

# **Board of Selectmen Meeting Minutes March 29, 2010**

## **Roll Call: Windham**

Charles McMahon, Chairman – Present  
Bruce Breton, Vice-Chairman – Present  
Roger Hohenberger, Selectman – Present  
Ross McLeod, Selectman – Present  
Galen Stearns, Selectman – Present

## **Salem**

Michael Lyons, Chairman - Present  
Everett McBride, Selectman - Present  
Elizabeth Roth, Selectman - Present  
Arthur Barnes, Selectman - Present  
Patrick Hargreaves, Selectman – Present

## **Staff**

David Sullivan, Town Administrator  
Paula Wrenn, Minute Taker

Henry LaBranche, Acting Town Manager - Present

## **Call to Order/Attendance/Pledge of Allegiance**

Chairman McMahon opened the meeting at 7:03PM followed by the Pledge of Allegiance.

## **Sewer Feasibility Study**

Mr. McMahon gave a brief overview of the concerns with the 93 Project and the impact it will have on the Town's natural resources (Canobie Lake and Cobbetts Pond). He said if they are going to be digging up 93 this is the time for Salem and Windham to look at the opportunity for funding a sewer study with Community Technical Assistance Program (CTAP) money to protect the natural resources in the areas affected.

Mr. McBride spoke about the Greater Lawrence Sewer District (GLSD). He said Salem entered into a capacity agreement with the GLSD in 1987 to cover Shadow Lake and Canobie Lake. Mr. McBride noted that Cobbetts Pond was not included. He suggested the Windham Selectmen discuss with the GLSD to reallocate the gallons from Shadow Lake to Cobbetts Pond.

Mr. McBride gave a synopsis of where Salem is today with their sewer program. He said that they did a study a few years ago called the “West Side Interceptor”. Salem has put a grant application in with the Federal Government for Canobie Phase II which would tie-in the remaining Salem homes on Canobie Lake to the sewer. This grant is a 50% reimbursement to the town. Salem already has their design done and it has gone out for bid. They know what their cost will be

Mr. Hohenberger asked if Windham/Salem want to go as a group to apply for the CTAP funds to do a study. Mr. McBride believes that Salem has exhausted their CTAP funding. Mr. Stearns explained that CTAP funding is available for municipalities with joint projects. This funding would not be part of their normal allocation. It is only available if Windham joins with another town and each town could be granted \$10,000.

Mr. McMahon said that Mr. Stearns is the Town of Windham's CTAP representative.

Ms. Roth said Mr. William Scott is Salem's CTAP representative. She will be with Mr. Scott tomorrow at Salem's Economic Development Committee meeting and will relay this information to him.

“DRAFT”

Ms. Roth thanked the Windham Selectmen for sharing the preliminary study with Salem Selectmen. This study is looking at the resources of Cobbetts Pond and Canobie Lake; and the impact of sewerage and development of sewerage in the surrounding areas. She believes this a tremendous opportunity to work together jointly especially where Canobie Lake is shared with Windham and Salem. Ms. Roth would like to go forward with applying for the CTAP money in order to do a joint study.

Mr. Stearns wanted confirmation that Windham was part of the original GLSD. Mr. McBride assured him that Windham was because of Canobie Lake. Mr. McBride again said Windham Selectmen need to have the discussion with the GLSD with getting the allocation of gallons from Shadow Lake (Shadow Lake is not going to be sewerred) moved to Cobbetts Pond.

Mr. McBride touched upon the Dracut/Methuen agreement with the GLSD. Dracut is paying the Town of Methuen for the privilege of running 500,000 Gallons per day through Methuen and \$1.6M to the GLSD for their allocation. Windham will not have those costs associated with the GLSD as they already have an allocation from the GLSD.

Mr. Hohenberger said he has concerns with changes in the zoning. He feels that the proximity of the wells to the sewer (75') around the lake help with controlling density. Presently the resident has to come before the Board to request dispensation. Mr. Hohenberger questions how many of these lots will become available for development with sewer.

Mr. Breton reviewed some of the flow allocations under Section 4.0 of the Feasibility Study Report:

- 136,000 Gal for 650 Homes on Cobbetts Pond;
- 21,000 Gal for 100 Homes on Canobie Lake;

Mr. Breton said under Section 4.1 it is noted that the GLSD agreement was for 310,000 Gal per day. Therefore, he does not believe there would be any zoning issues.

Mr. McBride said with the way septic systems are designed today and the flow of clean water from them that it would not hinder development around the lake. They get these same requests in Salem and it is a non-issue.

Mr. McLeod asked Salem what is their current gallon volume per day. Mr. McBride said 3,000,000 Gal. in the summer and 2,000,000 Gal. in the winter.

Mr. McLeod asked Salem how many personnel they have allocated to Water and Sewer. Mr. McBride responded 12+/-.

Mr. McLeod asked Salem what are their annual Operating and Maintenance cost for the system. Mr. Lyons said it is \$2.2M and they have recently stepped up their capital investment and will be replacing \$400,000 of pipe this year and plan to do that every year.

Mr. McLeod asked what the connection fees per house are. Mr. McBride said the cost per home is \$7,500 for sewer and \$4,500 for water. There are two ways to pay for this; you can pay up-front or over a 20-year period. Mr. McBride said this is still cheaper than putting in a septic/leach field and it is forever.

Mr. McMahon said he would like to focus this meeting on if the two towns' are interested in working together to apply for the CTAP funding to do a further study. He asked Ms. Laura Scott if she would speak to the group on the steps to apply for the funding.

Mr. Stearns asked Mr. Lyons if Salem is interested in working with Windham in applying for this grant.

Mr. Lyons, speaking for himself, would like to move forward with the CTAP funding; however, he would like the Salem Selectmen to discuss this further among themselves at a subsequent meeting.

Mr. McLeod has concern with the surface water run-off into the ponds. He would like to hear from the Presidents of the respective Lake and Pond Associations on this topic when opened up for public input. Mr. McLeod wants to make sure that this study will address this issue.

Mr. Barnes would like to propose a motion as he said this is a posted Salem Board of Selectmen meeting.

Mr. Lyons said Mr. Barnes could propose a motion; however, he would prefer to take the discussion amongst them back to Salem.

Mr. Barnes motioned to go forward with the Windham Selectmen to make application for the CTAP money and move forward with a joint venture.

Mr. Hargreaves second for discussion. Mr. Lyons opened for discussion.

Ms. Roth thinks Salem should take a step back and see what they are trying to accomplish tonight. She would like to see Chairman Lyons take a straw poll to see if Salem is interested in moving forward.

Mr. Hargreaves believes the motion is for the two Boards to apply for the CTAP grant together. There needs to be a start somewhere and this does not mean that both Towns are committed to anything long-term. It is a beginning to see if this is right for both towns to save Canobie Lake and Cobbetts Pond.

Mr. Lyons would like to talk with Mr. Scott and discuss at next Monday's Salem Board of Selectmen's Meeting. Mr. McBride made motion to table discussion. Ms. Roth seconded. Passed 3-2 Selectman Barnes and Hargreaves opposed.

Mr. McMahon asked the Windham Boards view if they support the concept of applying for CTAP funding to do an in-depth study to establish a sewer line.

Mr. Hohenberger said we need to continue to the next step to get some ideas of costs not just for the Town but also for the Windham homeowners. He also would like to further discuss how zoning is affected with changing to sewer. Mr. Hohenberger is in favor of moving forward.

Mr. Stearns said he agrees with Mr. Hohenberger and has issues such as; costs; infrastructure needs (staff & equipment); and site where the line would go. Mr. Stearns is in favor of moving forward.

Mr. McLeod said we need to make sure we spend this CTAP money wisely. He has concerns with costs and water quality. He thinks the next study needs to address all these concerns. Mr. McLeod is in favor.

Mr. Breton thinks the study will show the interconnection between Salem/Windham; if Salem's lines need to be upgraded in order to accommodate Windham; and the costs involved. Mr. Breton is in favor of moving favor.

Mr. McMahon said that the Windham Selectmen are in agreement with jointly applying for the CTAP grant. He asked Ms. Scott, Windham Community Development Director, to speak on the process of applying for the CTAP grant.

Ms. Scott said the CTAP money is there for us; there is no competitiveness. The grant application is fairly simple (3 pages). It is a multiple step process. You need to spell out clearly what the money is going to be spent on in the application. This is a rolling application. The application gets submitted to the Regional Planning Commission and to DOT. Ms. Scott has heard that the funds need to be spent by the end of August. Ms. Scott is going to verify this information.

Mr. McLeod would like Ms. Scott to find out what the actual steps and timing is for this grant and when would the grant be put in and when we would get the report back from Underwood Engineering. Mr. McLeod would also like Ms. Scott to query about what is involved with the overall process.

Mr. McMahon asked if there were any questions from the public.

Mr. Sean Ferris, 31 Cobbetts Pond Road, asked if the Town has considered the impact on the schools if some of the 650 houses around the pond were to covert to year-round if there was to be a sewer line installed.

Mr. McMahon said that this is an issue for consideration. However, Windham has never gotten to the point of having the facts. Engineering work needs to be done and then informed decisions can be made. The overall objective for both Towns is to protect Cobbetts Pond and Canobie Lake. Mr. McMahon explained once they get some facts then decisions can be made.

Mr. McMahon explained that there could be an opportunity to receiving funding from the Federal Government because of the issues with 93 with what is happening to Cobbetts Pond; and the Conservation Law Foundation law suit possibly delaying the 93 project.

Mr. McMahon said they will await for Salem's response so they can work on the narrative for the CTAP application.

Mr. McBride motioned for the Salem Selectmen to adjourn. Ms. Roth seconded. Passed 5-0.

Mr. McMahon recessed for 5-minutes at 7:55PM.

### **Equipment Purchase**

Mr. Poulson addressed the Selectmen about the purchase of equipment. He said they are looking at purchasing a compact loader and a used man lift. The Town has no man lift and has always had to lease/rent.

Mr. Stearns asked if a scissor lift would be less expensive. Mr. Poulson said the scissor lift is less expensive but the capabilities are limited. Mr. Poulson advised that the way the bid proposal will go out, there will be the right of refusal.

Mr. Stearns said if you are only going to be doing maintenance the scissor lift would be fine. If you are looking to do additional work outside of maintenance, the man lift would be best.

Mr. Hohenberger asked if they could borrow the scissor lift from the school district. Mr. Poulson said he has been trying for 8-mos. to borrow the scissor lift and has not been successful.

Mr. Poulson explained that with a man lift more projects can be accomplished such as; washing down siding, tree trimming, gutter work. Mr. Hohenberger wants to make sure that the man lift will justify the cost vs. renting one. Mr. Poulson said he is conscious of the cost. His intent is to come in under budget.

Mr. McLeod asked how much they anticipate the cost. Mr. Poulson said they are looking at units of 50 hrs. or less with a warranty. Mr. Poulson could not speculate on the cost - possibly \$15,000.

Mr. Stearns said if the man lift can be used by all departments for maintenance, power washing, cleaning 2<sup>nd</sup> floor windows, used by the Highway, Fire and Police departments, etc. then it can be justified. If you are only looking to do maintenance, the scissor lift would be cheaper.

Mr. Breton asked Mr. Poulson what his recommendation would be.

Mr. Poulson's said that he intends to bid the project and feels that by bundling the bid the Town will get the best equipment for their money. He knows that at least two vendors who offer all these types of equipment will be interested in bidding. The man lift they are interested in is an "all terrain unit". Mr. Poulson said they want to purchase four pieces of equipment (2-trailers, 1-loader and 1-manlift).

Mr. Breton made motion to support Mr. Poulson's recommendation in his memo dated March 29, 2010 to go out to bid in a bundled fashion. Second by Mr. Stearns. Passed 3-2. Messrs. McLeod and Hohenberger opposed. Mr. Hohenberger opposed as it is the first time he heard of the need for the man lift and if the bid went out less the \$15,000 he would be in favor.

Mr. Hohenberger was excused from meeting at 8:25PM.

### **Fee Changes**

Ms. Scott said last May the Board had asked that all department heads review their fee structure and make recommendations. Ms. Scott has some proposed fee changes for the Community Development Dept. These fees were developed with the assistance of Zoning Board, Planning Board and department staff. Only the fees that they proposed to change are listed.

Mr. Breton made a motion that the commercial tower fee be \$5,000. He explained to the Board that he looked at the tower fees across the country and they were \$500-\$7,000. Mr. Breton took the median (\$5,000) and said when the proposal goes to Public Hearing they can amend the fee down but not up.

Mr. McLeod wants to propose \$500 and go to Public Hearing unless it cost the Community Development Dept. significantly more to process the application.

Ms. Scott said the cell tower fees are the lowest she has ever seen. She did query the Town Building Inspector and he did not feel there were thousand of dollars of time involved. Ms. Scott said she is not trying to use fees as a revenue maker for the Town but to offset the department costs.

Ms. Scott also explained to the Board that there will no longer be a Zoning Board Use/Area Variance as mandated by the State. There will only be one ZBA Variance Application and the fee will be \$60.

Mr. Stearns asked about the deletion of the Sunday License Fee. Ms. Scott said they only received four requests this past year. She also explained that in the Site Plan Regulations and on the Site Plan Application it states the Sunday hours of operation.

Mr. Stearns questioned why the residential radio tower fees went from \$50 to \$250. Ms. Scott explained that the Building Inspector surveyed surrounding communities and based the \$250 on his findings and also the amount of his time that is required on these applications.

Mr. Stearns motioned that we keep the radio tower fee at \$50.

Mr. McLeod motioned to accept the fee proposal dated March 29, 2010 with the amendment to add Mr. Stearns' request to keep the residential radio tower fee at \$50 but not amended per Mr. Breton's request to raise the commercial tower fee from \$500 to \$5,000. Second by Mr. Stearns. Motion passed 3-1. Mr. Breton opposed as he proposed a \$5,000 fee for the commercial tower fee.

### **Announcements**

Mr. McLeod noted that the Windham Firemen's Ball was a huge success.

Ms. Scott said the Career Day at WHS, the Greater Salem Chamber of Commerce 'Business After Hours' event and the Windham Economic Development Expo held on March 18, 2009 was very successful. There were over 70 local businesses that participated in the Expo with over 200 attendees with many high school students attending.

### **LIAISON REPORTS**

Mr. McMahon advised that the minutes of the March 1, 2010 will be reviewed at the next Selectmen's meeting.

### **CORRESPONDENCE**

Mr. McMahon noted hat the Board received documents from Ms. Scott regarding:

- Cell Tower
- Dunkin Donuts
- Reorganization

### **Dunkin Donuts**

Ms. Scott addressed the parking issues at Dunkin Donuts. She stated that the parking does not agree with the original site plan. Ms. Elizabeth Wood, Code Enforcement Officer, and Ms. Scott both measured the parking spaces (length and width) at two different occasions recently. They both found that the parking spaces do not conform to the original site plan. Ms. Scott verbally communicated with the applicant and the Owner the issue of parking spaces. The Owner has agreed to restripe the parking lot; however, due to the weather they have agreed to do this in early spring.

Ms. Scott advised since that communication, she has been informed that they are going to submit to the ZBA for a variance to reconfigure the parking lot. Ms. Scott said she has advised them that they have until late April to either do the restriping or submit a variance to ZBA for reconfiguration of the parking lot.

Mr. McLeod asked if the Code Enforcement Officer did the compliance check prior to opening. Ms. Scott said that she was the Code Enforcement Officer at the time and she signed off on it. The site at that time was in compliance; however, Ms. Scott said she could have possibly made a mistake with the parking spaces.

Mr. McLeod asked if the parking could have been changed after Ms. Scott's site inspection. Ms. Scott said she would have no way of knowing.

Mr. McLeod would like Ms. Scott to advise the Owner that the deadline for restriping as per the Site Plan or submission to the ZBA for reconfiguring is May 15, 2010. Ms. Scott will advise the Owner of the May 15<sup>th</sup> deadline.

#### Reorganization

Mr. McMahan said there is a proposal dated March 28<sup>th</sup> from Ms. Scott entitled "Department Staffing Structure and Job Duties Proposal". Mr. McMahan would like this be discussed at a future meeting so all Board members review.

Mr. Breton questioned if it should be for non-public or public discussion. His concern is that a job is being eliminated and a new one is being proposed.

Mr. Sullivan said that the March 28, 2010 document is a public document. He said it is a proposal for a staffing reorganization.

Mr. Breton made motion to make the March 28, 2010 document 'confidential' and not make the document public pending the April 12, 2010 meeting.

Mr. McLeod wants it a public document as it is about organizational structure. He thinks it is good for the public to know.

Mr. Sullivan agrees that it is a public document. Mr. Sullivan suggests that they have a brief non-public meeting tonight to discuss so that the Board understands the affects of the proposal with regard to personnel.

Mr. Breton withdrew his motion as the Board has agreed to have a non-public meeting tonight to discuss personnel.

Mr. McMahan said there will be a non-public meeting tonight to discuss the March 28, 2010 document.

#### Cell Tower

Ms. Scott said she has 65 pages of emails from the public with regard to the ZBA Cell Tower case. Mr. Sullivan said the majority of these emails allude to two specific questions at the March 15<sup>th</sup> ZBA Meeting:

- Abutter Notification
- Can the ZBA deny an applicant's request to postpone a meeting?

Ms. Scott said she has kept the Chairman of the ZBA in the loop with regard to the few emails that she has responded to. She does not understand why the Selectmen would have concerns with this.

Mr. McMahon said this is not an issue for the Selectmen. If there is a concern, the Board should go directly to the Chairman of the specific board. He said since these questions deal with 'process' it should be directed to the ZBA Chairman.

Mr. McLeod said Ms. Scott does not report to the ZBA and he thinks it is inappropriate for the Selectmen to go to the ZBA to seek answers to these questions. Mr. McLeod said Ms Scott reports to the Selectmen so he thinks it is entirely appropriate for the Selectmen to be concerned with the substance and style to Ms. Scott's responses to citizen's inquiries.

Mr. Stearns said if the Selectmen have an issue, this discussion should be non-public.

Ms. Scott said she does not know if this should be public or nonpublic because she does not know what questions the Selectmen have for her.

Mr. Breton said the ZBA is not part of this Board and they are elected by the citizens of Windham. Ms. Scott is there to assist the ZBA. Mr. Breton said if there are any questions with protocol it should be addressed with the Chairman of the ZBA. Therefore, he does not think a non-public is necessary.

Mr. Sullivan said Ms. Scott reports to him. He also said when Ms. Scott responded to a few of the emails she referred to the RSA's and By-Laws. Mr. Sullivan said ultimately it is the ZBA that has to make the decisions.

Ms. Scott said this issue is a very emotional issue for the residents. She has handbooks available in her office of the ZBA Regulations and Office of Energy and Planning for the public.

Mr. McMahon said the Board is in agreement with not having to do a non-public session.

#### Planning Board Meeting

Mr. McMahon advised the Board that they have been asked to participate at the Planning Board Meeting on Wednesday, March 31, 2010 on "Workforce Housing".

#### **NEW BUSINESS**

Mr. Breton said there is a plot of land that was given to the Town at Gov. Dinsmore Road and the corner of Mockingbird where many trees are down from the recent storms. Mr. Sullivan will have Mr. Jack McCartney evaluate the site and make recommendations.

Mr. Sullivan reminded the Board that Liaison assignments should be submitted to his attention soon.

Ms. Scott said Community Development, Recreation, Transfer Station and Go-Green are doing a clean-up day on April 17<sup>th</sup> on the Rail-Trail, Conservation Land and are trying to create some neighborhood clean-up activities. Sign-up sheets are at the Community Development Office.

**NON-PUBLIC**

Motion made by Mr. Breton to go into Non-Public Session under 91-A:3, II c. to discuss the Memorandum of March 28, 2010 with regard to personnel. Second by Mr. McLeod. Passed 4-0.

Mr. Breton motioned to recess the meeting to Wednesday, March 31, 2010, at which time the Board of Selectmen would hold a joint meeting with the Planning Board. Second by Mr. McLeod. Passed 4-0.

The meeting was recessed at 9:15 PM.

Respectfully submitted,

Paula Wrenn  
Minute Writer

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