

BOARD OF SELECTMEN
Minutes of January 9, 2006

MEMBERS PRESENT: Chairman Roger Hohenberger called the meeting to order at 7:05 PM. Selectmen Galen Stearns, Bruce Breton, and Alan Carpenter were present. Selectman Margaret Crisler was excused. Town Administrator David Sullivan was also in attendance. Following the Pledge of Allegiance, Mr. Hohenberger read the agenda into the record.

LIAISON REPORTS: Mr. Hohenberger announced that the Strategic Planning Committee is continuing to meet, and is endeavoring to put together a presentation for the Town Administration and Department Heads in the near future.

ANNOUNCEMENTS: Mr. Sullivan reminded all that the deadline for submission of petitioned warrant articles would be the following day, and that petitions required 25 valid signatures as verified by the Town Clerk.

RPC/VAN POOL: Mr. Scott Bogle, Senior Transportation Planner for the Rockingham Planning Commission, approached to begin the discussion. He noted that, in 2005, he had made an extensive presentation to the Board relative to the Regional Transportation program and the possibility of entering the Town's senior van into the available pool. Mr. Bogle noted that, at that time, the Board had requested more detailed information be provided.

Mr. Bogle explained that the project is designed to increase access to transportation services for senior and disabled residents of the region by: 1) coordinating scheduling and dispatching of services across a range of agencies and, 2) leveraging federal and regional funding to support the program.

Mr. Bogle noted that this program had come out of a 2001-02 regional study geared toward assessing the supply of transportation versus population and demand. Mr. Bogle stated the study had indicated that, in addition to the lack of public transport, the senior population is growing rapidly in our region. He noted that, according to AARP statistics, one in five seniors does not drive. Mr. Hohenberger sought clarification of what age range the RPC was categorizing as "senior". Mr. Bogle replied aged 65 and above.

Mr. Bogle then explained that the study had shown that 20 +/- health and human service agencies in the region did have transportation, and most were staffed by volunteers. Mr. Bogle stated that this type of staffing posed issues, and was often an ineffective system.

Mr. Bogle noted that the initial plan had consisted of a two-pronged approach: 1) establishment of a transportation brokerage with a central call center and dispatching and, 2) exploring areas where a bus route might make sense. Mr. Bogle noted that, as to the latter, Salem to Derry along Route 28 had been found to be the only viable area.

Mr. Bogle noted that the RPC had been attempting to coordinate this program since 2003 by obtaining Federal funding, pilot funding through the Endowment for Health, reaching out to regional municipalities for funding, and coordinating with Merrimack Valley Health Services for fund management.

Mr. Bogle noted that the Endowment had funded an initial grant, designed to ramp up to municipal funding as follows: year one, 2/3 from the Endowment and 1/3 from the municipalities; year two, 1/3 from the Endowment and 2/3 from the municipalities, and; year three, 100% municipal funding. Mr. Bogle pointed out that there is no obligation to continue beyond the first year of participation, and noted that the RPC had calculated the various municipal contributions based upon income and population. Mr. Bogle then noted that

for the first year, Windham's portion would be 7% (\$3,100); year two would be \$6,600; and year three would be \$10,300. In return, Mr. Bogle stated that the Town would receive an estimated 570 trips per year, based upon the percentage of the Town's contribution.

Mr. Bogle stated that, in response to the Board's previous request for further details, he had worked with Mr. Tom Case to develop a survey for distribution, however only a limited number had been returned. Mr. Bogle noted that the survey had recently been re-distributed and 27 had been returned. Mr. Bogle stated that, while the majority indicated that they do drive, they seemed to be looking down the road toward a change in their mobility, as most indicated they would use the van.

Mr. Bogle then stated that a petition had been developed in the event the Board did not wish to add the \$3,100 in funding to the budget, and inquired what the members' preference was.

Mr. Hohenberger inquired what towns in the region had already committed to the program, to which Mr. Bogle replied Salem, Derry, Plaistow, Hampstead, and Danville. Mr. Bogle also indicated that he has met with Pelham, and will be meeting with Chester and Londonderry in the near future.

Mrs. Barbara Coish, President of Windham Seniors, Inc., approached to advise the Board that the follow-up survey had not been made available at the Senior Center.

Mr. Peter Griffin, RPC Representative, approached to urge the Board to support participation in the program. He pointed out that the State study of transportation needs had shown that large numbers of the population had indicated that they had lost or turned down employment due to lack of transportation, or had missed or skipped medical appointments as they had no means to get there.

Mrs. Annette Stoller, RPC Chairman, approached noting that she did not feel the people in need of the service had been reached by the survey. She then pointed out that, if 200 residents of Windham utilize the service, the cost is only \$.05 per day per person. Mrs. Stoller noted that NH has the 7th oldest population in the United States, and is rising in the ranks. She urged the Board to support all the residents of Windham, and felt that \$3,100 was a small amount to ask.

Mrs. Lee Maloney approached to note that everyone she had spoken to indicated that, while they did not need the service now, they might in the future. She also pointed out that there is a large amount of elderly housing being constructed in Town, with no transportation contingencies. Mrs. Maloney stated the service would not be just for seniors, but for the physically challenged as well, and urged the Board to support participation.

Mrs. Coish pointed out that the Town van service works as it is, if a driver is available, and suggested that the \$3,100 could be used as a stipend for the volunteer drivers instead.

Discussion moved to whether or not users would be charged for the service. Mr. Bogle stated that, if a fare is charged the amount would be established by the Board of Directors and would likely be \$1.00 or so. He stated that, for users eligible through Medicaid, no fares would be charged, and that the scheduler would track that information.

Mr. Stearns inquired whether transportation would be available only as needed, or for regularly scheduled uses such as the Town's weekly shopping trip. Mr. Bogle indicated it could be a combination of both.

Mrs. Maloney approached to point out that, in such cases, the fare recovery is generally only about 20%, and that the maximum fare charged would probably only be \$2.50 based upon her experiences in public transportation.

Mr. Stearns then inquired whether, if the Town's percentage were only calculated at 7%, the Town's van would be out of Windham the other 93% of the time. Mr. Bogle replied that the use of the Town's van in the pool was a separate issue, but if the van were made available for other uses reimbursement would be provided for the driver/mileage. Mr. Bogle stated that the Town can set the terms of use for the van if entered into the pool, and it could be limited to Windham residents only or opened up to use in other communities.

A discussion ensued regarding the extent of the possible reimbursement, wear and tear on the Town's van, other towns participating and their vehicles, and to what extent the van is currently utilized.

Mr. Hohenberger felt that the service is currently available and well advertised. He stated he would be amenable to supporting this program if the service wasn't available, but he did not see what additional benefit the Town would gain.

After further, brief discussion, Mr. Carpenter moved and Mr. Breton seconded to approve the addition of \$3,100 to the budget for the purposes presented by the Rockingham Planning Commission.

A discussion ensued regarding establishment of an agreement before expenditure of the funds and the loss of existing volunteers in the event the Town wishes to withdraw from the program in the future.

Mr. Wayne Morris approached to suggest that the Board reach out to Wal-Mart for possible grant monies for use toward participation, or explore collection of fees from the elderly housing developments for this purpose.

Mr. Sullivan pointed out that the van will continue to operate until an agreement is in place, and Mr. Bogle stated that, if the existing drivers wished to continue a stipend could be negotiated as part of the reimbursement program.

Mr. Sullivan then questioned whether entering into the program would result in a duplication of services, as the Town contributes to the Community Caregivers and the Great Derry Regional Transportation organizations. Mr. Bogle replied in the negative, noting that the funding from Windham assists in keeping those organizations' vehicles on the road and available for use.

After further, brief discussion, the motion passed 3-1, with Mr. Hohenberger opposed.

OLD BUSINESS: Mr. Breton requested that the members consider releasing Town Counsel's opinion relative to Hopkins Road to the public, noting that it pertained to a specific inquiry made by a resident and should be released.

After lengthy discussion, it was the consensus of the Board that Mr. Sullivan arrange for the Board to meet with Attorney Campbell prior to making any decision.

NEW BUSINESS: Mr. Carpenter requested that the following be addressed by the Board as they enter into the new year:

- Placing the Town's legal services out to bid. After some discussion, it was the general consensus of the members to support this move, with only Mr. Stearns being opposed.

- Amending the Recreation Committee's charter.
- Revision of the Town's purchasing policy, specifically for items over \$5,000 and centralization of the bid specification process with the Finance Director.
- Re-bidding of the Town's vehicle fuel. A discussion ensued regarding whether doing so would violate the agreement currently in place, re-bidding in the fall versus earlier, and the possibility of bidding as to append the agreement to add an additional vendor.

OLD BUSINESS, CONTINUED: Mr. Hohenberger expressed concern that, since the Special Town Meeting regarding the property across from Griffin Park, the Board had received no updates. He requested that Mr. Mesiti be contacted to attend an upcoming meeting.

Mr. Breton then noted that a meeting had been held with the State on December 19th relative to the crossing issue and that Mr. Zohdi is currently working on a plan for the property. Mr. Breton then requested that a letter be provided to Mr. Zohdi allowing him to conduct survey work at the Park.

Mr. Hohenberger then pointed out that it has been suggested that the tennis courts be relocated to the new property and the additional parking be placed at Griffin Park. He inquired whether the Board was amenable to discussing this suggestion, noting that it would require another vote.

After a brief discussion regarding possibly just paving the level grassy area at Griffin Park instead, Mr. Sullivan sought clarification whether the Board was willing to allow Mr. Zohdi to conduct survey work at the Park.

Mr. Carpenter then moved and Mr. Breton seconded to approve Mr. Zohdi's request. Passed unanimously.

BOARD OF HEALTH/31 W. SHORE ROAD: Mr. Breton moved and Mr. Stearns seconded to enter into the Board of Health. Roll call vote – all "yes". Mr. Hohenberger read the public hearing notice into the record.

Mr. Turner presented revised plans to the Board for this continued hearing, which detailed the proposed and existing wells and septic systems as requested by the Board. Mr. Turner noted that the Drake's well is 99' from the proposed septic system, and that Mr. Murray's well is 83' from it. Mr. Turner then pointed out that the Drake's well is not currently being utilized as a water supply, and that both it and Mr. Murray's well meet the State's requirement of 75'.

Mr. Stearns sought clarification of the distance from Mr. Murray's well to the existing septic system, which Mr. Turner confirmed was only 60'. Mr. Turner then reiterated that no records or waiver are on file for Mr. Murray's well.

Mr. Carpenter sought clarification that this hearing had been continued due to a lack of detail on the submitted plans, which Mr. Turner confirmed.

Mr. Hohenberger inquired whether it was Mr. Nickerson's intent to utilize the existing system until it failed, as the notice seemed to imply. Mr. Peter Zohdi, representing Mr. Nickerson, replied in the negative, noting if the new system were approved it would then be installed and the old system discontinued.

Atty. John Ratigan, representing Mr. Nickerson, reiterated that Mr. Nickerson is attempting to improve the situation by discontinuing use of the old system. He noted that the well regulations allow just such a waiver and to deny it would cause manifest injustice to Mr. Nickerson. Mr. Ratigan pointed out that, as planned, increased distance and a better system would result. He also noted that all the wells in the area are drilled and thus there is no hydro-geological connection to septic systems.

Discussion ensued regarding the current status of the property, the intent to convert it to year-round use, and the status of the existing septic that has been abandoned for 20+/- years.

Attorney David Lefebvre, representing Mr. Murray, approached to point out that Mr. Murray's objection was not to the applicant drilling a well within 100' of his septic, but rather to his installation of a septic system within 100' of Mr. Murray's well. Atty. Lefebvre then re-stated his previous argument to the Board that the Town's sewage regulations do not contain a provision for a waiver, and thus the Board did not have the authority to grant one.

Mr. Carpenter inquired how, if that were the case, did Mr. Murray's well come to be drilled. Attorney Lefebvre replied Mr. Murray's well was not pertinent to the discussion, noting that they could not speak to what happened in 1988, which is what the well pump is coded as being aged. He noted that the regulations as they exist today do not allow a waiver.

Atty. Lefebvre then pointed out that there is no way that the structure planned by Mr. Nickerson can be built in accordance with the Shoreline Protection Act, and that any request should be denied until a viable plan is developed.

Mr. Zohdi noted that waivers of the SLPA are available, and that he is confident one can be obtained. He further noted that addressing that would be under the purview of the Zoning Board of Adjustment.

A discussion ensued regarding the SLPA, the intent of the Town's sewage regulations, and the authority of the Board to grant a waiver of same.

Mr. Carpenter pointed out that denial of the waiver would not inhibit Mr. Nickerson's rights to use the property, as it was purchased as seasonal and could remain that way. Mr. Carpenter noted that the Board had a history of being sensitive to owner rights and has compromised with individual wells, however, this proposal affected neighboring wells.

Atty. Lefebvre pointed out that Mr. Nickerson could replace the current system with another holding tank. He then suggested that the Board verify with Town Counsel that there is no provision for a waiver in the regulations. Atty. Lefebvre further noted that the Town's Zoning Regulations require compliance with minimum health requirements, and to approve this request would be contrary. He also reiterated that the Town's Master Plan doesn't encourage conversions of seasonal properties to year-round use.

Mr. Carpenter inquired what the basis of Mr. Murray's objection was, and Atty. Lefebvre stated it was simply that he did not want a septic system installed within 100' of his well. Atty. Lefebvre stated that Mr. Murray's situation was what it was, however, he did not want to suffer the cumulative effects of Mr. Nickerson's change.

Mr. Breton opined that, if he were an abutter, he would not object to installation of the proposed Clean Solution System, and Mr. Hohenberger felt that Mr. Murray's objection appeared clearly to be based upon the conversion of the property to year-round.

Mr. Hohenberger closed the public portion of the meeting, and a discussion ensued amongst the members regarding consulting Town Counsel for his opinion on the Board's authority.

Mr. Carpenter then moved and Mr. Turner seconded to submit this matter to Town Counsel for opinion on whether the authority exists for the Board to grant a septic system waiver. Passed 3-2, with Mr. Breton and Mr. Stearns opposed.

Mr. Carpenter then moved and Mr. Stearns seconded to continue this hearing until January 23rd at 7:30 p.m. Passed unanimously.

BOARD OF HEALTH/40 TURTLE ROCK ROAD: Mr. Hohenberger read the public hearing notice into the record.

Mr. Carpenter momentarily left the meeting.

Mr. Turner explained that this request entailed the same waiver as the previous discussion, and inquired whether the Board wished to table the request or hear input without making a decision.

A discussion ensued regarding revising the Town ordinances to 75', which is the State's requirement or possibly adding a waiver provision to the septic regulations. Mr. Turner noted he had discussed revising the regulations with Mr. Sullivan, and that to do so would require a public hearing.

Mr. Carpenter returned to the meeting.

After further, brief discussion, Mr. Breton moved and Mr. Turner seconded to table this request until January 23rd at 7:30 p.m. Passed unanimously.

Mr. Carpenter moved and Mr. Stearns seconded to exit the Board of Health. Passed unanimously.

MINUTES: Mr. Carpenter moved and Mr. Breton seconded to approve the minutes of November 28, December 8, December 12, December 13, and December 29, 2005 as written. Passed unanimously.

OLD BUSINESS: Mr. Sullivan discussed the request for access over Town land as part of the Lakeview Farm development. Mr. Sullivan noted that the Planning Board had made it a condition of their approval that access over the Town's property be gained, and that two (2) petitions were being submitted for Town meeting. Mr. Sullivan suggested that the Board consider, based upon Town Counsel's opinion, adding language at the Deliberative Session to provide for an easement.

Mr. Sullivan advised the Board that the Library Trustees had requested a warrant article for \$20,000 to conduct a further engineering study of the library. This matter will be discussed at a future meeting.

Mr. Sullivan advised the Board that "friendly eminent domain" was not possible, and that a warrant article would be required relative to the transfer of Industrial Drive to the State.

NEW BUSINESS: *Mr. Sullivan* noted that the Highway Safety Committee had reviewed a request for a street light at Lamplighter Village, and supported its installation. This request will need to be forwarded to the State for installation however the pole is in place.

Mr. Breton moved and Mr. Stearns seconded to support the HSC recommendation to install a streetlight at Lamplighter Village. Passed 3-1, with Mr. Hohenberger opposed.

Mr. Hohenberger announced that a valid citizen petition to the Warrant had been received, relative to conversion of Hopkins Road to a trail. Mr. Hohenberger then read the petition into the record, and a brief discussion ensued regarding the Board's previous decision to re-classify, and obtaining Town Counsel's opinion on the possible effects of the petition should it be approved by the voters.

NON-PUBLIC SESSION: Mr. Carpenter moved and Mr. Breton seconded to enter into non-public session in accordance with RSA 93-A:3 IIa. Roll call vote, all members "yes". The topic of discussion was personnel, and the Board and Mr. Sullivan were in attendance.

The Board and Mr. Sullivan discussed a possible change in job title for the finance director. Mr. Sullivan will prepare a formal request with revised job description for the Board to consider at a future meeting.

The meeting was adjourned at 11:15 p.m.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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