

BOARD OF SELECTMEN
Minutes of August 23, 2004

ROLL CALL: Chairman Alan Carpenter called the meeting to order at 7:00 pm. Those present included Selectmen Bruce Breton, Christopher Doyle, Roger Hohenberger, and Galen Stearns. Mr. Sullivan was excused. Mr. Carpenter read the agenda into the record.

ANNOUNCEMENTS: None.

LIAISON REPORTS: None.

NEW BUSINESS: Chief Messier approached the Board to request a public hearing be scheduled in the near future to discuss revisions to Fire Department permit fees. Administrative staff will schedule a hearing accordingly.

Chief Messier also requested the Board's support in applying for a \$900 grant from Wal-Mart for a fire extinguisher training simulator. Mr. Doyle moved and Mr. Hohenberger seconded to authorize the Fire Chief to begin the process of application for a \$900 grant from Wal-Mart. Passed unanimously.

SENATOR SAPARETO: The Senator was in attendance to review recently passed SB414, which relates to impact fees. The Senator gave a brief history of how this bill originated, and highlighted some significant procedural changes including: Planning Boards must identify and define "active and substantial" changes requiring impact fees; impact fees assessed should be reflective of the development's impact at the time of the project, rather than in the future; fees should be collected at the time of certificate of occupancy issuance, rather than beforehand; and, impact fees must be codified prior to levying.

Senator Sapareto praised the Board of Selectmen for being pro-active and clarifying the effects of this law well ahead of some of our surrounding communities. SB414 will become effective in June, 2005.

IMPACT FEES: Mr. Carpenter read the public hearing notice into the record, and then sought clarification of the purpose for this discussion as impact fees are generally the purview of the Planning Board.

Mr. Hohenberger explained that he had requested this discussion as the Board of Selectmen oversees the distribution of the fees collected, and he felt the members should have a better understanding of how the fees are applied. Mr. Stearns noted that the discussion would also address the collection of non-school related fees.

Mr. Hohenberger gave detailed overview of how the school impact fee procedure and calculations had been researched and developed. Currently, based upon numerous factors, the school impact fee calculates to \$3,436 per new dwelling, which was adjusted and adopted by the Planning Board at \$3,400/dwelling.

In summation of his presentation, Mr. Hohenberger stated he felt strongly that computations and calculations need to be developed and an in-depth study conducted of development impacts to infra-structure, etc. He also asked that the Planning Board better define the term "manufactured housing" and take a closer look at condominiums as they relate to impact fees.

Mr. Tom Case approached the Board stating he felt that the timing of this discussion was late, as it should have been discussed a year ago given that

the Board of Selectmen is charged with reviewing the rational nexus per the Zoning Ordinance.

Mr. Wayne Morris felt the Board would do better to schedule a workshop with the Planning Board to discuss impact fees, rather than discussing it without their input.

The discussion moved to existing fees collected, which are unrelated to the school impact fees. Mr. Carpenter stated that while the collection of fees falls under the purview of the Planning Board, the expenditure of them is the Selectmen's. He explained that the Town has collected money in the past which has been placed in restricted accounts, and that questions were raised regarding the legality of their collection. Several legal opinions were sought, and the Board was undertaking this discussion to determine the nature of the fees and what should be done with them.

Mr. Hohenberger noted that the majority of the money collected was related to the fire sub-station, and that an in-depth study should be conducted and computations developed if the Planning Board wished to continue to attempt to collect these fees. If not, then they must stop requiring these funds and deeming subdivisions in the area scattered and premature.

Ms. Rebecca Way, Assistant Planner, noted that the Planning Department staff had looked at surrounding communities' procedures and found that Windham is fairly conservative as it relates to impact fees. She felt that it was time calculation methods were developed and the fees standardized.

Mr. Stearns urged the Board to address the funds already collected. He felt that, although each of the legal opinions received indicated that the Town could retain the fees as they had not been challenged, the Board should return them to the developers as no procedure had existed to collect them.

Mr. Hohenberger agreed but stated that, in his recollection, several of the developers had approached the Planning Board offering to contribute towards the safety and recreational needs, and they were not conditions for approval.

Mr. Breton stated that Town Counsel had advised the Planning Board that all donations must be presented to the Board of Selectmen before approval. Also, such fees are no longer being discussed as a requirement for approval. He suggested that letters be sent to each of the payers explaining the situation and the Town's error, and advising them that if they wish to continue to donate these funds the Town would graciously accept them.

A discussion ensued regarding how many individuals had paid these fees to date; and who is still paying; and that the individual agreeing to pay the fee initially and the one who ultimately pays it may differ.

Mr. Walter Kolodziej, former Planning Board member, thanked the Board for obtaining legal opinion on this matter. He stated that, in his seven years on the Planning Board, he was consistently opposed to collection of these fees, feeling that if the plan in question were "scattered and premature", then it should have been denied. He also recalled that donations were not offered, but asked for by the Planning Board. Mr. Kolodziej felt that, in his opinion, these funds were wrongly solicited and should be returned to the payers.

Mr. Morris sought clarification as to whether the collection of these fees was deemed illegal per the opinions received. The Board responded that, if challenged, the practice would not hold up in court and that it should not continue. However, since no one has challenged the fees, the legal opinion was the Town could retain the funds.

Mr. Morris noted that *Simonsen v. Derry* states that the Planning Board can deny applications that do not meet Town standards, and that some of those fees were borne out of response times to the area. He expressed concern that, procedurally, the public hearing notice for this discussion was incorrect and that the Board should not consider returning the fees without the members of the Planning Board present.

Mr. Stearns respectfully disagreed, believing that as they were incorrectly collected, the Board must offer to return them. Mr. Carpenter conceded that the notice could have been clearer, but that the expenditure of the fees was up to the Board, including their possible return.

Mr. Stearns moved to return the fees that were improperly collected. A lengthy discussion ensued with comments from Mr. Morris, Ms. Way, Mr. Kolodziej and Mr. Case, regarding the need to discuss release of the funds with the Planning Board; varied interpretations of the legal opinions; the reasons for the fees; and to whom they should be returned.

Ms. Way advised the Board that a list of payers is available for the Board's review. She requested that the Board look at the conditions of the donations and the circumstances surrounding them.

After further discussion regarding the legal opinions, Mr. Stearns reiterated his earlier motion to return the fees, adding that all payers should be contacted and advised that their collection was in error but, if the payer was still willing to contribute, the Town would be happy to accept their donation should they so choose. Mr. Doyle seconded the motion. Mr. Hohenberger expressed his continuing concerns regarding determining who actually paid the fee and who the funds should be returned to.

A five minutes recess was called to allow the Board to locate and review the list of payers.

Mr. Carpenter announced that the list had been located and reviewed, and advised all that, should the Board decide to return the funds it would include monies for the Senior Center, trail system, computers for the School district, and the Fire substation. Mr. Breton stated that these particular funds, totaling \$65,000, had not been collected yet, and suggested that the developers in question be scheduled to appear at a future meeting to officially donate the funds, with the exception of the school district monies, if they still wish to do so.

After some further discussion regarding determining the payers, the motion passed 4-1, with Mr. Carpenter opposed.

Mr. Stearns moved to instruct Mr. Sullivan to compose a letter to the Planning Department staff directing them to stop the collection of conditional fees on any approved subdivisions. Mr. Breton and Mr. Hohenberger requested Mr. Stearns amend his motion to allow staff to include in their communications that the developers, if they wish, may come to the Board of Selectmen to donate the funds. Mr. Doyle seconded the amended motion. Mr. Carpenter requested that Town Counsel receive a copy of the correspondence. Passed unanimously.

PUBLIC HEARING/DONATION: Chairman Carpenter read the public hearing notice into the record. Mr. Stearns moved and Mr. Doyle seconded to accept with thanks the donation of \$1,350 from Rockingham, Toyota, Dodge, Nissan, Honda for use towards expenses associated with the Recreation Committee Tennis Tournament. Passed unanimously.

Mr. Breton thanked Rockingham for their generosity and Mr. and Mr. Goldman for their efforts in conducting the tournament.

PUBLIC HEARING/DONATION: Chairman Carpenter read the public hearing notice into the record. Mr. Doyle moved and Mr. Stearns seconded to accept the donation of \$23,059 from the Friends of Windham Historic for use toward the costs of renovating the Searles Building. Passed unanimously.

Mr. Breton requested that letters of thanks be drafted by staff for each of the above contributors.

PUBLIC HEARING/ANIMALS: Mr. Carpenter read the public hearing notice into the record. He then explained that this discussion had been precipitated by an ongoing problem at Griffin Park of owners failing to clean-up after their dogs, as well as recent vandalism at the Beach.

Griffin Park: Mr. Hohenberger opened the discussion by indicating he supported the leashing of all dogs on Town property. He explained that currently the Town operates under the Dog Control Law, and he is concerned about dogs roaming too far from their owners. He then stated he is unsure of how the issue should be handled at the beach, as it is already posted "No Dogs Allowed". He suggested that disposal systems should be installed.

Mr. Doyle concurred with Mr. Hohenberger that, at a minimum, leashes should be required, but felt that a complete ban of dogs was a disservice to the residents.

Mr. Stearns felt that, whether leashed or not, owners who failed to clean up after their dogs showed a lack of respect for the facilities and the other users. He noted that, numerous times, staff has had to conduct clean-up operations. He believed that all domestic animals should be banned from Town recreational facilities and a fine schedule implemented that included no provisions for warnings.

Mr. Breton felt the issues at Griffin Park were due mostly to the dogs being unleashed. He felt a leash law should be implemented and the dogs restricted to the walking path, noting most of the damage is to the playing fields. Mr. Stearns questioned how such a restriction could be enforced.

Mr. Carpenter favored Mr. Breton's solution, noting that Griffin Park is a new facility populated by users with different interpretations of appropriateness. He felt education in Park etiquette should be attempted first to give users a chance to comply and, if that fails, then a ban should be considered. He suggested disposal systems, implementation of a leash law, and hand-outs presented to dog owners at the time of registration explaining the Park requirements.

Mr. Howie Glynn, local business owner, approached the Board to express his concerns about banning of dogs at the Park, believing it to be unfair. He advised the Board that his company had offered approximately two years ago to purchase dog waste disposal systems and donate them to the Town. He felt that if the Town made them available, people would use them. He then reiterated his previous offer to purchase and donate the systems, and to install them at locations chosen by the Town. He suggested three (3) units be purchased and presented descriptions of two different types to the Board, stating he would purchase whichever the Board preferred.

Police Captain Patrick Yatsevich spoke in support of a leash law pertaining to public property and roadways. He also suggested the Board look at

developing other ordinances specific to Griffin Park, such as an alcohol ordinance or curfew, and that the Board consider banning pets from public buildings.

Mr. Ralph Sinclair, resident and owner of Woof Woof Professional Dog Services, felt that it was a minority of dog owners causing the problem, and that signage at the Park was important. He also suggested the Board explore building a dog park. He stated he did not believe leashes were the solution, as some dogs become more aggressive when restrained and, in some cases, the leash was more dangerous than the dog itself. He also advised the Board that he has witnessed dogs on the Town Beach on a nightly basis scavenging for food in the sand. Mr. Case approached to express his concurrence with Mr. Sinclair's comments regarding the Park.

Mr. Dennis Senibaldi, Recreation Committee, stated that the Committee feels dogs should be leashed and limited to the outside walking path only. He also agreed with Mr. Stearns belief that no warnings should be issued for violations.

Mr. McMahon approached to thank Mr. Glynn for his generous offer, and to state he did not believe people went to the Park intending to break the rules. He expressed hope that the Board will install signage, particularly regarding the athletic fields, and suggested 6-8 months be allowed to pass before re-addressing the issue if there is no change.

After further, brief comments by Mr. Barlow and Mr. Sinclair, Mr. Hohenberger moved to instruct staff to draft a leash law pertaining to all public areas and including a fine schedule, to prohibit dogs from all Town buildings and designated playing fields, to install signage at all Town fields, and to schedule a public hearing to accept the donations from Mr. Glynn and Mr. Sinclair of disposal systems and signage. Mr. Doyle seconded the motion. Passed unanimously.

Town Beach: Mr. Carpenter noted that the beach, while open 24 hours, is only staffed from 10 A to 5 P. He suggested that either the fencing be extended right down to the water and around the back portion with a suitable lock, or that staff be on hand from 10 A to 7 P each day and lock the beach upon exiting.

Mr. Senibaldi noted that the beach is currently fenced all the way around, but that dogs can still enter on the right and left sides where the docks are located. He agreed the fence could possibly be extended to the water.

Mr. Sinclair felt it would be nearly impossible to fence the dogs out. He suggested that the existing policy be enforced and the Animal Control Officer sent out to collect the dogs and fines levied on the owners, or a curfew implemented between dusk and dawn with a fine for violators. As an additional option, Mr. Sinclair suggested that motion activated sprinklers may be an effective way to deter the dogs.

Mr. Carpenter suggested staff be asked to contact the Animal Control Officer to perform random patrols of the beach, and Mr. Breton asked that Captain Yatsevich send a letter to the Animal Control Office accordingly.

CLASS IV ROAD BUILDING PERMIT: The Board reviewed a request for a building permit at 1 Searles Road. Mr. Carpenter read opinions regarding the request as received from the Planning Board and Police Department. Mr. Doyle moved and Mr. Breton seconded to grant the request for a building permit at 1 Searles Road to include comments received from the Planning Board and standard waiver language, including release of liability. Passed unanimously.

CLASS IV ROAD BUILDING PERMIT: The Board reviewed a request for a building permit at 21 Sawtelle Road. Mr. Carpenter read opinions regarding the request as received from the Planning Board and Police Department. Chief Messier approached to note his only concern was that the roadway not be blocked during construction, hindering emergency access. Mr. Doyle moved and Mr. Hohenberger seconded to grant the request for a building permit at 21 Sawtelle Road to include comments received from the Planning Board and standard waiver language, including release of liability. Passed unanimously.

NEW BUSINESS: Mr. Senibaldi advised the Board that he had received a request from the Boy Scouts to use the pavilion area of the multi-purpose building, but was unsure to whom he should refer them to for authorization.

It was determined that, as the multi-purpose building is a Town facility, the Scouts will need to seek permission from the Board.

OLD BUSINESS: Mr. Breton requested that the Board send a letter to the CIP Committee requesting the removal of the Castle Hill Road bridge project from the CIP Plan, and to move the Bartley House out to a further date.

Chief Messier requested that Board not remove the bridge from the CIP plan, feeling it should be repaired in the future as the Fire Department is unable to utilize it. Captain Yatsevich also supported the repair, noting that the traffic counter had been placed in the area for a period of three days and indicated an average of 150 to 200 cars per day traverse the bridge.

After a brief discussion regarding the bridge, Mr. Breton moved to remove the bridge from the CIP plan, and to move the Bartley House to 2009 and the amphitheater to 2010. Mr. Doyle seconded the motion. Passed 4-1 with Mr. Stearns opposed.

Bond Releases/Lamplighter: Mr. Carpenter explained that these releases had been continued from a previous meeting due to ongoing concerns with the site. After reviewing a timeline of correspondence regarding this issue, a brief discussion ensued regarding DES concerns and changes made to the area. Ms. Way noted that Planning staff is authorized to make minor modifications to drainage, which was done at this site to improve storm water issues, provided they would not have changed the initial approval. Ms. Way also noted that the area has been seeded and is well on the way to restoration.

Mr. Hohenberger moved and Mr. Stearns seconded to authorize a partial bond release in the amount of \$30,978 to Silvestri Corporation. Passed unanimously.

Mr. Doyle moved and Mr. Hohenberger seconded to authorize a partial bond release in the amount of \$12,051.10 to Silvestri Corporation. Passed unanimously.

Mr. Doyle moved and Mr. Hohenberger seconded to authorize a partial bond release in the amount of \$9,519 to Silvestri Corporation. Passed unanimously.

Mr. Doyle moved and Mr. Hohenberger seconded to authorize a partial bond release in the amount of \$11,322 to Silvestri Corporation. Passed unanimously.

CORRESPONDENCE: Letter received from Roy Dennehy. Mr. Breton noted that this refers to an ongoing legal issue. Discussion was postponed until the next meeting.

BID AWARDS: Highway Agent Jack McCartney presented the following bids to the Board for review:

Roadway Crack Sealing:

HB Dow, Concord, NH \$19,000 (7 pallets, labor incl.)
Sealcoating, Inc., Hingham, MA \$7.49/gallon

Mr. McCartney explained that, when calculated out in terms of coverage, HB Dow's total bid price would average out to 15-18 miles of roadway versus 6-9 miles from Sealcoating.

Mr. Doyle moved and Mr. Stearns seconded to award the bid for roadway crack sealing to HB Dow of Concord, NH for an amount not to exceed \$19,000. Passed unanimously.

Basin & 65' Pipe/Jones Road:

Tate Bros. Paving, Hudson, NH \$5,460

Mr. McCartney explained that this was a sole source bid arising from a drainage issue in front of the Manor Motel. He explained he had solicited verbal quotes from several vendors, and none except Tate had been interested in the project.

Roadway Reconstruction:

Tate Bros. Paving, Hudson, NH
Marblehead Road: No Bid
Castle Hill Road \$188,450 (excluding ledge work)

A discussion ensued regarding the basin and reconstruction bids. Mr. Breton expressed concerns that the time frame allowed for proposals was too short, and moved that the basin and 65' pipe and roadway reconstruction be placed out to re-bid. The motion did not receive a second.

Mr. McCartney explained that the reconstruction project had been sent out to bid twice. A discussion ensued regarding Castle Hill Road and the shared developer cost, and the repercussions of carrying over the money budgeted for this project.

This discussion was tabled to the next meeting of the Board to allow input from Mr. Turner and Mr. Sullivan.

NEW BUSINESS CONTINUED: Mr. Barlow advised the Board that there was an ongoing issue with the air conditioning breakers at the Town Hall. He stated he had asked the Fire Department to investigate the feeds using the thermal imaging camera, and it appears that they are undersized. Replacement of the feeds will require a permit, and Mr. Barlow requested that the Board waive the associated fee.

Mr. Breton moved and Mr. Hohenberger seconded to waive the permit fee for repairs to the Town Hall. Passed unanimously.

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

The meeting was adjourned at 11:15 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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