

**BOARD OF SELECTMEN**  
**Minutes of January 28, 2013**

**MEMBERS PRESENT:** Vice Chairman Ross McLeod 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 Bruce Breton was excused. Mr. McLeod opened with the Pledge of Allegiance, then expressed hope that Chairman Breton's health improves.

**ANNOUNCEMENTS:** Ms. Kelley McLaughlin, Cable Coordinator, presented a "Program Recognition Award" to Director Patricia Mack for her work on "Time for Animals".

Ms. McLaughlin then presented a "Producer Recognition Award" to Mary Griffin for her work on "Windham Watch", the longest running cable program in Windham.

Ms. McLaughlin then presented a special acknowledgement gift to Tom Case for his continued volunteerism to the studio. Brief discussion ensued regarding Mr. Case's efforts over the years.

**LIAISON REPORTS:** None.

**CORRESPONDENCE:** Bond Release/Lake View Farms. Mrs. DiFruscia moved and Mr. Hohenberger seconded to release the bond in the amount of \$57,600; retaining zero. Passed 4-0.

Bond Release/Medicus: Mrs. DiFruscia moved and Mr. Hohenberger seconded to release the bond in the amount of \$11,567.60; retaining zero. Passed 4-0.

**MINUTES:** None.

*Mr. McLeod* noted that the Community Development Department/JLMC agenda items had been postponed.

**POLICE UNION GRIEVANCE:** Mr. McLeod noted that this was a continuation of the December 13th hearing; which Mr. Sullivan had been excused from. He inquired whether Mr. Sullivan had anything to add to the information presented at that time. Mr. Sullivan noted that this matter is not an issue regarding officer performance; rather it is related to interpretation of the union contract; adding he would like to respond to some of the points made by Officer Shane Mirasola, Union Representative, at the previous discussion.

*Mr. McLeod* requested that Mr. Sullivan defer his comments, momentarily, to allow for completion of the Cable presentations.

Ms. McLaughlin presented an appreciation award to Barbara Coish, also for her ongoing volunteer efforts on behalf of the studio.

**GRIEVANCE, CONTINUED:** Mr. Sullivan went on to note that this grievance is relative to the lack of a contract versus the status quo doctrine; adding that the Police Union has not had a contract since 4/1/2011. Mr. Sullivan indicated that, given that, Officer van Hirtum had not received a step increase and, further, Mr. Sullivan had counseled the Chief to deny the subsequent grievance based upon the status quo doctrine. He then went on to address the issue of whether he had "changed" the offer of employment letter as claimed by the Union; clarifying that historically one of two letters is utilized for new hires and paraphrasing the language of same.

Mr. Sullivan noted that when Officer Dawe moved from Dispatcher to Officer, he had utilized the same letter; which is a reflection of the contract language that after one (1) year the employee will move to a specific union rate. Mr. Sullivan indicated he believes however, that based upon current case law and arbitration, said increase from non-union to union pay is no different than any other step; adding that there

are least five (5) officers who have received no increases due to the lack of a contract and, since 2011, seven (7) have been hired and given similar letters outside of a contract. Discussion ensued regarding the times the staff has been without a contract.

Mrs. DiFruscia inquired whether, in 2006/7 when there was also no contract, increases had been given. Mr. Sullivan replied in the negative, adding that per the Milton case, which is specific to step raises, the Town has historically taken the position that it is at their discretion whether to grant raises. Mrs. DiFruscia then inquired whether any grievances were filed during the 2006/7 contract hiatus and/or whether any were related to interpretation of the Milton case. Mr. Sullivan replied that there were no grievances filed for the 2006/7 period, however, Officer Clark had filed one in 2012 which had gone to arbitration before being withdrawn by the Union.

Mr. Sullivan then noted there are other case references which deal with this issue relative to the towns of Hudson and Laconia, and Mr. McLeod indicated that those pertain to past practice which is not the issue in this case. Discussion ensued regarding the contract, the Evergreen Clause, and the lack of a previous challenge relative to interpretation of the Milton case. Mr. Sullivan reiterated that he did not believe this to be related to the offer letter; adding that Officers Mirasola and Kinyanjui had also not received steps, nor had Officer O'Loughlin received his second increase.

Officer Shane Mirasola, Union representative, approached seeking clarification of the offer letter; inquiring whether the same template language was used for all. Mr. Sullivan noted that one of two versions is used, and Officer Mirasola inquired why there was not a figure stated in Officer Dawe's offer letter for the dispatch position. Mr. Sullivan indicated this was because it was based upon a scale, and a discussion ensued as to whether it was intended to be misleading; which Mr. Sullivan denied.

Officer Mirasola indicated that Officer Dawe had been hired as a probationary employee and, after one year, had entered the union from which he is receiving all other benefits and paying dues. He indicated it is the Union's position that moving to the union pay scale is not a step raise and therefore Milton does not apply and the Town must grant the increase. Mr. Sullivan indicated he understood the Union's argument, and that there is obviously a difference in interpretation. He then noted he would ask that the Board confer with Attorney Mark Broth during their deliberation. Brief discussion ensued.

Attorney Broth approached noting that any increase from probation to union status is based upon a collective bargaining agreement; so the question at hand is whether it continues without one in place or if it is suspended. He went on to note that the Superior Court has addressed specifically what continues and what does not, and determined that steps are frozen in such cases; citing the Alton and Milton cases. Attorney Broth noted this same issue had been litigated many times, citing Laconia as an example, and the Public Labor and Relations Board had found that the obligation to grant a step raise was not binding due to the need for new funding from the public. Discussion ensued.

Mr. Hohenberger then moved and Mr. LoChiatto seconded to uphold the denial of the grievance.

A lengthy discussion ensued. Mrs. DiFruscia indicated it was unfortunate there was no contract in place and all steps were frozen, adding it was certainly no reflection on the officers' service. She went on to note that she did not believe the intent was to mislead anyone, and it was a known fact that during the contract hiatus steps would be frozen. Mrs. DiFruscia indicated that she believed based on past practice, case law, and the lack of a prior challenge to the Town's definition of status quo that the denial should be upheld. Mr. LoChiatto echoed Mrs. DiFruscia's comments regarding service, and concurred with her assessment.

Mr. McLeod disagreed, opining that the Union's position should be upheld and adding that he had spent much time researching this matter. He went on to cite several factors in his determination, among them: the irrelevance of the Milton case; that the PLRB initially felt that the steps should be paid before the Court overruled their decision, and; that warrant article language regarding "cost items" encompasses things such as clothing allowance, training, etc. and voter approval of same does not mean the expense for

the ensuing year is known. Mr. McLeod indicated he took issue with the Town selectively choosing to isolate/deny step increases from other benefits being continued as status quo; adding that he felt van Hirtum's letter represented an express promise to pay. Mr. Sullivan disagreed, and further discussion ensued.

Motion passed 3-1, with Mr. McLeod opposed.

*Chief Lewis* then advised the Board that, after further reviewing the merits of Officer Dzierlatka's grievance as previously discussed, he would recommend that the Board offer a settlement in the amount of \$158.75; adding that while he would continue to contest the grievance on principal, to do so is not a good business choice. After brief discussion, Mr. Hohenberger moved and Mrs. DiFruscia seconded to settle this matter in the amount of \$158.75, based solely on the Chief's recommendation. Passed 4-0.

**BID OPENING/TOWN PROPERTY:** Mr. Sullivan opened the following, sealed bids, received for parcels 16P-501, 502, and 1004 located on Third and Fourth streets; advising the Board that they are not required to award the purchase to any bidder:

*Dean/Beaudette/Root/McCain: \$5,000 in total for all three (3) parcels*

*Mike Callahan: 16P-501 \$1,206; 16P-501 \$1,206; 16P-1004 \$12,601*

*Shawn Ferris: \$5,025 in total for all three (3) parcels*

*16P-501 and 502 \$2,025*

*16P-501 \$1,025*

*16P-502 \$1,025*

*16P-1004 \$5,020*

Mr. Hohenberger sought clarification as to whether there had been a requirement to purchase all three (3) lots together, and Mr. Sullivan replied in the negative. Discussion ensued as to the size of the lots versus usage of the property for a well and/or septic system, and the highest combined bid.

Mr. LoChiato moved and Mrs. DiFruscia seconded to award the bid to purchase lots 16P-501, 502, and 1004 to Mike Callahan for his total bid amount of \$15,113 subject to the bid notice requirements and future deed restrictions.

Mr. Dennis Root approached indicating he was unsure why anyone else would bid on these parcels, as they are no use to anyone other than an abutter; however, it seemed with the deed restrictions they would stay undeveloped. Mr. Sullivan noted that the question had been raised during the process as to whether a camper could be placed on the lots and resided in, however, that is prohibited by Town code/ordinance.

Mr. Ferris approached and asked that the Board consider that the abutting property located at 1 Second Street currently has a failed septic system; the owner of which was one of the bidders. Discussion ensued, and Mr. Sullivan clarified that he had spoken to Mr. Beaudette that day who had advised him that a holding tank is installed which is working properly.

Motion passed 4-0.

**CONSERVATION COMMISSION:** Mr. Sullivan advised that this matter had previously been discussed in non-public session, and the Board had not supported the Commission moving forward. Mrs. DiFruscia moved and Mr. Hohenberger seconded to reconsider the previous vote of the Board. Passed 3-1, with Mr. LoChiato opposed.

Mr. Wayne Morris, Conservation Commission, approached and explained that the parcel in question, 7B-10, is owned by the State of NH and is located off of the discontinued portion of Governor Dinsmore Road. He noted that this parcel abuts the rail trail and that the adjacent lot does have the potential to be subdivided. Mr. Morris indicated that, if the Commission were to purchase this parcel, there was a

potential to develop an accessible trail to the Governor Dinsmore conservation land. He then reviewed several maps/photographs of the area, depicting the historic stone walls and overall layout. Discussion ensued as to the availability of room in the existing right of way to access the Governor Dinsmore land, the unlikelihood of the abutting parcel being developed, and the stone walls.

Mrs. DiFruscia indicated she had walked the area with Mr. Morris, and felt it would be an asset to the town; adding that the walls are exquisite and the property would offer a nice place picnic/rest while walking the rail bed. Discussion ensued regarding the value of the property to others, that the State was approached directly regarding the purchase, the potential for construction in the area, and the DOT's normal process regarding sale of property. Mr. Sullivan indicated that the Town will need to advise the State fairly quickly as to their decision.

Mrs. DiFruscia moved and Mr. Hohenberger seconded to authorize the Conservation Commission to move forward to post a public hearing to discuss the potential purchase of lot 7B-10. Passed 3-1, with Mr. LoChiatto opposed.

**OLD/NEW BUSINESS:** Mr. Sullivan advised that he and Mr. LoChiatto had met to compile a revised proposal regarding the re-organization of the Maintenance Department; which would be presented to the Board the following week.

*Mr. Sullivan* inquired whether the Board wished to begin Strategic Planning discussions with the Department heads now, or wait until subsequent to the election in March. After a brief discussion, it was the consensus that these discussions begin now.

*Mr. Sullivan* advised he had received an email from a resident with an offer to donate seven (7) laptops with related software to the Town. Discussion ensued regarding their possible acceptance on a trial basis, and the ability to redistribute should the Boards not wish to utilize them. Mr. Hohenberger indicated he would like to go on record that he believed, in three years, replacements for these will be proposed in the budget.

After further discussion, it was the consensus of the Board that staff move forward to accept these donated items.

Mrs. DiFruscia motioned and Mr. McLeod seconded to adjourn. Passed 4-0.

Meeting adjourned at 8:45 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.*