the change.

I would refer the Board to the town's own Merger Application with nominal fees and also to John Ayer, Director of Planning and Land Use, Town of Gilford where an Unmerger ordinance has been in effect for more than a year with fewer than a dozen applicants at no charge!