

**BOARD OF SELECTMEN**  
**Minutes of August 27, 2012**

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

**ANNOUNCEMENTS:** Mrs. DiFruscia noted that the recent Movie Night at Griffin Park had been a tremendous success, with over 150 in attendance.

Mrs. DiFruscia noted the recent press release regarding West Nile Virus, and advised that more information can be found at dhhs.nh.gov. Residents can also contact 271-4496 or 800-852-3345, extension 5300 with any questions or concerns they may have; and are encouraged to take preventative measures such as removing standing water on their property and utilizing bug spray.

Chief McPherson reminded all of the Department's annual 9/11 ceremony scheduled for 8:30 AM on September 11<sup>th</sup>; to be followed by light refreshments.

Mrs. Barbara Coish, Sister City Committee, updated the Board on the highlights of her recent trip to Suzdal, and presented gifts to the Board members.

Mrs. Margaret Case, Chairperson of the Cable Advisory Board, presented the second quarter franchise fee check in the amount of \$57, 182.81.

**PUBLIC HEARING – RYAN FARM ROAD ACCEPTANCE:** Mr. Sullivan read the public hearing notice into the record. Mr. Hohenberger moved and Mrs. DiFruscia seconded to accept Ryan Farm Road from station 9+75 to 15+74 as a town road, and to release the bond accordingly. After a brief discussion, motion passed unanimously.

Mr. Hohenberger then moved and Mr. LoChiatto seconded to post Ryan Farm Road at 25 MPH. Mr. McLeod inquired whether a speed study had been conducted, and Chief Lewis replied in the negative; adding that it is required. After a brief discussion, motion passed 3-2, with Mr. McLeod and Mrs. DiFruscia opposed.

**TAX ASSESSOR REX NORMAN:** Mr. Norman explained that the El-Hefni Educational Foundation, who was requesting a property tax exemption, owned lots 8C-100 and 102, and 13C-400 on Roulston Road; totaling approximately 400 acres zoned Professional Business Technology. He noted that their current assessment was \$3.8M in total, and that he had advised them they did not meet the test for an exemption.

Mr. Michael Rosen, on behalf of El-Hefni, approached and explained that the parcels have been used for charitable and educational purposes for years; and that in 2012 they were transferred to the Foundation which was a 501-c 3 organization. He noted that when an application was made for the tax exemption questions were raised regarding the use and occupancy of the parcels, and he then went on to explain that students are onsite regularly for outside study. Mr. Rosen also noted that the property is used by colleges to develop curriculum for outdoor education, and has been used by Northern Essex, Merrimack College, and others over a dozen times this year alone. He noted that he believed the use had thus been established, and added that as it pertained occupancy, 100% of parcel 13C-400 is being used for educational purposes. As to 8C-100, the majority of that is being used, as well, via trails and tree/dam studies. He also noted there is an abandoned building onsite which will be used for Fire Department training. Discussion ensued regarding whether the Foundation charged for some services and its ownership of property/operations in Massachusetts. Mr. Rosen clarified that the Foundation does not own land which would qualify for an exemption in Massachusetts, nor does it charge for services. He indicated that the Foundation's income is less than \$5K per year.

Mr. Hohenberger inquired whether Mr. Rosen was requesting a full exemption, and the response was in the affirmative. Mr. Norman noted that there were several options available: 1) granting the full exemption as requested; 2) doing a PILOT program such as the Sisters of Mercy have, or; 3) the Foundation could put the parcels into Current Use. He added that the purpose of this evening's discussion was the Foundation's request for a reconsideration of his denial.

Lengthy discussion ensued regarding the total taxes assessed on the parcels, the PILOT (Payment in Lieu of Taxes) agreement that the Town currently has with the Sisters of Mercy, and Mr. Norman's preference to resolve this prior to issuance of the December tax bill.

Mr. Hohenberger moved and Mrs. DiFruscia seconded that Mr. Norman meet with owner representatives to draft a proposal under the PILOT program. Passed unanimously.

*Mr. Norman* then reviewed with the Board an abatement request for 21K-37A, 50 Turtle Rock Road; currently assessed at \$520,500. Mr. Norman explained that, after review of an owner submitted appraisal and inspection of the property, he had made adjustments to the listing resulting a revised assessment of \$475,300. He recommended that the Board grant an abatement in the amount \$1,043.22.

Mr. LoChiatto moved and Mr. Hohenberger seconded to grant the abatement as recommended. Passed unanimously.

**PRESIDENT OBAMA CAMPAIGN VISIT:** Mr. Sullivan noted that, since the President's visit on August 18, there had much discussion as to whether or not the Town should bill the campaign for public safety personnel costs. He clarified that those costs, encompassing nine firefighters, one call firefighter, five police officers, and one dispatcher, calculated to \$5,490.58 in total. Mr. Sullivan added that five management personnel had also attended the event, however no pay was involved. He went on to note that he had provided an estimate to the Board of other communities' expenses, clarifying that those numbers were based on Windham's salaries. Mr. Sullivan also advised that the School District is a different jurisdiction.

Mr. Sullivan then read into the record an email received from Mr. Ken Eyring, as attached. Mr. Breton inquired whether Mr. Sullivan had received any correspondence from the Town of Salem regarding this issue, and Mr. Sullivan replied in the negative.

Mr. McLeod raised a procedural concern regarding quotes in the news attributed to Mr. Breton regarding the Town's decision to bill the campaign; and asked that Mr. Breton clarify if he was misquoted. Mr. Breton indicated that he was not misquoted in that the Town will bill, as it is standard procedure to bill for events. Mr. McLeod then inquired how much the Town billed for the Santorum or Huckabee events. Mr. Breton indicated he did not know, as he was not involved in those events.

Lengthy discussion ensued regarding previous candidate visits/gifts presented, the School District and surrounding community expenses, as well as policy for billing. Mrs. DiFruscia noted it was disconcerting to read in the news that the Town was not going to pay these expenses. She noted that this was never a question with any other candidate, and opined that all should be welcomed to Town.

Ms. Laura Scott, Community Development Director approached to clarify that she had paid for the baskets presented to previous candidates; and had attended those events on her own time.

Chief Lewis approached to clarify that the Department had not billed any previous candidates during his tenure; rather those expenses had been absorbed via overtime. He also clarified that staff did not provide security during the event; rather they were on site for crowd/traffic control and for the protection of the attendees. Chief Lewis indicated there were six other communities who had also assisted who will not be billing Windham for their services, as it was rendered as part of the mutual aid agreement. He then commended the Fire and Police staff who had attended, noting that he had received feedback from the Secret Service to the effect that Windham had "knocked the socks off people in Washington." Discussion ensued again regarding previous candidate visits, as well as the question being whether this was an official visit by Obama or a campaign visit.

Ms. Stephanie Wimmer approached, clarifying that she did so as a resident rather than a member of the School Board, to point out that District has a policy in place regarding such events; and that same was executed prior to the President's visit. She noted that the Selectmen kept referring to it being "policy" to bill, and inquired where that policy was and, if there was not one, that the Board develop one similar to the School District.

Mr. Sullivan indicated there is one in place regarding contracted details, for Verizon for example. He added that right now the August 18 expenses were absorbed via overtime unless the Town chose to bill. Discussion ensued regarding application of the billing procedure to all candidates, as well as the School District policy which charges all users custodial and electrical costs.

Mr. Sullivan again clarified that the Police Department has treated all candidate visits as overtime, and not activated the policy to bill them as contracted details. He noted that if the Board feels that the expenses should be billed, then they should invoke the policy and do so. Discussion ensued.

Mrs. Margaret Case approached and asked that the Board not bill for the expenses; noting several other visitors, including Ford in the 1970's, for whom the Town had not billed. She indicated that as a resident she was embarrassed by the recent headlines, and added that she resented the automated call she had received from Corey Lewandowski of the AFP regarding this issue.

Representative Walter Kolodziej approached in support of billing the campaign; noting that if it were an official visit he believed there would not be a person in Town opposed to absorbing the cost. He felt, however, that it was a campaign visit and to use tax dollars in support of that was an insult to the taxpayers. He indicated that, in fairness to all, the Democratic and Republican National Conventions should cover the costs for all campaign visits.

Mrs. Diane Carpenter approached noting that the term contracted services implies an agreement was in place prior to the event and, barring that, she questioned how the Town could bill the campaign. She went on to note that she believed there was no doubt it was a campaign visit, however he is the sitting President and thus has the benefits of incumbency.

Mrs. Betty Dunn approached noting matters of procedure; including that no one member of the Board has authority to take action on their own. She indicated she was disturbed by the news reports without some citation of a policy. She concurred with Mrs. Carpenter that contracted services implies agreement, and added that there was no contract in place between the Town and the Obama campaign. Mr. Breton disagreed, noting that the Campaign came to the Town requesting services and indicating they would not pay for same. Discussion ensued.

Mrs. Dunn then noted that the benefits to the local businesses had not even been mentioned; and added that she felt a demand for payment was inappropriate. She indicated, however, that a letter requesting reimbursement might be sent.

Mrs. Kristi St. Laurent, clarifying she was speaking as a resident rather than a member of the Planning Board, indicated she had attended and certainly felt safer given the local public safety presence. She did not feel the Town should bill the campaign, as the support was provided for the citizens and not the candidate; adding that the Town should be proud to have hosted his visit.

Mr. Corey Lewandowski approached, noting that to date the Obama campaign has raised \$348,315,028. He noted that while the visit was historic and exciting, it was also purely political as all reports regarding the visit stated he was here to campaign. Mr. Lewandowski then cited several items, including: news articles regarding the various visits President Obama has made; the events surrounding the Town of Durham's recent experience; and the Board member's specific tax bills. Mrs. DiFruscia took exception to the latter, inquiring what Mr. Lewandowski annual taxes were, to which he replied \$22K.

Mr. Lewandowski then went on to note the tax bill in the amount of \$5,412.26 issued for 26 Hadleigh Road, and Mrs. DiFruscia again took exception; citing invasion of privacy by Mr. Lewandowski. Discussion ensued, and Mr. Lewandowski indicated he was trying to exhibit that the expense in question was not an insignificant amount and while the visit was an honor, the Board has a fiduciary responsibility to the taxpayers.

Mrs. DiFruscia noted that Mr. Lewandowski had not raised similar concerns regarding other candidates if no amount is insignificant. She also expressed concerns that Mr. Lewandowski's robo-calls had taken time out of Mr. Sullivan's day. Mr. Lewandowski countered that the other campaign visits were arranged by the 9.12 group per the School District policy. Discussion ensued.

Mrs. Case inquired who had initially been contacted by the Secret Service. Mr. Sullivan indicated the visit had been coordinated with Chief McPherson and Captain Caron; and that the Town had been advised there would be no reimbursement. Mrs. Case then questioned why staff had been provided, and Mr. Sullivan reiterated they were present for the safety of the residents.

Mr. Hohenberger indicated he was disappointed in the headlines, as well, and that the visit was an honor. He concurred that the staff was present for the protection of the visitors/residents, and noted that even without advance notice they still would have been on hand due to the volume of attendees.

Mr. Hohenberger then moved that a letter, not a bill, be sent to the Obama campaign outlining expenses incurred in support of his campaign stop in the amount of \$5,409.58. Mrs. DiFruscia indicated that she would support this solution provided the same letter were sent to all the others as well. Mr. Hohenberger amended his motion to equally include all other candidates who've visited, as well.

Mr. Sullivan inquired whether Mr. Hohenberger's intent was to address Windham's direct costs only, and Mr. Hohenberger replied in the affirmative. Discussion ensued regarding expenditures by other entities, such as the Rockingham County Sheriff, and Mr. Hohenberger's intent. The latter clarified that the letter would indicate that reimbursement would be highly appreciated for the expenses incurred. Mrs. DiFruscia expressed concerns regarding sending such a letter retroactively; noting that she would support a policy moving forward.

Mr. LoChiatto seconded Mr. Hohenberger's motion.

Mr. McLeod indicated that lack of a policy is the issue; noting there is a long list of previous candidates who have not received a bill and thus the Town's de facto policy is not to bill. Further discussion ensued, and Mr. Hohenberger clarified that he does not want to "bill" the campaign, rather he wants to make it known to them what the costs were and that any contribution towards offsetting same would be appreciated.

Mr. LoChiatto withdrew his second and the motion failed for lack thereof.

The Chairman called for a five minute recess, and the meeting resumed at 9:15 PM.

After further, brief discussion, Mrs. DiFruscia moved and Mr. McLeod seconded to waive the overtime costs for Fire and Police for President Barack Obama's visit. Motion failed 2-2-1, with Mr. LoChiatto and Mr. Breton opposed and Mr. Hohenberger abstaining.

Further discussion ensued before Mrs. Case made a point of order; noting that the motion had been defeated and inquiring why the Board was still in discussion. Mr. Breton indicated that the Board needed to determine whether to waive the expense or bill. Discussion ensued.

Mr. LoChiatto then moved and Mr. Breton seconded to bill the Barack Obama for President Campaign in the amount of \$5,409.58. Motion failed, 2-3, with Mrs. DiFruscia, Mr. Hohenberger and Mr. McLeod opposed.

**DEREK MONSON – CPIA:** Mr. Monson, on behalf of the Cobbets Pond Improvement Association, extended thanks to the Board for their support of the CPIA's previous efforts to improve drainage on Hawley/Marblehead Roads by allowing the Highway Agent to assist them with basin repairs funded via grant monies. He then advised that the CPIA had applied for, and received, additional grant funds and would like to undertake similar work on Horseshoe Road encompassing 4-5 rain gardens and leaching basins. Mr. Monson requested that the Highway Agent again be authorized to assist them.

Discussion ensued regarding the scope of the project, the success of the work on Hawley Road, the current grant funds available in the amount of up to \$77K, and the estimated costs for Mr. McCartney's time. Mr. Sullivan indicated that the latter would be approximately \$1,200 in total for two men for three days.

After brief discussion, Mr. Hohenberger moved and Mr. McLeod seconded to approve the work as described by Mr. Monson. Passed unanimously.

**BID AWARDS – PROPANE/HEATING OIL:** Mr. Sullivan advised that the following bids had been received:

*Heating Oil:*

| <b>Vendor</b>                            | <b>Fixed \$/Gal</b> | <b>Index plus \$/Gal</b> | <b>Market with Cap Max \$/Gal</b> |
|--|---------------------|--------------------------|-----------------------------------|
| <i>Fred Fuller Oil, Hudson NH</i>        | \$3.425             | n/a                      | n/a                               |
| <i>Nashua Fuel, Nashua NH</i>            | \$3.270             | n/a                      | n/a                               |
| <i>B&amp;H Oil, Salem NH</i>             | \$3.249             | n/a                      | n/a                               |
| <i>Palmer Gas/Ermer Oil, Atkinson NH</i> | \$3.199             | n/a                      | n/a                               |

*Propane:*

| <b>Vendor</b>                               | <b>Fixed \$/Gal</b> | <b>Index plus \$/Gal</b> | <b>Market with Cap Max \$/Gal</b> |
|---|---------------------|--------------------------|-----------------------------------|
| <i>Eastern Propane &amp; Oil, Hudson NH</i> | \$1.79              | n/a                      | n/a                               |
| <i>Palmer Gas/Ermer Oil, Atkinson NH</i>    | \$1.89              | n/a                      | n/a                               |

Mr. Breton questioned whether service call costs were included and stated that, if not, these items should be re-bid to include those costs. Lengthy discussion ensued as to the removal of said costs from the bid specifications the previous year, School District costs, and possible issuance of a targeted re-bid.

Mr. Sullivan indicated that he could inquire of the School District and the bidders regarding their costs and service rates, respectively. It was the consensus of the Board that he do so.

**DISPOSITION OF REAL ESTATE POLICY:** Mr. Sullivan advised that the policy had been submitted to the Planning Board, Conservation Commission, Economic Development Committee, Tax Assessor, and Community Development for comment; and that only minor changes had been suggested. These included adding back in references to the Assessor/IT department, and adding the Economic Development Committee and Historic District Commission to the list of parties contacted for input before sale. Mr. Sullivan noted that the policy will now be formally posted for the required 14 day period.

Mrs. DiFruscia inquired whether Town Counsel had reviewed the policy, and Mr. Sullivan indicated he had in 1991; adding that these proposed amendments were more procedural changes. Mr. Breton suggested that it be forwarded to Attorney Campbell for comment. Mr. Sullivan will follow-up to do so.

Mr. Sullivan noted that the Planning Board had voted to recommend that the Selectmen form a sub-committee to review town-owned property consisting of representatives from the Planning Board, Conservation Commission, EDC, HDC, CPIA, Recreation Committee, and the Moeckel Pond Village District. He indicated that he did not support representatives from the MPVD or CPIA, as neither was a Town entity. Discussion ensued regarding the redundancy of such a committee and the Board took no action on the Planning Board's recommendation.

Mr. McLeod noted several amendments, including: addition of "registered voters" and citation of the appropriate RSA relative to the annual deadline in Section 1.

Mr. McLeod moved and Mr. Hohenberger seconded to post the proposed amendments and send to Town Counsel for review. Passed unanimously.

**REORGANIZATION OF MAINTENANCE DEPT:** Mr. Hohenberger requested that this matter be postponed, as he would prefer Mr. Barlow to be in attendance. Discussion ensued regarding the two distinct proposals regarding this reorganization, as well as whether Mr. Poulson should be in attendance for the discussion also.

Mrs. DiFruscia moved and Mr. McLeod seconded to postpone this discussion to the September 10<sup>th</sup> agenda. Passed unanimously.

**OLD/NEW BUSINESS:** Mr. McLeod indicated he would like to take a moment to publicly commend the Chiefs for their efforts on August 18; noting that, all politics aside, they should be applauded for what they accomplished that day.

*Mr. Sullivan* advised that Wednesday at 9AM the court will be reviewing the Town's request for a declaratory judgment relative to articles 18 and 19, and that he will be in attendance.

*Mr. Sullivan* advised that the as-built for Griffin Park is now available, and that staff is working to implement the Board's most recent vote regarding speed bumps/lines. To that end, he is meeting with all parties the following day. Discussion ensued regarding the bio-detention pond and whether it is functioning properly, as well as ongoing concerns from Mr. Johnson relative to run-off.

Mr. Sullivan clarified that he had spoken to Mr. Johnson and that the issue is that the bio-detention area needs to be re-sloped. Also, the water is supposed to be retained in the pond; percolating down to the bio-detention area. Discussion ensued regarding looking into lava rings for the water; and Mr. Sullivan indicated he will follow-up.

**NON-PUBLIC SESSION:** Mr. Hohenberger moved and Mr. McLeod seconded to enter into nonpublic session in accordance with RSA 91-A:3 II a. Roll call vote all "yes". The topic of discussion was personnel and the Board and Mr. Sullivan were in attendance.

Mr. Sullivan updated the board a personnel matter. No decisions were made.

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

Meeting was adjourned at 10:30 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant.

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