

BOARD OF SELECTMEN MEETING
Minutes of May 18, 2020

CALL TO ORDER: Chairman Ross McLeod called the meeting to order at 7:00 pm. Selectmen Roger Hohenberger and Bruce Breton were present in the meeting room; with Mr. McLeod, Selectmen Heath Partington and Jennifer Simmons, Town Administrator David Sullivan, and Fire Chief Tom McPherson, in attendance via Zoom Conference.

Mr. McLeod opened with the Pledge of Allegiance, then read a statement relative to the Governor's Executive Order 2020-04 #12, which authorizes the Board of Selectmen to meet electronically provided public access is available via telephone or electronic means. He read the access phone number, text message number, and email address available for use by the public.

Mr. McLeod then conducted a roll call of all participants to ensure they were conferencing in alone; which each confirmed.

ANNOUNCEMENTS/LIAISON REPORTS: Mr. McLeod wished Mrs. Simmons a happy, belated birthday.

Mrs. Simmons advised that the Economic Development Committee had recently met and that Community Development Director Rex Norman will be attending the Board's 6/1 meeting to discuss the TIF districts.

SEARLES SCHOOL & CHAPEL TRUSTEES: Mr. Sullivan asked this be deferred.

PUC PETITION: Mr. Sullivan noted that the Board has received the draft petition as written by the Town of Salem for review and, if they concur with it as drafted, he will advise them to file the petition; reminding all that this is to give the Town of Salem control of all those parcels shown in the recently approved revised franchise map. Mr. Sullivan added that a letter would be sent to the Town of Salem on behalf of the Board, expressing their support.

Mr. Hohenberger sought clarification as to whether Pennichuck had been part of the agreement, and Mr. Sullivan replied in the affirmative; adding they also have to sign off on the final document. Brief discussion ensued regarding proposed language changes to be discussed in non-public relative to the agreement between Windham and Salem.

Mr. Breton raised concerns regarding hydrants along Route 28 as discussed at a previous meeting. Mr. Sullivan reiterated that the Town of Derry cannot guarantee fire flow to the hydrants, and a discussion ensued in that the Salem/Windham agreement can be amended in the future should said guarantee arise.

Mr. Breton moved and Mr. Hohenberger seconded to support the petition to the PUC as drafted, and that a letter be sent to the Town of Salem to that effect. Roll call vote – all "yes".

APPOINTMENTS: Mr. McLeod noted that positions on the following have been advertised for: Cable Advisory Board, Conservation Commission, Economic Development Committee, Forestry Committee, Highway Safety Committee, Historic District Commission, Housing Authority, Local Energy Committee, Museum Trustees, Recreation Committee, and Searles Trustees; adding that the number of candidates for appointment/reappointment does not exceed the number of positions available.

Mr. Breton moved and Mrs. Simmons seconded to approve all of the appointments as recommended by Mr. Sullivan. Roll call vote – all "yes".

Mr. McLeod noted for the record that the appointments, all terms of 3 years and current members being reappointed, were as follows:

- Cable Advisory Board: Mary Griffin and Leo Hart
- Conservation Commission: Wayne Morris and Pam Skinner
- Economic Development Committee: Gabe Toubia and Kristi St. Laurent
- Forestry Committee: Wanda Rice

- Historic District Commission: Carol Pynn and Derek Saffie
- Housing Authority: Mary Griffin (5 year term)
- Local Energy Committee: Pat Manzo
- Museum Trustees: Derek Saffie, Regular and Bob Coole, Alternate
- Recreation Committee: Khadija Lodhi
- Searles Trustees: Mike Mazalewski and Betty Dunn

Mr. Sullivan advised that, as it pertained the Southern NH Planning Commission, Carl Griffin had resigned and the Planning Board will now need to go through their process.

Mr. McLeod urged the remaining members to reach out to any individuals they know who might be interested in serving.

Mr. Partington expressed concerns regarding certain committees and their activity, noting that Recreation and Cable in particular have not posted minutes for several years and the Housing Authority does not even have a presence on the website. Discussion ensued regarding the latter, and it was clarified the Authority has not met in several years.

Mr. Partington went on to question appointing people to sit on committees that then do not meet; leaving them just waiting. He felt the Board should not be appointing people to committees which are not going to meet, but rather to those that are active. Discussion ensued regarding the Recreation Committee, which is active, and the change over the years in their responsibilities.

Mr. Partington indicated he was aware of an individual who had been appointed to a certain committee, who had several ideas that they could not bring forward. Mr. McLeod suggested that Mr. Partington work with Mr. Sullivan regarding this concern, and Mr. Partington agreed.

GRANT APPLICATION – MARSTON-FINN DAM: Mr. Sullivan noted that, late last year, he had discussed with the Board delays in the project due to the timing of the grant funds, as well as due to the discovery of the need for additional work resulting in \$331,000 in added costs to complete the project. He reminded the Board that the increased project costs are currently being borne by the Friends of Moeckel Pond and this opportunity for funds would be as an addendum to the current grant; adding that if we are awarded the \$186,000 anticipated, the remainder would be paid for by the Friends. Mr. Sullivan clarified that this project involves no Town funding beyond those conservation monies previously approved and noted that, with Board approval, a Notice of Intent will be submitted.

Mr. Hohenberger moved and Mr. Breton seconded to approve submittal of the grant application. Roll call vote – all “yes”.

COMMITTEE APPOINTMENTS CONTINUED: Mr. McLeod noted he had overlooked Jayson Luippold, who had expressed an interest in serving as an alternate to the Conservation Commission; questioning the Board as to whether they wished to interview him as a new appointee.

After brief discussion, Mr. Hohenberger moved and Mr. Breton seconded to appoint Mr. Luippold an alternate member of the Conservation Commission. Roll call vote – all “yes”.

USE OF POLICE IMPACT FEES: Mr. Sullivan, on behalf of Captain Mike Caron, requested that the Board release up to \$8,500 in Police Impact Fees for use toward purchase of a generator for the Animal Control facility. He explained this item was left out of the original bid specifications, which was an oversight, and that two quotes have been received thus far both of which are under the requested amount. Mr. Sullivan noted, unless the Board wanted staff to obtain a third quote, a waiver of the bid process would be needed.

Discussion ensued regarding efforts to obtain a third quote and that, as this is under the \$10,000 limit, it is within Mr. Sullivan’s purview to approve the purchase. It was the consensus of the Board that a third quote be obtained.

Mr. Sullivan then requested that the Board authorize the use of impact fees for the purchase.

Mr. Hohenberger moved and Mr. Breton seconded to allow the use of up to \$8,500 in Police impact fees for purchase of a generator. Roll call vote - all "yes".

BID AWARD: Mr. Sullivan advised that four bids had been received for replacement of the second bridge on Castle Hill Road, 80% of which is grant funded with 20% coming from other State funds, as follows:

- William Davis Excavating, LLC \$579,465.00
- Hansen Bridge, LLC \$603,140.00
- Northeast Earth Mechanics Inc. \$645,741.00
- George R. Cairns & Sons Inc. \$1,118,609.00

He went on to note that, after reviewing all submissions and the bridge, the engineers recommend awarding the replacement to William Davis Excavating; contingent upon the State's approval. Mr. Sullivan noted that, based upon original estimates, the bids had come in approximately \$130,000 more; adding indications are the State will approve the award, but we are awaiting final confirmation.

After brief discussion, Mr. Hohenberger moved and Mr. Breton seconded to award the bid to William Davis Excavating, contingent upon the State providing their 80% cost share.

Mr. Partington inquired about an addendum that had been made to the bid specifications some time after posting; and Mr. Sullivan clarified it related to a change in the location of one of the easements and was not material to the project.

Mr. Partington then noted there had also been one regarding the State's requirements for the contractor, and Mr. Sullivan explained that had involved the State allowing certified culvert contractors, as opposed to just certified bridge contractors, to bid the project. Discussion ensued regarding the number of bids sent out and inquiries received, and Mr. Sullivan noted people had ample opportunity to bid the project.

Mr. Breton sought clarification that the State will have to approve the recommendation, and Mr. Sullivan replied in the affirmative; adding they do already have the information which is why the requested motion was contingent upon their approval.

Roll call vote – all "yes".

Mr. Sullivan then noted that there are two easements involved with the project; one of which is with the Town of Pelham, which has no issue granting a permanent easement for maintenance, however, they would like indemnification.

Mr. Hohenberger moved and Mr. Breton seconded to authorize the easement agreement as described and Mr. Sullivan to execute same. Roll call vote – all "yes".

Mr. Sullivan noted the second involves a private owner, who has requested that the Town attempt to mediate the amount of water which flows across their property; clarifying there is no commitment to fix the issue, rather just to explore if there is a reasonable solution. Discussion ensued, and Mr. Sullivan clarified if there is a simple solution it would be done as part of the project, whereas if it involved increased cost that would come back to both the Board and the State.

Mr. Hohenberger moved and Mr. Breton seconded to authorize the agreement and look at mitigation for water to the abutter's property. Roll call vote – all "yes". Mr. Sullivan sought clarification as to whether Mr. Hohenberger's intent was for him to execute the agreement, as well, and Mr. Hohenberger replied in the affirmative.

ACCEPTANCE OF CARE ACT ASSISTANCE: Mr. Sullivan advised that under one of the Governor's recent orders, \$32M in funds has been released to towns for Covid relief, of which Windham is eligible for up to \$374,000. He indicated the intent is to reimburse such things as building modifications or certain personnel absences, but that it does not cover public safety expenses which would come under FEMA reimbursement. He reiterated that the funds can only be received in

reimbursement for items submitted, and are not for use to cover loss revenues. Mr. Sullivan noted that, if the Board concurs, a motion would be in order to file the paperwork and to accept the resulting funds in accordance with RSA 21P:43.

Mr. Breton added that there are three application dates, which cover certain periods only; clarifying that the first submittal covers the start through 5/31, and then the following dates of 7/1 and 9/1 cover those periods, accordingly. Discussion ensued regarding the amount of funding available versus the anticipated, allowable expenses.

Mr. Breton moved and Mr. Hohenberger seconded to authorize staff to submit the grant application as described. Roll call vote – all “yes” save for Mr. Partington who abstained, indicating he needed more information. Motion passed 4-0-1.

Mr. Partington inquired whether any calculations have been done as of yet, and Mr. Sullivan replied there are likely approximately \$13,000 in staff absences; adding that Mr. Senibaldi is currently getting prices for windows which are approximately \$5,000. Mr. Sullivan advised that he did not anticipate any more than \$25K or \$30K will be requested at this time. Mr. Partington noted he would like to see an itemized accounting when it is submitted, and Mr. Sullivan replied that he will copy the Board on the submittal; reiterating that FEMA expenses will be separate.

Discussion ensued regarding the need for a second motion now to accept the funds, and Mr. Sullivan clarified it is necessary per the cited statute in order to submit the grant application.

Mr. Breton felt that deep cleanings of the facilities should be arranged during each of the three submittal periods, and discussion ensued. Mr. Sullivan noted that staff is meeting weekly, and looking into glass windows with speakers, as well as arranging for approximately 40 hours/week in cleaning/sanitizing.

Mr. Breton moved and Mr. Hohenberger seconded to accept these unanticipated funds in accordance with RSA 21P:43. Roll call vote – all “yes”.

Mr. Sullivan then requested a final motion authorizing him, as the Town Administrator, to execute all paperwork and submit same.

Mr. Hohenberger moved and Mrs. Simmons seconded to accordingly. Roll call vote – all “yes”.

Brief discussion ensued regarding the portion of the application, Section 1.11 B, which supported this last motion.

OLD/NEW BUSINESS: *Legion Lease Addendum* - Mr. McLeod expressed concerns that Exhibit A, as referenced in the document, was not available for the Board’s review; and Mr. Sullivan clarified it was the graphic depiction of the sign as submitted to Community Development.

Mr. Partington expressed concerns that item 7 makes it sound as if this is a governmental use of the building, even though the Legion had gone through the regular sign permitting process. Mr. Sullivan clarified it does not require a variance but, because it is not solely a governmental use, the Planning Board must be given a opportunity to weigh in.

Mr. Partington noted that the reference to RSA 674:54 II confuses the issue, and a discussion ensued. Mr. Partington clarified that the Planning Board is considering the sign under the normal sign permitting process, and not as a governmental use.

Further discussion ensued, and Mr. McLeod suggested there may be a better RSA to reference; asking that Mr. Sullivan check with Town Counsel. Mr. Sullivan indicated he would, but suggested that if the Board supported the rest of the language, they approve same contingent upon Town Counsel’s verification.

Discussion ensued and it was the consensus of the Board to wait to see Exhibit A and that, in the meantime, the document be sent to the Legion for review.

Mr. Sullivan cited that portion of Town Counsel’s letter regarding RSA 674:54 II, and further discussion ensued until Attorney Campbell happened to join the zoom meeting; he being scheduled for a later, non-meeting with the Board.

Mr. McLeod explained the Board's concerns, and Attorney Campbell noted the Board should refer to section I of the RSA, which defines governmental use to mean the use, construction or development of a property "owned or occupied" by the Town; adding the statute defines use as a change in use to the land.

Mr. McLeod noted that if "II" is struck and the citation just 674:54, then the language makes sense. Further discussion ensued, and it was the consensus to strike "II", as well as obtain Exhibit A for the next meeting.

Propane Bid : Mr. Sullivan advised that the School District had gone out to bid for their heating oil and propane needs, and would be awarding the latter to Palmer Gas for their bid price of \$1.13/gallon for the coming year; adding that staff would recommend doing so for the Town, as well, as it is less than last year's price.

Mr. Hohenberger moved and Mrs. Simmons seconded to award the bid for propane to Palmer Gas as recommended. Roll call vote – all "yes".

CORRESPONDENCE: Mr. Sullivan requested the Board authorize the use of alternative counsel, Donahue, Tucker & Ciandella, to handle a case relative to a code enforcement issue for which Attorney Campbell has a conflict.

Mr. Hohenberger moved and Mr. Breton seconded to authorize Mr. Sullivan to retain alternative counsel as requested. Roll call vote – all "yes".

Mr. Hohenberger then moved and Mr. Breton seconded to authorize Mr. Sullivan to execute the necessary documents. Roll call vote – all "yes".

MINUTES: Mrs. Simmons moved and Mr. Breton seconded to approve the minutes of 5/4/2020 as written. Roll call vote – all "yes".

SEARLES SCHOOL & CHAPEL TRUSTEES: Mr. Sullivan advised he had reached the Trustees, who had asked that he present their update. He noted the following:

- The NH Preservation Alliance has awarded the Trustees \$4,500 for use towards completing an historic assessment; a preservation company has been retained to complete same.
- Martel Engineering is completing a structural assessment, which should be done by June.
- The Trustees intend to apply for a \$10,000 grant through the Methuen Festival of Trees; this grant has been received by the Town twice before for the facility.
- The stone work has been placed out to bid; responses are due by 6/4, and it is expected to be part of the Board's 6/15 meeting for award.
- Specifications for the roof replacement are being worked on, and the bids are expected to go out in June.
- The Trustees have submitted an intent to apply to LCHIP for grant funds; and it is hoped more information will be available this week as to whether that application can proceed.
- The Trustees will attend the 6/15 meeting for a further update.

Mr. Sullivan advised that the Board will adjourn to meet with Town Counsel in a non-meeting.

Mr. Hohenberger moved and Mr. Breton seconded to adjourn. Roll all vote – all "yes".

Meeting was adjourned at 8:15 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant