

**BOARD OF SELECTMEN**  
**Minutes of February 14, 2011**

**MEMBERS PRESENT:** Chairman Charles McMahon called the meeting to order at 7:00 PM. Selectmen Bruce Breton, Ross McLeod, and Roger Hohenberger were present, as was Town Administrator David Sullivan. Selectman Galen Stearns was delayed and arrived at 7:15 PM. Mr. McMahon opened with the Pledge of Allegiance.

**TOWN COUNSEL:** At the Board's request, Attorney Bernard Campbell addressed the issue of Mr. Breton's candidacy to the Planning Board. Attorney Campbell clarified the following:

- RSA 673:7 prohibits two (2) Selectmen serving on the Planning Board simultaneously.
- RSA 673:2 requires that one seat on the Planning Board shall be an ex-officio spot under the control of the Board of Selectmen
- If Mr. Breton does not win the election, there is no issue. However, if he does win AND the Board of Selectmen wishes to appoint one of their own members to the Planning Board, then Mr. Breton will have to resign from either the Planning Board or the Board of Selectmen.
- Alternatively, if Mr. Breton does win the election, the Board of Selectmen could decide to appoint an "Administrative Official" to the ex-officio spot, in which case Mr. Breton could serve as both an elected Selectman and elected Planning Board member.
- Such an "Administrative Official" would likely be one of five (5) possible individuals: Town Administrator David Sullivan; Community Development Director Laura Scott; Town Planner Elizabeth Wood; ZBA/Code Enforcement Administrator Tim Corwin; or Building Inspector Michael McGuire. Attorney Campbell noted that the appointment of Ms. Scott or Ms. Wood could present issues for the Planning Board due to the need for recusal based upon their level of interaction with applicants.
- If Mr. Breton is successful in his election, any decision would need to be made by the remaining four (4) Selectmen, as Mr. Breton would likely need to be excluded from the discussion due a conflict of interest.
- If Mr. Breton resigns from the Planning Board, the vacancy would be filled by the remaining Planning Board members for a period of one (1) year until the next election.

Attorney John Cronin, representing Mr. Breton approached to note that the statutory scheme as discussed by Attorney Campbell is not one that has been voted on by the Supreme Court. He then added that he trusted the Board would be able to reach an agreement, if necessary, to appoint and Administrative Official.

Planning Board member Ruth Ellen Post approached to inquire how the Board of Selectmen would fill a vacancy, and Attorney Campbell replied that the remaining members would make appointment until the next election. Discussion ensued regarding the make-up of the Planning Board.

*The Chairman* called for a five minute recess.

**ANNOUNCEMENTS/LIAISON:** None.

**MINUTES:** Mr. Hohenberger moved to approve the minutes of January 10<sup>th</sup> as written. There was no second.

**CORRESPONDENCE:** Reduction/Letter of Credit – Johnny Hill Estates/EJR, Jr. Development LLC. After a brief discussion relative to pavement escalation/contingency considerations, Mr. Hohenberger moved and Mr. McLeod seconded to reduce the amount by \$336,534, retaining \$101,136, as requested. Passed unanimously.

*Letter received* from Senator Kelly Ayotte advising that she has begun the process of establishing regional offices throughout the state, and that she may currently be reached at 41 Hooksett Road, Unit 2, Manchester, NH 03104 / (603) 622-7979.

*Letter received* from Comcast advising of changes to digital packages/channel lineups.

*Letter received* from Leo and Theresa Breault relative to a property tax abatement; which has been forwarded to the Tax Assessor for response.

**MOMENT OF SILENCE:** Mr. Sullivan requested a moment of silence in memory of former Building Inspector Ron Preble, who recently passed away.

**EDC SURVEY RESULTS:** Economic Development Committee Chairman Ralph Valentine approached to review the results of the survey with the Board. Highlights of the presentation included:

- The EDC Survey Sub-Committee was made up of Bob Young, Chair, Paul Gosselin, Al Letizio and Sally D'Angelo, with assistance from Laura Scott.
- 520 responses were received and, based upon the estimated population of 12,993, a 95 % level of confidence was achieved with a margin of error of 4.212%. Mr. Valentine noted that the Committee stands behind the integrity of the data collected.

Mr. Hohenberger noted that the population is actually closer to 15,000, and inquired what effect that number would have on the confidence level/margin of error. Mr. Bob Young noted that the confidence level would remain the same, however the margin of error would change. Discussion ensued.

Mr. McLeod inquired whether controls were put in place to ensure one individual did not complete the survey twice. Mr. Young noted that, while the goal was to maintain confidentiality, IP checks were in place and the addresses logged were looked at closely. He noted that only one IP had had multiple submissions that were significantly similar, and that all of those had been deleted save one.

- One of the questions discussed was # 3, which read: In which 3 of the areas on Map #1 would you like to see Windham's business development focused? The map showed 9 areas labeled A through I. Respondents chose 3 of the 9 areas and ranked them 1, 2 and 3. The responses were compiled and then weighted, and the top three areas, starting with the highest ranking were G, H and E.

As a result, a map was drawn which showed the 3 highest ranking areas, with the highest ranked presented as the largest area. This new map did not match the map in the survey, however, but merely showed the results of the rankings.

After concerns were raised regarding the new map and what message or impression it might send, it was removed and the original map re-instated in the survey presentation.

- To the question of how much more business growth, more than 50% favored more growth.
- To the question of how satisfied are the residents with how the community has developed, slightly more than half are satisfied.
- To the question of location of business growth, the highest ranked was the southern end of Route 28, second was the middle to northern section of Route 28 and third was the 93/111 intersection.
- To the question of what factors are most important when considering business growth, the 3 most important were: Impact on Property Value, Community Preservation, and Location.
- To the question of what type of business development is preferred, Business Professional Office was first and Arts, Entertainment and Recreation was second.
- To the question of support for mixed use development, there were more nos and maybes than yeses.
- To the question of sewer, 46% were in support, 27% were not sure/had no opinion, and the balance were opposed.
- To the question of water expansion, 42% support it, almost 30% were not sure/had no opinion, and the rest were opposed.
- To the question “A fully developed and built out Windham looks most like what community...”, Andover ranked first and Bedford second.
- To the question “A fully developed and built out Windham looks least like what community...”, the Town of Salem received the most votes.
- Some questions did receive hand written answers which do not fit neatly in a pie chart or bar graph and were thus not included with the data. However, all of those answers as well as all the data are available by contacting Laura Scott.

Discussion ensued regarding the need for further discussion of the results after presentation to the Planning Board and the availability of the full data at the Community Development Department.

Mr. Pat Nysten, Edgewood Road, approached to inquire how much input into proposed zoning amendments the EDC would have in the future. Ms. Scott explained the dissembling of various proposed amendments to Planning Board members and herself for study/development that had been undertaken by the Planning Board; as opposed to the appointment of an official sub-committee. Discussion ensued relative to the need for better posting and availability of minutes for such future discussions.

Mr. Valentine noted that one of the EDC's goals is to provide input to the Planning Board, as well as the Board of Adjustment and Board of Selectmen, and that the members do expect to weigh in on future plans.

Mr. Nysten indicated that, in the future, he expected there would be full transparency/minutes relative to major zoning proposals, as well as full disclosure of anyone who may have a financial interest in a particular zoning recommendation. Brief discussion ensued.

**TRANSFER STATION MANAGER:** Mr. Poulson advised the Board that he had been approached relative to the Town's joining a new recycling cooperative in Concord NH, however, he did not recommend the Town do so due to the following:

- Requirement for a 15 year contract with a single out-clause.
- Transportation time/costs would nearly double.
- The MRF facility itself is not constructed as yet.

After a brief discussion, it was the consensus of the Board to not accept the offer to enter said co-op.

*Mr. Poulson* then discussed concerns he had with the Town's procurement processes as currently in place, and the lack of negotiating power they afford Department Heads toward obtaining best pricing. He then noted that he was currently in contact with a single stream vendor as the Town's current contract is nearing its completion, and was seeking the Board's authority to negotiate with the company outside the bid process to obtain the best agreement for the Town.

Mr. Hohenberger disagreed, and felt that the Town can obtain better pricing through bidding. In addition, he added that the bid process itself is more legitimate and transparent. Mr. McLeod agreed with Mr. Hohenberger, noting that the process protects the department heads and others participating. After a brief discussion, it was the consensus of the Board that the bid process will remain as it currently is.

Further discussion ensued regarding the Board's ability to waive the bid process, which is handled on a case by case basis with public discussion. Mr. Sullivan concurred that the bid process should not be altered, but added it allows for pre-bid meetings and for the Town to negotiate with the apparent low bidder in any circumstance. Further discussion ensued.

Mr. Poulson advised the Board that he would work to tailor the bid specifications to include a pre-bid conference. Mr. Sullivan sought clarification as to whether Mr. Poulson would be recommending the Town continue its current contract, and Mr. Poulson replied in the negative. Discussion ensued regarding the need for an analysis of trucking costs, contracting services versus in-house, and the need for a workshop to discuss the Transfer Station.

**OLD/NEW BUSINESS:** Mr. Sullivan inquired whether the Board wished to update any of their recommendations on the Town Warrant. After a brief discussion, the Board made no changes.

**NON-PUBLIC SESSION:** Mr. Hohenberger moved and Mr. McLeod seconded to enter into non-public session in accordance with RSA 91-A:3 II a and c. Roll call vote all "yes". The topics of discussion were personnel and reputations. The Board, Mr. Sullivan, Chief McPherson, and Ms. Devlin were in attendance in the first session.

The Chief discussed the vacant Assistant Fire Chief position with the Board. Mr. McLeod moved and Mr. Stearns seconded to support the Chief's recommendation to fill the position. Passed unanimously.

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

Mr. Sullivan updated the Board on matter related to health insurance. Mr. Hohenberger moved and Mr. Stearns seconded to allow Mr. Sullivan to proceed as described. Passed 4-1, with Mr. Hohenberger opposed.

Mr. Sullivan presented his annual self-evaluation to the Board for their review. No decisions were made.

Mr. McLeod moved and Mr. Breton seconded to adjourn. Passed unanimously.

The meeting was adjourned at 9:30 PM.

Respectfully submitted,  
Wendi Devlin, Administrative Assistant

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