

BOARD OF SELECTMEN
Minutes of December 29, 2011

MEMBERS PRESENT: Vice-Chairman Bruce Breton called the meeting to order at 7:00 pm. Selectmen Kathleen DiFruscia and Roger Hohenberger were present, as was Town Administrator David Sullivan. Selectman Phil LoChiato was delayed and arrived at 7:10 PM, and Chairman Ross McLeod was excused. Mr. Breton opened with the Pledge of Allegiance, then requested a moment of silence to acknowledge the passing of Frank Keefe.

ANNOUNCEMENTS: Mr. Mark Samsel of the Windham Rail Trail Alliance announced that the Alliance had received a donation in the amount of \$1500 from the Amherst Railway Alliance for use toward the Windham trail.

LIAISON: None.

MINUTES: Tabled.

PUBLIC HEARING/ROAD ACCEPTANCE: Mr. Sullivan read the public hearing notice into the record, then noted that all paperwork was in order. Mr. Hohenberger moved and Mrs. DiFruscia seconded to accept the following as Town roads: Northland Road from station 0+00 to 38+00, and Duston Road from station 0+00 to 24+00. Passed 4-0.

Mr. Hohenberger then moved and Mr. Lochiatto seconded to post each roadway at 25 MPH. Passed 4-0.

Brief discussion then ensued, with input from Chief Lewis, regarding this motion as it pertained to statutory requirements for speed limit posting and past practice of the Board. It was the consensus of the Board that Chief Lewis look into the matter further to verify the procedure to post roads as such.

Mr. Lochiatto then moved and Mrs. DiFruscia seconded to release the bond in the amount of \$17K to H & B Homes for Northland Road. Passed 4-0.

Mr. Lochiatto then moved and Mrs. DiFruscia seconded to release the bond in the amount of \$13K to H & B Homes for Duston Road. Passed 4-0.

CORRESPONDENCE: Bond release/Common Man. Mrs. DiFruscia moved and Mr. Lochiatto seconded to release the landscaping bond in the amount of \$4500 to Alex Ray. Passed 4-0.

LAURA SCOTT: Ms. Scott advised the Board that the grant application authorized by the Board in August relative to an analysis of the Village Center District had been awarded to the Town. She noted that this is a matching grant, with a total cost to the Town of \$2,500, and requested the Board execute the contract documents in order to encumber available budget funds into next year for the project. Brief discussion ensued regarding of the intent of the analysis, which is to compile all existing data and maps into a cohesive report.

Mrs. DiFruscia moved and Mr. Lochiatto seconded to execute the documents as requested. Passed 4-0.

Ms. Scott advised that the recent Fall Business Seminar had seen over 70 participants, and requested the Board accept the following donations given toward this event: Bank of New England - \$200; Wharf Industries – printing; Andrea O’Brien – speaker; NH DOT – host; Bella Vino – refreshments; Ruth Ellen Post – speaker; Nesmith Library – host; Jeremy Ayers – speaker; Winmill Equipment – host; Shabby Chic – refreshments; Ann Vennard & Trish Ballantyne – speakers; George Cairns & Sons – host; Tamaja Pies – refreshments, and; Windham Independent – advertising.

Mrs. DiFruscia moved and Mr. Hohenberger seconded to accept with gratitude to all who provided goods and services. Passed 4-0.

Spruce Pond II: Ms. Scott clarified for the Board that the donation of the land in question for recreational purposes was condition #17 of the Planning Board approval; and would need to be accepted via a Town Warrant article. She noted that there is one change from the original approval being proposed by Harvey, which is to put in an additional septic easement on the Route 28 side of the property. Ms. Scott advised that the Recreation Committee has approved this request, which does not include any changes to the use as it is just an expansion of the approved easement, and that it was also going to the Planning Board for review. Brief discussion ensued regarding the need to have Town Counsel review the language for the change, which Ms. Scott indicated had already been done, and whether a presentation could be prepared for the Public Hearing on the 9th. Ms. Scott indicated she could arrange the latter.

RECREATION DONATIONS: On behalf of the Recreation Coordinator, Mr. Sullivan requested the Board accept the following donations toward the Tree Lighting, Senior Party, and Harvest-Fest: The Lobster Tail – chowder; Al Letizio – cookies; Dunkin Donuts – 2 Boxes of Jo; McDonalds – 25 free breakfast sandwich certificates; The Long Group – calendars; Shabby Chic - \$25 gift certificate; B & H Oil - \$10 gift certificate; The Common Man - \$25 gift certificate; Piro’s Bakery – cookies, and; GK & K - \$40 donation.

CHIEF LEWIS/DONATIONS: The Chief approached explaining that the Department currently has 1994 Harley Davidson motorcycle, which has not been used in several years, and a 2005 Honda ATV which is only used occasionally. He indicated he had looked into the value of the Harley, and received an estimate of \$3K from Seacoast Harley Davidson. Chief Lewis advised he had then spoken to Nault’s Honda, and was present to propose that both vehicles be traded to Nault’s in exchange for the donation of 2011 Kawasaki Mule valued at \$9800 +/-; representing \$4K for the motorcycle and \$2K for the ATV, with the balance of the value being donated by Nault’s. Chief Lewis explained that the Mule offers far more uses to the department, including the ability to carry two riders and equipment.

Mrs. DiFruscia inquired whether the Mule would require any special training or licensing, and the Chief replied in the negative. Discussion ensued as to the current value of the ATV. Mr. Hohenberger inquired whether the wheel base of the Mule would restrict its use off-road, and the Chief replied in the negative; noting it would actually offer greater use. Discussion ensued regarding the enhanced safety and stability of the Mule, with input from Mr. George Skaperdas of Nault’s, and the usefulness of the Mule to the Fire Department as well. Mr. Skaperdas indicated that, if the Board were concerned regarding the loss of the ATV, he could speak to Mr. Nault regarding re-gifting that vehicle back to the Town.

Mr. Breton expressed concerns regarding the motorcycle, noting it had been donated in memory of Sgt. Brad Ruel. Discussion ensued and it was clarified that it had not been donated, but rather dedicated in Sgt. Ruel’s memory. Chief Lewis noted that two other members of the department had since passed, Officer Mark Knight and Captain Pat Yatsevich, and that the Mule could be re-dedicated to all three. The Board concurred.

Mr. Dennis Senibaldi approached noting he understood that no one utilized the motorcycle, but inquiring if there weren’t a way to keep anyway; perhaps purchasing the Mule via Asset Forfeiture funds. He indicated he hated to see items given away that served as memorials. Chief Lewis indicated there was no interest in keeping the motorcycle, and he did not foresee the Town utilizing anytime soon as that was not the structure of the Department. Discussion ensued, and Mr. Skaperdas indicated that he would be willing to hold on to the motorcycle for a month or so in the event that the Town wished to re-purchase it for the \$4K.

After further discussion, Mrs. DiFruscia moved and Mr. Hohenberger seconded to gratefully accept the exchange of the 1994 Harley Davidson and 2005 Honda with Naults for a 2011 Kawasaki Mule. Passed 4-0.

GROUNDSKEEPING BIDS: Mrs. Call inquired whether the Board wished to award the third year of the groundskeeping bid awarded to Boyden Landscaping in 2009; noting that said bid did not include fertilization. Mrs. DiFruscia inquired whether staff was satisfied with Boyden’s work, to which Mr. Sullivan replied in the affirmative.

Mrs. Call noted that Boyden's bid price for this third year was as follows:

- Groundskeeping: \$42,850
- Irrigation: \$ 1,450
- By-pass mowing: \$ 5,375
- Infields: \$ 2,700

Mr. Hohenberger then moved and Mrs. DiFruscia seconded to award the contract to Boyden in the amounts as read. Passed 4-0.

CARRY-OVERS: Mrs. Call advised that the Highway Department had within their budget funds to purchase a new plow, which had not been bid. She noted that the previous vendor, HP Fairfield LLC, had agreed, however, to hold their previous year's price for the equipment of \$7,191. She inquired whether the Board would consider waiving the bid process requiring three quotes and award the plow purchase to Fairfield for their bid price.

Mrs. DiFruscia inquired whether the three quote requirement had also been waived last year, to which Mr. Sullivan replied that Sleeper had been the only other bid. He went on to note that there had been no time this year to obtain quotes, as it was unsure whether funds would be available in light of the bottom line budget concerns. Discussion ensued regarding available funds and that Fairfield was the low bid last year.

Mr. Lochiatto then moved and Mrs. DiFruscia seconded to waive the bid requirements and authorize the purchase of the plow from HP Fairfield in the amount of \$7,191. Passed 4-0.

ABATEMENTS/TAX DEEDED PROPERTIES: Mr. Sullivan explained that Administrative Abatements were required on those properties taken by tax deed in order to clear the Tax Collector's books; totaling \$103,214.11. Mr. Lochiatto inquired whether all of the properties had since been sold back to the owners, and Mr. Sullivan replied that only two had been redeemed with the Town maintaining ownership of the rest.

Mrs. DiFruscia moved and Mr. Hohenberger seconded to abate the amount of \$103,214.11 for properties taken by tax deed. Passed 4-0.

OLD/NEW BUSINESS: Mr. Sullivan advised the Board that, relative to the Highway Department truck purchase, the chassis price had come back \$7,000 higher than anticipated. He reminded the Board that they had opted to reject the bid received from Freightliner in favor of going with the State bid, and added that it was unclear how the chassis price would affect the overall costs. Discussion ensued in that the truck may overall end up costing more or less, depending upon the additional component costs; and whether Freightliner was able to meet the Build American/Salt Reduction Grant requirements.

Mrs. Call advised the Board that the Searles Use Regulations had been amended to reflect those changes made on 12/05, including clarification of the Board's intent regarding the list of organizations authorized to use the facility at no charge versus event charges.

Mrs. DiFruscia moved and Mr. Lochiatto seconded to approve the Searles Use Regulations as revised. Passed 4-0. Brief discussion ensued regarding the addition of names to the list.

Mr. Sullivan noted that Target New England, who had originally bid \$38K for painting of the Community Development Department which was not awarded, had submitted a revised bid after completion of the Town Hall painting. Mr. Sullivan noted that the revised bid was significantly lower, and that staff had been very satisfied with the Town Hall project. He noted that the CDD project could be placed out to bid, however, based on previous bids received he believed Target's revised price to be very competitive.

Mr. Breton sought clarification of the maintenance contract regarding the Town Hall, and Mr. Sullivan explained that the Town had entered into a one-year maintenance contract at a cost of \$1,500 with Target regarding the Town Hall as it pertained to inspection and repair. Discussion ensued.

Mrs. DiFruscia then moved and Mr. Lochiatto seconded, for discussion, to waive the bid process. Mr. Lochiatto then raised concerns regarding the federal and state lead standards, and it was clarified that staff will be addressing this within the contract if the bid is awarded. Motion passed 3-1, with Mr. Hohenberger opposed.

Mrs. DiFruscia then moved and Mr. Hohenberger seconded to award the bid for the painting of the Community Development Department to Target New England for their bid price of \$14,000; subject to all state and federal lead remediation requirements. Passed 4-0.

Mrs. Call reviewed with the Board several requested expenditures from the Property Maintenance Trust, including:

- \$2,599.25 for completion of all Joint Loss Management Committee safety recommendations at the Transfer Station, including strobes and alarm work.
- \$3,519.13 for emergency repairs to the heat exchanger at the Community Development Department.

Mr. Lochiatto inquired whether any other outstanding safety issues remained, and Mr. Sullivan indicated he was not aware of any save for the need to replace all existing gas cans with new ones equipped with safety nozzles; which would not represent an astronomical cost. Mr. Pat Robertson, Chair of the JLMC, approached noting that the gas can issue was more of a policy issue related to the use of safety glasses. Discussion ensued regarding the number of cans needing to be replaced.

Mrs. DiFruscia then moved and Mr. Hohenberger seconded to approve the expenses from the Property Maintenance Trust as described. Passed 4-0.

Mrs. Call advised the Board that the School District would not be requesting disbursement of their impact fees this year; rather they would be deferring to the spring. Brief discussion ensued.

Mr. Sullivan noted that the Board had received two pieces of correspondence, from the Planning Board and ZBA, relative to staffing changes at the Community Development Department as scheduled for discussion at the public hearing in January. Mr. Lochiatto noted that he felt the Planning Board was overstepping their bounds, indicating that in all his time on the Planning Board they had never had jurisdiction over staffing or other such issues.

Mr. Sullivan noted that the ZBA had also requested a non-public session with the Board. Mr. Breton indicated he did not believe the Board of Selectmen had any jurisdiction and indicated he did not wish to meet as requested. Mrs. DiFruscia disagreed, noting that if the ZBA's concerns related to process then the Selectmen should hear their concerns.

Lengthy discussion ensued before Mrs. DiFruscia moved and Mr. Hohenberger seconded to meet with the ZBA as requested in a non-public session. Motion failed 2-2, with Mr. Lochiatto and Mr. Breton opposed. Mrs. DiFruscia indicated for the record that she would like to readdress this issue with a full board.

Mr. Hohenberger then sought clarification from Chief McPherson of his intent to return to status quo staffing of five per shift on January 1st, as it pertained to the current lack of a safety issue with not re-calling the fifth shift member as cited by the Chief in meeting with the Board.

Chief McPherson approached giving a brief history of the resident letter and budget discussion in question. He noted that he has always maintained that returning staffing to five per shift is safest for the Department; however he had done what was needed to stay within budgetary constraints. Chief McPherson noted that with the Department's call demand, fewer per shift lends itself to increased injuries, overtime, etc.

Mr. Hohenberger clarified that the Department had been maintaining five per shift, but simply not filling that fifth position in the event of absences. Chief McPherson indicated that was correct.

Mr. Lochiatto noted that the Chief had stated that the Town was no less safe with four on shift. Chief McPherson disagreed, noting he had not wanted to raise public alarm based on the letter in the Windham Independent, and had advised there is a risk to firefighter safety and response times.

Lengthy discussion ensued regarding why the change had been made in June, the Chief's responsibility to ensure the safety of both the Community and the Firefighters, and whether the availability of new budget was precipitating the move back to staffing five per shift.

Chief McPherson noted that, statutorily, he has the authority to operate the Fire Department as he sees fit. Mr. Sullivan added that he has discussed this with the Chief, and supports his plan. He reminded the Board that the Police Department faces the same situation regarding overtime, and that occurrences such as disability absences cannot be controlled and that it is the Chiefs' responsibility to manage those line items.

Further discussion ensued, with input from Assistant Chief Ed Morgan, regarding the impacts of four versus five, and the successful absorption of increased retirement costs of both the Police and Fire Departments into their budget. Mr. Sullivan commended both the Chiefs for the latter.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mrs. DiFruscia seconded to enter into nonpublic session in accordance with RSA 91-A:3 II a, b and c. Roll call vote all "yes". The topics of discussion were personnel and reputations.

The Board, Mr. Sullivan, Mrs. Call, Ms. Scott, and Ms. Devlin were in attendance in the first session.

Ms. Scott discussed the probationary status of an employee. Mr. Lochiatto moved and Mr. Hohenberger seconded to remove the employee in question from probation. Passed 4-0.

Ms. Scott discussed a disciplinary matter with the Board. No decisions were made.

The Board, Mr. Sullivan, Chief Lewis, and Ms. Devlin were in attendance in the remaining session.

Chief Lewis discussed a proposed disciplinary action with the Board. Mr. Hohenberger moved and Mrs. DiFruscia seconded to approve an administrative suspension, up to 30 days, as discussed. Passed 4-0.

Mr. Lochiatto and Mr. Hohenberger seconded to adjourn. Passed unanimously.

Meeting was adjourned at 9:30 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant.

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