

**BOARD OF SELECTMEN**  
**Minutes of February 13, 2012**

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

**ANNOUNCEMENTS:** Mr. McLeod extended thanks to all who had attended the Annual Deliberative Session the previous Saturday, and apologized for his absence to attend a music festival in which his son was participating.

**CORRESPONDENCE:** Request received from Mrs. Patricia Mahoney to utilize the Town's van for the period of 2/24 to 2/27 in order to bring her son to her residence for the weekend from Crotched Mountain Rehabilitation. Mrs. DiFruscia moved and Mr. Hohenberger seconded to grant Mrs. Mahoney's request. Passed unanimously.

**MINUTES:** None.

**LIAISON:** None.

**PUBLIC HEARING/PERSONEL POLICY AMENDMENTS:** Mr. Sullivan reminded the Board that, as previously discussed, these amendments pertained to newly hired employees and included changes to the earned time accrual scales and a cap of 400 hours; as well as codification of the new health insurance plan options and premium levels for non-union personnel. Mr. Sullivan noted that, as a result of posting these amendments in house as required, he had received input from only one employee who felt there should be no earned time cap at all. He added that this employee felt without a cap that earned time would be utilized differently resulting in smaller balances; however he disagreed and felt that without a cap the Town would face the same situation it does today of large balances remaining.

After a brief discussion, Mr. Hohenberger moved and Mr. Breton seconded to approve the amendments to personnel policy as discussed. Passed unanimously.

*Mr. McLeod* noted that the Board had received legal correspondence from Town Counsel relative to petitioned articles 18 and 19; and inquired whether the Board wished to release it to the petitioner in preparation for later in the evening. Mr. Breton moved and Mr. LoChiatto seconded to release Town Counsel's confidential legal correspondence dated 2/13/2012. Passed unanimously.

**REX NORMAN – ABATEMENTS:** Mr. Norman reviewed seven abatement requests with the board, as follows:

*24-D-21:* Mr. Norman noted that the owners had filed late for an elderly exemption, and he recommended that this request be denied. He explained that, per RSA 72:33 1a, despite the 4/15 deadline for submission the exemption could have been accepted up to the point of the tax rate setting; however, the application was not received until 11/21/2012. Mr. Norman noted that the exemption will be applied for next year.

After a brief discussion, Mr. Breton moved Mr. LoChiatto seconded to approve the recommendation of the Assessor and deny the exemption request for 24-D-21. Mr. LoChiatto requested that the motion clarify that the denial is per RSA 72:33 1a. Mr. Breton amended his motion, and Mr. LoChiatto his second, and further discussion ensued as to why the applicant had been late. Mr. Norman clarified that he had explained to the owners that he could bring it to the Board for approval after the 4/15 deadline, as long as it was prior to the tax rate setting.

Motion passed unanimously.

*21-G-230 and 230A:* Mr. Norman explained that these two parcels represented back land to parcel 21-G-12, and that both have been merged into said parcel. Brief discussion ensued.

Mr. LoChiatto then moved and Mr. Breton seconded to accept the Assessor's recommendation to abate parcel 21-G-230 and 230A in the amount of \$161.56 each, based upon their being merged into parcel 21-G-12. Passed unanimously.

*25-H-2:* Mr. Norman explained that the applicant had questioned his land assessment, which was significantly higher than others in neighborhood, including his next door neighbor. Mr. Norman indicated he had found the properties were coded in the system as waterfront, despite no longer being anywhere near water, and he had ultimately adjusted multiple properties in the area. Discussion ensued regarding the future of Moeckel Pond, its uniqueness as a private pond, the ability to re-adjust these assessments should they become waterfront again, and the way the system codes such properties.

Mr. Hohenberger then moved and Mr. Breton seconded to approve the abatement of \$1,003.98 as requested by the Tax Assessor. Passed unanimously.

Mr. LoChiatto stepped out momentarily.

*1-C-510:* Mr. Norman explained that the owners, who had just purchased the property, had questioned their assessment and, upon inspection, he had found several minor listing errors. Mr. Norman noted that, after adjustments were made, the assessment was now in line with the owners' appraisal submitted and sale price. Mrs. DiFruscia questioned whether the appraisal had been conducted by a certified appraiser, and Mr. Norman replied in the affirmative. Mr. Hohenberger expressed concerns with abating this property, as everyone in Town has suffered a reduction in their value over the last 3-4 years. Discussion ensued regarding fair market value versus the currently depressed market, and "arm's length" versus "short sales".

Mrs. DiFruscia then moved and Mr. Breton seconded to approve the abatement request for 1-C-510 in the amount of \$630.08. Passed 4-1, with Mr. Hohenberger opposed.

*21-D-107:* Mr. Norman noted this property was the plaza located at 4 Cobbetts Pond Road which, when 100% completed had been assessed by the Town's retail model at \$3,558,000. He noted that after exploring the issue further, he believed the Town's retail model was high, and that Mr. Glynn had presented a re-financing appraisal of \$2.9M, which Mr. Norman felt was conservative. He indicated he had reviewed retail sales in the area and, after updating the Town's retail model, the new assessment for the plaza came in at \$3,102,000 which Mr. Glynn concurred with.

Mrs. DiFruscia expressed concerns regarding a re-finance appraisal versus a certified appraisal, and lengthy discussion ensued regarding the acceptance of appraisals completed for other purposes if relevant to the abatement, in-town comparables available and those used, and assessment procedures for retail properties.

Mr. LoChiatto then moved and Mr. Breton seconded to support the Tax Assessor's finding relative to 21-D-107 and approve the abatement of \$10,524.48. Passed unanimously.

*16-D-450:* Mr. Norman explained that this is the plaza located at 32 Indian Rock Road, also owned by Mr. Glynn, and that he recommended granting of this abatement based upon the same adjustments to the retail model as discussed; which reduced the assessment from \$2,653,800 to \$2,373,800, a figure agreed upon by Mr. Glynn. Discussion ensued regarding the rear portion of the plaza and its classification as a health center versus office/retail strip center. Mr. Norman clarified that commercial properties are not generally coded by tenant fit-ups, as at turnover they are essentially a vacant shell. Discussion ensued regarding transferrable values, ease of retro-fitting the plaza in question to office space, and the comparables used by Mr. Norman.

Mr. LoChiatto then moved and Mr. Breton seconded to support the Tax Assessor's findings regarding 16-D-450, and to approve the abatement of \$6,462.40. Passed unanimously.

**TOWN MEETING ARTICLES:** Mr. Sullivan explained that this is the final opportunity for the Board to confirm their recommendations on the Town warrant articles. He also noted that the Planning Board had made a request that their recommendations be displayed on the official ballot to include their vote counts; which the Board of Selectmen would have to approve.

Mr. Hohenberger moved and Mrs. DiFruscia seconded to approve the Planning Board's request. Passed unanimously.

Mr. Sullivan then went on to explain that, per state statute, all appropriation warrant articles must exhibit a recommendation from the Board on the ballot. Non-appropriation articles do not require such a recommendation, however, the Board of Selectmen by-laws require that if the Board chooses not to include one they must state the reason why. Mr. McLeod noted for the record that, at this time, all warrant articles except two are listed as 4-0, due to Mr. Hohenberger's absence at the previous meeting.

Mr. LoChiatto then moved and Mr. Breton seconded to reconsider the recommendations of articles 5-20. Passed unanimously.

*Article 5:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to "recommend" this article. Passed unanimously.

*Article 6:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to "recommend" this article. Passed unanimously.

*Article 7:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to "recommend" this article. Passed unanimously.

*Article 8:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to "recommend" this article. Passed 4-1, with Mr. Breton opposed.

*Article 9:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to "recommend" this article. Passed unanimously.

*Article 10:* Lengthy discussion ensued regarding this article and the fact that the Fire Department had not been awarded the grant which it references, versus the value of the Board's recommending it to future grant applications.

Mr. Breton then moved and Mr. LoChiatto seconded to "not recommend" this article. Motion failed 2-3, with Mr. McLeod, Mrs. DiFruscia, and Mr. Hohenberger opposed.

Further discussion ensued, and Mr. Breton inquired whether the public should be advised that the Department did not receive the grant. Chief McPherson approached noting he understood both perspectives, and expressing his disappointment that the grant was not awarded. He advised that he can put out a press release prior to the ballot vote clarifying that the grant wasn't awarded and explaining the reasons behind the Board's recommendation.

Mr. LoChiatto then moved and Mr. Hohenberger seconded to "recommend" Article 10. Passed unanimously.

*Article 11:* Mr. Hohenberger moved and Mr. Breton seconded to "recommend" this article. Passed unanimously.

*Article 12:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to "recommend" this article. Passed unanimously.

*Article 13:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to “recommend” this article. Passed unanimously.

*Article 14:* Mr. Hohenberger moved and Mr. Breton seconded to “recommend” this article. Passed unanimously.

*Article 15:* In response to previous concerns raised by Board members, Mr. Sullivan clarified that lot 15A does have a point of access onto the new “Salem Road”, and that the owner does have a deed in hand which includes a curb cut. He extended thanks to Mr. Peter Stamnas of NHDOT for his assistance in confirming this.

Mr. LoChiatto then moved and Mrs. DiFruscia seconded to “recommend” Article 15. Passed unanimously.

*Articles 16 and 17:* Mr. McLeod recused himself from the Chairmanship for these articles, citing his affiliation with Windham Soccer.

*Article 16:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to “recommend” Article 16. Passed 4-0.

Mr. Marc Sneider then approached, noting that articles 17 through 19 are all Citizen petitions and he believed that the Board should allow the voters to vote on them as they are with no recommendations noted. Mr. Sullivan clarified that, as it pertained to article 17, the Board had to make a recommendation as it is an appropriation article.

*Article 17:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to “not recommend” Article 17; both citing that though the article has merit they do not believe this is the time to expend such funds.

Mr. Breton then read into the record a letter from the petitioner, Dennis Senibaldi, who was unable to be in attendance. Mr. LoChiatto noted that, after looking further into the issue of the School District article regarding portables and resulting field losses, he felt Article 17 should be recommended as it represents far less cost in the long run than would be spent in and around the high school complex for fields. Discussion ensued regarding the inclusion in the School District article of replacement fields, and Ms. Donna Hulme approached noting there should be a distinction between school and town budgets and facilities. She added that the school fields also get overbooked and urged the Board to recommend this article.

Discussion ensued regarding the potential impacts on the tax rate if the article passes, which Mr. Sullivan replied would be \$0.12 versus \$0.05 for all other articles, and completion estimates and the low priority of this project in the CIP.

Motion failed 2-2, with Mr. Breton and Mr. LoChiatto opposed.

Mr. LoChiatto then moved and Mr. Breton seconded to “recommend” Article 17. Motion failed 2-2, with Mr. Hohenberger and Mrs. DiFruscia opposed.

Discussion ensued and it was the consensus of the Board to reflect a “Recommended 2-2” in the Town Warrant due to the splitting of the votes in both motions.

Mr. McLeod resumed the Chairmanship.

*Article 18:* Mr. Marc Sneider, petitioner, approached to reiterate his stance that this Article and Article 19 were discussed and amended at the Deliberative Session, and the Board should offer no recommendation on either. After a brief discussion, Mrs. DiFruscia moved and Mr. Hohenberger seconded that the Board decline to make a recommendation on Article 18. Mr. Hohenberger noted that he believed these articles were of the subjective type that the Board did not need to weigh in on. Mr. LoChiatto disagreed, citing amongst other concerns that, as a Selectman, he could not obtain permits from the Town. Brief discussion ensued regarding amendments made at the Deliberative session.

Ms. Hulme approached, opining that Mr. LoChiatto's concerns themselves exhibited a conflict of interest. She felt this is why the Board should not be making a recommendation, and clarified that she was one of the original petitioners.

Mr. Bob Coole approached noting for the record that Attorney Campbell had said regarding Article 18 the following: "While I probably would counsel individuals to vote against the proposal, I see no need for any particular response should it pass."

Discussion ensued, and Mr. McLeod noted that he did believe something was needed; citing Mr. LoChiatto's failure to recuse himself during Mr. Zohdi's presentations as an example. He indicated the perception is that the current protections are not working.

Motion to decline to make a recommendation passed 3-1-1, with Mr. McLeod opposed and Mr. LoChiatto abstaining.

*Article 19:* Mr. Sneider approached requesting the Board make the same motion for this article; to decline to take a position. Mr. Hohenberger indicated that, unlike Article 18, Town Counsel did indicate he had strong feelings regarding liability as it pertained to #19, and that if it does pose some such threat to the Town it is a concern to him.

Mrs. DiFruscia noted that issues exist with both proposals regarding who is a covered person, and that this was vetted out at length at the Deliberative Session. She then indicated that while she felt something may need to be done regarding conflicts of interest policies, she would move that the Board decline to make a recommendation on Article 19. Mr. Hohenberger seconded, but the motion was then tabled to allow for further public input.

Mr. Bob Coole approached noting that Article 19 restricts the personal freedoms of individuals. Mrs. DiFruscia questioned the petitioner if as an attorney, she could both serve as Selectman and volunteer her services to the Cobbetts Pond Improvement Association under Article 19. Mr. Sneider replied in the negative. Discussion ensued regarding the detrimental effects to others of passage of this policy, and Mr. Coole pointed out that some who retired from the Town could not even volunteer to help with the Town census.

Mr. Breton requested that Mr. Hohenberger clarify his claims of liability to the Town. Mr. Hohenberger indicated that Town Counsel, within the just released correspondence, had stated he saw such issues with it. Discussion ensued regarding Town Counsel opinion, and Mr. Hohenberger endeavored to find the relative paragraph.

Mr. Sneider approached and confirmed that Article 19 would prohibit volunteer activities that would bring someone before a Town board. Lengthy discussion ensued regarding other resultant impacts to contractors, etc., and potential difficulties in obtaining some permits issued by the Town.

Mr. Hohenberger then read the following excerpt from Attorney Campbell's letter: "With respect to Article #19, I would say that this article, even as amended, is much more problematic and poses numerous and several serious liability problems for the Town."

Mr. Breton sought clarification of the ability to obtain any of the many types of permits issued by the Town outside of building permits, such as a burn permit or a gun permit. Discussion ensued with input from Mr. Justin Belair, in which it was clarified that a burn permit could be obtained as it was tied to the applicant's "personal residence", however, it was likely a firearm permit could not be issued. Mr. Belair then questioned whether the Board was actually discussing the amended policy, and after review it was determined that they were.

Further discussion ensued, and Mrs. DiFruscia's motion to decline to make a recommendation failed 1-4, with all but Mr. Hohenberger opposed.

Mr. Breton then moved to not recommend Article 19. There was no second. Continued concerns were expressed regarding the ramifications of this proposed policy, and Mr. Sneider indicated that people would simply need to decide based upon its passage whether or not they wanted to volunteer for the Town.

Mr. LoChiatto then moved and Mr. Breton seconded to “not recommended” Article 19. Motion failed 2-3, with Mr. McLeod, Mrs. DiFruscia, and Mr. Hohenberger opposed.

Mr. McLeod then moved and Mr. Hohenberger seconded that the Board take no position and make no recommendation on Article 19. After further, brief discussion, motion passed 3-1-1, with Mr. Breton opposed and Mr. LoChiatto abstaining.

*Article 20:* Mr. Hohenberger moved and Mrs. DiFruscia seconded to “recommend” this article. Passed 4-1, with Mr. Breton opposed; noting that he believed the budget could have been even more refined to reflect a 0% increase inclusive of the other proposed warrant articles. Brief discussion ensued.

**FIRE DEPARTMENT BID AWARD:** Chief McPherson advised that three bids had been received for purchase of Hazardous Materials equipment, as follows:

|   |   | Firematic Supply Co, E.<br>Yaphank NY | Industrial Protection Svcs,<br>Wilmington MA** | Mine Safety Appliances,<br>Pittsburgh PA |
|---|---|---------------------------------------|--|--|
| 1 | ALTAIR 5X 5 Gas Detector with Vehicle Charger and 4-year Extended warranty (for 1)  | \$1,864.00                            | \$1,684.00                                     | \$1,918.47                               |
| 2 | MSA Galaxy Calibration System with Calibration Gas (for 1)                          | \$1,581.50                            | \$1,742.00                                     | \$1,601.17                               |
| 3 | MSA Altair Pro Single Gas Detector, Chlorine (for 2)                                | \$752.00                              | \$872.50                                       | \$769.22                                 |
| 4 | MSA Altair Pro Single Gas Detector, Ammonia (for 2)                                 | \$918.00                              | \$1,066.00                                     | \$940.00                                 |
| 5 | MSA Altair Pro Single Gas Detector, Hydrogen Cyanide (for 2)                        | \$752.00                              | \$872.50                                       | \$769.22                                 |
| 6 | Calibration Gas for Altair Pro (for 3)  | \$795.00                              | \$570.00                                       | \$825.15                                 |
| 7 | Regulator and Tubing for Altair Pro Calibration (for 1)                             | \$479.00                              | \$285.00                                       | \$487.39                                 |
| 8 | Gamma Rae II Radiation Detector and Dosimeter with 5-year Extended Warranty (for 2) | No Bid                                | \$2,358.00                                     | No Bid                                   |

The Chief went on to note that it was his recommendation that each piece of equipment be awarded to the low bidder thereof. Brief discussion ensued regarding freight charges, which the Chief clarified there were none.

Mr. Breton moved and Mr. Hohenberger seconded to approve the purchase of items 1, 6, 7, and 8 from IPS as bid and recommended by the Chief. Passed unanimously.

Mr. Breton then moved and Mr. Hohenberger seconded to award the purchase of items 2, 3, 4, and 5 from Firematic as bid and recommended by the Chief. Passed unanimously.

**OLD/NEW BUSINESS:** Mr. Sullivan updated the Board on the previous week’s discussion regarding the donation of fill to the Town. He indicated that Mr. LoChiatto was on the correct track when he had expressed concerns regarding the cost to haul the material from the donor’s site to the Town site. Mr. Sullivan added that some of the material has already been moved, however, if the Town does not proceed with the donation the contractor who moved has indicated he will simply keep the material and there will be no cost to the Town.

Mr. Sullivan advised that, should the Town proceed to accept the donation, the costs to move the material will be approximately \$5,000. Lengthy discussion ensued regarding the amount of fill generally purchased by the Town in any given year versus the amount needed, the trucking costs and ability to store 3,000 yards of material, and the testing requirements.

Mr. LoChiatto then moved and Mr. Breton seconded to, with regret, not accept the donation of fill as the costs to move the material will be equal to if not greater than the Town's cost to buy same. Passed unanimously.

Brief discussion ensued as to the cost to keep the material moved to date versus no charges if the hauler keeps it. It was the consensus to not keep the material in question.

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

The Board, Mr. Sullivan, Rex Norman, and Ms. Devlin were in attendance in the first session.

Mr. Norman updated the Board on a legal matter relative to a tax appeal. Mr. Breton moved and Mr. LoChiatto seconded to approve the recommendation of the Tax Assessor as discussed. Passed unanimously.

Mr. Norman updated the Board on an additional legal matter. No decisions were made.

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

The Chief discussed the vacant dispatcher position with the Board. Mr. Hohenberger moved and Mr. Breton seconded to extend an offer of employment to the recommended candidate per the Employment Policy. Passed unanimously.

The Chief reviewed with the Board a request for leave of absence. Mrs. DiFruscia moved and Mr. LoChiatto seconded to support up to two months of leave, without pay. Passed unanimously.

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

Meeting was adjourned at 9:40 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant.

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