

BOARD OF SELECTMEN
Minutes of November 19, 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, and then introduced Superintendent of Schools Dr. Henry LaBranche, School Board Chairman Dr. Bruce Anderson, and School Board members Michelle Farrell, Jerome Rekart, Stephanie Wimmer, and Mike Joanis.

ANNOUNCEMENTS: Josh Hebert, Captain of Team 3467 Windham Windup Robotics announced that the team will be doing a fundraiser at the upcoming, 12/8 Monarchs game; inclusive of robotics presentations on ice between periods. He noted that tickets are available for \$25; with the majority of the profits being returned to the team. Brief discussion ensued.

Mr. Max Puyanic of Convenient MD approached to introduce himself; noting the good fortune of being able to locate in Windham and the positive interactions with Town staff and Boards thus far. He went on to give a brief description of services to be offered, including x-rays and labs, and noting that there was no particular hospital affiliation, and the facility will be open 9am to 9 pm seven days per week. Discussion ensued regarding when one would visit and urgent care facility versus primary or emergency room care, and that Convenient MD is happy to partner with the Town whenever possible, ie: free flu shots.

PUBLIC HEARING – ROAD ACCEPTANCES: *Governor Dinsmore Road:* Community Development Director Laura Scott explained that all work has been completed, all documents have been executed and the deed is in hand. Mrs. DiFruscia moved and Mr. LoChiatto seconded to accept Governor Dinsmore Road from station 0+00 to 18+00 as a town road. Passed unanimously.

Mr. Hohenberger then moved and Mr. LoChiatto seconded to post this road at 25 MPH. Mr. McLeod inquired of the Police Chief whether a traffic study had been conducted on same, and the Chief replied in the negative. Discussion ensued regarding this portion of the road and relevant Statutes; with input from resident Bob Coole, Chief Lewis, and Prosecutor Heather Newell. Ms. Newell clarified the statute requirements, and cited the legal obligation she has to not prosecute unenforceable items. Further discussion ensued regarding standards/definitions for urban versus rural roads. Motion passed 3-2, with Mr. McLeod and Mrs. DiFruscia opposed citing statutory concerns.

Burnham Road: Ms. Scott again explained that all work has been completed and all parties have signed off on the acceptance. Mr. Hohenberger moved and Mr. LoChiatto seconded to accept Burnham Road from station 0+0 to 24+00. Passed unanimously.

Mr. Hohenberger then moved and Mr. LoChiatto seconded to post Burnham Road as 25 MPH. Passed 3-2, with Mr. McLeod and Mrs. DiFruscia opposed.

Mrs. DiFruscia moved and Mr. McLeod seconded to release the cash guarantee in the amount of \$2,500 plus interest for Governor Dinsmore Road to Mr. Sam Nassar. Passed unanimously.

Mr. LoChiatto moved and Mrs. DiFruscia seconded to release the letter of credit in the amount of \$24,150 for Burnham Road. Passed unanimously.

WORKSHOP – SCHOOL BOARD: The Board then met in workshop session with the School Board, highlights of which included:

Old Police Station/Pre-school:

- If the building is no longer utilized for school services, by lease it reverts back to Town ownership.
- The preschool was relocated due to the condition of the building, both structural and cosmetic; estimated cost for repairs is \$135,000.

- The property abuts 20 acres of Town owned land, and is assessed at \$548,000 in total; with the building valued at \$252,000.
- Possible use of the building as a community center was discussed, as was the zoning of the property and the Capital Improvement program.

Mr. LoChiatto offered his services to evaluate the estimated repair costs; and it was the consensus that the District be allowed to continue to use the building for storage, that an appraisal/inspection be conducted, and that the property be looked at in connection with the abutting Town land.

Gage Land Swap:

- Dr. Anderson noted that, as it pertains to the still outstanding parcel swap agreed to in 2006, a survey issue exists in that the High School was constructed over the parcel line. In 2006, the Town transferred 7.885 acres to the School District, and was to receive 15 acres in exchange.
- The District cannot transfer the intended 15 acres due to the survey issue; nor any land without a warrant article.
- Discussion of alternative acreage was discussed at length, as was the intent of the voters in 2006, and field issues at the school.

Mr. Hohenberger moved and Mr. McLeod seconded to accept from the School District the promise of transfer of 32 acres located behind the Middle School to the Town; subject to a survey. Discussion ensued regarding the need for Conservation review and possible future designation of same.

Mr. Hohenberger amended his motion and Mr. McLeod his second to accept this exchange conceptually. Passed unanimously.

Ms. Farrell then moved and Mr. Joanis seconded that the District move forward to complete the transfer of 32 acres to the Town. Discussion ensued, and Mr. Joanis clarified that he supported the concept of the exchange, but would like to see the survey before committing to the 32 acres behind the school. Mr. McLeod suggested the motion be made contingent upon review of the land in question and the adjoining acreage.

Further discussion ensued regarding the possible need for expansion of the Middle School, and Ms. Farrell amended her motion to proceed with the development of a land swap contingent upon a survey. Ms. Wimmer seconded and the motion passed unanimously. Further brief discussion ensued regarding the old police station, with input from Mr. Bob Coole, regarding its potential to be converted to a residential home and sold as such.

The Chair called for a five minute recess.

MR. DICK MESSINA – MANOR MOTEL: Prior to the commencement of this discussion, Mr. McLeod and Mrs. DiFruscia recused themselves from the Board due to a professional conflict regarding this matter.

Mr. Sullivan explained that Mr. Messina was present to discuss what he perceived as a lack of Police support relative to enforcement of the Innkeepers Law regarding eviction. Mr. Sullivan explained that since 2008 the Department has utilized an 8-10 prong criteria to determine whether cases constitute an eviction situation and whether they can assist; adding that since this criteria was implemented there have been no issues until now. He went on to note that Mr. Messina was present regarding one particular tenant, who had received assistance from the Town and then failed to continue to pay; adding that the Police had investigated and determined that the individual in question was a tenant and therefore Mr. Messina was required to evict said person. Mr. Sullivan explained that Mr. Messina had done so, but then sought \$1,500 in reimbursement from the Town for related expenses; which had been denied. He noted that staff had met with Mr. Messina, however no resolution had resulted thus the matter was before the Board.

Mr. Messina approached, giving a brief history of his time as owner of the Motel and interactions with the Town regarding same; noting that it had been successful until the last 5-7 years. He indicated that issues now existed regarding both the response by the Police and the differences between a guest and a tenant. Mr.

Messina indicated that he has tried hard to work with the Town, however, he feels he has been stonewalled and that the Police do not seem to want to be involved in issues at the Motel. Discussion ensued regarding the several meetings Mr. Messina has had with Town staff since last appearing before the Board.

Mr. Messina noted that the Town and he had expended much money in development of the criteria; however that information has never been shared with him and his requests for same have been unanswered by both Mr. Sullivan and Chief Lewis. Mr. Sullivan replied that Mr. Messina does have the criteria, however, his issue is centered on the fact that staff could not provide him with a point by point answer regarding this particular tenant. He clarified that the criteria is not used as such by the officers; rather it is used to make an overall assessment and, in this case, it was determined that the individual was a tenant.

Prosecutor Newell noted that there are fourteen (14) criteria that the officer will consider as a guideline, which are not all inclusive. Mr. Messina noted he wanted an answer as to which criteria applied in the case in question, and Chief Lewis indicated that he had advised Mr. Messina that said information was not available; reiterating Ms. Newell's explanation that the criteria is used a guideline. Chief Lewis then noted that he took offense to Mr. Messina's claims of "no response" by the Department; citing response to 332 calls to the Motel this year resulting in 27 arrests. Discussion ensued.

Mr. Hohenberger sought clarification that Mr. Messina was seeking an answer regarding which specific criteria the individual met that led the officers to determine he/she was a tenant, and Mr. Messina replied in the affirmative. Mr. Sullivan reiterated that information is not available, as point by point transcripts are not retained; adding that the criteria is taken in its totality, as opposed to a yes/no record. Further discussion ensued.

Ms. Newell sought clarification that the tenant in question had been evicted by the Court; and Mr. Messina replied in the affirmative. Ms. Newell pointed out that, given that, the individual in question was indeed a tenant. Mr. Messina disagreed, and a discussion ensued regarding the criteria, the number of client issues since implementation in 2008, and enforcement.

Town Counsel Bernard Campbell approached noting that he believed the Town was well served in development of the criteria, and that he did not recommend a change in current protocol. He went on to express concerns regarding the Police Department's involvement; noting they should always err on the side of due process by having the owner go through the eviction process. Lengthy discussion ensued regarding whether the Board should amend the protocol to require retention of documentation regarding the evaluation, and why this particular tenant differed from the others in Mr. Messina's mind. Mr. Messina replied that the individual in question claimed they would only be staying a couple of weeks, however the Town had provided assistance and the stay had ended up being longer. Further discussion ensued, and Ms. Newell clarified that the reason the change in evaluation had occurred was in response to a court order in 2006; adding that the Police Department investigates every such case and, in fact, investigates Mr. Messina's concerns in even greater depth.

Mr. Messina noted that someone from the Motel had called the department and had been told that officers will not respond to the Motel. Chief Lewis requested that Mr. Messina provide the exact date and time of the occurrence so he could verify this claim, and Mr. Messina replied that he was not going to share that information at that time. Discussion ensued as to the Motel's alarm system, which Mr. Messina indicated was tied to the Department however officers do not respond. Captain Caron asked that the Board not respond to such claims by Mr. Messina, as the latter had never made such a complaint to the Department. Discussion ensued regarding the department's response, and Mr. LoChiatto noted that all calls to the Department are recorded and, absent Mr. Messina's providing the date and time as requested, it was merely an allegation.

Lengthy discussion ensued, however, no decisions were made. Mr. Breton suggested that in the future Mr. Messina submit any complaints regarding the Town or Police in writing to the Board. Mr. Messina indicated he would do so.

Mr. McLeod and Mrs. DiFruscia resumed their seats with the Board.

BUDGET KICK OFF PRESENTATION: Mr. Sullivan reviewed a powerpoint presentation with the Board; noting that thanks to the efforts of the Department Heads, the proposed 2013 budget represents an increase of only 2.728%. This encompasses all proposed items including those in the Capital Improvement Plan. Mr. Sullivan indicated that the first budget meetings will take place next week, on Monday and Thursday evenings; and it is anticipated the review will be completed by Christmas.

TOWN WARRANT ARTICLE: Mr. LoChiatto recused himself from this portion of the meeting. Ms. Scott approached explaining that there was a need to draft a warrant article for the acceptance of 2.73 acres of land located off of Bear Hill Road. She explained that this parcel was supposed to have been merged with the adjoining Town owned parcel in 2007, and that although the property line had already been moved a deed was never filed nor was it accepted by Town meeting. After a brief discussion, Mr. McLeod moved and Mrs. DiFruscia seconded that a warrant article be drafted for the 2013 Town Meeting to accept a donation of 2.73 acres of land to be designated as Conservation. Passed 4-0.

Mr. LoChiatto resumed his seat with the Board.

CONTENT MANAGEMENT SYSTEM: Mr. Sullivan explained that, as part of the recently completed IT assessment, a recommendation had been made that the Town move to a content management system for the official website; adding that the Searles facility has also been requesting development of a website. Mr. Sullivan noted that Mr. Scott Baetz, of AdminInternet, has offered to redesign the Town website, and create a site for the Searles and possibly the Nesmith Library for about 1/3 the cost of what bids would be anticipated to be submitted for. He indicated there is already a template system in place by way of the Economic Development site, and that funds are available to complete this project via the Administrative, Searles, and Library budgets.

Discussion ensued as to the need to waive the bid process, and the approximately \$4000 in costs annually to maintain the EDC site.

Mr. LoChiatto moved and Mr. McLeod seconded to support proceeding pending a final number for annual maintenance costs. Passed unanimously.

BID AWARD/AUDIT: Mrs. Call noted that, after review of the cost proposals as submitted, the recommendation of the review committee was that the Town change auditors to Plodzik and Sanderson; despite not being the low bidder. Discussion ensued regarding the hours bid, and the Board's previous discussion regarding the technical proposals submitted. Mrs. Call noted that she would support having a new set of eyes review the Town's finances; noting that the end result/product would be the same.

Mr. McLeod expressed concerns with awarding the bid to the higher bidder; in that a problem did not exist with the current firm and the end result would be the same. Discussion ensued regarding the similarity of the final product being based upon GASB standards, the differences in approach between the two firms, and the hours as bid.

Mr. McLeod moved and Mr. Hohenberger seconded to award the bid for the independent audit to the low bidder, Vachon Clukay. Motion failed 2-3, with Mr. LoChiatto, Mrs. DiFruscia and Mr. Breton opposed.

Mr. LoChiatto then moved and Mrs. DiFruscia seconded to award the bid to Plodzik and Sanderson for the years 2012, 13, and 14 as bid. Passed 3-2, with Mr. McLeod and Mr. Hohenberger opposed.

OLD/NEW BUSINESS: Ms. Scott advised that the Town's well and septic regulations had not been updated in some time, and that in light of State updates and technological advances several amendments were being proposed. She asked that the Board review same for future discussion at a workshop session. Discussion ensued as to how the Town's regulations differ from the State, and Ms. Scott clarified that the Town's were more restrictive. Mr. Hohenberger noted that was intentional, particularly to protect the pond.

Lengthy discussion ensued, and it was the consensus of the Board that this be scheduled for discussion after the start of the new year; and that Ms. Scott arrange to invite experts and/or developers to discuss the amendments, technological advances, DES regulations, etc.

ANNOUNCEMENTS CONTINUED: Ms. Scott advised that Massage Chi will be hosting an open house the following Saturday from 4-8PM at 63 Range Road. She also noted that, on December 1st, the Holiday Shopping Extravaganza will take place at the High School from 9A to 2P.

CORRESPONDENCE: Ms. Call noted that two trenching permit applications to install hydrants had been received from Pennichuck Water Works, for 9 Hidden Valley Road and 17 Jenny's Hill Road; for which a \$10,000 bond will be put into place.

Mr. Hohenberger moved and Mr. LoChiatto seconded to approve these permits as requested. Passed unanimously.

OLD/NEW BUSINESS: Mr. Sullivan noted that the Christmas holiday falls on a Tuesday this year and that, in the past in such cases, the Board had authorized closure on Christmas eve via staff use of earned time. Mr. Sullivan explained that all employees must agree to utilize their time in order for the closure to occur.

Mrs. DiFruscia moved and Mr. Hohenberger seconded to support closing of Town offices on said Monday as explained. Passed unanimously.

Discussion ensued regarding the Transfer Station hours for Thanksgiving, and it was clarified that they will be closed both Thursday and Friday as are all other Town offices. Further discussion ensued regarding the traffic counter data, which will be discussed as part of the budget hearing on 12/6.

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

The Board, Mr. Sullivan, Conservation members Wayne Morris, Lisa Ferrisi and Jim Finn, and Ms. Devlin were in attendance in the first session.

A potential land purchase via grant funds was discussed. Mr. Hohenberger moved and Mrs. DiFruscia seconded to allow the Commission to submit a letter/plan to the State as discussed. Passed 3-2, with Mr. Breton and Mr. LoChiatto opposed.

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

Mr. Hohenberger moved and Mr. LoChiatto seconded to continue Mr. Paul Gosselin's appointment to the Economic Development Committee to 2015. Passed unanimously.

Mr. Sullivan updated the Board on personnel matter relative to a disability claim. It was the consensus of the Board that Mr. Sullivan proceed as described.

Mr. Sullivan discussed a hardship abatement request with the Board. Mrs. DiFruscia moved and Mr. Hohenberger seconded to not waive the fees as requested. Passed 4-0-1 with Mr. Breton abstaining.

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

Meeting adjourned at 11:20 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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