

**BOARD OF SELECTMEN**  
**Minutes of September 14, 2015**

**MEMBERS PRESENT:** Chairman Al Letizio called the meeting to order at 7:00 PM. Selectmen Bruce Breton, Joel Desilets, Ross McLeod and Roger Hohenberger were present, as was Town Administrator David Sullivan. Mr. Letizio opened with the Pledge of Allegiance, followed by a moment of silence in honor of the passing of Gail Webster, a long-time resident and volunteer of the Town.

**ANNOUNCEMENTS/LIAISON REPORTS:** Mr. McLeod extended thanks to the Fire Department for hosting their Annual 9/11 Ceremony; noting a good turnout. Chief McPherson also extended thanks to the public, Board members, and Town staff for participating.

*Mr. Letizio* announced that a free business seminar, “Inspiring Spaces for Productive Places: How to Get the Most out of Your Business Space”, was scheduled for October 8<sup>th</sup> from 5:30 – 7:00 PM at Delahunty’s. Those interested in attending may register online at windham-nh.com or RSVP to Community Development Director Laura Scott by 10/6.

*Ms. Scott* approached noting that the Annual Harvest-Fest is scheduled for 10/17, and any businesses or non-profits who wish to participate in the Trick or Treat portion of the event should contact her.

*Ms. Scott* then sought the Board’s support for installation of another “Welcome to Windham” sign to be placed at the Spruce Pond recreational parcel. She indicated the sign would be the same as that currently on Mammoth Road, and that Recreation has reviewed and supports the proposal. Ms. Scott also advised that a site walk had been conducted with representatives of the DOT, and they are in support as well, and that Board approval is now needed for her to proceed.

Mr. Hohenberger moved and Mr. Breton seconded to allow Ms. Scott to proceed with placement of a “Welcome to Windham” sign at Spruce Pond. Passed unanimously.

*Mr. Letizio* advised that the EDC has been working on the Market Square proposal, and after several meetings it has reached the public hearing level. He indicated one has been held, and the second is scheduled for 9/30 with the hope being it will appear on the Town ballot in March. Mr. Letizio indicated that information on the Market Square is available on the Town website.

**PUBLIC HEARING:** Mr. Sullivan read the public hearing notice into the record, as follows: “*In accordance with RSA 31:95-b, the Board of Selectmen will hold a public hearing at 7:00 pm on September 14, 2015 at the Community Development Department for the purpose of considering the acceptance of unanticipated funds allocated to the Town of Windham from the Healthtrust totaling \$156,247.21. This amount represents a return of surplus from the Town’s medical and dental insurance programs. A portion of the funds was returned to retirees and active employees representing their proportionate share of insurance premiums paid, with the remainder to be available towards 2015 budget expenditures.*” He then explained that \$24,860.09 had been reimbursed to employees, and \$26,329.48 to retirees; leaving a balance of \$105,057.64 to the Town. Mr. Sullivan noted these funds will be used towards this year’s budget as was previously authorized by the Board; offsetting such things as Assessing needs.

Mr. Hohenberger moved and Mr. McLeod seconded to accept these surplus funds for use as unanticipated revenue to offset over-expenditures; funds to be placed in the General Fund. Passed unanimously.

**LIBRARY TRUSTEE VACANCY:** Mr. Sullivan advised that Ms. Michelle Stith had been the only applicant in response to advertisement to fill the position vacated by Ms. Kathy Smith. He reminded the Board that this is an interim appointment through the March election only.

The Board then heard from Ms. Stith, and Mr. McLeod noted that he had spoken to Trustee Chair Patricia Barstow who indicated Ms. Stith has the full support of the Trustees. Mr. McLeod then moved and Mr. Desilets seconded to appoint Ms. Stith to the vacant Library Trustee position for an interim term to run until the March 2016 election. Passed unanimously.

**HELPING HANDS:** Mr. Sullivan advised that the organization has submitted their annual request to utilize Griffin Park to host a Walk-A-Thon fundraiser. He indicated that Recreation is in support of same, and suggested the Board consider granting the group standing authorization for this use, subject to coordination with Recreation, until otherwise voted. Mr. McLeod noted that such a motion is of great help to local organizations.

Mr. McLeod then moved and Mr. Breton seconded to grant Helping Hand's request to utilize Griffin Park, and give them standing authority to host such an event subject to coordination with Cheryl Haas. Brief discussion ensued, and Mr. Letizio encouraged all to participate and/or sponsor the event.

Motion passed unanimously.

**LIBERTY UTILITIES:** Mr. Sullivan introduced Mr. Mike Licata, Director of Government Community Relations for Liberty; noting that there will be a brief presentation this evening with a follow-up in a few weeks.

Mr. Licata explained that, on August 30<sup>th</sup>, Liberty had filed with the PUC (#BG-15362) for a franchise to expand their existing natural gas system in Hudson into Windham to provide residential service. He indicated that Liberty is the largest provider of natural gas in the state, and that the initial project phase will be in the Mammoth Road area. Mr. Licata explained that it will take several months for the PUC to review their application, but Liberty could potentially begin expansion in the spring of 2016 with service beginning in fall of that same year. He advised that Liberty will return to the Board for a longer presentation, bringing with them their engineers and safety staff.

Mr. Hohenberger inquired whether most of the work will be off road in the right of way. Mr. Licata replied that was the intention; adding they may need to occasionally cross, however. Discussion ensued as to repairing/patch work at such crossings, that same should be coordinated with the Highway Agent, and that Liberty evaluates on a case by case basis whether or not directional boring can be done instead.

Mr. Letizio inquired about expansion east to the Haverhill Road area, and Mr. Licata replied that the plan is fluid and, in the future, their goal is to tie into their Londonderry service, as well, and thus provide service to as much of Windham as possible. Discussion ensued regarding public outreach, which will include flyers about tying in/sale, and working with the Local Energy Committee and the Economic Development Committee.

Mr. Letizio then sought clarification as to whether service will extend into neighborhoods off of Mammoth Road, as well. Mr. Licata replied that the first 100' off of the main road are free, and after that there is a cost involved; confirming the intent is to reach those neighborhoods.

Mr. Letizio inquired as to the size of the intended pipes, and Mr. Licata noted the mains will vary between 8", 4", and 2" at a maximum of 60 psi. He indicated 2" will be run to the homes, which generally only require .5 psi.

Mr. Licata then indicated that the Town is welcome to participate in the PUC process, and a discussion ensued regarding when Liberty will be returning to the Board. Mr. Sullivan advised it will likely be October 5.

Mr. Breton queried whether a motion to support was in order, and a discussion ensued. Mr. Licata advised Liberty was happy to wait for same until their presentation on the 5<sup>th</sup>.

**TOWN CLERK FEES:** Mr. Sullivan advised that, effective July 1, an amendment to NH RSA 261:1 had raised from \$1 to \$2 the fee collected per motor vehicle registration processed. He indicated the amendment was intended to increase revenues to municipalities, but as one of the few whose Town Clerk is still on fee-based pay, that increase is going to Mrs. Bottai. He went on to explain that the Town currently, out of the budget, pays the Town Clerk an additional \$0.50 per registration and, in total, she is now receiving \$2.50/registration. Mr. Sullivan advised that, with this additional dollar, the Town will see a \$20,000 +/- increase in next year's budget; clarifying, however, that this is an in/out amount.

Mr. Sullivan then indicated that the Board will need to determine whether it wishes to continue paying the additional \$0.50; noting that this year's budget will be overspent. He clarified that he had advised Mrs. Bottai that he would be bringing this to the Board, and that perhaps it was time to look at making this a salaried versus fee based position.

Mr. Breton suggested that the Board be provided a copy of all the relevant RSAs and any pending legislation regarding this and municipal agents. Mr. Letizio clarified for those watching that the Town Clerks compensation is comprised of fees collected by her office only.

Mr. McLeod expressed concerns regarding the intent in bringing this to the Board, noting he was not inclined to discuss taking money from Ms. Bottai's pocket. Mr. Sullivan clarified that Ms. Bottai is not opposed to moving to salary, and it has been discussed in the past. He indicated he is simply advising the Board of a change in the law; reiterating that the additional \$0.50 appears to have been put in place by the Town as opposed to being a "fee".

Mr. Hohenberger disagreed with the idea that money was being taken from the Town Clerk's pocket. He noted that it sounded as if the bill had been put into place to give Towns more money, not clerks; adding that the Town supports the department through staff, office space, etc. Mr. Hohenberger noted that the increase is a windfall for the Town Clerk if the Board does nothing, and a discussion of salary should be had.

Mr. Breton concurred with Mr. Hohenberger; adding that the fee statute is old. He felt, however, that the salary discussion should be held in an election year. Mr. Breton also cited the support of two full time employees provided by the Town, and felt that this issue should be researched in depth.

Mr. Desilets expressed that he was not keen on discussing changing the current set up, however as long as Ms. Bottai is interested in discussing a salary he is okay with same. He sought clarification of the additional amount Ms. Bottai will receive, and Mr. Sullivan confirmed that it was \$1 more per registration.

Ms. Bottai approached noting that the only matter under discussion that evening was the additional \$0.50 that is over and above her fees. She clarified that the Town Clerk fee is now \$2.00/registration, along with \$2.50 municipal agent fee. Ms. Bottai also clarified that she is willing to discuss salary versus fees.

Mr. Letizio inquired what Mrs. Bottai's recommendation would be, and she replied that would be the Board's decision. Discussion ensued.

Mr. Hohenberger then moved and Mr. Breton seconded to rescind the \$0.50/registration that is paid by the Town from the budget to the Town Clerk. Discussion ensued, and Mr. Bob Coole inquired whether this would be retroactive back to July 1. Mr. Sullivan replied in the negative. Mr. Coole then asked whether this would need to go to the voters in March, and Mr. Sullivan again replied in the negative; explaining that the vote is taken on the bottom line budget.

Motion passed unanimously.

Lengthy discussion then ensued regarding changing to a salaried position and Town Clerk versus Municipal Agent duties. Mr. Letizio suggested that staff should be asked to look at this further and a public conversation regarding same held.

Further discussion ensued, and Mr. Desilets moved and Mr. McLeod seconded to request that staff research the law and return to the Board with a recommendation for discussion.

Mr. Sullivan clarified that the Town Clerk is an elected official and he had no authority without direction from the Board, and further discussion ensued. Mr. McLeod indicated he did not believe a motion was necessary, as he has full faith in Mr. Sullivan's abilities to perform his job.

Mr. Breton noted he did not feel there was a need to speak to the person involved; but rather they should proceed “nameless/ faceless” by researching the RSAs, contacting other communities, and completing fact finding. Mr. Desilets clarified that the intent of his motion was to allow Mr. Sullivan to speak to whomever he wishes. Discussion ensued and Mr. Breton indicated he did not feel any public impression should be given of negotiating with an elected official. Mr. Desilets noted that he was talking only of getting information regarding salary versus fee based.

Mr. Jay Moltenbrey, resident, approached noting that the Tax Collector had been switched from elected to appointed, and Mr. Sullivan confirmed that was the case, however, statutorily the same cannot be done with the Town Clerk.

Motion passed unanimously.

**BID AWARD:** Mr. Sullivan advised that six bids for Contracted Custodial Services had been received, as follows:

Vendor	Bid Price
Alliance Cleaning Services – Londonderry, NH	\$18.00/hr
Best of Best Cleaning – Nashua, NH	\$16.50/hr
Like You Want It, LLC – Manchester, NH	\$18.00/hr
ABS Cleaning – Nashua, NH	\$21.50/hr
SteriClean – Londonderry, NH	\$19.50/hr
SJ Services – Danvers, MA	\$16.75/hr

Mr. Letizio advised that after conducting interviews, staff recommended the bid be awarded to “Best of Best Cleaning”. Maintenance Supervisor Dave Poulson replied in the affirmative.

Mr. Breton expressed his agreement with the recommendation to award the bid, but felt subsequent to same the whole picture should be looked at as it pertained to costs. Mr. Sullivan noted that this had been looked at and a sidebar executed with the Union allowing retention of a company; provided current union employees retain their jobs until end of current contract period in March 2017. Discussion ensued as to the events following retirement of the former Maintenance Director, whose position had not been filled.

Mr. McLeod moved and Mr. Desilets seconded to award the bid for custodial services to the low bidder, Best of Best Cleaning. Brief discussion ensued regarding the sharing of staff between the Highway and Maintenance Department. Mr. Desilets then extended thanks to Mr. Sullivan, Mr. Poulson and Mr. McCartney for their hard work.

Motion passed unanimously.

**FIRE UNION:** Mr. Sullivan advised that the Union had sent a letter to the Board in June relative to the Chief’s implementation of provisions to not fill the certain shifts as a budget management measure. He explained that, to date, 340 hours have not been filled, resulting in a cost savings of approximately \$13,000; however the Union desires that the town fill all five (5) personnel on shift.

Mr. Sullivan further explained that, as of this date, the Fire Department salary accounts are projected to be a net \$10,000 over budget; along with unanticipated repair costs for the engine of approximately \$50,000. He indicated that, over the last five years, there has only been an annual overage of approximately 1% in the salaries accounts. Mr. Sullivan further explained that, on average, staff utilizes approximately 80% of their earned time, which if all hours were filled would add approximately \$20,000 more annually to the budget. He indicated he believed going forward, if the Board wished to ensure the shifts are filled year round, that if these funds were added to the budget he felt confident that based on past experience these shifts could be covered; barring any excessive use of time off.

Mr. Hohenberger sought clarification as to whether it was the day shift being left unfilled, when the Chiefs are on duty. Chief McPherson replied in the affirmative, but clarified that they do not augment the shift staff. Discussion ensued in that the Chiefs are not necessarily on hand to respond, and thus should not be part of the equation.

Lt. Jay Moltenbrey approached, agreeing that if they have to run down one man, the day shift is the time to do it. He went on to explain, however, that each member of the five man crew has assignments, and with only four they must augment the way they respond to calls; likening it to playing baseball without a shortstop. Lt. Moltenbrey indicated he would be in favor of adding the \$20,000 to guarantee the safety of all with a full crew. Discussion ensued regarding the ensuing budget and the balance of the year. Mr. Sullivan noted that to fill the shift for the balance of the year would cost approximately \$7,000.

Further discussion ensued, and Mr. Desilets noted that overtime expenses are vastly cheaper than additional employees.

Mr. Hohenberger sought clarification as to how long the Chief has been implementing this no staffing measure, and the Chief replied it has been quite some time; adding that he has done the budget for the last nine years and it is always a struggle. He then agreed that an additional \$20,000 is a small price to pay; stressing that he fully supports having five on duty in the interest of safety and service to all.

Discussion ensued regarding the mechanics of the staffing, and the Chief clarified that in the case of absences during the Monday-Friday, 8A-6P shift, only the first person absent is being covered; not the second. The Chief noted this is the busiest time for the Department, but it is not the most dangerous. Further discussion ensued.

Mr. Breton moved and Mr. Desilets seconded to authorize the Chief to fill the shift for the balance of the year. Mr. Desilets then sought clarification as to whether Mr. Breton intended to cap the expense at \$7,000 and Mr. Breton replied in the negative. Motion passed 3-2, with Mr. Desilets and Mr. Hohenberger opposed; the latter citing his opposition based upon the Board's requests to the Chief to adjust operations when overtime reaches a certain level and the trouble the budget is in this year. Mr. Desilets clarified that although he was opposed to the motion, he is in support of the staff's recommendation. Discussion ensued.

*Dispatch Contract:* Mr. Sullivan explained that the contract expires next year and the Chief has been working with the Town of Derry who has a proposed a five year extension at an increase of 5%/year. He indicated that such a continuance presents a far cheaper option than any other.

Mr. Desilets moved and Mr. McLeod seconded to support the extension of five years, cost to be \$97,190 in 2016 and increasing 5% each year thereafter as recommended. Passed unanimously.

**GIFT ACCEPTANCE, CONSERVATION:** Mr. Sullivan noted that the Planning Board has made it a condition of approval that the Wood Meadow Subdivision open space, totaling 95 acres, be donated to the Conservation Commission; adding that the Board must authorize the Commission to accept same.

Mr. McLeod moved and Mr. Desilets seconded to authorize the Conservation Commission to accept the gift as described.

Mr. Hohenberger sought clarification as to whether this was the open space that was required for the development. Mr. McLeod replied in the affirmative, clarifying that the homeowner's association can do whatever they'd like with it, and it is better protected under Conservation. Mr. Hohenberger expressed concerns that by giving the land to Conservation they no longer pay taxes on it; also questioning whether that removes the density required for the development. Discussion ensued regarding the loss of revenue, that the land then becomes public, and whether older open space subdivisions could then do the same.

Mr. Desilets questioned whether this was a time sensitive matter, and Mr. Sullivan replied that as a condition of approval it needs to go back to the Planning Board. Discussion ensued regarding waiting to make a decision to determine what is allowed in open space developments, what would be permitted if it were conservation, and the possible tax impacts. Mr. Sullivan clarified the land in question does abut the Town Forest, and the Commission is likely interested in accepting same.

Further discussion ensued as to whether giving the land to conservation would negate the subdivision, and the need to get Town Counsel's opinion on that and whether the others could also come forward.

Mr. Bob Coole approached and questioned why it could not be given to the Forestry Committee as it abuts the Forest; and Mr. Sullivan clarified that would need to go to Town Meeting.

**MUSEUM TRUST:** Mr. Sullivan noted a request for reimbursement in the amount of \$135 from the Trust had been received for a new Museum computer. Mr. McLeod moved and Mr. Breton seconded to approve. Passed unanimously.

**EDUCATIONAL FUNDING:** Mr. McLeod noted that he had traveled to Concord with several others on August 25<sup>th</sup> relative to education funding issues; and requested that the Board consider adopting a resolution in support of the lawsuit filed by the City of Dover.

Mr. McLeod advised that the Statute in question 198:41, reads: *"Beginning July 1, 2013, and each fiscal year thereafter, the department of education shall not distribute a total education grant on behalf of all pupils who reside in a municipality that exceeds 108 percent of the total education grant distributed to such municipality in the previous fiscal year."*

He explained that there is money accumulating, which is not being paid out; and that Windham is due \$11M in whole. He advised that Dover is seeking a declaratory judgement that this statute is unconstitutional and that, strategically, it is better for Dover to be the only plaintiff in the suit. Mr. McLeod reiterated that he would request that the Selectmen, as the School Board has, adopt a resolution in support of Dover's efforts.

Mr. Desilets moved and Mr. Hohenberger seconded that the Board of Selectmen endorse a letter expressing their support of the City of Dover. Passed 4-0-1, with Mr. Breton abstaining.

**OLD/NEW BUSINESS:** Representative David Bates requested that the Windham Republican and Democratic committees be added to the list of Town organizations eligible to utilize the Town Hall at no charge. Mr. McLeod moved and Mr. Desilets seconded to add both as requested. Passed unanimously.

**TEMP FINANCE DIRECTOR SERVICES:** Mr. Sullivan advised that Mrs. Call has submitted her resignation as Finance Director-Assistant Town Administrator effective 9/18; extending best wishes to her. Mr. Sullivan noted that he has the utmost respect for Mrs. Call, both personally and professionally, and that her loss will be felt by all.

He then went on to note that her position is currently being advertised for and needs to be filled; hopefully by December 1. In the event it is not, or if it becomes necessary in the interim, Mr. Sullivan requested the Board's authorization to contract with either MRI or Coppolla to bring someone in on a per diem basis.

Mr. McLeod moved and Mr. Hohenberger seconded to accept Mrs. Call's resignation with regrets. Passed unanimously.

Mr. McLeod then moved and Mr. Breton seconded to authorize Mr. Sullivan to contract with either MRI or Coppolla as needed. Passed unanimously.

Mr. Breton asked that a non-public session be held to discuss appointment of an interim second in command. Mr. Sullivan concurred.

**OLD/ NEW BUSINESS CONTINUED:** Mr. Sullivan reminded the Board that the Deliberative Session for the Special Town Meeting has been scheduled for 9/28 at the Town Hall. He indicated that it will be followed by a regular Board agenda for anything that needs attention.

*The Board* will also meet as regularly scheduled on October 5<sup>th</sup>.

*Mr. Sullivan* advised that a draft ordinance regarding use of the Town seal has been sent to Town counsel for review. Mr. Desilets asked that Town Counsel attend that meeting, and a discussion ensued.

*Mr. Sullivan* advised that Mr. Rosa of Platinum Realty has submitted some prices to him for the Town parcels to be sold; but he believes some should be higher. He indicated they are not out to market as yet, as we are still waiting for the quiet title on the Fourth Street lots. Discussion ensued.

*Mr. McLeod* noted that Chief Lewis had, at a previous meeting, indicated that u-turns and the like are part of the Department's normal course of activity. He added, however, that RSA 265:8 allows same only in emergency situations and that he had asked Mr. Sullivan to look into whether there was additional legislation regarding same.

Mr. Letizio noted that Chief Lewis was unable to attend that evening, and that information regarding this is still pending from him and Town Counsel. Discussion ensued and Mr. Sullivan noted Attorney Campbell's response had been received late that day, and this will likely be scheduled for discussion on October 5<sup>th</sup>. Further discussion ensued, and Mr. Desilets noted he has continuing concerns, as well.

*Mr. Letizio* advised that the sidewalk maps will be completed for the Board's review next meeting.

**MINUTES:** Mr. Letizio requested that page 4, 3<sup>rd</sup> paragraph of the 7/27 minutes be amended to read "...median strips in the area of Route 111 from Route 28 to the Commons also be looked at..."

Mr. McLeod asked that page 7 of the same be amended as follows: paragraph 5, remove everything after "minutes" in the motion. Also, in paragraph 7, he was opposed and not Mr. Desilets. Mr. McLeod then moved and Mr. Desilets to approve the minutes of 7/27 as amended. Passed 4-0-1, with Mr. Breton abstaining.

Mr. Desilets moved and Mr. McLeod seconded to approve the minutes of 7/29 as written. Passed unanimously.

Mr. McLeod moved and Mr. Desilets seconded to approve the minutes of 8/24 as written. Passed unanimously.

**CORRESPONDENCE:** Resignation received from Ms. Neelima Gogumalla from the LEC. Mr. McLeod moved and Mr. Hohenberger seconded to accept with regrets, and thanks for her service. Passed unanimously.

**NON-PUBLIC:** Mr. Desilets moved and Mr. McLeod seconded to enter into nonpublic session in accordance with RSA 91-A:3 II a and c. Passed unanimously. Roll call vote all "yes".

*Prior to entering* into non-public session, Mr. Sullivan advised all in public session that the Town Hall front parking lot would be closed on Wednesday due to tree removal operations at the Armstrong Building.

The Board, Mr. Sullivan, Chief McPherson, Deputy Chief Morgan, and Ms. Devlin were in attendance in the first session.

*Mr. Desilets* moved and Mr. McLeod seconded to promote Ralph DeMarco to Lieutenant per the Chiefs' recommendation. Passed unanimously.

*Mr. Desilets* excused himself from the meeting.

The Board, Mr. Sullivan, and Ms. Devlin were in attendance in the remaining sessions.

*Mr. Sullivan* discussed a personnel matter with the Board. It was the consensus of the Board that Mr. Sullivan reply to the employee as discussed.

*The Board* discussed an interim second in command to Mr. Sullivan. Mr. Breton moved and Mr. McLeod seconded to support Mr. Sullivan's intent of assigning Chief McPherson to act in Mr. Sullivan stead when the need arises. Passed 4-0.

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

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.*