

**BOARD OF SELECTMEN  
Minutes of February 24, 2014**

**CALL TO ORDER:** Chairman Phil LoChiatto called the meeting to order 7:05 PM. Selectmen Ross McLeod, Al Letizio, Kathleen DiFruscia and Roger Hohenberger were present; as was Town Administrator David Sullivan. Mr. LoChiatto opened with the Pledge of Allegiance, and then announced that the Scouting request had been removed from the agenda.

**ANNOUNCEMENTS:** Mr. McLeod reminded all that Candidates' Night would take place the following evening beginning at 7:00 PM at Town Hall.

*Mrs. Barbara Coish*, Sister City Committee, reviewed with the Board a letter from the Mayor of Suzdal; inviting a delegation from Windham to the City to celebrate their 990<sup>th</sup> Anniversary.

*Community Development Director* Laura Scott extended thanks to Ms. Bev Donovan of Colliers International for hosting the first of four free business seminars; adding that it had been well attended. Ms. Scott advised that the second will be held on March 20<sup>th</sup>, at Sophisticakes, and will discuss insurance dos and don'ts for small businesses.

*Ms. Scott* advised that she is getting ready to begin organizing the Community Garden at the former Taylor's Bingo Hall; adding that twenty spots are available and a kick-off meeting will be scheduled in May.

*Ms. Scott* noted that the kick-off for the Adopt-a-Spot Program will take place in June, and that this year sponsors of a strictly monetary type will be able to participate for areas such as the By-pass.

*Ms. Scott* noted that on March 6<sup>th</sup>, beginning at 7:00 PM at the Town Hall, there will be a Groundwater Education seminar hosted by the DES; as well as an EDC presentation regarding Town Article 21 and Planning Board Article 3.

**CORRESPONDENCE:** None.

**MINUTES:** None.

**PUBLIC HEARING/EMERGENCY LANE:** Mr. Sullivan read the public hearing notice into the record, as follows: *"In accordance with RSA 231:59-a the Board of Selectmen will hold a public hearing on February 24, 2014 at 7 pm in the meeting room of the Community Development Department for the purpose of considering the declaration of Taninger Road as an Emergency Lane.*

*A declaration of a road as an Emergency Lane allows the town to perform work "deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles." Such work to be limited to winter maintenance operations. Any work required to bring the road to a plowable condition as determined by the town will be the responsibility of the abutting landowners."*

Mr. Sullivan began by clarifying there are no conditions that exist that would require improvements; and that the Town has been plowing Taninger. He indicated that this hearing is a formality, similar to that held at the High School some time ago in which 23 roads were similarly declared in keeping with the Town's Emergency Lane policy. Mr. Sullivan noted that Taninger meets the public need criteria for same as a subdivision roadway over which the busses must pass.

Discussion ensued regarding Taninger being in the Spruce Pond area off of Mallard Road, and Mr. Sullivan clarified that he had received numerous calls from area residents expressing concerns regarding possible expense to them. He indicated none were opposed to the declaration once he had explained to them that no improvements were necessary to Taninger.

Mrs. DiFruscia moved and Mr. McLeod seconded to declare Taninger Road as an Emergency Lane per RSA 231:59-a. Passed unanimously.

**BID WAIVER REQUEST:** Ms. Scott indicated that she was requesting a waiver of the bid process relative to Phase I of the 2015 Master Plan; for which \$13,500 is proposed in the 2014 budget. Ms. Scott indicated that, based upon the price quote received from the Southern NH Planning Commission she did not feel any other vendor could match SNHPC's price. She clarified that should the 2014 budget not pass the project will not proceed, however, if it does the process will begin the day after the vote with an official kickoff of 4/30/2014 at the Planning Board.

Discussion ensued as to why Ms. Scott felt no other vendors could match the price, and she indicated her opinion of same was based upon bid prices received by other Towns for similar projects. Mr. McLeod noted that the Town has a good foundation in place, which just needs to be updated, and that he was not sure it was correct that a better price couldn't be obtained; thus he would like to see it placed out to bid. Discussion ensued regarding the two phases of the project, as well as the budgeted funds.

Mrs. DiFruscia inquired whether Ms. Scott had looked at other vendors, and she replied that she had looked at what Londonderry and Derry had paid for similar services, which was in excess of \$100,000 to private consultants.

Mrs. DiFruscia inquired what Phase I entailed, and Ms. Scott replied it would include a draft report, maps for presentation to the various sub-committees and similar items. Discussion ensued, and Ms. Scott clarified that SNHPC's proposal of \$13,300 is a "not to exceed" price regardless of any additional requests that may be made of them. Mrs. DiFruscia inquired whether the scope of work had been provided to any other vendors, and Ms. Scott replied in the negative; adding however that it is a public document. Ms. Scott then indicated that an additional reason she was requesting a waiver was because SNHPC has compiled information that other vendors would not have access to, which is reflected in their cost. Further discussion ensued regarding SNHPC's hourly costs versus others, which Ms. Scott indicated was dependent upon staffing/seniority levels.

Mr. Sullivan inquired whether, if the waiver were granted for Phase I, SNHPC expected that Phase II would be given to them as well. Ms. Scott replied in the negative, noting that the data would become the Town's and SNHPC is aware there is no guarantee they will be awarded Phase II. Mr. Sullivan then inquired whether the Planning Board had weighed in on this request, and Ms. Scott indicated she had provided them the scope, however, they had not replied to her memo.

Mr. Letizio inquired what Mr. Sullivan would recommend, and the latter replied that if the intent was to bind Phase II over for SNHPC he would not support the waiver request. However, while \$13,500 is a large amount, given the data available to the SNHPC he believed it would be more expensive to go out to bid.

Discussion ensued as to the timing of the phasing, budgetary reasons behind same, the availability of the data to other vendors, and the dues paid into the SNHPC. Mr. McLeod noted the statutory requirements regarding Master Plans, and indicated he would really like to see the Planning Board step up to drive the process and the document. Lengthy discussion ensued.

Mr. LoChiatto sought clarification as to how a denial of the waiver request would effect the schedule, and Ms. Scott noted it would effect only the consultant and not the Planning Board; who would keep the April 30<sup>th</sup> kick off regardless.

Mrs. Vanessa Nysten, Planning Board member, approached and noted that to her knowledge the Planning Board has had very little input into the process; adding she would like to hear more from the provider.

Mr. Dan Guttman, Heritage Hill Road, approached urging the Board to consider value versus cost. Mrs. DiFruscia inquired whether the SNHPC had completed Master Plans before, and Ms. Scott replied in the affirmative.

Ms. Kristi St. Laurent, Range Road/Planning Board Chair, approached and indicated that the Planning Board was advised that some information was already available to the SNHPC; adding that although the Town is relatively new to the SNHPC thus far they have been very accessible and have provided high quality service.

Mr. LoChiatto inquired whether Ms. St. Laurent supported the waiver request, and she replied in the affirmative; adding she had no reservation in recommending the SNHPC.

Mr. McLeod noted that April 30<sup>th</sup> is an internal date that is not tied to any statutory obligation and could be moved out if necessary. Mrs. DiFruscia noted that, if it were put out to bid, she would prefer it be for the complete process. Mr. LoChiatto noted that funding is only proposed in the budget for Phase I. Discussion ensued.

Mrs. DiFruscia then moved and Mr. Letizio seconded to grant the request for a waiver as presented. Motion failed 2-3, with Mr. McLeod, Mr. Letizio and Mr. Hohenberger opposed.

**IMPACT FEE UPDATE:** Mr. Sullivan noted that the School impact fee review was complete, after approximately four weeks and many hours of reviewing subdivision files and minutes of the Planning Board and Zoning Board of Adjustment. He indicated that the impact fees involve various vesting rights for subdivisions, and no permanent vesting is afforded “orphan lots” from pre-1998 when impact fees began.

Mr. Sullivan noted that, in the course of his review, he had found that historically and consistently impact fees had been charged based upon what the fee was at that time; without applicable vesting rights. He indicated that data had been reviewed back to 2004 involving 520 parcels, of which 250 had been overcharged due to vesting errors; totaling \$173,541. Mr. Sullivan advised, however, that the statute of limitations is three (3) years, thus of that total \$14,265 would be eligible for refund. He noted that Town Counsel opines that if the Board chooses to refund same, it should be disbursed to the original payer rather than the current property owner.

Mr. Sullivan noted that, per his memo, the Board should now determine the following actions: 1) the extent to which any refunds would be made; 2) the time frame for disbursing the refund payments; 3) which budget to pay the refunds from, and; 4) whether or not to net out underpayments for the same time period. Mr. Sullivan also indicated he would still recommend a joint workshop on March 10<sup>th</sup> with representatives of the Planning and School boards to garner input and look at the procedures in place.

Mrs. DiFruscia extended thanks to all for their work on this analysis, and inquired which fund Mr. Sullivan felt the refunds should come from. Mr. Sullivan noted either the legal budget or School Impact fee fund; however the latter funds may have already been paid out. Discussion ensued regarding usual disbursement of the school impact fees, and whether funds from the three years in question were still in the account at this time.

Mr. LoChiatto echoed Mrs. DiFruscia’s thanks; noting this had been a huge, time consuming undertaking which was important to address before the change in the Board. He noted he would also like to schedule a joint meeting prior to the election. Discussion ensued.

Mrs. Nysten approached seeking clarification of the seasonal conversion fees which went uncollected since 2008, that were not reflected in that evening’s presentation. Mr. Sullivan noted that they were previously discussed as part of the Public Safety/Commercial impact fee analyses. Mrs. Nysten then inquired what was overcharged from 2008 to date, and Mr. Sullivan replied approximately \$42,000. Discussion ensued regarding 2004-2007 amounts.

Mrs. Nysten then noted correspondence from 2010 from the Finance Director to Ms. Scott regarding proactively managing funds and concerns that the former had regarding collections. She then noted similar correspondence from 2011 wherein Mrs. Call had advised Ms. Scott of her continued concerns regarding oversight/validation of the collections. Discussion ensued.

Building Inspector Michael McGuire approached and reviewed with the Board the procedures/forms that have been implemented in order to ensure proper collection moving forward, including: fees are now collected upon issuance of the Certificate of Occupancy; an impact fee calculation spreadsheet which auto calculates the fees based on square footage input; seasonal conversion checklists; and a daily log. Mr. McGuire noted these process changes and forms are working well.

Mrs. DiFruscia extended thanks for putting these new procedures together; noting that she appreciated the acknowledgement that mistakes were made and the need to focus on moving forward. Mr. McGuire clarified that he had been following procedures that were in place prior to his arrival.

Mrs. Nysten approached expressing concerns that there needed to be a level playing field for all businesses who come to Town. Mr. LoChiato inquired whether Mrs. Nysten was suggesting these errors had been intentional, and Mrs. Nysten replied in the negative. Discussion ensued, and Mr. Sullivan clarified that there was, unequivocally, no selective treatment involved; rather these were simply timing/vesting errors. Discussion ensued regarding vesting.

Ms. St. Laurent approached and inquired how many had sought refunds of the overages paid, and Mr. Sullivan replied no one to date. Ms. St. Laurent noted there may be a way to approach the payers to see if they wanted the refund, as the fee in effect was passed on to the homeowner. Discussion ensued.

Mr. Sullivan noted that the refund amount noted had only been calculated back to 2004, and if the Board chose to go further then more analysis, back to 1998, would need to be completed. Brief discussion ensued, before Mrs. DiFruscia moved and Mr. Letizio seconded to release Town Counsel's opinions dated 2/11, 2/14 and 2/24/2014 regarding this matter. Passed unanimously. Further discussion then ensued regarding the additional meeting and preparation/availability of packets for same.

Mr. Charles Wingate approached urging the Board to use caution in issuing the refunds; and suggesting they consult with Town Counsel before discussing the possibility of going beyond the three year period for same. He noted it was a travesty that the impact fees have been under-calculated all this time, not as it related to this issue, but fundamentally the fee is wrong; further urging the Board to look at impact fees, such as Recreation Impact fees, in earnest. Discussion ensued regarding previous consideration of Recreation Impact fees, as well as the conservative nature of the existing fees.

Mr. Wingate noted that the undercalculation of the fees is the root problem of where Windham is at right now; facing overcrowding with no money to pay for expansion.

Mr. Hohenberger requested that further input be sought from Town Counsel regarding recommendation #4 as shown in the 2/24 correspondence. Discussion ensued.

Mr. Jerome Rekart, School Board Chairman, approached asking that no vote be taken until the joint workshop as to where the refunds are taken from; adding that there were underpayments, as well, resulting in a \$5,600 deficit. Discussion ensued, and Mr. Sullivan will work to coordinate this joint workshop to take place before March 10<sup>th</sup>.

**BULLYING POLICY:** Ms. Scott advised that the proposed policy had been reviewed by Primex for compliance, and posted internally for the required time period with no comments/concerns received. Lengthy discussion ensued regarding perception/subjectiveness of such incidents and statutes regarding discrimination/hostile work environments. Several amendments were offered including:

- Removal of the word "substantial" as it pertains to distress
- Addition of the words "social media" and definition thereof as it pertains to cyberbullying
- Replacement of the words "in place of someone else" with "designee"
- Minor grammatical changes

Mr. McLeod then moved and Mr. Letizio seconded to adopt the Bullying Policy as amended. Passed unanimously.

**AMBULANCE BILLING:** Chief McPherson approached to review with the Board proposed changes to the billing; reminding the Board that in 2013 the Town had moved from an "a la carte" billing to a bundled rate as recommended by our billing company, Comstar. He indicated that, historically, billing fees are never reduced, but the Department has used Medicare plus 30% to determine the fee. Comstar is now suggesting a fee equal to the average of the Town's 50 highest service charges.

Chief McPherson noted that the Town can establish their own rates, with Comstar taking a percentage thereof, and that to date the Town is not charged by hospitals for advanced lifesaving medications used en route; which will likely change at some point. He also reminded the Board that hardship policies are in place. Discussion ensued regarding a service versus cost analysis and the average highest rate versus Medicare +30%. It was the consensus of the Board that the Chief put together the data on the Medicare +30% rates for posting for a public hearing.

**OLD/NEW BUSINESS:** Mr. Sullivan presented an administrative abatement to the Board for signature, in the amount of \$47.50, relative to Parcel A which the Town now owns as part of the Settlers Ridge Road deed. In addition, he presented a supplemental bill for signature relative to the Town's PILOT agreement with the Sisters of Mercy.

**NON-PUBLIC SESSION:** Mr. Letizio moved and Mr. Hohenberger seconded to enter into a nonpublic session in accordance with RSA 91-A:3 II c. Roll call vote - all "yes". The topic of discussion was reputations, and the Board and Mr. Sullivan were in attendance.

The Board discussed employee evaluations. No decisions were made.

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

Meeting was adjourned at 9:50 PM

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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