

BOARD OF SELECTMEN
Minutes of July 28, 2014

CALL TO ORDER: Chairman Ross McLeod called the meeting to order at 7:00 PM. Selectmen Roger Hohenberger, Joel Desilets, Al Letizio, and Bruce Breton were present, as was Town Administrator David Sullivan. Mr. McLeod opened with the Pledge of Allegiance.

ANNOUNCEMENTS/LIAISON REPORTS: As it pertained to the ongoing issues at Market Basket, Mr. Breton noted that Shaw's is fully stocked, there will be a Farmer's Market on Sunday on Lake Street, and that Johnson's Farm is stocked as well. He also noted Simply Wholesome in Town, and a discussion ensued regarding supporting local businesses.

Mr. Letizio noted that the WEDC Land Use Sub-Committee would be taking a field trip on Wednesday to MarketSquare in Lynnfield, MA; adding that the group would be meeting at 11 AM at the Community Development Department should anyone wish to join.

Mr. Sullivan noted that the Campbell Farm closing had taken place the previous Friday, and extended thanks to the Campbell family, Mr. Morris and Mr. Finn of the Conservation Commission, and Representatives McMahan and Griffin. Brief discussion ensued regarding the latter's efforts toward new legislation in response to issues faced by Windham regarding this purchase, and Mr. McLeod noted he would echo a special thanks to Representatives McMahan and Griffin. Mr. Hohenberger requested that a discussion as to what to do with the building at the site be placed on an upcoming agenda. Mr. Sullivan advised that the Conservation Commission would be discussing same and presenting a recommendation to the Selectmen.

Mr. McLeod announced with sadness the passing of former Planning Board member and ZBA/Code Enforcement Officer, Nancy Prendergast. Mr. McLeod went on to note how very special Nancy was and her tremendous contributions to the Town, particularly as part of the Planning Board responsible for developing the 2005 Master Plan; adding that he would strongly advocate that the current Planning Board include a dedication to her memory in the final 2015 Plan. He then requested a moment of silence.

MARGARET CASE: Mrs. Case, as Chairman of the Cable Advisory Board, approached and requested the Board's authorization to expend \$12,000 from the special cable fund to purchase a replacement tri-caster; noting that this equipment controls all cameras in the Town Hall and Community Development meeting room. Mrs. Case noted that the cost for the tri-caster would likely be less than \$12,000; however, she would like authorization in that amount to cover potential installation or other costs.

After a brief discussion, Mr. Hohenberger moved and Mr. Breton seconded to approve the requested expenditure of \$12,000 as described. Passed unanimously. Brief discussion ensued as to the amount of funding remaining in this account, which is \$290,000.

Mrs. Case then requested that the Board accept the following donations towards the Searles restoration: \$1,000 from Haverhill Bank, and; \$500 from the Women's Club. Mrs. Case noted that this is the second donation from the latter, who previously donated \$500, and that these bring the total cash amount donated to date to \$29,953.

Mr. Hohenberger moved and Mr. Desilets seconded to accept these donations with gratitude. Passed unanimously.

Mrs. Case then updated the Board on the status of the proposed parking lot/bridal area upgrades; noting that the Planning Board had approved the plans for same.

RECREATION: Recreation Coordinator Cheryl Haas approached noting that the Recreation Committee had expended \$14,098 of the \$20,000 budgeted for special projects on resurfacing of the Nashua Road courts, and was now requesting authorization to expend the remaining funds to repair the fences in the same area. Ms. Haas advised that a quote of \$5,200 to re-do the Nashua Road tennis and basketball fences had been obtained, and that doing so would complete upgrade of this area.

Mr. Letizio sought clarification as to how the quote in question had been obtained. Ms. Haas advised that she had reached out to the current vendor who had evaluated and quoted the overall area; and that she had selected items to upgrade from said quote. Discussion ensued as to whether the Town was locked into utilizing the particular vendor in question, which we are not, other work the vendor has completed for the Town, the items which were selected to upgrade, and the availability of another, local fence vendor. Ms. Haas expressed concerns that the price offered had now been made public, and noted that the Committee had requested that she approach B-Line Fence, the vendor who had drafted the quote.

Mr. Sullivan noted that, with only a single quote, the Board would need to grant a bid waiver. Discussion ensued, and Mr. Sullivan noted he would suggest that the Board waive the bid process contingent upon Ms. Haas obtaining a second quote from the local vendor and awarding of the project to the apparent low bidder between the two. Mr. Letizio moved accordingly.

Mr. Hohenberger queried why it could not just be opened up to bid to all, and Mr. Letizio withdrew his motion. Discussion ensued regarding the need for three (3) quotes rather than formal bids for purchases under \$10,000; and Mr. Sullivan clarified that provided a third quote was solicited, even if not received, then the process would not need to be waived.

Mr. Letizio then moved and Mr. Breton seconded to authorize the expenditure of the balance of funds for this project under the normal process. Passed unanimously.

MARGARET CASE, CONTINUED: Mrs. Case approached noting that she had received an offer of a gravel donation towards the Searles project. After a brief discussion, Mr. Hohenberger moved and Mr. Letizio seconded to accept the donation of gravel provided there is no related expense to the Town. Passed unanimously.

Chairman McLeod recused himself from the following agenda items, due to his affiliation with the Windham Soccer Association. Mr. Letizio assumed the Chairmanship.

RECREATION, CONTINUED: Ms. Haas advised that she had been contacted by the leagues regarding the possibility of mosquito spraying, and that contributions totaling \$970 had been offered by the Soccer Association, Baseball/Softball League, and Football League. Ms. Haas indicated it would be her intention to spray Rogers, Griffin, Nashua Road, and Searles fields, and that the total for same would be \$1,560; adding there are funds in the Recreation budget to cover the balance.

Mr. Hohenberger noted that he was pleased to see the local groups were stepping up to contribute; adding however that he was disappointed they had not come up with enough to cover the full cost. Further discussion then ensued.

Mr. Breton moved and Mr. Desilets seconded to approve the request to spray the fields as noted, and to extend thanks to the local organizations for their donations toward same. Passed 3-1, with Mr. Hohenberger opposed.

SOCCER ASSOCIATION: Mr. Sullivan advised that the Association had presented their annual request for authorization to use temporary lighting at Griffin Park this fall for practices. Mr. McLeod approached noting that the request encompasses the usual parameters, and that Soccer will again be responsible for any damages that might occur and will work with Chief Lewis and Ms. Haas regarding the location of the lights. He also noted the Association will work promptly to respond to any complaints that might arise; adding, however, that none had been received since the first year of use.

After a brief discussion Mr. Breton moved and Mr. Hohenberger seconded to approve the Windham Soccer Association's annual request for use of temporary lighting at Griffin Park as discussed; and that same remain a standing authorization until otherwise voted.

Further brief discussion ensued regarding the benefits of the lighting and the lack of complaints regarding same before the motion passed 4-0. Mr. McLeod extended his thanks to the Board, to Ann and Dennis Senibaldi, and to Dan Pascarella before resuming the Chairmanship.

FINANCIAL UPDATE: Finance Director Dana Call presented her 2nd quarter financial update to the Board, highlights/discussion of which included:

- Revenues – General Fund: Most items are in line with expectations; however, a few more months’ of activity is needed to determine if budgeted amounts remain reasonable.
- Budget Expenditures - Most line items should be, and are, approximately 50% expended, although certain items are paid “up-front” causing line items to exceed 50%, as discussed in the Q1 report.
- Legal – General legal expenses including Beaumont & Campbell and other law firms are running higher (payments through 6/30 reflect billing through 4/30); Miscellaneous reflects the payments made to developers refunding impact fees.
- Solid Waste – Vehicle Maintenance is over-expended due to (1) the retirement of a contracted, local mechanic resulting in fleet maintenance performed by a large company, at double the service cost; and (2) excessive repair issues in the early part of the year to get all trucks and trailers through their annual inspections.
- Mr. Breton noted that the Fire Department overtime is currently 3% below the average expended to date.
- Conservation Land Fund – Of the \$146,500 in current use tax bills outstanding at year-end, \$65,000 has been collected/abated, and \$81,500 remains outstanding. An additional \$146,000 has been billed so far during 2014, with \$42,500 of that remaining due.
- Mr. Breton raised concerns regarding the small amount of interest earned on \$1.3M in funds; noting the availability of funds in areas such as the Special Cable and Public Safety funds for investment. Lengthy discussion ensued regarding previous exploration of better interest rates. Mrs. Call advised that she had put out inquiries regarding a better interest return on both special fund and general fund monies in response to the Board’s recent discussion of this concern. She reminded the Board, however, that such availability is limited due to statutory requirements for collateralization. Mrs. Call advised that rates are rising, and that she will work with the Treasurer.

Mr. Breton requested that the Town’s entire banking service be looked at, as there are several local banks available. Discussion ensued, and Mrs. Call noted she had met with several of the banks to which Mr. Breton was referring, and that they had advised her that they are unable to work with municipalities. She did note that Santander has a government banking division, but reiterated the lack of fees required by Citizens Bank. Mr. Breton indicated he would like to see an analysis of what the fees with another bank might be versus what interest rate we could receive. Further discussion ensued regarding the benefits of being able to work with several different banks, without being tied to one, and it was the consensus of the Board that Mrs. Call make inquiries as to Mr. Breton’s query.

Mrs. Call then presented to the Board members a copy of the Town’s most recent financial statements; adding that same will be posted to the website and that the auditor will be making a formal presentation on the results in August.

BID WAIVERS: Highway Agent Jack McCartney approached noting that, as a result of the previous bids received, funding remains available for road projects; adding that he would like to solicit prices from the three (3) bidders to complete two (2) additional roads. Discussion ensued in that this would be a targeted process to those who bid during the previous round.

Mr. Letizio moved and Mr. Breton seconded to waive the formal bid process in favor of a targeted solicitation as discussed. Passed unanimously.

Mr. McCartney then requested a bid waiver relative to the relocation of the retaining wall between the Transfer Station and Highway garage to increase parking; with Mr. Sullivan advising that quotes for the cost of equipment/hours had been received from five (5) vendors.

After a brief discussion, Mr. Hohenberger moved and Mr. Letizio seconded to waive the formal bid process and allow the project to be completed at a cost not to exceed \$15,000 using the quotes received for equipment use. Passed unanimously.

PROPOSED SEPTIC AMENDMENTS: Mr. McLeod opened the discussion by noting that he taken much time to review the previously proposed versions, watched the meetings he had missed, and researched systems such as the Presby system. He indicated that he believed the real issue was whether or not the Town could do better than the current regulations which, clearly, work. He noted that he also had concerns with opinions being presented as facts throughout the previous discussions, and that the DES has the expertise and experience and therefore is in a better position to stay abreast of and handle septic issues. Mr. McLeod queried why the Town would duplicate the DES' efforts, and noted there is a difference between homeowner costs and costs to the taxpayers; adding that the Board must consider the latter. Lengthy discussion ensued as to the purposes of this evening's discussion, as well as the previous formal public hearing. Mr. Breton noted the need for a public hearing on these proposed amendments, and that he would prefer not to debate them this evening.

Mr. Desilets indicated that he would publicly like to address questions he had received subsequent to the previous hearing, noting a lot of people were under the assumption that he had unilaterally amended the regulations; which he had not. Mr. Desilets advised that one of the questions had related to there being a lack of support for the regulations favored by him, and he provided for the record the attached letter from the Town's engineer, Steve Keach, to the contrary. Discussion ensued regarding the relevance or need to discuss these issues as they pertained to a previous version, and Mr. Desilets indicated he would simply like to clarify questions posed to him.

Mr. McLeod then reviewed his proposed amendments to the Sewage and Waste Disposal System regulations, highlights of which included:

- References to Health Officer as opposed to Building Inspector
- Continuation of bed bottom inspection requirements
- Addition of a new appeals process
- Deferring to the DES as it pertained to 4' vs 3' separation and in-kind replacements
- Overall simplification of the regulations and removal of redundant language

Discussion ensued, and Mr. Desilets noted there were two major issues of contention at the previous hearing, and that he had reviewed Mr. McLeod's proposal and was in favor of same. He then noted that he had been questioned regarding what the scientific support was for his being so attached to the 4' requirement; clarifying that he did not believe he had been. Mr. Desilets noted that, on 5/19, he had inquired whether the DES was more stringent regarding this footage, and staff's response had been in the affirmative. He then noted concerns were also expressed to him regarding Mr. Walsh's assertion that a plan had been sitting on the Building Inspector's desk that the latter had been afraid to approve; inquiring of Mr. Sullivan whether this was factual. Discussion ensued, and it was clarified that the current regulations remain in effect. Mr. Sullivan noted that Mr. Walsh's statement at the time was the first he had heard of it, and deferred to Ms. Scott as to whether this was true. Ms. Scott replied in that Mr. Walsh's claim was not true. Brief discussion ensued.

Mr. Breton moved and Mr. Letizio seconded to send the proposed regulations dated July 23, 2014 to public hearing.

Discussion ensued, and Mr. McLeod requested that Section 108.2 be amended to reflect ten (10) days rather than thirty (30). Mr. Breton amended his motion, and Mr. Letizio his second accordingly. Further discussion ensued regarding the time of the appeal versus the Board to act, and whether 108.1 should be broadened beyond the applicant. Mr. McLeod noted that the latter could be discussed at the public hearing.

Ms. Scott approached noting that both she and Mr. McGuire had reviewed and were in support of the proposal. She raised concerns, however, regarding the timing of the appeal and written decision, and use

of the word “publication”. Discussion ensued regarding the latter, with the consensus of the Board being to change the word to “issuance”; as well as appeals by abutters. Ms. Scott then clarified that Mr. Walsh’s plan had been in the office less than ten (10) days, without a waiver being requested by him, before he redesigned it and it was approved. Mr. McGuire confirmed same.

Further discussion ensued regarding the appeals process. Mr. Desilets noted that the regulations serve two (2) purposes, one for the residents and one for the engineers. He then suggested that the DES document title ENVWQ-1000 be added back into the regulations, and a discussion ensued regarding the potential issues of such specificity in the future as a result of State updates. It was the consensus not to insert the title.

Mr. Desilets then noted that as it pertained to Section 102.2, DES 1008.04 states that the distance may be reduced and he wanted to ensure that it was clear that the 75’ stated in 102.2 was absolute. Discussion ensued, with input from Mr. Shane Gendron of Herbert Associates. Mr. Gendron noted that the reduction to 50’ is in relation to a closed/sealed septic tank; and he suggested that the language might be amended to change “system” to “drain field.” Mr. Hohenberger inquired why there was the 50’ requirement if both systems were solid, and Mr. Gendron indicated he believed the State had established it as a nominal distance.

Mr. Desilets then inquired whether the Board would consider amending Section 103.7 to add reference to NH RSA 485, as otherwise applicants may not be aware that in-kind replacements are permitted; and also that “without a new plan” be added. Discussion ensued again regarding the potential hazards of being so specific, and the ability to discuss this at the upcoming public hearing.

Mr. Desilets then indicated he would like it clear for the record that the 12” base requirement was being removed; adding that same does not just add additional as previously claimed, but as noted by Mr. Walsh it can make the bed last longer. Discussion ensued.

Mr. Desilets then noted that, as it pertained to 108.2, he believed it beneficial to have a written opinion from the Health Officer or Building Inspector, which had been taken out. He advised he would like to have that added back into the waiver provisions. Discussion ensued regarding this request, and Ms. Scott noted that as the Health Officer she is a voting member of the Board of Health. It was the consensus of the Board not include Mr. Desilets’ proposed language, and the latter noted for the record that he would be looking for a written opinion to aide and advise him in the event of hearing. Further discussion ensued.

Mr. Hohenberger echoed Mr. Desilets’s point as it pertained to in-kind replacements and whether language should be added clarifying where information could be found regarding same; and discussion ensued in that this can be amended at the public hearing.

Mr. Sullivan noted that, as it pertained to the appeal process, the Board must consider the Board of Health rules of procedure as well; adding that combined there is a potential sixty (60) day delay for a decision. Discussion ensued as to the substantive nature of such a change, and it was the consensus to amend same to read “public hearing and render a decision within thirty (30) days.”

Mr. Breton reiterated his motion to post the proposed Regulations, as amended, for public hearing. Mr. Letizio amended his second and after brief, further discussion regarding 103.7 and the specific changes agreed to this evening, the motion passed unanimously.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mr. Letizio seconded to enter into a nonpublic session in accordance with RSA 91-A:3 II e. Roll call vote - all “yes”. The topic of discussion was legal, and the Board, Ms. Scott, Mr. McGuire, and Mr. Sullivan were in attendance.

The Board reviewed and executed a legal document relative to code enforcement.

Public Session resumed at 9:30 PM.

I-93 UPDATE: Mr. Sullivan advised that the DOT has been working on establishing a crossing in the form of a box culvert under I-93 which will facilitate a connection between the Greenway Trail to the Rockingham Recreational Trail; explaining that as part of this process the Town must improve the section between the culvert and North Lowell Road. Mr. Sullivan went on to note that a letter of intent has been

submitted to the new TAP grant program, detailing an estimated project cost of \$650,000 to fully pave the area in question, as well as the Greenway Trail from 93 through to Old Mill Road, for which the Town's portion would be \$130,000. Mr. Sullivan noted that the connecting trail needs to be, at a minimum, "blazed" by 2018. He then advised that the State, as per the Town's request, will be installing lighting in the culvert for which the Town will assume maintenance, however, they will not establish a cellular connection; adding that if the Board is in support of this proposal then he will advise Mr. Stamnas in writing so that the State may proceed to include it in their next round of bidding.

Discussion ensued regarding "blazing" of the trail, which Mr. Sullivan clarified could entail nothing more than clearing of the trees and in essence creating a clear path, and that same would cost an estimated \$25,000. Mr. Letizio moved and Mr. Desilets seconded to accept the State's proposal and commit to, at a minimum, blazing of the areas as discussed. Passed unanimously.

TOWN PROPERTY: Mr. Sullivan presented the Board with a list of sixty-three (63) undesignated, Town owned parcels for the Board's annual review and determination regarding possible sale or designation. He indicated he will forward this same information to the relevant boards/committees for review and comment; with a deadline for same in August. Mr. Sullivan noted that this will be placed on the August 25th agenda, and reminded the members that while Tax Deeded property can be sold, all other must go to Town Meeting for sale and/or designation.

Mr. Letizio noted that the EDC Land Use Sub-Committee was reviewing Town parcels as well and would be making a recommendation to the Planning Board in early October which may include some of the parcels in question. Mr. Desilets noted that feedback from the community is to avoid putting the cart before the horse, and he suggested that community charrette be arranged prior to Town Meeting.

OLD/NEW BUSINESS: Mr. Letizio expressed concern about the stone wall in front of Griffin Park, which remains in disrepair after the parking lot project; inquiring whether there was a plan to rectify same. Mr. Sullivan noted this had been discussed many times, and that the cost to rebuild the wall is substantial. Discussion ensued regarding simply placing the stones in an orderly fashion as opposed to fully rebuilding.

Mr. Letizio indicated that he would like to see what the cost would be to simply continue an orderly look such as what the remainder of the wall looks like. Mr. Desilets inquired whether this could possibly be done as an Eagle Scout project, and a discussion ensued regarding the type of machinery that would be required even to simply place the stones. Mr. Sullivan advised that he will work with Mr. McCartney to gather more information for the Board.

Mr. Sullivan then announced that Town Assessor Rex Norman would be retiring at year end, and that he would like to schedule a discussion on the next agenda as to how the Board wished to proceed with the recruitment process (eg. Contract or hire). Discussion ensued, and Mr. Breton noted that there could be an opportunity to bring someone on staff early to aide in the transition by using the balance of funds from the contracted services account in the Assessing budget.

Mr. Sullivan noted that he felt the position should be replaced, rather than contracted out. After further discussion, Mr. Letizio moved and Mr. Breton seconded to advertise the Assessor position to allow time for overlap. Passed unanimously.

Mr. Breton then inquired whether the current data collection techs' pictures could be placed on the Town's website, and Mr. Sullivan replied in the affirmative.

CORRESPONDENCE: None.

MINUTES: Mr. Desilets requested that the minutes of 6/30 be amended on page two (2) to include that Mr. Walsh also advised that a 12" separation will extend the life of the system for an additional year or two. After a brief discussion, Mr. Desilets moved and Mr. Hohenberger seconded to approve the minutes of 6/30 as amended. Passed 4-0-1, with Mr. Breton abstaining.

Mr. Desilets moved and Mr. Breton seconded to approve the minutes of 7/14 as written. Passed 4-0-1, with Mr. Letizio abstaining due to absence.

NON-PUBLIC SESSION: Mr. Hohenberger moved and Mr. Letizio 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, Mr. Sullivan, and Ms. Devlin were in attendance.

Mr. Sullivan updated the Board on a reputations matter relative to tax deeding. Mr. Hohenberger moved and Mr. Desilets seconded to approve the extension as discussed by Mr. Sullivan. Passed unanimously.

Mr. Letizio moved and Mr. Desilets seconded to adjourn. Passed unanimously.

Meeting was adjourned at 9:40 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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

Subject: Email forward

From: Joel Desilets (jdesilets@windhamnewhampshire.com)

To: joeldesilets@yahoo.com;

Date: Monday, July 28, 2014 4:35 PM

From: Steven Keach [mailto:skeach@keachnordstrom.com]
Sent: Thursday, June 05, 2014 7:35 PM
To: LScott@windhamnewhampshire.com;MMcguire@windhamnewhampshire.com;karl@thedubaygroup.com;st
engineering.com
Cc: DSullivan
Subject: RE: Sewage Amendment Docurments

Laura

I found your mock up illustrating competing versions of existing and proposed code incredibly helpful. It appears that at the present time only minor differences exist between versions recommended by "Staff" and "Joel D." with the exception of Section 103.0 pertaining to "in kind" replacement of residential systems. I have heard many arguments both for and against a continuation of permitting "in kind" replacements. Several years ago, when the NHDES first began to permit in kind replacements, it was my experience a lot of homeowner's paid good money for often questionable outcomes given lack of control. That said I also recognize it is often difficult if not impossible to design and install a system meeting all current requirements on many "older" lots. On that basis I have come to support the NHDES' current code since I believe it strikes a reasonable balance.

I recently authored updated code requirements for the Town of Amherst. Interestingly, I settled on language that is not dramatically different than that proposed by Joel D. I guess I would be hypocritical at this juncture if I didn't recommend Windham do the same.

If you wish to discuss, please contact me at your convenience.

Steve K.

From: Laura Scott [mailto:LScott@WindhamNewHampshire.com]
Sent: Thursday, June 05, 2014 11:20 AM