

BOARD OF SELECTMEN
Minutes of September 29, 2008

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

RETIREE PRESENTATIONS: Mr. Sullivan made presentations to the following retirees with the Town's thanks for their years of service: Officer Louis Palermo, 25 years; Firefighter Don Worthington, 19 years; Officer Greg Malisos, 20 years; and Officer Dave Comeau, 21 years. Mr. Sullivan indicated that each of these individuals continues to serve the Town on a call/special basis. Mr. Sullivan also recognized Office Michael Lodise, who was unable to attend, for his 20 years of service.

MINUTES: Tabled.

ANNOUNCEMENTS: Mr. McMahon advised that the Town of Salem has opted not to pursue a \$5M bond article in March relative to a sewage project, however, there is an interest in working with the Town of Windham in 2010. Mr. McMahon noted that he has not been able to meet with Town Manager Sistere, as yet, but has spoken to several Salem Selectmen.

Mr. Stearns suggested that Salem be approached to join with Windham in the application for CTAP funds towards a sewage study, which would increase the amount of funds available. Mr. Sullivan recommended the Board proceed to apply for a portion of Windham's allocation for the preliminary study, and reserve any additional funds for a future, in-depth analysis.

Discussion ensued regarding the need to move forward on this matter, as the State was awaiting a response regarding the conduit. Mr. Senibaldi indicated that Mr. Dubay had yet to receive a response from the State regarding the possibility of their funding the installation.

Mr. Sullivan then advised the Board that he had sought letters of support from the Planning Board and Conservation Commission for inclusion with the CTAP grant application. He further noted that funding would not likely be available until mid-October when the new funds become available. Further, brief discussion ensued.

Mr. Breton advised that he, Mr. Senibaldi, and Mr. McMahon had attended the recent Planning Board meeting at which the Ledge Road project was discussed, and that Mr. Hohenberger and Mr. Stearns had attended the DES public hearing relative to same. Mr. Breton noted that the Planning Board hearing had been continued.

Mr. Hohenberger explained that the DES had discussed a renewal application for the Ledge Road project and focused primarily on surface water criteria. Mr. Hohenberger indicated there had been some talk relative to groundwater, and that representatives of Novus had been present to discuss their findings. Mr. Hohenberger noted that much testimony had been presented, and a decision may be announced by October 13th.

Mr. McMahon noted that a question had been raised by a resident at the hearing regarding whether the regulations governing activities such as those at Ledge Road could be changed now. He indicated it had been clarified that

any change would not affect the Ledge Road project, which will continue to operate under the regulations in place at the time of the issue.

Margaret Crisler approached to remind all that the Annual Women's Club Coat Drive would be taking place the following Saturday from 10A to 2P at the Town Hall.

Mrs. Crisler then announced that the Historic Society, Historic Committee, and Historic District/Heritage Commission would be meeting with Mr. Zohdi and Mr. Nickerson to discuss the status of the Kivikoski house located at the intersection of Hardwood Road and Route 111. Mrs. Crisler noted the meeting would take place the following evening at 7P at the Town Hall.

Mrs. Crisler then noted that Windham Economic Development Committee in concert with CURP would shortly be sending out surveys relative to economic development in the Town.

LIAISON REPORTS: Mr. Hohenberger advised that the CIP Committee would next meet on the following Thursday.

Mr. Stearns noted that the CTAP Steering Committee had met the previous Thursday, and were working to put together a presentation for the various communities consisting of Q & A sessions regarding aide, etc.

CORRESPONDENCE: Letter received from the NH Department of Transportation relative to the sale of property located at Industrial Drive. Mr. Sullivan advised that the Town has the right of first refusal for this property, and suggested the Board wait for input from the Planning and other Boards.

HIGH SCHOOL ACCESS ROAD OPTIONS: Mr. McMahon indicated the goal in requesting this agenda item was to educate all regarding the requirements for the second access. After a brief discussion, Chief McPherson approached and conducted a slideshow presentation to the Board, highlights of which included:

- Clarification of the term "Authority Having Jurisdiction", which refers to the State Fire Marshall except in those cases where he/she has delegated such authority to the local fire official, in this case Chief McPherson.
- Review of RSA 154, by which Fire Chiefs obtain their authority.
- Review of SAF-C6008, which is based upon the 2003 editions of NFPA 1 and NFPA 101, and detail the code requirements that must be adhered to during plan reviews.
- Clarification of NFPA 1, Chapter 18, which requires multiple access roads when the AHJ determines that a single road could be impaired. Also requires that access roads have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches, and must be designed and maintained to support the imposed loads of fire apparatus and surfaced to suit all weather conditions. The AHJ is also authorized per this chapter to require the installation of gates or other barricades.

Chief McPherson clarified at this point that the only proposal presented to date had been for a fully constructed, paved roadway and, as such, the Department had supported it for multiple reasons.

- The Chief cited several School Board minutes between December of 2004 and September of 2006, at which the secondary access had been discussed, contrary to what is being claimed by some.
- The Chief referenced several pieces of correspondence from him/the Department to the School District and Department of Education regarding this matter, as well as meetings between the parties regarding same. Noted in particular was correspondence from Mr. Murdough of the Department of Education in which he noted he had failed to note the lack of a second access, and from the Fire Marshall in which he agreed with the need for a second access.

Chief McPherson then noted that the Department of Education and Fire Marshall had declined to attend that evening because the matter of a second access was a local issue as he, as the AHJ, was requiring the second access based on site, topographical, and other concerns.

- Chief McPherson then reviewed aerial photographs of the site taken at his request by the State Police in response to those recently published in the Windham Independent. Chief McPherson pointed out that the photograph in the Independent was, in his opinion, controversial as it appeared to show a second access to the site. Chief McPherson clarified that this roadway is a maintenance road for access to the fields only and is approximately 14' wide with grades in excess of 8%.
- Chief McPherson reviewed additional photographs of the site, noting it had been suggested that the school could be evacuated on foot to an area neighborhood, if necessary. He pointed out on the photograph that there are no neighborhoods within walking distance, and noted that from the intersection of Route 111 to the front door of the High School is in excess of 5300'. From the intersection of Route 111 to the first driveway is approximately 4400'.

Chief McPherson then indicated that he had been asked to attend to clarify the requirements and his position, and again reiterated he is willing to work with any parties toward a solution.

Mr. Hohenberger pointed out that Bear Hill Road did not show in the Chief's pictures. Chief McPherson noted that Bear Hill is quite a distance away and some of the slopes in that area exceed 15%. Mr. Senibaldi clarified that Bear Hill Road is approximately 4000' away.

Chief McPherson noted that the potential to not be able to get to the children at the High School exists, and noted that there is no way to evacuate the school as it is. Police Chief Lewis approached noting he wholeheartedly supported Chief McPherson, and indicated his agreement that it would only take one incident occurring without a second access. He then noted the recent spate of school shootings.

Mr. Senibaldi then inquired whether an engineer would need to certify a gravel road could bear the apparatus load and if it would require continual maintenance/repair. Chief McPherson replied in the affirmative to both. Mr. Senibaldi then asked that the Chief clarify how he is deemed the AHJ as this is an educational facility. Chief McPherson replied that the State Fire Marshall is in charge of plan review and inspections, and that all other matters are under local jurisdiction.

Mr. Senibaldi then inquired whether the RSA's prohibited the Board of Selectmen over-ruling the AHJ. Chief McPherson replied that, by Statute, the Board cannot over-rule him. Mr. Senibaldi then inquired about the issuance of a Certificate of Occupancy. Chief McPherson replied that the CO is issued on a local level and, if certain measures are required by the AHJ on a local level and are not completed, a CO will not be issued.

Mr. McMahon then noted the time might take to complete the roadway if it needs to wait until March, and inquired as to how long the Chief would feel was acceptable past the opening in 2009 for it to be completed if started. Chief McPherson noted that there has been no meeting with the School District to discuss where to go from here, and reiterated his willingness to work with the School Board. He noted, however, that he would likely not support more than 60-days beyond the opening, reiterating that this has been his position all along and he has yet to meet with anybody regarding this access.

Mr. Bill Brennan, 22 Forest Street, requested the Chief re-address the picture in the Windham Independent, as those watching at home had missed it due to a cable issue. The Chief obliged.

Mr. McMahon noted that the goal for the evening was to find a consensus and common understanding of all the requirements, as well as to have a meeting with those involved who have yet to meet to discuss this matter. He felt it was wrong to wait until March, as costs are rising, and inquired what the Chief recommended. Chief McPherson replied that he believed all were aware that time was of the essence and that a meeting was needed, and indicated he would be willing to send a letter to the School District if the Board wished regarding the time constraints. He indicated the School Board has stated they have options in mind, and that he would be interested to see them, however this is a School Board project and they need to contact him.

Mr. Michael Hatem approached, as a resident, and suggested the Board turn down the heat a bit, and allow the School Board some time, noting they would be meeting the following week. Mr. Hatem indicated he was confident a resolution could be reached that will pass in March. Dr. Frank Bass, School Superintendent, then approached noting that the School Board desired extra time to ensure they get it right.

Mr. Senibaldi stressed the magnitude of the issue and the need for the parties to get together sooner rather than later. Mr. Stearns indicated that the Board would be willing to attend any School Board meeting to offer their assistance, and Mr. McMahon concurred noting that parents are very concerned about this issue.

Mr. Senibaldi then read into the record the School Board's letter declining to attend that evening's discussion and requesting additional time to discuss options amongst themselves first.

The Chair called for a five minute recess.

OLD/NEW BUSINESS: Mrs. Call advised the Board that there were currently eleven (11) surplus vehicles, and discussed several options with the Board for their disposal including: bidding as a package; bidding individually; or trading all in towards the purchase of a new van at no cost.

Discussion ensued regarding the usage of the current Town van, which is far less than previously thought with its primary function being for the weekly

shopping trip. Mr. Sullivan confirmed that the van was not used as much as it used to be, as most users are transported in the Admin vehicles. He suggested that its use be reevaluated in six months.

After further discussion, it was the consensus of the Board to bid the vehicles with two options; as a package or individually.

Mrs. Call advised the Board that universal gas cards had once again been looked into, as opposed to the current Speedpass program. Mrs. Call noted that under the current program, all taxes are taken out and rebates are offered both by Exxon and locally by Mr. Klemm. She noted that the universal cards are offered under Wright Express and are good at approximately 4 stations locally, which is not as much flexibility as previously thought. Mrs. Call also noted that it had been discovered that the universal cards involve a per card fee of \$2/card/month, which would amount to approximately \$500/year, and would require recouping \$0.10-0.13/gallon to equal out to the lost rebates from Exxon and Mr. Klemm. Discussion ensued.

Mr. Sullivan reminded the Board that there is currently no contract between the Town and Mr. Klemm or Exxon, who are simply honoring the previous bid. After further discussion regarding bidding the vehicle fuel, it was the consensus of the Board to not pursue obtaining universal gas cards, and to bid it with language indicated that handling of taxes is preferred, but not required.

IT Director Eric DeLong approached, seeking the Board's guidance regarding a request he had received from Mr. Glenn Davis for the Town's underlying GIS data for use by an outside vendor to attach to the School's data to create a density report. Mr. DeLong indicated the Town has no policy regarding the sharing of such data.

Discussion ensued regarding possible use by the outside vendor of the data for other purposes and the School's return of the data with their results. Mr. Breton expressed concern regarding the lack of a formal request from Mr. Davis, and suggested the School Board make written request for the data with a full description of the project.

Mr. Stearns inquired how long it would take to create a density report, and Mr. DeLong replied a couple of hours. Mr. Stearns then suggested that Mr. DeLong obtain the School's information and generate what they need for them. Discussion ensued regarding the interest other departments may have in this data, as well, such as the Assessor and Fire and Police departments.

It was the consensus of the Board that a formal request be obtained from the School District to have our IT Director generate the maps they require, and that Mr. DeLong develop a formal policy regarding sharing of the Town's data.

Mr. DeLong then advised the Board that the equipment required for relocation of the Town's servers at the Police Station should be under \$2000, however, he is waiting for one more price.

Transfer Station Manager David Poulson approached and advised the Board that Maguire was requesting an extension until October 17th to complete the renovation of the Station for single-stream, and that the delay was due to back ordered items. Mr. Breton moved and Mr. McMahan seconded to approve the extension as requested. Passed unanimously.

Mr. Poulson then reviewed with the Board the results of his fact-finding regarding the Canobie Lake water transfer issue, in which he spoke to Mr. Paul Currier of the NHDES and Mr. Rick Russell, Salem Public Works Director. Highlights included:

- This has been an ongoing issue for approximately 10 years, which ongoing denials from the NHDES and the EPA.
- A Water Quality Advisory Committee was formed at the State level in 2001 to deliberate on issues impacting NH water resources, including state regulation changes on the issue of such transfers within NH in efforts to ensure no degradation to receiving waters. The Canobie Lake Protective Association has a delegate to the committee.
- In 2008, the EPA ceased issuing permits to entities that request water transfers, and NH assumed complete regulatory oversight which expedited their rule changes. NH will now issue a Water Quality Certificate through an application and assessment program. The process will either approve or deny water transfers within NH, and the rules will be universal. No one will be exempt from the Clean Water Act or water quality criteria, and there is a distinction between Drinking Water Standards and Surface Water Standards. These rule changes should be adopted within the next 6 months.
- The assessment process will require water bodies to be compatible and ensure the quality of the receiving water body, and justifiable reasons for the transfer will need to be presented. The authorization process may also require pre-treatment to ensure the compatibility of the waters.
- Salem claims to have exclusive water rights to Canobie Lake, as well as Arlington Pond, and an agreement with stakeholders to retain an acceptable water level and ensure recharge of both.
- Salem currently has and is working on a water management plan, and is researching alternate water sources that can yield sufficient water of adequate quality to service long-term growth. The best scenario would be an exclusive water source which stabilizes the variables of producing drinking water.
- Salem is awaiting the adoption of the State rule changes, and will continue to work on their water management plan, including water supply sources. A formal plan will take 1-5 years.
- Beyond producing sufficient water volume, water quality of a source impacts the treatment cost. Canobie Lake affords Salem a strategic, economical, and high quality water source with the only questions being recharge and environmental impacts.

Mr. Poulson recommended the Board craft a position statement letter to the Canobie Lake Protective Association citing a neutral position until the matter resumes and formal decisions are needed. He recommended the letter be copied to the Town of Salem and that the process be allowed to work and the facts disclosed.

He further recommended that a mechanism be established by which Windham and Salem, along with other groups, can begin a dialogue on issues affecting a variety of stakeholders, such as drinking water, salt impacts, waste water, economic development, and area planning. Also,

establish a memorandum of understanding with the Town of Salem regarding Canobie Lake to ensure Windham is party to events that effect the status of the Lake and its residents, and obtain a set of final rules from the DES in order to understand protocols.

Mr. Poulson noted that the State protects the waters of NH, and would not allow them to be degraded. He felt a relationship with Salem was critical and urged the Board to set up a dialogue with them.

Discussion ensued regarding taking a neutral position and the importance of reasserting Windham's vested interest in the Lake with Salem. Mr. Poulson urged that the Board be cautious as opposed to adversarial.

Further discussion ensued regarding Salem's "exclusive rights" and the need to clarify what that meant.

Mr. Sullivan then suggested that Mr. Poulson draft a letter to the CLPA advising them that the Town had researched this issue and will continue to monitor it as it progresses. He noted that the primary concern seems to be the direct transfer of water from Arlington Pond to Canobie, as opposed to transfer to users.

After further discussion, it was the consensus of the Board that Mr. Poulson draft the letter as recommended.

Mr. Sullivan advised that Mr. Barlow had obtained pricing to install a railing along the back walkway up to the Senior Center, and that it approached the level requiring it to go through the bid process. He indicated he did not believe funds would be available for it this year. Mr. Senibaldi clarified that he been approached by seniors regarding a railing, and had therefore asked Mr. Barlow to inquire about the cost.

Mr. Sullivan indicated that the Board could wait and do the project as part of next year's budget, or see what remains at year-end. It was the consensus of the Board to wait until 2009.

Mr. Sullivan advised the Board that the Lowell Road Bike Path project bids had come in 8% lower than estimated, leaving approximately \$24,000 in funds available for contingencies, with American Excavating being the low bidder. Mr. Sullivan noted that no funds are being requested, as money has been set aside over the years for this project.

Mr. McMahon moved and Mr. Breton seconded to concur with the award of the bid to American Excavating for the Lowell Road Bike Paths. Passed 4-1, with Mr. Stearns opposed.

Mr. Sullivan noted that all of the AEDS are now in place, with the exception of Griffin Park due to ongoing questions regarding the alarm system at the multi-purpose building. He suggested that if the issues could not be worked out by week's end, the Town's regular alarm vendor be utilized. Mr. Senibaldi indicated he would resolve the issues with the current vendor by week's end.

NON-PUBLIC SESSION: Mr. McMahon moved and Mr. Hohenberger seconded to enter into a non-public session in accordance with RSA 91-A:3-IIa, c and e. Roll call vote – all members "yes". The topics of discussion were personnel, reputations, and legal and the Board, Mr. Sullivan, and Ms. Devlin were in attendance in the following sessions.

Mr. Sullivan updated the Board on a legal matter. No decisions were made.

Mr. Sullivan updated the Board on a legal matter relative to reputations. No decisions were made.

Mr. Sullivan reviewed a legal opinion with the Board. No decisions were made.

Mr. Sullivan updated the Board on a legal matter relative to land acquisition. No decisions were made.

Mr. Sullivan advised the Board on legal processes relative to land acquisition. No decisions were made.

Mr. Sullivan advised the Board of a reputations matter relative to land acquisition. No decisions were made.

Mr. Breton discussed a legal matter with the Board. It was the consensus of the members that *Mr. Sullivan* instruct Town Counsel to draft an agreement in preparation for the next agenda.

Mr. Sullivan discussed a personnel complaint with the Board. Staff was instructed to draft a follow-up letter.

Mr. Sullivan updated the Board on a personnel matter. *Mr. Hohenberger* moved and *Mr. Stearns* seconded to accept the Town Administrator's recommendation to assume all investigation and adjudication of complaints from this point forward. Passed unanimously.

The Board and *Ms. Devlin* were in attendance in the final session.

The Board discussed a personnel matter. *Ms. Devlin* will follow-up to advise staff accordingly.

Mr. Hohenberger moved and *Mr. McMahon* seconded to adjourn. Passed unanimously. The meeting was adjourned at 11:30 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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