

BOARD OF SELECTMEN
Minutes of March 21, 2011

MEMBERS PRESENT: Chairman Ross McLeod called the meeting to order at 7:05 PM. Selectmen Bruce Breton, Phil Lochiatto, Kathleen DiFruscia and Roger Hohenberger were present, as was Town Administrator David Sullivan. Mr. McLeod opened with the Pledge of Allegiance.

ANNOUNCEMENTS: Mr. McLeod made several announcements, as follows:

- Tickets went on sale today for the Annual Mother/Sign Night, which is scheduled for June 17th at Mel's Funway in Litchfield. Contact Recreation at 965-1208 for more information.
- The Town's Annual Fireworks/Town Day event has been tentatively scheduled for July 2nd at the High School.
- The Annual Easter Egg Hunt/Earth Day event is scheduled for April 16th.
- Windham Athletic Boosters 3rd Annual Comedy Night is scheduled for 3/24 at the Tupelo Music Hall in Londonderry.
- Annual Firefighter Ball is scheduled for Saturday 3/26 at Castleton.

LIAISON REPORTS: None.

MINUTES: None.

CORRESPONDENCE: None.

GRIFFIN PARK PARKING LOT: As the Board was ahead of schedule for the 7:15 Public Hearing, Mr. McLeod moved the discussion to the Griffin Park parking lot. Mr. Sullivan advised that, as the voters had approved up to \$200K for this project at Town meeting, Mr. Breton had requested this item be placed on the agenda to move the project forward. He noted that the Board would need to make two determinations in order to proceed: 1) who will oversee the project; and, 2) how the engineering will be finalized – will it be placed out to bid or would the Board prefer to continue with Herbert Associates who developed the conceptual plan. Mr. Sullivan indicated that, as to the former, he would recommend the Board consider allowing former Selectmen McMahan to serve as point person for the project, as he has been involved since the beginning and has expressed interest in assisting.

Mr. McLeod sought the Board's input on the question of engineering. Mr. Lochiatto inquired as to what the cost estimate was, and Mr. Sullivan noted that the engineering was estimated at \$10K, with an additional \$25K for DES permitting costs. Mrs. DiFruscia inquired if the value of the conceptual plan as donated was available. Mr. Sullivan replied he did not have that figure but could obtain it for the Board.

Mr. Breton noted that all work on the project thus far had been donated, and added that an alteration of terrain will need to be obtained and drainage plans developed. Mr. Sullivan reiterated that the \$200K as approved by the voters includes \$10K for the engineering and an additional \$25K for the DES permitting.

Mrs. DiFruscia noted that while she appreciated Herbert Associates donated services, she believes it would be interesting to see bids for the entire project; including engineering.

Mr. Hohenberger indicated that he supported remaining with Herbert, as they have always done well by the Town, adding that there were also substantial drainage concerns that needed to be addressed as part of the plan. Mr. Lochiatto concurred with Mr. Hohenberger, noting that the work donated to date does have value. He further noted that the CPIA's independent study, which could be incorporated into the plan, does address those drainage concerns and that the State will also be involved. Mrs. DiFruscia noted that the CPIA could provide the study to the Town and that this may also present an opportunity for collaboration between the Town and CPIA relative to grant funding for remediation.

Mrs. DiFruscia then noted that she does have concerns regarding loss of potential savings from bidding, and inquired how much of the \$200K would be left for actual construction after the engineering. Mr. Sullivan noted that, based upon estimates, \$165K would remain after engineering and permitting.

Mr. McLeod expressed that he would like the CPIA and Recreation Committee to receive copies of the conceptual plans for review and comments. He also noted that, while he too appreciates Herbert's work, given the magnitude of the project he would like to send it all out to bid. This discussion was then tabled to later in the meeting.

PUBLIC HEARING: Mr. McLeod read the public hearing notice into the record as follows, and then deferred to Tax Assessor Rex Norman for further explanation. *“Notice is hereby given that the Windham Board of Selectmen will conduct a public hearing on Monday, March 21, 2011 at 7:15 PM in the meeting room at the Windham Community Development Department for the purpose of taking public input on the possible amendment of pole licenses issued by the Windham Board of Selectmen to persons using the public right-of-way for utility and other purposes, to incorporate language under RSA 72:23 (I) (b) to require payment of real estate taxes as a condition of said licenses. This hearing is in response to a Petition of Rex Norman, Assessor, and Jack McCartney, Highway Agent, dated January 31, 2011. A copy of said Petition is available for inspection during regular business hours at the Windham Administrative Offices, 3 North Lowell Road, Windham, New Hampshire, or the Windham Town Clerk, 4 North Lowell Road, Windham, New Hampshire.”*

Mr. Norman explained that the petition proposes to modify these licenses to allow the Town to assess a value on the rights-of-way relative to the various companies occupying them. He noted that, regardless of the pending SB133 legislation to afford telephone and cable providers a pole tax exemption, this modification would allow the Town to assess these entities. Mr. Norman then read the proposed language as follows:

“In accordance with the requirements of RSA 72:23, I (b) this license is granted to the licensee(s) subject to the condition that the licensee(s) and any other entity using or occupying property of the state or of a city, town, school district or village district pursuant to this license shall be responsible for the payment of, and shall pay all properly assessed real and personal property taxes no later than the due date. Failure of the licensee(s) to pay duly assessed personal and real taxes when due shall be cause to terminate this license.

In accordance with the requirement of RSA 72:23, I (b), the licensee(s) hereunder and any other entity using or occupying property of the state or of a city, town, school district or village district pursuant to this license shall be responsible for the payment of, and shall pay, both current and potential real and personal property taxes when due. Furthermore, in accordance with the requirements of RSA 72:23, I (b), the licensee(s) and any other entity using and/or occupying property of the state or of a city, town, school district or village district pursuant to this license shall be obligated to pay real and personal property taxes on structures or improvements added by the licensee(s) or any other entity using or occupying property of the state or of a city, town, school district or village district pursuant to this license.

The changes to the within license set forth in the preceding two paragraphs shall take effect April 1, 2011 and shall remain in effect until changed in accordance with the requirements of RSA 231:163.”

Mr. McLeod inquired as to what the estimated cost was to assess these properties/poles, and Mr. Norman replied that doing so is part of that contract already awarded by the Board to Thos. Pickett for the public utilities revaluation.

Mr. Tony Bell of Thos. Pickett approached and explained the procedure to establish values for these types of properties; which includes looking at the companies as a whole and then allocating values for the various jurisdictions at a local level. He further noted that the company endeavors to establish fair market value. Discussion ensued regarding the potential impacts of SB133 and Fairpoint’s bankruptcy on this revaluation. Mr. Bell clarified that Thos. Pickett has been through a situation similar to Fairpoint’s with MCI and that, as it pertained to SB133, all that would be impacted is what is ultimately included in the valuation.

Mr. Hohenberger sought clarification that, if necessary, Mr. Bell will handle any negotiations with the utility companies, to which Mr. Bell replied in the affirmative. Mrs. DiFruscia then inquired whether some parameter of the expected values was available, and Mr. Bell replied he will not have that information available until he begins to look at the companies.

Mr. Lochiatto expressed concern that the cost of these taxes to the utilities will then be assessed to the users, and inquired if the utilities are able to pass such costs along. Mr. Bell replied that, typically, utilities are allowed to recoup all reasonable expenses which includes taxes. Mr. Norman then clarified that Fairpoint is already assessing such charges to users, despite not actually paying any property taxes. He then added that all the utilities in Town, save the telecommunications providers, are currently paying taxes and those will simply be reassessed.

Attorney Bernard Campbell, Town Counsel, approached and clarified that since 1979 State statute regarding pole licenses has required that utilities pay their share of taxes, however, since most poles were pre-existing at that time they were not incorporated. He added that the Rochester Supreme Court case allows an amendment such as that being proposed to include a tax clause in the license and that, if the Board should decide to vote to approve the amendment it should be on the basis of the public good.

Mr. Bob Coole, resident, approached to note that a number of people in Windham have light poles on their property from which they purchase service from PSNH, and inquired what the state of those poles would be as it pertained to this amendment. Mr. Norman clarified that such lights are deemed private property.

After brief, further discussion, Mr. Hohenberger moved and Mrs. DiFruscia seconded to approve the changes to the pole licensing as proposed in the interest of the public good for the Town of Windham.

Further discussion ensued regarding pending legislation relative to pole license exemptions and whether undertaking incorporating this amendment was worthwhile. Mr. Norman clarified that, regardless of the legislation, this amendment is not a waste of time as it addresses real estate rather than usage of the pole itself.

Mr. McLeod sought clarification that all utilities currently operating in Windham had been notified of this hearing. Mr. Sullivan replied in the affirmative, noting that each had been advised via certified mail and signed for receipt of the correspondence; and that none had responded with any input.

Mr. Lochiatto sought clarification of who was currently paying taxes, and Mr. Norman replied all utilities are paying save the telecommunication companies.

Motion passed unanimously.

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

The Chief updated the Board on a soil matter relative to Cobbetts Pond. Mr. Breton expressed concerns that this may not be a non-public matter. Discussion ensued, after which the Chief completed his update. No decisions were made.

PUBLIC SESSION: The Chair resumed the public portion of the meeting at 8:05, and advised that the Board had discussed a soil situation over which the Department of Environmental Services has taken jurisdiction.

GRIFFIN PARK PARKING LOT: Discussion resumed regarding this matter, and Mr. Derek Monson, Cobbetts Pond Improvement Association (CPIA), approached to note that the parking area had been mentioned within the CPIA's plan as recently submitted for grant funding. He noted that the CPIA would like to work with the Board of Selectmen on this project, and can provide their documents regarding this area. Mr. Monson noted that he believed the conceptual design could be easily retrofitted to the CPIA's plan. Discussion ensued regarding the availability of CPIA grant funds.

Ms. Carolyn Webber, resident, approached to urge the Board to consider locating the overflow parking in the lower right hand corner of the park, as opposed to the conceptual plan. She noted that the Town has a right-of-way from Squire Armor Road, and the costs would be less to construct a graveled/gated lot in this rear area. Ms. Webber felt that the proposed expansion of the existing lot will diminish the character of Range Road. Mr. Sullivan noted that land which Ms. Webber was speaking of cannot be used for overflow parking, as it is a conservation easement and therefore restricted. Discussion ensued.

Mrs. Margaret Case, resident, approached and expressed her disagreement with Ms. Webber; noting that the conceptual plan was what was voted on and the time to discuss proposed changes was prior to Town Meeting. She felt that the Board needed to stay within the bounds of what the residents voted on.

Mr. Sullivan then advised the Board that he had been able to reach Mr. McMahan in the interim between this and the earlier discussion, and that he had advised that the estimated value of work completed to date on this project by Herbert Associates was \$60-80K. Mr. Sullivan also noted that Mr. McMahan had confirmed the cost estimates of \$10K and \$25K for engineering and DES permitting in order to prepare the project bid documents. Discussion ensued.

Mr. Hohenberger then moved and Mr. Lochiatto seconded that the Town continue to secure the services of Herbert Associates to complete the engineering necessary to obtain sufficient plans to place this project out to bid.

Discussion ensued, and Mr. Hohenberger amended his motion and Mr. Lochiatto his second to include completion of the alteration of terrain permitting with the DES; in a total amount not to exceed \$35K.

Further discussion ensued, and Mr. McLeod noted that the cost to relocate the existing lights also needs to be evaluated. Discussion ensued regarding the splitting of this cost between the Windham Soccer Association (WSA) and the Windham Baseball Softball League (WBSL) as previously agreed to. Mr. McLeod then clarified that he believed use of the competitive bid process for this project may result in lower costs.

Motion passed 3-2, with Mr. McLeod and Mrs. DiFruscia opposed.

Mr. McLeod then reiterated that the CPIA and Recreation will receive a copy of the conceptual plans for review, and that comments should be forwarded to Mr. Sullivan.

Mr. Sullivan then, again, recommended that the Board consider allowing Mr. McMahan to act as an agent of the Town to run the project in cooperation with himself. After a brief discussion, Mr. Lochiatto moved and Mr. Breton seconded to authorize Mr. McMahan to work with staff as an agent of the Town with respect to the Griffin Park parking lot expansion.

Mr. McLeod sought clarification that Mr. McMahan will not be entering into any binding agreements or similar, and Mr. Sullivan replied in the negative; noting that Mr. McMahan will oversee the day to day activities of the project only with all items requiring execution, etc., being brought before the Board. Discussion ensued regarding the need to keep the WBSL, WSA, and the Recreation Coordinator apprised during the project as it pertained to scheduling of the fields.

Motion passed unanimously.

LIAISON APPOINTMENTS: Mr. McLeod noted that the Board members had submitted the following liaison assignment requests:

- Cable TV: Mr. Hohenberger with Mrs. DiFruscia as alternate
- CIP: Mr. Hohenberger with Mr. Lochiatto as alternate
- CTAP: Mr. Lochiatto
- Depot Advisory: Mr. Hohenberger
- Economic Development: Mr. Lochiatto with Mrs. DiFruscia as alternate
- Haz-Mat District: No submissions
- Historic Committees: Mrs. DiFruscia
- Housing Authority: Mr. Lochiatto (no submission for alternate)
- Technical Advisory: Mr. Hohenberger
- Joint Loss Safety: Mr. Breton
- Planning Board: Mr. Breton or Mr. McLeod with Mrs. DiFruscia as alternate
- Recreation: Mrs. DiFruscia with Mr. McLeod as alternate
- Welfare Overseer: Mr. Hohenberger
- Fire/Police/Municipal Unions: Mr. Breton and Mr. Hohenberger

Mr. Lochiatto moved and Mr. Hohenberger seconded to approve all uncontested liaison requests. Passed unanimously.

Mrs. DiFruscia then moved and Mr. Breton seconded to appoint Mr. Hohenberger as CIP liaison, with Mr. Lochiatto as Alternate. Passed unanimously.

Mr. Lochiatto then moved and Mr. Breton seconded to appoint Mr. Breton as Planning Board ex-officio. Discussion ensued with Mr. Breton and Mr. McLeod both presenting their position in requesting this liaison assignment.

Mr. Lochiatto explained that his thought in making the motion was related to concerns regarding the workload involved in being both Selectmen Chair and Planning Board ex-officio; adding that he believed both Mr. Breton and Mr. McLeod had done excellent work in the past for the Planning Board. Motion failed 2-2-1 with Mr. McLeod and Mrs. DiFruscia opposed and Mr. Hohenberger abstaining.

Mr. Hohenberger then moved and Mrs. DiFruscia seconded to appoint Mr. McLeod as the Planning Board ex-officio. Discussion ensued regarding the need for rotation on the Planning Board, and Mr. Breton pointed out that the same argument was not made regarding the CIP appointment that Mr. Hohenberger has held for several years. Mr. Hohenberger indicated he would be willing to move down to alternate on the CIP if the Board wished.

Mr. Lochiatto then cautioned the Board regarding returning to a six month rotation on the Planning Board ex-officio position; citing a need for consistency. Discussion ensued.

Motion passed 3-2, with Mr. Lochiatto and Mr. Breton opposed.

Mr. Hohenberger then moved and Mr. Lochiatto seconded to reverse the CIP liaison assignments as voted on previously; making Mr. Lochiatto the regular and Mr. Hohenberger the alternate. Passed unanimously.

Brief discussion ensued regarding the liaison appointments to the Hazardous Materials District and Housing Authority Alternate position, and it was the consensus of the Board that staff distribute the information regarding meetings etc., to the Board as a whole to determine who is able to attend at the time.

Mrs. DiFruscia then moved and Mr. McLeod seconded to appoint Mr. Hohenberger as liaison to the Wall Street Advisory Committee. Passed 4-1, with Mr. Hohenberger opposed.

OLD/NEW BUSINESS: Mr. Sullivan advised that next week the Board will be discussing a proposed re-draft of the Town's Stormwater Ordinance, as well as a special use permit relative to additional parking for the rail trail. Mr. Breton requested that estimated maintenance costs for the latter also be available for the discussion.

NON-PUBLIC SESSION: Mrs. DiFruscia moved and Mr. Hohenberger seconded to enter into non-public session in accordance with RSA 91-A:3 II a and e. Roll call vote all "yes". The topics of discussion were personnel and legal.

The Board, Mr. Sullivan, Community Development Director Laura Scott, and Ms. Devlin were in attendance in the first session.

Ms. Scott discussed an ongoing legal matter with the Board. Mr. Hohenberger moved and Mrs. DiFruscia seconded that Ms. Scott proceed with Town Counsel as recommended. Passed unanimously.

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

Chief Lewis updated the Board on a union grievance. Mr. Lochiatto moved and Mr. Breton seconded to support the Chief's position in the response to the grievance. Passed unanimously.

Chief Lewis then discussed a personnel matter with the Board relative to tuition reimbursement. No decisions were made.

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

The meeting was adjourned at 9:35 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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