

BOARD OF SELECTMEN
Minutes of March 7, 2005

ROLL CALL: Chairman Alan Carpenter called the meeting to order at 7:05 PM. Those present included Selectmen Bruce Breton, Christopher Doyle, Roger Hohenberger, and Galen Stearns. Mr. Sullivan was also present. Chairman Carpenter read the agenda into the record.

ANNOUNCEMENTS: Mr. Carpenter extended heartfelt condolences on behalf of the Board and the staff to Deputy Tom McPherson on the unexpected passing of his wife. Those present observed a moment of silence in her memory.

Mr. Carpenter urged the residents to get out and vote on March 8.

Mr. Breton announced that he had attended the Annual Firefighters Ball over the weekend, and that it was very well attended and a good time was had by all.

Chief Don Messier presented the "Thomas Fratus Memorial Award" to Firefighter Bill Merrill for outstanding service to the department over the past year. The Award is presented annually at the Firefighters' Ball to one member of Windham Fire Department, as chosen by his/her peers. Chief Messier also presented Firefighter Merrill with a Certificate of Appreciation for his actions on July 3, 2004, when he saved a small child from drowning in Cobbetts Pond.

Firefighter Merrill stated the entire Department deserves to be recognized for their efforts on a daily basis, and thanked the Chief and the Department for their support and appreciation.

On behalf of Deputy McPherson, Chief Messier thanked the community, the Board, and town staff for their outpouring of support in response to his loss.

RICHARD MESSINA: Mr. Messina, owner of the Manor Motel on Route 28, was present to discuss several, ongoing concerns with the Town and staff. Prior to beginning his discussion, he presented the Board with 30+/- pieces of correspondence related to his concerns.

Mr. Carpenter inquired whether or not Mr. Messina had met with Mr. Sullivan and Mr. Turner regarding these issues. Mr. Sullivan indicated that several meetings had taken place, however Mr. Messina stated that these particular items had not been discussed and/or resolved to his satisfaction. He then related the following specific concerns to the Board:

- Flooding from Jones Road, which has been ongoing for several years, is adversely effecting his property. Mr. Messina stated this problem has only gotten worse since the shoulder was widened by the Town, and he had requested that a barrier be constructed to divert the flow. He further stated he had received no response from the Town to his request.
- In 1988, Mr. Messina had been required to construct a fire pond, which the Town now claims is not sufficient. Mr. Messina felt the Town should liable if the pond were not adequate all this time.
- Mr. Messina stated that he had been advised that the Life/Safety Code required a maximum of 1 person per 200 sft, which allowed him only two people in each of his large units. He felt that he was

being suddenly singled out by the Town in enforcing this code, which he did not believe had even been adopted by the State or the Town, and stated he was not going to comply with what was an unfair burden on him.

- Mr. Messina claimed that just prior to Christmas, he received correspondence from Mr. Turner advising him that no small appliances were permitted in the motel units. Mr. Messina contends that the original plan was approved with kitchen units.
- Mr. Messina contended that the Town knew what had been occurring at the motel and that people were in residence for the long-term, and Mr. Turner could not now make him throw residents out. He also noted that the Town pays for long-term residents to reside there and registers their vehicles to that address.

Mr. Sullivan noted that he had first come into the issue about six weeks ago due to Mr. Messina's concern with staff members. He stated that, since that time, several meetings had occurred and approximately 100 hours expended by him, Mr. Turner, and Fire Inspector Diana Nault toward resolving Mr. Messina's concerns. Mr. Sullivan felt that it had been a cooperative effort from all involved, and that the main focus had been toward clarifying the Town's issues for Mr. Messina. Mr. Sullivan stated that, to his belief, Mr. Messina had received answers to each of his concerns, citing the following:

- The issue of flooding has been discussed by all parties, including the owner of Cyr Lumber and will, hopefully, be permanently corrected prior to spring.
- Fire Inspector Nault has worked extensively with him to address Life/Safety issues at the motel. Mr. Sullivan noted that Mr. Messina had already corrected several issues, and asked Mrs. Nault to speak to the occupancy requirements.

Mrs. Nault noted that the code in question covers both new and existing structures, and that she had conducted research back to 1987 and found that the requirements currently in question were in place when the building was constructed. She further noted that the State of NH has adopted the Life/Safety Code and as Windham has not adopted anything locally we are thus subject to the State's code.

Mr. Carpenter noted that it didn't appear that Mr. Messina was being singled out, as the State code was in place at the time of construction. Mr. Messina countered by inquiring if Windham was the only Town in the country to enforce this code, and stating it had never been enforced previously.

Mrs. Nault stated that the issue had arisen based on conditions witnessed at the last inspection of the facility. She noted that some of the rooms had a high occupancy load and, in one unit, a child had been found to be sleeping on the closet floor. As a result, the building had been checked against the Life/Safety code. Mrs. Nault stated that Mr. Messina had been advised of the code, but was not told to kick anyone out of the units. She stated that she was concerned for the safety of the residents in the event of fire, and how they would get out of the rooms.

Mr. Messina reiterated that he did not intend to stop what he was doing at the motel, and stated he would be appealing a letter limiting him to two persons per unit to the Zoning Board of Adjustment.

Mr. Carpenter again noted that if the code is in effect and the Town chooses to enforce it, then that is what will occur. He inquired of Mrs. Nault if Mr. Messina had been advised of any repercussions if he chose not to comply. Mrs. Nault stated Mr. Messina had been advised to consider the code as he rents these units. Mr. Messina stated that Town was discriminating against families and children through these restrictions.

Mr. Sullivan stated that the issue of small appliances within the units had been discussed on more than one occasion, in efforts to clarify Mr. Turner's determination that no hot plates or toaster ovens be utilized in the units. Small refrigerators, coffee pots and microwave ovens are allowed, and Mr. Sullivan noted that Mr. Messina could appeal to Zoning Board of Adjustment regarding the other appliances, if he wished.

Mr. Hohenberger inquired why hot plates/toaster ovens were prohibited. Mr. Turner stated that the property file had been extensively researched for the original approvals and that the Planning Board had disallowed kitchens in the units. Mr. Turner stated the original plans had depicted countertop areas with no appliances and that "kitchenettes" had been rejected by the Planning Board. He went on to state that, generally, hotels/motels do not include hot plates or toaster ovens, but often include the permitted items. He further noted that Mr. Messina had actually removed the prohibited items himself.

Mr. Turner then stated that each meeting with Mr. Messina had been cooperative and productive on all sides, and that it was only after that Mr. Messina apparently becomes upset and floods the staff with faxes and letters. He advised the Board that he had never ordered Mr. Messina to throw anyone out of the motel, and that he had never heard any members of the staff lie to Mr. Messina.

The Board inquired whether any "as built" plans of the motel existed. Mr. Turner stated there were none. He went on to say that the buildings had been inspected in 1990 by the State Fire Marshall and the Fire Chief, and the Life/Safety codes enforced. He also noted that the units currently are in the best shape they've ever been, and praised Mr. Messina for his efforts.

Mr. Turner noted that it is the Town's responsibility to enforce the codes and ensure the safety of the residents. He stated he had spoken to Mr. Messina prior to the recent inspection, and advised him of certain deficiencies that could result in the building being condemned based upon the Fire inspection. He stated that Mr. Messina had successfully addressed the major issues, and that only a couple remained that needed attending to.

Mr. Carpenter felt that, although the Manor Motel was a unique entity in Town and provided a necessary service, the codes are in place for a reason and all are expected to comply. He noted that the absence of enforcement at a previous time does not absolve Mr. Messina from having to comply.

A discussion ensued regarding the availability of records and the facts that were on file regarding the building. Mr. Messina stated that there was no information available, which was disputed by Mr. Sullivan and Mr. Turner.

Mr. John Pelletier, a resident at the Manor, approached to state that his and the other families residing at the Motel are concerned about enforcement of the codes. He stated that, if complied with, his daughter will be required to sleep on the floor. He stated that he had researched surrounding towns with motels, found none that enforce the occupancy limits, and thought it ironic that the Town puts up families at the motel.

Mr. Carpenter stated that, based on Mrs. Nault's statements, it was clear that some occupants had far exceeded the requirements, but she was clearly attempting to work with the families.

Mr. Sullivan felt that staff had endeavored to accommodate Mr. Messina, and expressed a continued willingness to meet with him to a certain point, stating that Mr. Messina still has the option to appeal.

Mr. Carpenter agreed that staff was clearly still willing to work cooperatively toward resolution, and thanked Mr. Messina for his efforts.

RECREATION: Mr. Dennis Senibaldi, Chairman of the Recreation Committee, began by advising the public that the Committee's regular meetings had been changed to the third Thursday of each month at 7:30 PM at the Planning and Development Department, and would now be televised. This change will begin with the March 17th meeting.

Griffin Park Playground Group: Mr. Senibaldi advised the Board that this group had begun fundraising efforts for construction of a playground complex at the Park. Mr. Carpenter expressed concerns that this was an unofficial committee working on a playground that had yet to be presented to the Board for consideration.

Mr. Senibaldi clarified that the group was simply moving forward to develop a plan. If the Board were to reject the playground project, any funds raised would be returned to the donors.

Mr. Sullivan noted that the Playground Group was a non-profit organization, independent of the Town, and that he had advised their Chairman that she would need to present their proposal to the Board. The Group is currently working on a conceptual design.

Mr. Senibaldi stated the Group had made a presentation to the Recreation Committee which was met with much support. Mr. Stearns inquired whether the Group was aware of and understood the requirements that would have to be adhered to for construction of a public playground. Mr. Senibaldi stated the Group put forth an excellent presentation, with nearly every contingency considered. Mr. Carpenter noted that the Board of Selectmen still needs to discuss whether they were even in support of a playground at the Park.

World Team Tennis: Mr. Senibaldi advised the Board that the Goldman's, members of the Recreation Committee, would be establishing a World Team Tennis League, and that a notice would be coming out regarding it in the near future.

Easter Egg Hunt: Mr. Senibaldi announced that the Annual Hunt will be held on Saturday, March 26 beginning at 10:00 AM at the Town Hall.

Blues Concert/Town Day: Mr. Senibaldi reported that he had been approached by a local musician regarding a possible blues concert at Griffin Park, and that the Committee was considering trying to make a "Town" day out of it by possibly moving the Fourth of July Field Day from Rogers Field to Griffin Park. He stated that the day could possibly include a barbeque, t-ball or baseball, etc., and conclude with fireworks at night. He stated that a team would need to be formed to organize the event, and he was seeking the Board's opinion of the idea.

Mr. Stearns applauded the idea and the effort, however he cautioned Mr. Senibaldi that the Cobbetts Pond Association has historically handled the fireworks and the Committee should be careful not to offend anyone. Mr. Hohenberger concurred.

A discussion ensued regarding the size and logistics of the event, and the possible impacts to neighbors of Griffin Park if attendance is excessive due to the concert. The consensus of the Board was that the Recreation Committee should proceed with development of a detailed outline of activities and events for the day.

Mr. Tom Case suggested that the Recreation Committee also bear in mind the Lion's Club for the barbeque, and the proximity of July 4 to the Strawberry Festival.

CORRESPONDENCE: *Bond Release – Fletcher Road Extension:* Mr. Doyle moved and Mr. Breton seconded to release the partial bond amount of \$58,672 to F & M Land Holdings. Passed unanimously.

Bond Release – Northland Road: Mr. Doyle moved and Mr. Stearns seconded to release the partial bond amount of \$390,737 to H & B Homes. Passed unanimously.

Letter received from the NH Department of Transportation, dated December 2004. Mr. Sullivan explained that the letter had been discovered fallen behind the mail unit at the Town Hall. It was not an item that had required any action by the Board, but was simply the minutes of a previous meeting with the DOT.

MINUTES: Mr. Hohenberger moved and Mr. Stearns seconded to approve the minutes of January 13 and 24, 2005 as written. Passed unanimously.

Mr. Doyle moved and Mr. Hohenberger seconded to approve the minutes of February 7 and 14, 2005 as written. Passed unanimously.

The minutes of February 22, 2005 were tabled.

OLD BUSINESS: Mr. Sullivan advised the Board that the groundskeeping bids and regulations for the multi-purpose building were scheduled for discussion on either March 14 or 28.

Mr. Carpenter requested that Mr. Sullivan clarify the status of the Planning Department based upon the Board's meeting on February 22. Mr. Sullivan explained that Assistant Planner, Rebecca Way would be transitioning to the lead person in Code Enforcement and GIS, while continuing to assist in Planning issues. Mr. Turner will no longer be out in the field, but will be resuming administration of the department, being Ms. Way's "go-to" person, as needed, for issues she is unable to resolve.

Mr. Breton inquired whether the Building Inspector's position had been posted, as yet. Mr. Sullivan indicated it had not, but would be advertised as a Building Inspector/Health Officer when it was.

Mr. Breton sought clarification on the staking of the Gage Lands. Mr. Sullivan responded that no permission had been granted for anyone to work on the Gage Lands, and that he had been advised that the stakes were placed there erroneously by the people working on the school project.

Mr. Breton noted there seemed to be an excessive number of stakes for it to be accidental, and Mrs. Lisa Linowes approached with an e-mail she'd received from Gove Environmental stating that the School Department had requested them to stake-out the property. Mr. Sullivan will seek further clarification from the School Board.

NEW BUSINESS: Mr. Sullivan advised the Board that Nault's had submitted their annual request for permission to act as a Boat Agent, which required the Board's approval.

Mr. Hohenberger moved and Mr. Doyle seconded to allow Mr. Sullivan to approve Nault's request to act as a Boat Agent in Windham. Passed unanimously.

ANNOUNCEMENTS, CONTINUED: Mr. Breton advised the Board that the Depot Advisory Committee had met the previous week, and were moving forward on establishing the status of the Depot, having recently forwarded a letter to the State inquiring about the property. He also noted that he had attended a recent Joint Loss Management Committee meeting, and praised Chairman Dave Poulson for his work in arranging training for the employees at no cost to the Town.

Mr. Hohenberger sought clarification on why the Depot Advisory Committee was contacting the State. Mr. Sullivan stated that, per the DAC charge, the members were endeavoring to ascertain the ownership of the property, as well as any interest the State may have in selling/leasing the buildings to the Town should the Town choose to pursue that option. He stated nothing in the Committee's letter was binding, and that it was simply and inquiry.

NON-PUBLIC SESSION: Mr. Doyle moved and Mr. Hohenberger seconded to enter into non-public session in accordance with RSA 93-A:3 Iib, c, and e.

Mr. John Basileco, reporter, interrupted to inquire whether the Board would be discussing the Police Chief candidates. Mr. Carpenter advised Mr. Basileco that the process was being discussed in non-public session in accordance with the NH RSA's, and not in "secret" meetings as stated by Mr. Basileco in previous news articles. Mr. Carpenter stated that, out of respect for those candidates who may currently be employed elsewhere, discussion of the recruitment in public was inappropriate. Mr. Basileco was advised that, if appropriate, a press release would be issued containing any decisions made in non-public session.

Roll call vote, all members "yes". The topics of discussion were personnel, reputations, and legal. The Board, Mr. Sullivan, and Ms. Devlin were in attendance in all sessions.

Personnel: The Board and Mr. Sullivan reviewed the Assessment Center results of the Police Chief candidates. After some discussion, Mr. Doyle moved and Mr. Breton seconded to proceed with the top three candidates. Passed unanimously. Mr. Sullivan will contact and advise the finalists that, should they wish to continue in the process, a press release is planned to be issued revealing the finalists' identities to the general public.

Personnel: Mr. Sullivan presented a request from the Assistant Planner for a possible change in her status as an exempt employee to non-exempt. After discussion, Mr. Breton moved and Mr. Doyle seconded that there be no change in status and no additional compensation provided to the Assistant Planner. Passed unanimously.

Reputations/Legal: The Board discussed an ongoing legal matter and possible appeal by the Board on behalf of the Conservation Commission of a recent Board of Adjustment denial of a request for rehearing. Mr. Hohenberger moved and Mr. Breton seconded that Mr. Breton compile relevant data for the Board's review prior to making a decision on the request. Passed 4-0-1, with Mr. Doyle abstaining.

Personnel: The Board reviewed several Department Head evaluations as submitted by Mr. Sullivan, approving seven and tabling one.

Personnel: The Board discussed hosting a casual, Saturday, round-table discussion with the Department Heads to address any concerns, ideas, etc. Mr. Sullivan will arrange for this to occur sometime in early April.

Personnel: Mr. Sullivan advised the Board of a newly arisen personnel matter. No decisions were made, and Mr. Sullivan will keep the members informed, as appropriate.

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

The meeting was adjourned at 10:00 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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