

BOARD OF SELECTMEN
Minutes of June 12, 2006

MEMBERS PRESENT: Chairman Galen Stearns called the meeting to order at 7:05 PM. Selectmen Roger Hohenberger and Margaret Crisler were present. Selectmen Alan Carpenter and Dennis Senibaldi were delayed, as was Town Administrator David Sullivan. Mr. Stearns read the agenda into the record, followed by the Pledge of Allegiance.

ANNOUNCEMENTS: None.

MINUTES: In reviewing the minutes of June 5th, Mr. Stearns noted that the date of the TAN completion needed amendment to 12/29/06, rather than 12/31/06. Mrs. Crisler requested these same minutes be amended, under Liaison Reports, to clarify that the Planning Board had voted to request that the Board of Selectmen seek input from the Highway Safety Committee, Conservation Commission, and others, relative to the High School access road.

Mrs. Crisler then moved and Mr. Hohenberger seconded to approve the minutes of June 5th as amended. Passed 3-0.

CORRESPONDENCE: Notice received from the Town of Merrimack relative to installation of a cellular tower. Mr. Turner explained that the law requires notification to surrounding towns within so many miles. Mr. Stearns questioned whether notification is paid for by the developer, and Mr. Turner replied in the affirmative.

Road Bond Increase/Governor Dinsmore Road/Searles Road: Mr. Turner explained that a portion of this bond was released several years ago, after which the developer went bankrupt and currently cannot be located. He further explained that the Planning Board had recently voted to rescind the previous vote to release the funds, and have them added back into the bond.

After a brief discussion, Mr. Hohenberger moved and Mrs. Crisler seconded to add the amount of \$17,773 to the bond amount for a total of \$45,308 for Windham NH Development Company, LLC. Passed 3-0.

Letter received from Mr. Turner relative to draft amendments to the Septic Ordinance as follows: (1) to add a new section 103.7 regarding failed septic systems, which will mimic State DES requirements, and; (2) to reinstate the previously removed level of 3' of satisfactory material above the high water table with specific considerations. A discussion ensued regarding why the Board had previously removed the 3' reference, and it was the consensus of the Board to review the previous meeting for clarification. Staff will follow-up to obtain copies of that meeting as requested.

Mr. Senibaldi arrived at 7:10 P.M.

Mr. Hohenberger also requested that Mr. Turner draft up clarification for the Board to review as to what information will be required from the applicant to ensure that 3' is suitable. Mr. Turner indicated that specific DES regulations could be referenced in the paragraph, and the Board indicated they would like copies of those regulations prior to a public hearing. A brief discussion then ensued regarding "replacement in kind" of systems.

Mr. Hohenberger moved and Mrs. Crisler seconded to move the proposed amendments to a public hearing. Passed 4-0.

Mrs. Crisler requested that the Conservation Commission be asked for comment, and Mr. Turner will follow-up to provide copies to them of the proposed amendments.

Letter received from the NH Department of Transportation, updating the Board on their construction activity. A brief discussion ensued, and the Board requested that this notice be placed on the website and in the Windham Independent, as well.

OLD BUSINESS: Mrs. Crisler inquired whether an update had been received from the mosquito control company. Mr. Turner indicated that representatives are still working around Town, however no current update had been received.

Mr. Stearns noted that the replacement sand at the beach had once again washed into the pond. Mr. Senibaldi noted that Mrs. Haas is meeting with representatives of the DES on Wednesday to discuss the Town's options. A discussion ensued regarding the source of the run-off causing the washout, and whether or not to approach the State to repair the area, as these problems had not existed prior to the DOT's use of the parking lot as a construction staging area.

BOARD OF HEALTH: Mrs. Crisler moved and Mr. Hohenberger seconded to enter into the Board of Health. Passed 4-0.

Mr. Stearns read the public hearing notice into the record, and noted that the applicant had withdrawn the requests for waiver for 8 Shamrock and 17 Crestwood roads.

30 Emerson Road: Mr. Turner presented photographs and a map of the area, and noted that the property currently consists of a single-family, 2-bedroom home. The applicant is proposing to replace the septic system, at a level of 3' above the high water mark, which requires a waiver from the Board.

Mr. Joe Maynard, Benchmark Engineering, approached representing the property owners. He noted that the current system is in failure, and the proposed leach field will lie 3' above the water table. Mr. Turner noted that the system will be located in the rear of the home, and is an Enviro-Septic, which is approved for installation at 3' by the State of NH.

Mr. Stearns inquired about the location of the well on the adjoining lot, and Mr. Maynard noted that the lot in question is currently vacant, and that all area wells are outside the required 75' radius. He further noted that the property is currently seasonal, and that the owners ultimately would like to convert it for year-round use.

A discussion ensued regarding the State versus Town requirements for conversion, and the Town's Zoning ordinances.

Mrs. Crisler inquired why Mr. Maynard could not locate the system higher on the property, and Mr. Maynard noted that the location suggested by Mrs. Crisler would impede an existing right to pass and re-pass over that area, and would require the removal of several large trees. A discussion ensued regarding possible alternate locations, grade issues, and impediments. Mr. Hohenberger indicated he would prefer a 4' level be adhered to.

Mr. Andrew Desrosiers, property owner, approached to point out the standard for this particular system is 3'. Mr. Hohenberger clarified that he felt more was better when it came to filtering waste, and that while he understands the wish to preserve the yard and avoid an unsightly hump from the field, it was important to protect the Pond.

Mr. Senibaldi inquired whether a retaining wall could be built to allow for 4' of clearance, to which Mr. Maynard replied he had never successfully obtained a waiver from the State for such a wall.

A discussion then ensued regarding the existing dry well on the property, which is in the water table and was installed in the 1960's.

Mrs. Crisler pointed out that the property could be converted per Town regulations, that the Board has approved 3' in the past, and that data has shown it to be sufficient.

After further, brief discussion regarding soils in the area, Mrs. Crisler moved and Mr. Senibaldi seconded to grant a waiver from Section 103.1 of the Waste Disposal regulations that require 4', and allow for 3' of material in accordance with the plan submitted and dated February 12, 2006 for 30 Emerson Road.

Mr. Hohenberger requested Mrs. Crisler amend her motion to include the name of the septic system. Mrs. Crisler amended her motion, and Mr. Senibaldi his second, that the system installed be an Enviro-Septic system manufactured by Presby Environmental.

Mr. Hohenberger reiterated his opposition, noting that if 4' is not necessary than that's all right, but the ordinance should then be revised. He did not feel aesthetics were a valid reason for a waiver.

The motion passed 4-1, with Mr. Hohenberger opposed.

2 Barker Road: Mr. Turner advised the Board that no current plans were available for this property, and that the owner had hired a private company which had done test pits that showed the water table to be at a level of 24". Mr. Turner noted the owner planned to replace the system in kind, and had filed a statement that no area wells were within the 75' radius, the property was not impacted by the Shoreland Protection Act, and that the bottom of the field will be 24' above the high water mark.

Mr. Ray Dion, Felix Septic, approached representing the owners. He noted that he was endeavoring to adhere to State requirements to replace the system in kind. He noted that no plot plan was on file for the property, but a test pit dug to 48" had been dug and the bed bottom reached at 24" inches. Mr. Hohenberger noted that the Board typically requires more extensive information from applicants, and that he did not feel that enough information was available to make a decision. Mr. Dion reiterated that no other information was available, and that this is simply an in-kind replacement of a pipe and stone system.

Mr. Carpenter arrived at 8:00 PM.

A lengthy discussion ensued regarding the size of the system, elevation, materials, changes in regulations over the years, and why a new system was not being proposed. Mr. Turner suggested the Board table the hearing to allow the applicant to ascertain if 4' can be obtained, in which case a waiver would not be necessary.

Mrs. Crisler moved and Mr. Senibaldi seconded to continue the public hearing for 2 Barker Road until June 19th at 8:00 P.M. Passed unanimously.

Mrs. Crisler then moved and Mr. Hohenberger seconded to exit the Board of Health. Passed unanimously.

Mr. Sullivan arrived at 8:20 P.M.

PUBLIC HEARING/PINE HILL ROAD: Mr. Hohenberger moved and Mr. Carpenter seconded to continue this matter to July 24th at 7:30 P.M. Passed unanimously. Mr. Stearns explained this continuation was at the applicant's request.

ADDITIONAL WARRANT ARTICLES: Mr. Mike Salvo, Bissell Camp Road, approached to review a requested article to discontinue a portion of Bissell Camp Road. He noted that the proposal entails little impacts to the area, and the portion abuts his property, Conservation land, Flatrock Road, and the proposed Plaza. He noted the road is currently overgrown and that,

as part of the Flatrock Road development, the other old section of Bissell Camp had been improved to a fire lane.

Mrs. Crisler noted she could see no benefit to keeping this portion open, as good connectivity existed in the area. Mr. Stearns read the proposed article into the record as follows:

“To see if the Town will vote to discontinue that portion of Bissell Camp Road commencing at a point along Route 28 and running along the borders of Tax Maps 3-B-360, 3-B-350, 3-B-352, 3-B-262, 3-B-261, 3-B-260, 3-B-250, 3-B-200, and ending at a point near Flat Rock Road at the end of lot 3-B-200. Said section of road was discontinued “subject to gates and bars” at the Town Meeting held on March 16, 1979 (Article 34)”

Mr. Sullivan advised the Board that, if this is placed on the Warrant, abutters will be notified accordingly.

After further brief discussion, Mr. Hohenberger moved and Mrs. Crisler seconded to bring this article, as written after checking with counsel, forward to the Deliberative Session. Passed unanimously.

Mr. Stearns recused himself from the Board to join the School Board for this discussion, and Mr. Carpenter assumed the Chair.

Mr. Bruce Anderson, Chairman of the School Board, approached to update the Board on the lot line issue between the High School site and the Gage Lands. He noted that the third survey, contracted with Benchmark Surveying, had agreed with the previous Logan survey, and the lot line passes through a corner of the proposed building.

Attorney Greg Michael, Wiggin & Nourie, approached as special counsel for the School District, and presented a comparison map of the three surveys in question: Doucette, Logan, and Benchmark. He explained that if the District were to attempt to move the building to avoid the lot line, serious slope issues would result, as well as impacts to the area wetlands. He also noted it would be a difficult and costly process to relocate the building.

Atty. Michael noted the School Board was requesting the Special Town Meeting to authorize the Board of Selectmen to convey two parcels: one consisting of .5 acres and the other approximately 7 acres, to correct the line and allow the project to continue.

Atty. Michael then explained that the Planning Board had approved the line and direction of a new access road over portions of the old Londonbridge Road the previous week, and that a portion of the roadway near Route 111 runs over Town land. He stated he did not believe a Town Meeting vote was necessary to allow for the layout of the road over the land, but that he would prepare the appropriate language for the warrant if necessary. He then stressed that the timing of the meeting is important, and presented a proposed schedule for the Board’s consideration.

Mrs. Crisler supported the loss of the conservation acreage to the project; however, she proposed the District offer a swap of land or equitable easement over their property. Atty. Michael noted that an area of 7-10 acres in the rear of the Middle School has been considered by the School District for just such an exchange, however he did not believe an accurate survey existed of this parcel.

Mr. Hohenberger agreed the land behind the Middle School was ideal for a swap. He then commented that lot line adjustments generally involves the same owner, and questioned whether a subdivision plan would be required as this change involves two owners. Atty. Michael was unsure, but noted a subdivision plan could be developed and presented to the Planning Board for approval, if necessary.

Mr. Senibaldi sought clarification of the difference between the surveys, and Mr. Andy Bramhall of Benchmark Surveying noted it amounted to 7.5 acres. Mr. Carpenter inquired of Atty. Michael how exactly this error had happened, who replied it would be inappropriate for him to comment on that at this time.

Mr. Hohenberger asked Mr. Bramhall to detail why he believed their survey to be correct. Mr. Bramhall gave an overview of Benchmark's procedures and how the parcel in question and abutting parcels had been researched at the Registry of Deeds, and then physically surveyed through a controlled traverse to recover the markers.

Mr. Jim Finn, Chairman of the Conservation Commission, approached to state that the Commission would like to discuss a land swap with the School Board in greater detail. He also felt that the Commission would not be seeking a 1-1 swap, and noted that there are approximately 20 acres available behind the Middle School.

David Sullivan pointed out that, if a land swap is considered in the future, it would have to wait until the March School District Meeting.

Mr. Anderson noted that the School Board is certainly willing to discuss the land abutting the Landry property, as well as possible upgrades to the trail system on the Gage lands in exchange for the 7.5 acres. Mrs. Crisler noted that the land doesn't necessarily have to be deeded to the Town, but an easement done instead. Mr. Carpenter inquired whether the necessary survey could be completed for the March meeting, and Mr. Anderson replied in the affirmative.

Mr. Ralph Valentine, Acting Recreation Committee Chairman, approached to note that the Gage lands are under Conservation and Recreation supervision per the prior Town meeting vote, and suggested that both parties have some input into what occurs. He proposed that a joint meeting be scheduled between the Conservation Commission and Recreation Committee to discuss this matter further.

Mr. Carpenter inquired what the width of loss was from the Gage lands at the widest point, and Atty. Michael noted it as 310 feet. Mr. Carpenter then inquired why the District did not just endeavor to redesign the school. Mr. Anderson noted that, at this point, the plans are 90% complete. Mr. Brad Mezquita of Appledore Engineer further explained that all necessary permit applications have been submitted, and noted that steep slopes exist down to the wetlands and there are limited areas where the septic system can be placed. He noted that all the site plans would need to be re-done.

Mr. Hohenberger inquired how long it would take the District to obtain a site specific permit, and Mr. Mezquita replied they had submitted their current application in December, and had not received it as yet. For a new permit, it would not take less than six weeks.

A discussion ensued regarding the proposed article language, inclusion of the legal description of the parcels in the article, and whether a second article was necessary for the layout over Town owned land. David Sullivan indicated that, per Town Counsel, a second article was not necessary. He then suggested that the Board address whether to include the articles on the warrant that evening, and allow Town Counsel and him to finalize the language for the Board's review and approval at their next meeting. Further discussion ensued regarding potential dates, and obtaining Town Counsel opinion regarding inclusion of language relative to the future land swap.

Mrs. Crisler then moved and Mr. Hohenberger seconded to proceed with the Special Town meeting for the purposes of a lot line change between the Gage Land and the School property. Passed 4-0.

Once again, discussion ensued regarding the dates for the Deliberative session and vote, in which Supervisor of the Checklist Bob Skinner noted that no voter checklist is available at this time. He explained that, due to implementation of a new checklist system, the Supervisors will not have access to the records until their training by the State is complete. That will not be until the end of June. Mr. Hohenberger suggested that Mr. Skinner contact the State and figure out how to make the system available sooner, under the circumstances. Mr. Carpenter requested that Mr. Sullivan work with the Supervisors to facilitate this matter.

After further brief discussion, it was determined that the Deliberative session would not be held until sometime after July 4th.

Mr. Stearns resume the chairmanship and called for a five minute recess.

ADDITIONAL WARRANT ARTICLES, CONT.: Attorney Bill Mason, representing Mr. Anthony Mesiti, approached to request inclusion of an additional warrant article relevant to their previous vote to allow the drilling of two test wells on Town property. Atty. Mason explained that it had since been brought to his attention that, should a suitable water source be found, the Board of Selectmen does not have the authority to grant access to the water. Atty. Mason read the following proposed language into the record:

“To see if the Town will vote to authorize the Selectmen to enter into certain agreements as they deem necessary to permit the creation of a water system to be developed on Town property to wit: lot 16-L-100, to service the Windham Village District. Said agreements to include easements such other documents as the Selectmen deem appropriate and in the best interest of the Town.”

Mr. Carpenter sought clarification whether it was intended for the system to service the entire Village Center District, or only Mr. Mesiti’s development behind the Town Hall. Atty. Mason noted that, initially, it would be the latter if necessary, however if sufficient quality and quantity were available then the entire VCD would benefit.

Mr. Mesiti approached to clarify that he since located a substantial amount of water to service his two parcels, and that he wanted to proceed with the warrant article because town wells could assist other developers in the VCD if they have difficulty locating an adequate water source. He noted he would be glad to work with the Town to develop a water system.

Atty. Mason pointed out that the purpose of the article was to empower the Board to negotiate what’s best in the future. Mr. Hohenberger inquired whether the wording of the article would preclude the Board from entering into an agreement with a third party to manage the system, and Atty. Mason replied in the negative, noting it would authorize the Board to deal with a town-owned resource as they see best.

Mrs. Crisler indicated support for the article, but wondered whether it would be better to wait until March to allow time for education of the residents regarding its intent. Atty. Mason felt the article was fairly straightforward, but noted it could also go to the March ballot if defeated at the Special Town Meeting.

Mr. Mesiti pointed out that when developers look at potential properties they look at the needs of each, and stated he felt that waiting until March may inhibit the process until then. A discussion ensued.

Mr. Carpenter suggested that the Board might want to wait until March, and contact Pennichuck in the interim to obtain a proposal for management of a full water infrastructure. Mr. Senibaldi noted that such an agreement, if any, would have to be discussed at a Public Hearing prior to execution.

Mr. Sullivan agreed that the intent was only to authorize the Board to act, and noted he could also have the final language ready for the Board review, if they wished.

Mr. Ralph Valentine approached stating he understood Mr. Carpenter's concerns, however, if authorized to act by the Special Town Meeting, the Board could then bring any agreement to a future Town meeting if they wished.

Mrs. Crisler felt the Board should move forward with the article, noting there are valid business reasons to do so. Mr. Mesiti noted that retail/commercial development requires water, and that Pennichuck generally will only assume control of a full system.

Mr. Stearns noted that the Town has been fortunate to date, that it hasn't had to supply much infrastructure. He felt utilization of a Town resource for the Village Center District was a good idea.

Mr. Carpenter then moved and Mr. Senibaldi seconded to ask staff to craft Atty. Mason's language into a viable article for review by the Board the following Monday. Passed unanimously.

OLD BUSINESS, CONT.: Mr. Sullivan advised the Board that Verizon representatives had canceled their attendance at the Cable Advisory Board meeting on Thursday. No new date is available.

Mr. Sullivan stated he had spoken to Mr. Bill Cass of the NH Department of Transportation, who had indicated that Division 5 is willing to take the Board members on a tour of the By-pass construction area if they wished. Mr. Sullivan will set up some dates for the Board's consideration.

Mr. Sullivan reported that the bids for the work at Tokanel Field had been opened. Five vendors had attended the pre-bid conference, and all five had submitted proposals, ranging from \$44,000 to \$72,000. Mr. Sullivan noted that the Recreation Committee would be reviewing the bids for recommendation to the Board.

Mr. Stearns inquired as to the status of the Town Beach. Mr. Sullivan replied that the Department of Environmental Services would be reviewing the area on Wednesday. He noted that the Town is required to follow strict Stormwater guidelines, and can't make any repairs without a permit. Representatives of Gove Engineering had also looked at the damage, and will be drafting a recommendation for the Board.

Mr. Stearns noted that the beach had never experienced these erosion problems prior to the State's utilizing it as a staging area, and Mr. Sullivan replied that was why they were conducting a review.

Mr. Hohenberger inquired as to the status of the well at the Griffin Park multi-use building. Mr. Sullivan stated the project is moving forward, and will be completed by June 20th.

NEW BUSINESS: None.

NON-PUBLIC SESSION: Mr. Carpenter moved and Mr. Hohenberger seconded to enter into non-public session in accordance with RSA 93-A:3 Iib, c, and d. Roll call vote, all members "yes". The topics of discussion were personnel, reputations, and legal. The Board, Mr. Sullivan, and Ms. Devlin were in attendance.

Legal: The Board discussed an appeal of a Zoning Board of Adjustment decision. No decisions were made, and Mr. Sullivan will follow-up.

Personnel: Mr. Sullivan discussed a personnel matter with the Board. No decisions were made.

Mr. Stearns excused himself at 10:50 P.M.

Reputations: The remaining members discussed possible substitutions for Mr. Stearns as it pertains to the High School. Mrs. Crisler moved and Mr. Hohenberger seconded to appoint former Selectman Bruce Breton as substitute for Mr. Stearns relative to matters pertaining to the High School access road and associated meetings. Passed 4-0.

Mr. Hohenberger moved and Mr. Carpenter seconded to adjourn. Passed 4-0.

The meeting was adjourned at 11:00 P.M.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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