

**BOARD OF SELECTMEN**  
**Minutes of June 21, 2010**

**MEMBERS PRESENT:** Chairman Charles McMahon called the meeting to order at 7:00 PM. Selectmen Bruce Breton, Ross McLeod, and Roger Hohenberger were present, as was Town Administrator David Sullivan. Selectman Galen Stearns was excused. Mr. McMahon opened the meeting with the Pledge of Allegiance.

**ANNOUNCEMENTS:** Recreation Chair Dennis Senibaldi announced that Town Day will be held on 7/3 from 12 PM to 3 PM at Griffin Park. Festivities will then move to the High School at 5:30, where there will be vendors and live band prior to the fireworks at approximately 9:20 PM.

**LIAISON:** None.

**MINUTES:** Mr. Hohenberger moved and Mr. McLeod seconded to approve the minutes of 4/19 and 26, 5/3, 10, 17, and 25, and 6/7 as written. Passed 4-0.

**CORRESPONDENCE:** Letter received from Ms. Laura Scott advising that the CTAP grant application relative to the continuation of the sewer study had been approved in the amount of \$20K.

*Bond Release/Haffner's:* Discussion ensued regarding clarification of landscaping issues at the site. This bond was tabled until Ms. Scott arrived.

*Bond Release/90 Indian Rock Road:* Mr. Hohenberger moved and Mr. McLeod seconded to release the bond in the amount of \$17,627 plus interest, retaining \$4,150, to DVMD Holdings. Passed 4-0.

**CABLE LIGHTING:** Mrs. Margaret Case advised that, at the Board's request, representatives were on hand from Barbizon and APS Lighting to clarify their bids for the High School Studio lighting.

Mr. Hohenberger inquired whether both bids were eligible for the credit from PSNH, and requested that the number of LED lights planned be specified.

Mr. Jonathon Lipsee of Barbizon advised that LED lighting will not be UL listed until August and that PSNH will not grant a credit without the UL listing. He advised that, therefore, his proposal did not include LED lighting, however, he had endeavored to design a "green" studio. Discussion ensued regarding the energy efficiency of fluorescent lighting.

Coordinator Stacey Barr advised that the most energy efficient lighting was being sought for the studio area at the best cost. Mr. Sullivan clarified that, assuming Barbizon were to receive the PSNH credit, the proposals were: \$22,240 from Barbizon, and; \$19,247.26 from APS.

Mr. Norm St. Germain of APS approached to clarify that he had not spoken to PSNH regarding a credit, and that although some of his proposed lights were halogen he believed in such a small space they would not impact energy efficiency levels.

Mr. Hohenberger inquired whether Ms. Barr was recommending the project be awarded to Barbizon. Ms. Barr replied that she would like the school to get as much as possible with the initial set up. Discussion ensued regarding the net difference between the proposals, which Mr. Sullivan clarified was approximately \$5K, and the number of fixtures/lamps proposed by each vendor.

Mr. Lipsee advised that he had endeavored to design a system which the students would not have to adjust that included front, back, key, and accent lighting. Mr. Breton inquired if this proposal would provide the overall effect that Ms. Barr was seeking, to which she replied in the affirmative.

Further discussion ensued regarding the luminosity/foot candles provided, the shipping costs for the equipment, and the potential credit from PSNH. Mr. McLeod inquired whether Ms. Barr could achieve the effect she desired with APS's proposal, and Ms. Barr again replied in the affirmative. Mr. McLeod then noted that, if APS were to receive the credit from PSNH, they would be able to add additional fixtures to the area and still remain within their proposed price.

Mr. St. Germain agreed that it would be ideal to have more fixtures, however, he had endeavored to meet the Town's price point. He noted that his proposal is minimal in nature but, given the opportunity he could add additional fixtures.

Discussion ensued regarding the lack of written specifications for the project. Mr. Sullivan clarified that the Board had approved the seeking of RFP's without a full bid specification, and added that the High School Media Coordinator has indicated he supports award of the project to Barbizon.

Discussion ensued regarding the learning/curriculum aspects of the project, and Mr. McLeod noted that both vendors have provided what was asked of them. He felt that that the bid should be awarded to APS as the needs of the studio can then clearly be quantified over the minimum studio set up. Mr. McLeod then noted that there is a \$5K, and potential \$10K without the PSNH credit, difference between the bids.

Mr. McLeod then moved and Mr. Hohenberger seconded to awarded the HS studio project to APS.

After a brief discussion, Mr. McLeod deferred his motion, and Mr. Hohenberger his second, to allow for public input.

Mrs. Case approached to clarify that all parties recommend awarding the project to Barbizon, adding that this does not affect tax dollars. She noted that Barbizon's proposal is more complete and offers more options. Mrs. Case noted that the Cable Board does not wish to return to the Selectmen in a year to add further equipment, and that the School District will be taking over the studio when the project is completed.

Discussion ensued regarding the wattages offered by the proposals and the variable costs, which are unknown. Mr. McLeod suggested the project be bid with a full set of specifications based upon Barbizon's proposal. Lengthy discussion ensued regarding the fairness of Mr. McLeod's suggestion as it pertained to Mr. Lipsee, the number of fixtures involved versus price, and a design build RFP.

Mr. McLeod again moved to award the bid to APS for their bid amount of \$19,247.26. There was no second.

Further discussion ensued regarding the differences between the designs and the systems as it pertained to the studio area.

Mr. Breton then moved and Mr. Hohenberger seconded to award the bid to Barbizon for an amount not to exceed \$24,240 as detailed in their proposal dated May 25<sup>th</sup>, and subject to inclusion in PSNH's incentive program. Funds for this project are to be taken from the Cable Special Account. Mr. McMahan clarified with Mr. Lipsee that the Board was referring to the same proposal as he, which Mr. Lipsee confirmed.

Motion passed 3-1, with Mr. McLeod opposed.

*Mr. Sullivan* then advised that the Memorandum of Agreement relative to the High School Cable Studio equipment needs to be executed. He noted that the document provides that once the High School has received the equipment from the Town, any issues or repairs are the District's responsibility.

Discussion ensued regarding the lack of provision for the Town to utilize the equipment at the High School. Mr. Leo Hart of the Cable Advisory Board, and Mrs. Case, clarified that the Town would not utilize the HS equipment unless it were by invitation in which case the responsibility for any issues would remain with the School.

Mr. McLeod noted that Section 7 should be reworded to simply state "all equipment losses are the sole responsibility of the owner", and "all maintenance is the sole responsibility of the owner." The Board concurred.

After further, brief discussion, Mr. McLeod moved and Mr. Breton seconded to approve the Memorandum of Agreement as amended. Passed 4-0.

**ABATEMENTS:** Mr. McMahon advised that the Board had previously received 35 abatement documents from Assessor Rex Norman for their review, and inquired whether the members had any questions regarding same. Mr. Hohenberger sought clarification relative to an abatement request on Lamson Road. Mr. Norman clarified that the parcel in question had been split by the new roadway and he had subsequently taxed it as two parcels, however, he had been incorrect in doing so. Further, the parcel is eligible for a special assessment due to its utilization as residential property in a commercial zone.

Mr. Breton then moved and Mr. Hohenberger seconded to approve the recommendation of the Tax Assessor relative to 16 denials and 19 approvals of abatement requests as per his memorandum dated June 21, 2010. Passed 4-0.

*The Chairman* called for a fifteen minute recess to allow the Board to meet with Town Counsel.

**PUBLIC SESSION:** Mr. McMahon advised that the Board had conducted a meeting with Town Counsel to discuss property on Cobbetts Pond Road. He then deferred to Attorney Peter Bronstein, who was on hand representing the property owner, Charles Roberts.

Atty. Bronstein advised that Mr. Roberts is the owner of ½ of lot 8, all of lots 9, 10, 11, 12, 13, and ¼ of lot 14 on Cobbetts Pond Road; all of which had been combined at some point by the Town for tax purposes into a single parcel now referred to as lot 21Z-268 on the Town tax maps. Atty. Bronstein noted that the property owners had never been consulted or notified regarding this merging of the lots and that, per the zoning regulations, these should be reflected as individual non-conforming lots of record. He added that state statute precludes the merging of lots by the Town without the consent of the owner, and that Mr. Robert's was requesting that the Board revise the Tax Maps to the original plan of the area with the following modifications: combine ½ of lot 8 with lot 9, and ½ of lot 14 with lot 13. Atty. Bronstein then noted the Tax Assessor and Town Counsel had been apprised of and disagreed with this request.

Mr. Hohenberger pointed out that the merging of the ½ lots would also arbitrarily change the "original" plan, and Atty. Bronstein replied that he felt it was unreasonable to request that the ½ lots be individual lots.

Discussion ensued regarding the original property deeds and when the lots were combined by the Town. Atty. Bronstein noted that the ½ lots were recorded as such in the deeds, and that the Town combined the lots somewhere around the late 60's.

Mr. McLeod inquired whether the property owner was treating the lots as individuals or whether there was an overlapping of uses. Mr. Joe Maynard of Benchmark Engineering approached on behalf of the owner, and noted that there is a slight overlap of a structure between lots 10 and 11, as well a structure of lot 9 which is completely contained thereon. The rest of the lots are vacant.

Discussion ensued regarding the value of the lots if taxed individually and why there had been no discussion of this prior to this time if the owner had concerns. Atty. Bronstein noted there had been sporadic discussions regarding the lots since 2000, and further discussion ensued relative to the lots having effectively been merged for zoning purposes, as well.

Mr. McMahon noted that such a merging may have been requested by a previous owner in the late 60's, and Mr. Maynard noted that no deed was found that referenced the property as "21-Z-268". Further discussion ensued.

Town Counsel Bernard Campbell approached noting that he and Mr. Norman were respectfully recommending that the Board deny the owner's request based upon the fact that since 1927 lots 9, 10, 11, 12, and ½ of lot 8 have consistently been conveyed by a metes and bounds description of the perimeter of the lots. Further, although lots 13 and ½ of 14 were originally separate from the others, in 1962 all of the lots came under one ownership with a single metes and bounds description.

Atty. Campbell went on to note that for 43 years one bill has been received for the property, which has been shown as a single lot on the tax maps, and that he believes for both assessment and zoning purposes it should be assumed and treated as a single lot.

Atty. Campbell then recommended that if the Board were going to consider granting the owner's request, a survey should be performed. He also noted the precedent that would be set by granting the request as it pertained to similar areas around the pond, and added that the owner does have the recourse to seek a proper subdivision.

Discussion ensued regarding the statute of limitations on such matters, and whether Mr. Roberts knew the property was considered as one parcel by the Town prior to 1995 when he assumed ownership. Atty. Campbell noted that, at a minimum, Mr. Roberts would have been aware in 1996 when he received a single bill.

Further discussion ensued regarding the owner's conduct as it pertained to Court opinion on effectively waiving the separation of lots through use. Atty. Bronstein stated that, although the previous owners had constructed a building on the property line, he believed that the 20 year statute of limitations should have begun in 1995. He reiterated that there had been no notification of the merger, and added that the Town cannot assume that an out-of-town taxpayer would have questioned a single bill for separate lots. Atty. Bronstein then stated that it is not necessarily Mr. Robert's intent to build on the five lots separately.

After further discussion, Mr. McLeod moved and Mr. Hohenberger seconded to maintain the layout of the property in question as depicted on the Windham tax maps and deny the request to recognize five individual lots. Passed 4-0.

**CORRESPONDENCE CONTINUED:** Bond release/Haffner's: Ms. Scott clarified that the Planning Board had voiced the same concerns relative to the status of the buffer landscaping on the site, however, the bond in question pertains specifically to dirt/grading. She noted that the landscaping was completed at the time that the Certificate of Occupancy was issued for the site, and that these funds represent a cash guarantee for other work which has been completed.

Ms. Scott also noted that the owner has been contacted and placed on notice regarding the dead trees in the buffer, as well as their current hours of operation. Discussion ensued.

Mr. McLeod then moved and Mr. Hohenberger seconded to release the bond in the amount of \$1,325 plus interest to Fournier Realty Trust. Passed 4-0.

**TRANSFER EQUIPMENT LEASE FINANCING:** Finance Director Dana Call reviewed with the Board those proposals received for equipment lease financing, and recommended the contract be awarded to TD Bank with whom the Town had worked previously.

Discussion ensued regarding related fees and documentation requirements, and Enterprise Bank's proposal which Mrs. Call clarified was not a traditional lease but rather a standard equipment loan.

Mr. McLeod then moved and Mr. Hohenberger seconded to award the lease financing contract for the Transfer Station equipment to TD Bank as they represent the overall lowest bid and no issues are noted by Mrs. Call with previous transactions. Passed 3-1, with Mr. Breton opposed.

Mr. Breton then expressed for the record his dismay with the Board's vote and refusal to utilize a local business. Discussion ensued.

**COMMUNITY DEVELOPMENT JOB DESCRIPTIONS:** Tabled.

**SALT SHED BID AWARD:** The Board reviewed those bids received for the Highway Garage/Salt Shed project. Mr. Sullivan noted that ten bids had been received and, after review, the lowest four base bids had been identified as follows:

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|----------------------|-----------|
| Ricci Construction:  | \$821,420 |
| Wrenn Construction:  | 825,527   |
| Wild Horses:         | 855,000   |
| Hutter Construction: | 868,000   |

Mr. Sullivan advised that all four bidders had met the bid specifications and come in under budget, however, Wild Horses had not included the site work. Mr. Sullivan then noted that the recommendation was to award the project to a turnkey vendor, and therefore requested that Wild Horses not be considered. He noted that representatives from Ricci, Wrenn, and Hutter were in attendance.

Mr. Sullivan then reviewed with the Board the specifics of the vendors and their base bids, all of which are inclusive of a salt shed, site work, garage, and optional radiant heat and generator. He noted that Ricci had recently constructed similar facilities in Derry and Rochester, and that Wrenn had been the Town's contractor for the Police Station; and that he and Mr. McCartney would be satisfied with either vendor for the project.

Lengthy discussion ensued regarding the alternative/optional items as it pertained to the calculation of the base bid, and equalization of the numbers. Mr. Wrenn expressed concerns with the timing of Ricci's obtaining of a quote to utilize a Clear-Span as opposed to a RUBB structure for the salt shed as originally bid. Mr. McCartney clarified that Ricci had provided two alternatives for the shed and that, in order to better compare the bids, the Town had requested he provide a price to utilize Clear-Span.

Discussion then ensued regarding the bid opening and results and the ability to obtain an "apples to apples" comparison. Mr. Sullivan noted that, if the Board were concerned regarding the request made to Ricci versus the bids as received, then he would recommend the project be awarded to Wrenn with change orders to add in additional amounts related the well and piping.

Lengthy discussion ensued relative to the bid specification and the Clear-span structure. Mr. Hohenberger then moved and Mr. Breton seconded to award the bid for the Highway Garage/Salt Shed to Wrenn Construction for their bid price of \$819,627 plus \$3,000 for additional piping. Passed 4-0.

Mr. Sullivan then requested the Board consider authorizing the expense of up to \$10K by he and/or Mr. McCartney for smaller items related to the project that may arise. Discussion ensued, however, no decisions were made.

Mr. Sullivan then advised the Board that a price for a cistern at the site was also being sought, and he would update the Board once available.

**OLD/NEW BUSINESS:** Mr. Breton advised the Board that a donation had been received from Centrix Bank in the amount of \$500 for use toward the Annual Town Day.

**NON-PUBLIC SESSION:** Mr. Hohenberger moved and Mr. McLeod seconded to enter into nonpublic session in accordance with RSA 91-A:3 IIa and c. Roll call vote, all members "yes". The topics of discussion were personnel and reputations.

The Board, Mr. Sullivan, Chief Lewis, Captain Caron, and Ms. Devlin were in attendance in the first session.

The Board discussed the vacant officer position. Mr. Breton moved and

Mr. McLeod seconded to extend an offer of employment to the recommended candidate per the employment policy subject to successful completion of a physical exam. Passed 4-0.

*The Board and Mr. Sullivan* were in attendance in the final session.

The Board discussed potential candidates for the Economic Development Committee.

Mr. Hohenberger moved and Mr. McLeod seconded to appoint the following individuals to the EDC: Sally D'Angelo, Paul Gosselin, Al Letizio, Jim MacDonald, Amy Spencer, Ralph Valentine, Diane Wasilisian, and Jay Yennaco.

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

Passed unanimously. The 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.*