

**BOARD OF SELECTMEN**  
**Minutes of March 21, 2016**

**CALL TO ORDER:** Vice-Chairman Joel Desilets called the meeting to order at 7:00 PM. Selectmen Bruce Breton, Ross McLeod, and Roger Hohenberger were present; as were Town Administrator David Sullivan and Finance Director Daniel Popovici-Muller. The meeting opened with the swearing in of newly elected member Jennifer Simmons, followed by the Pledge of Allegiance.

**ANNOUNCEMENTS:** Mr. Sullivan summarized the results of the ballot vote, including: the Town Clerk will be on salary as of 4/1 and the small right of way off Rock Pond Road will be sold. He also advised that the Salem/Windham Rail Trail project is off and running, with American Excavating being awarded the bid. He indicated there are ample funds available to complete Windham's portion, which is relatively small, and suggested that the Windham Rail Trail Alliance should schedule a meeting with American. Mr. McLeod inquired as to the start/end dates of the project, and Mr. Sullivan noted that tree removal will begin next week, the anticipated build is three months, with Windham's portions being finished by mid-summer. Brief discussion ensued.

*Mr. McLeod* extended congratulations to WHS wrestler John Ferri, Division II State Champion. He then extended thanks to Mr. Letizio for his ideas and thoughtful leadership of the Board; to Town Clerk Nicole Bottai and all involved in the elections, and; to the candidates for quickly cleaning up their signs.

*Mr. Desilets* extended congratulations to the Windham Windup First Robotics Team; noting that freshman Carina Savukinas had been nominated for the National Dean's List Award, the highest award for students, and that Planning Board member Paul Gosselin had been nominated for the National Woody Flowers Award.

*Mr. Sullivan* then advised that, as it pertained to the Rail Trail, the project would be staged at the old Rogers Auto Body lot.

**BOARD RE-ORGANIZATION:** Mr. McLeod nominated Mr. Desilets as Chairman. Mr. Hohenberger noted that he would prefer Mr. Breton be Chairman in keeping with the normal practice of the outgoing member serving as such. Mr. Breton respectfully declined, adding he believed Mr. McLeod would be the best candidate. Discussion ensued, and there was no second to Mr. McLeod's motion.

Mr. Breton moved and Mr. Hohenberger seconded that Mr. McLeod serve as Chairman and Mr. Desilets Vice-Chairman. Discussion ensued, and Mr. McLeod indicated he would prefer to be Vice-Chairman. Mr. Hohenberger noted that, typically, the Board Chair does not serve as the Planning Board liaison, which both Mr. McLeod and Mr. Desilets do currently. Mr. Desilets noted he believed no one member was more deserving than another, and that he would like to serve as Chairman. After further discussion, the motion and second were withdrawn.

Mr. Hohenberger moved and Mr. McLeod seconded that Mr. Desilets serve as Chairman and Mr. McLeod as Vice-Chairman. Passed 3-0-2, with Mr. Desilets and Mr. McLeod abstaining.

**LIAISON ASSIGNMENTS:** Mr. Sullivan requested the Board look over the list of annual assignments, and submit their requests to him for the next meeting. Brief discussion ensued on Mrs. Simmons behalf as to the liaison procedures.

**PUBLIC HEARING – OFF ROAD VEHICLES:** Mr. Sullivan read the public hearing notice into the record, as follows: "*The Board of Selectmen will hold a public hearing on March 21, 2016 at 7:00 pm at the Community Development Department for the purpose of considering amendments to the USE OF OFFROAD VEHICLES ON TOWN PROPERTY ORDINANCE (#WIN3:00:11:02). Changes being proposed within the ordinance are available for review on the Town website at windhamnewhampshire.com, or at the Administrative Offices, 4 North Lowell Road. Language that is being added is shown in underlined text while deleted language is crossed out.*"

Mr. McLeod noted this had come about based upon a conflict in the language with the Landry Conservation Easement wherein Section V A, 1 c needed to be removed as the easement is not “town-owned” land. He indicated he had then looked at the entire document from the perspective of turf management and defining wheeled vehicles; not snowmobiles. He went on to note that he had met with Mr. Curto of the Recreation Committee and Conservation Commission, and understood his concerns in that snowmobiles do not damage turf; adding that snowmobiles are covered under State statutes and a special provision pertaining to the Rail Trail. Mr. McLeod then noted he would suggest re-inserting section IV, A 1 which reads *“Snowmobiles operated in accordance with the laws of the State of New Hampshire, provided they are propelled on snow by tracks or cleats and steered by skis”*.

Mr. McLeod then noted that, in response to Town Counsel’s input, he would propose under Section III A to amend it to read *“but not to any Town owned land subject to statutory management by other Town entities, such as and including but not limited to, cemeteries (RSA 289:7), forest lands (RSA 31:112), conservation lands (36-A:4), and the Nesmith Library (RSA 202-A:6)”*. Also, that a new section, Section IX, be added to read: *“In the event that a section, clause, provision, portion or phrase of this Ordinance conflicts with a related section, clause, provision, portion or phrase of a Town By-Law or Policy that pertains to a particular property or groups of properties, that section, clause, provision, portion or phrase of the By-Law or Policy shall govern the particular situation.”* Mr. McLeod then thanked Mr. Curto, Attorney Campbell, and Mr. Sullivan for their assistance. Discussion ensued regarding the proposed amendments and the substantive nature of same.

Mr. Sullivan suggested that Section IV b also be amended to strike “designated conservation areas” due to the addition of the new language in Section III. Mr. McLeod concurred. Discussion ensued as to whether the public hearing would need to be renoticed given the nature of the amendments.

Mr. Mark Samsel, Rail Trail Alliance, approached expressing concerns regarding Section V and ATV’s in the Depot parking lot; noting that by Statute they are not allowed on the Trail. Mr. McLeod noted this is addressed in Section V A 1 b, and a discussion ensued.

Mr. Norm Babineau approached expressing concerns regarding the definition section, and a lengthy discussion ensued regarding one wheeled vehicles, hover boards, Segways, etc. It was the consensus of the Board that a list be added to this section better defining Segways, etc.

Mr. Dennis Senibaldi approached seeking clarification as to whether this would be more restrictive on quad vehicles and the like. Mr. McLeod noted that it would only effect these vehicles going into the Depot parking area. Mr. Senibaldi inquired whether there was currently any area that such vehicles were allowed that these amendments would restrict, and a discussion ensued regarding current, area specific regulations already in place (eg Foster’s Pond), as well as Spruce Pond and the Greenway Trail which are currently not locally regulated.

Mr. Wayne Morris, Conservation Commission, inquired whether discontinued roads would be included, and a discussion ensued in that registered vehicles are permitted to operate on Class VI roads.

Mr. Bob Coole inquired about town owned rights of way, which are essentially easements. Mr. Sullivan noted that, for new roads, the land itself is actually owned by the Town; with Mr. McLeod adding that the key language in the regulation is “intended for use”. Further discussion then ensued regarding the definition of motorized vehicles, the Depot parking lot, and the need for signage.

Mrs. Susie Noyles approached and extended thanks to Mr. McLeod for clarifying that the Landry Easement is privately owned in its entirety. She indicated that the access to the Conservation land is not over the center of the field as some believe, rather it is a 12’ strip along the stone wall by Mr. Massahos’ property. Mrs. Noyles also noted that no permission has ever been granted to make new trails or move stone walls; which people have done. She then indicated that any questions should be directed to her only at 11 Briar Road. Brief discussion ensued.

Mr. Curto approached noting he would support tabling this matter due to the many gray areas. He noted Section V should be clarified relative to ingress/egress to the Rail Trail, noting it goes north to Fremont and ATVs are allowed on that portion. He also noted that he had looked at the deed for the property and, based upon the language therein, it is his understanding that the Trail is to be left open; adding that the snowmobile clubs would be happy to provide/post signs regarding same and asking that the section be left in.

Mr. Jeff Noyles approached suggesting that, as to terminology, “OHRV” be used rather than motor vehicle. Discussion ensued.

Mr. Samsel approached noting that motor vehicles are prohibited on the Trail by the Department of Resource and Economic Development (DRED), so they’re not wanted in the parking lot. He went on to give a statistical history of the Trail and the number of trips thereon by pedestrian/bikes; adding that it was never intended for motorized vehicle use. He indicated that NH RSAs prohibit ATVs west of Route 28, and there are Federal restrictions, as well. Mr. Samsel then noted that there is no access to the Fremont side of the Trail from the Depot, and that there shouldn’t be motorized traffic competing with passive users in the parking lot. He indicated the Board needed to reexamine the purpose and intent of the Trail if they were going to consider motor vehicle use.

Mr. Sullivan clarified that, on the Rockingham Recreational Trail, ATVs are prohibited year round. He indicated he believed the deed Mr. Curto referred to was that for the Greenway Trail, which is Town owned, and sought clarification as to whether the intent was to prohibit their use there. Discussion ensued.

Mr. Hohenberger suggested this matter be re-posted for public hearing, due to the substantive changes, and reiterated his concerns as to why it was being changed, as doing so seemed to be causing more problems. Mr. Sullivan noted that two (2) weeks posting was required, thus it would be the 4/18 meeting.

Mr. Phil Bruno of the Derry Trailriders approached noting there were no concerns regarding offloading, and adding that ATVs are prohibited on Derry Town land.

Mr. McLeod then moved and Mr. Hohenberger seconded to post this for two weeks out inclusive of the amendments made this evening. Passed unanimously.

**ANNUAL BALLOT PREPARATIONS:** Mr. Sullivan noted that Mr. Breton had requested this item be placed on the agenda; explaining that this election cycle there had been a vacancy on the Trustees of the Trust Funds for which no one had signed up. Subsequently, the position was omitted from the ballot, thus there had been no opportunity for write-in votes. Mr. Sullivan indicated Mr. Breton had questioned why this had happened and whether or not the Board should move up their annual calendar; adding that, as to the latter, the filing period is established by statute. He indicated that Town Counsel had advised that the Board will have to appoint someone to the vacant term in accordance with RSA 669:73.

Mr. Breton expressed concerns that it was known on February 29<sup>th</sup> that the mistake had been made on the ballot and felt a press release should have been issued; also questioning why a supplemental ballot couldn’t have been done. He noted that the public had not known until tonight that there had been an omission. Mr. McLeod noted, to Mr. Breton’s point, what if it had been a School Board position.

Attorney Campbell approached noting the answer would be the same, as it simply cannot be fixed once the ballot has gone out. If a School ballot went out without a position on it, it would be considered a vacancy to be filled by appointment. Atty. Campbell noted that the Selectmen will appoint a Trustee to the full term. He then reiterated that the absentee ballots had already gone out when the error was discovered, and he did not see any feasible way to correct the error. Mr. McLeod noted that perhaps the Town should consider using a different printer next year.

Town Clerk Nicole Bottai approached noting that she took full responsibility for the error and would be adding an additional layer of review next year. She noted that staff had been overwhelmed with the Primary, and apologized to anyone who was unable to write themselves in. Discussion ensued regarding the process, with Mr. Breton reiterating that something like a press release should have been done. Mr. McLeod noted even if one had been issued, there would have been no place for a write-in, with Mr. Breton responding that it would have at least been known.

Town Moderator Peter Griffin approached noting it had been an unfortunate circumstance. He indicated that each year the election officials conduct a re-cap and asked that the Board consider any changes they'd like to see for future consideration. Brief discussion ensued.

Mr. McLeod then moved and Mr. Hohenberger seconded to advertise the vacant Trustee of the Trust Fund position for a period of three (3) weeks. Passed unanimously.

**ABATEMENTS:** Mr. Scott Marsh, MRI presented several abatement requests to the Board for consideration, as follows:

- 20-D-3003 in the amount of \$2,888.76. Mr. Hohenberger moved and Mr. McLeod seconded to deny this request. Passed unanimously.
- 20-D-3003, land use change tax abatement in the amount of \$10,500. After much discussion regarding the topography of the lot and the current use process, Mr. McLeod moved and Mr. Hohenberger seconded to deny this abatement. Passed unanimously.
- 20-D-3026, land use change tax abatement in the amount of \$2,500. Mr. McLeod moved and Mr. Breton seconded to grant the abatement as presented. Passed unanimously.

**SNHPC ENERGY CONSORTIUM:** Mr. Desilets noted this discussion had been continued from the March 7<sup>th</sup> meeting, and explained that the Board was being asked to enter into a three year contract for energy supply at a cost not to exceed \$.075/kwh.

Mr. Sullivan advised that a letter of resignation had been received from Mr. Matt Rounds from the Local Energy Committee; submitted due to his being selected by the SNHPC as the broker for this contract. Mr. McLeod moved and Mr. Hohenberger seconded to accept same with regrets. Passed unanimously.

Mr. Sullivan then explained that the SNHPC has taken over the energy consortium initiated by the Town, and that currently we are paying \$.075 per kilowatt hour with a small increase for 100% green. He indicated authorization is being requested to continue with the consortium contingent upon the same or lower price.

Mr. Breton indicated he would like to see a copy of the contract before approval, as well as the costs paid to the vendor for the process. He indicated taxpayer dollars are paid to the SNHPC and the costs incurred by the SNHPC should be looked at, and then questioned whether this had been put out to bid. Mr. Desilets indicated he had spoken to Mr. David Preece of the SNHPC and that Mr. Rounds had done this work gratis in 2015 for the consortium. Discussion ensued regarding compensation received by brokers.

Mr. Sullivan noted that he understood that the broker receives \$0.001/kw hour, and he was unsure whether they received anything from the suppliers. He indicated the broker would receive approximately \$700 from Windham. Mr. Breton again questioned why it would not be put out to bid, and Mr. Sullivan noted the towns do not control the SNHPC. Discussion ensued as to the nature of the SNHPC, how it was established, and their funding.

Mrs. Simmons inquired whether there was a contract, indicating she would feel more comfortable if she could review same. Mr. Sullivan noted the previous contract was available, however, this one had not been bid as yet. Discussion ensued regarding the difference in procedures, and the broker's activities.

Mr. Sullivan clarified that continuing does not obligate the Town to participate, and further discussion ensued. Mr. Hohenberger noted that his concern had been resolved and that, although he understood it was a blind contract, he was in favor of the consortium.

He then moved, and Mr. McLeod seconded, to proceed forward with the consortium contingent upon a contract being presented to the Board.

Mr. Breton voiced his objection to same in that a no bid contract was being awarded. Discussion ensued, and Mr. Desilets noted it was unknown if it had been bid out and that Mr. Preece was confident the fee being paid to the broker was in line with any other.

Mr. Hohenberger withdrew his motion, and then moved to ask Mr. Preece to attend a meeting and explain the process to the Board. Mrs. Simmons seconded and the motion passed 4-1, with Mr. Desilets opposed. The latter indicated that as liaison to the Local Energy Committee, and after speaking with Mr. Preece, he had 100% confidence in moving forward.

**ARTICLE 17:** Mr. Sullivan explained that this article for a third party conservation easement had passed overwhelmingly, and that as a result the Commission can get approximately \$107K of the purchase price back through grants. He noted a letter of agreement establishing the easement must be signed, with the cost of \$25,940 to do so coming out of the grant funds and the net going into the Conservation Fund.

Mr. Hohenberger indicated he was opposed to the agreement as it was written, suggesting references to “non-wheeled” vehicles and other language be stricken. Discussion ensued in that said language is in the existing easement on other properties, and Mr. Sullivan explained the intent is to add an addendum to the current easement.

After further discussion regarding uses such as mountain biking, the possibility of drafting a new document and the viability of the Southeastern NH Land Trust, Mr. McLeod moved to approve the agreement subject to staff inquiring whether it can be amended to allow mountain biking and to remove “non-wheeled”. Mr. Breton seconded and the motion passed unanimously.

**ARTICLE 9:** Recreation Coordinator Cheryl Haas approached and noted that she would now like to begin fundraising for the project; which is in keeping with the CIP and the Board’s requests. Mr. Hohenberger moved and Mr. McLeod seconded to allow Recreation to begin fundraising for the construction of a passive recreation area at Griffin Park.

Mr. Breton questioned whether the motion should be to allow solicitation of donations. Mr. Sullivan noted that Ms. Haas would also like to be able sell items on Town property (ie ice cream at the beach), to raise funds for same. Mr. Breton noted that a plan was needed to accept donations towards the project, or perhaps someone may wish to establish a 501c 3 to coordinate its completion. Discussion ensued.

Mr. Hohenberger then amended his motion, and Mr. McLeod his second, to authorize sale of items at the Town beach. Passed unanimously.

**OLD/NEW BUSINESS:** None.

**CORRESPONDENCE:** Mr. Sullivan advised that Kinder Morgan will be in Town marking and completing vegetation control on their existing line; this work having nothing to do with the proposed pipeline project.

**MINUTES:** None.

**NON-PUBLIC SESSION:** Mr. Hohenberger moved and Mr. McLeod seconded to enter into nonpublic session in accordance with RSA 91-A:3 II c. Roll call vote - all "yes". The topic of discussion was reputations and the Board, Mr. Sullivan, and Ms. Devlin were in attendance in all sessions.

Mr. Sullivan updated on the Board on a matter relative to breach of contract. It was the consensus of the Board that no changes be made and Mr. Sullivan return to the Board in two weeks with an update.

Mr. Desilets updated the Board on a reputations matter. No decisions were made, and Mr. Sullivan will follow up.

Mrs. Simmons moved, and several seconded, to adjourn. Passed unanimously.

Meeting was adjourned at 10:05 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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