

**BOARD OF SELECTMEN**  
**Minutes of December 7, 2009**

**MEMBERS PRESENT:** Vice-Chairman Bruce Breton called the meeting to order at 7:00 PM. Selectmen Ross McLeod, Charles McMahon, and Roger Hohenberger were present, as was Town Administrator David Sullivan. Chairman Galen Stearns was delayed and arrived at 8:05 PM. Mr. Breton read the agenda into the record, followed by the Pledge of Allegiance.

**CABLE AWARD:** Ms. Anastasia Sofronas, Cable Coordinator, announced that "Book Beat" had been selected from amongst 10 national program choices to receive a "Best Show" award by the National Alliance for Community Media. Ms. Sofronas noted that the show involves book reviews by Windham Middle School students, and is hosted/produced by cable volunteers Diana Greenleaf, Nancy Fahey, and Karen Rogers. She then invited Ms. Greenleaf and Ms. Fahey to the podium to receive their award.

*Margaret Case*, Cable Advisory Board Chair, then approached to extend her appreciation to Maintenance Supervisor Al Barlow and his crew for the magnificent work they had done at the Studio entrance.

*Mrs. Case* then announced that channel 170 is now active as the High School Access Channel; however, there is yet to be any activity.

**ANNOUNCEMENTS:** Mr. McLeod extended his thanks to Recreation Coordinator Cheryl Haas and the Recreation Committee for a job well done in coordinating the Annual Tree Lighting. Mr. Breton echoed Mr. McLeod's thanks, and noted that the residents of Hadleigh Woods had provided approximately 875 cookies towards the annual bake off.

*Mr. Breton* noted that he had toured several of the I-93/Route 111 construction sites with representatives of the Department of Transportation. He noted that the Middlesex contract is 50% completed and will finished by July of 2010 and the Cairns contract is slated for completion in 2011. He also indicated that he had toured the former Freda Hardware site, which is being converted for use by the State and should be completed by February of 2010.

*Ms. Haas* approached to remind all that the Senior Christmas Party is scheduled for the following Wednesday and that there is currently a waiting list for tickets. She recommended that, in light of the weather forecast, anyone who is on the list call on Wednesday morning as there may be space available due to cancellations.

*Ms. Haas* then extended thanks to the following for their contributions to/assistance with the Annual Tree Lighting: (need list).

*Community Development Director* Laura Scott announced the Planning Board is continuing their work on proposed amendments for the March ballot, and that the documents are available on the Town website for residents to review.

*Ms. Scott* then noted that the following Saturday would be the official Grand Openings of the Chatterbox Café and Windham Beauty Shoppe. In addition, Santa will be making his annual visit to the Windham Plaza.

**ENFORCEMENT MATTER/BAUCHMAN:** Ms. Scott advised that, in follow up to previous discussions, an agreement had been executed that day between her as Code Enforcement Officer and Brian Bauchman, which she then read into the record (see attached). Mrs. Scott noted that the agreement had been reviewed by both Town Counsel and Mr. Bauchman's attorney, and copies provided to both.

Mr. McLeod noted that, as worded, the agreement expires before Mr. Bauchman has to come into compliance. Ms. Scott replied that Town Counsel had not pointed that out to her. Mr. McLeod then expressed concerns regarding use of the word "may" throughout the agreement, and inquired at whose discretion fines/enforcement would be imposed. Ms. Scott replied any action would be at her discretion with input from Town Counsel. Mr. McLeod felt that a harder line should be taken in the agreement, and Ms. Scott reiterated that both counsels had reviewed the document prior to its execution. Mr. McLeod then indicated he did not feel the agreement was in keeping with the Board's previous position regarding this matter, and a brief discussion ensued regarding Town Counsel correspondence on the document.

**NON-PUBLIC SESSION:** Mr. Hohenberger moved and Mr. McMahan seconded to enter into a non-public session in accordance with RSA 91-A:3 II e. Roll call vote - all members "yes". The topic of discussion was legal, and the Board, Mr. Sullivan, Ms. Scott, and Ms. Devlin were in attendance. The Board reviewed correspondence from Town Counsel relative to the agreement between Ms. Scott and Mr. Bauchman.

**ENFORCEMENT MATTER CONTINUED:** Mr. Sullivan clarified that the Board had entered into non-public session due to what he believed may have been a difference in Town Counsel's review of the agreement. He indicated that Town Counsel had spoken to Ms. Scott subsequent to the correspondence in question, and he was confident that the final version as read by Ms. Scott had been reviewed and supported by Counsel.

Mr. McLeod pointed out that the order number from the court documentation, 08E273, indicates that this is an "equitable" matter and therefore imposition of the per diem fine of \$275 will not be required by the courts. He added that he still did not believe the document was worded strongly enough.

Ms. Scott clarified that Mr. Bauchman is currently only in violation due to the number of trucks at the site, and that he is still legally authorized have three vehicles on the property. She added that the agreement affords her the ability to do inspections of the site with no advance notice and that, as of April 1, 2010, Mr. Bauchman may have only two hooks and one flatbed vehicle at the site to be operated by himself or his son. No storage or maintenance of towed vehicles will be permitted.

Mr. McMahan inquired what the previous understanding was as referenced within related correspondence, to which Ms. Scott replied it was the same as had been drafted but not formalized in writing. Mr. McMahan then inquired whether there was any other agreement from the Town since October of 2008, to which Ms. Scott replied in the negative noting there had only been correspondence between the parties.

Mr. McMahon then sought clarification as to why three vehicles were allowed, and Ms. Scott indicated that it was based upon the number of trucks Mr. Bauchman had in place at the time of the first court decision. Mr. McMahon then inquired whether a towing company was an allowed use in the rural zone, to which Ms. Scott replied in the negative per the Zoning ordinance. She added, however, that Town Counsel indicates that it is being allowed based upon the first case. Further discussion ensued regarding the use of “may” versus “shall” or “will”.

Mr. Hohenberger raised concerns with item #2 relative to those living at the residence currently and in the future (i.e. additional employees). Ms. Scott noted that the property is currently a single-family dwelling and Mr. Bauchman would not be able to rent out accessory apartments without going through the planning process. Mr. Hohenberger suggested the language be changed to specifically indicate Mr. Bauchman or his son, and further discussion ensued.

Mr. McLeod noted that, as written, the agreement seems to grandfather in Mr. Bauchman’s existing non-compliance, and suggested that items 2 and 3 be stricken and the agreement amended to state that Mr. Bauchman will come into full compliance with the Zoning Ordinance. Ms. Scott replied that Mr. Bauchman was grandfathered in via the court order. Discussion ensued regarding whether the property was in violation prior to the court order and Mr. Bauchman’s current purchase and sale agreement relative to property in Londonderry, NH. Mr. McLeod then noted that the court order is clear that three vehicles can remain on the property, and reiterated that he would like to see the agreement revised to include the clarifications as discussed.

Mr. Breton suggested that the Board schedule a meeting with Town Counsel for the following week to discuss the agreement and that a new document be drafted for review. Ms. Scott noted that Mr. Bauchman may not wish to execute a new agreement. Brief discussion ensued.

Attorney Steve Clark, representing Mr. Marc Sneider, approached to indicate he shared similar concerns regarding the use of “may” throughout the document. He noted that, while it is not unusual to give parties a reasonable amount of time to come into compliance, he was concerned that Mr. Bauchman had not yet done anything with the Town of Londonderry, which would be at minimum a six month process. He then noted that he believed the agreement as written was a win/win for Mr. Bauchman, and that he did not believe that Mr. Bauchman would be able to meet the deadline as stated. Atty. Clark then noted that the agreement states Mr. Bauchman will be relocating “a portion” of his business, and inquired what portion would be staying. He also noted that a family member working for him still constitutes an employee. Mr. Breton then requested that Attorney Clark submit his comments/concerns to Mr. Sullivan and Ms. Scott in writing for reference.

Mr. Marc Sneider approached, indicating that the abutters had compiled and presented to Ms. Scott a list of nine points for inclusion in the agreement that were not incorporated. He noted that, in addition, letters from abutters were submitted expressing discontent with the situation. Mr. Sneider then stated that Town Counsel had, in September, drafted a stipulation for filing with the court that Ms. Scott had not utilized. He indicated that the neighbors wished to be heard and included in the process, and stressed that Mr. Bauchman only has the right to store vehicles at his property.

Mr. Heath Partington approached and inquired whether the Town intended to continue to utilize the towing services of Mr. Bauchman, and Mr. Sullivan replied that Mr. Bauchman is currently in the Police Department rotation. Mr. Partington noted that Mr. Bauchman is in violation of both court orders by storing eight vehicles at the property, and inquired why the Town continues to fund an illegally operated business. Mr. Sullivan indicated that Mr. Partington's concerns would be taken under advisement.

Mr. Partington then expressed concerns that Ms. Scott had provided Mr. Bauchman two days advance notice of her intent to inspect the site, which he felt resulted in a false impression of Mr. Bauchman's operations. He noted that Ms. Scott was taking Mr. Bauchman at his word, which he had not previously kept, and then cited a lengthy timeline of events leading up to the agreement in question (copy attached). Mr. Partington then indicated he believed the March 31<sup>st</sup> date to be a stalling tactic to allow Mr. Bauchman to rezone the property, and the Town's and residents' rights were not being addressed.

Mr. George Davidovich approached to thank the Board for hearing the abutters' input. He then noted that Mr. Bauchman's trucks are closer to his home than Mr. Bauchman's own, and that it was time to stop providing an illegal business a break.

After a brief discussion, Mr. Sullivan clarified that he would contact Town Counsel to arrange for him to meet with the Board the following Monday at 6:00 PM.

**ANNOUNCEMENTS CONTINUED:** Chief Thomas McPherson approached to present Firefighters Scott Zins and Paul Fisher, both of whom recently successfully completed their Paramedic certification. Chief McPherson noted their training had entailed 1200 hours over a fifteen month period, and afforded them the highest level of pre-care certification available. He added that Mr. Zins' and Mr. Fisher's success brings the total paramedic count to eight for the Department, and extended his congratulations to both men as well as his thanks to their families for their support during the long process.

**PUBLIC HEARING:** Mr. Sullivan read the public hearing notice into the record. After a brief discussion, Mr. Hohenberger moved and Mr. McLeod seconded to release the bond in the amount of \$30,500 for Jackman Ridge Road Butterfield Estates to Mako Development, LLC. Passed unanimously.

Mr. Hohenberger moved and Mr. McLeod seconded to accept Jackman Ridge Road from Station 00+00 to 30+50 as a town road. Passed unanimously.

Mr. Hohenberger then moved and Mr. Breton seconded to post the speed limit for Jackman Ridge Road at 25 mph. Discussion ensued, in which the Highway Safety Commission's objection was noted, and Mr. McLeod indicated the Board had no statutory authority to post a roadway at 25 mph without a traffic study. Motion failed 2-3, with Mr. Stearns, Mr. McMahan, and Mr. McLeod opposed.

**MINUTES:** Mr. McLeod moved and Mr. Stearns seconded to approve the minutes of 09/28, 10/19, 11/02, and 11/09 as written. 3-1-2, with Mr. McMahan opposed and Mr. Hohenberger abstaining.

**OLD/NEW BUSINESS:** Mr. Breton noted that three (3) zoning petitions had been received and verified by the Town Clerk.

Mr. McLeod moved and Mr. McMahan seconded to accept the petition of Amy Lampareui and others relative to amendments to the Historic District Ordinance. Passed unanimously.

Mr. Hohenberger moved and Mr. McMahan seconded to accept the petition of Delia Logue and others to rezone portions of lots 18L-300 and others from Professional Business and Technology District to Business Commercial District A. Passed unanimously.

Discussion ensued regarding the third petition relative to the discontinuance of Wyman Road. Acceptance was tabled to allow for clarification with Town Counsel as to the current status of the road and the validity of the petition as worded.

*Right-of-Way Activity Permits:* Cobblestone Road/KP Bergeron and Flat Rock Road/Gerry Beique. Mr. McMahan moved and Mr. McLeod seconded to approve the right of way permits as presented. Passed unanimously.

Brief discussion ensued regarding authorizing the Highway Agent to execute these minor types of permits. Mr. Hohenberger then moved and Mr. McLeod seconded to authorize the Highway Agent to execute standard, right-of-way trenching permits. Passed unanimously.

*Mr. Sullivan* presented three administrative abatements to the Board: 20D-4000, 1B-49, and 1C-2550. The latter abatement is related to a current lease agreement for the parcel, and the former are related to billing errors. Mr. Stearns moved and Mr. McMahan seconded to accept the recommendation of the Assessor and grant the abatements. Passed unanimously.

**BUDGET DISCUSSION:** Mr. Sullivan presented updated fire/police/insurance budget data to the Board, and noted that with these additional adjustments due to reduced workman's comp rates, the execution of the tentative agreement by the Fire Union, and a savings in Police salaries, the proposed budget now stands at \$67,374 less than last year. He added that there still remains the potential for additional savings of \$11,000 in the Health insurance and \$32,940 should the Police Union execute their tentative agreement relative to COLA increases; which would bring the decrease to \$106K. Mr. Sullivan noted that those items that remain to be decided are: 1) whether to add back into the budget \$50K for the purpose of lease/purchasing three vehicles for the Transfer Station, and; 2) whether to fund the Salt Shed/Garage via the addition of \$190K to the budget or through a one year bond. Discussion ensued, and Mr. Sullivan noted that absorbing the \$190K within the budget would represent an overall increase of \$176K (1% or \$.05 on the tax rate).

As the Board began their review of the budget, Mr. McMahan requested that the Board reconsider their previous motion to eliminate salary for the members. After brief discussion, there was no motion to re-consider.

The Board then reviewed the budget in full and made no changes to the proposed document. Discussion moved to the Transfer Station equipment, and after clarification of the current equipment needs and condition of the existing trailer by Transfer Station Manager David Poulson, Mr. Stearns moved and Mr. McLeod seconded to add \$50K to the Transfer Station budget as recommended by staff for replacement equipment. Passed unanimously.

Lengthy discussion occurred relative to the Salt Shed funding and the CIP program. Mr. Stearns then moved and Mr. McLeod seconded to add \$190K to the budget to fund the Salt Shed project for 2010. Mr. Sullivan reiterated that the overall budget with all other savings would represent a 1% increase over last year. Motion passed 3-2, with Mr. Breton and Mr. Hohenberger opposed.

Mr. Sullivan inquired of the Board whether they would support his contacting the School District to propose that both the Town and School deliberative sessions be held on a Saturday at the High School. It was the consensus of the Board that Mr. Sullivan contact Dr. Bass to inquire.

Mr. Sullivan inquired whether the Board wished to have a follow-up meeting prior to the end of the year to discuss the possible use of unexpended 2009 funds, if any, to reduce the 2010 budget. The Board concurred, and staff will follow-up to draft individual analysis for their departments.

Mr. McMahan then moved and Mr. Stearns seconded to approve the draft 2010 budget of \$12,678,785. Passed 3-2 with Mr. Breton and Mr. Hohenberger opposed.

**NON-PUBLIC SESSION:** Mr. McMahan moved and Mr. Hohenberger seconded to enter into a non-public session in accordance with RSA 91-A:3 II a, b, and c. Roll call vote - all members "yes". The topics of discussion were personnel and reputations.

The Board, Mr. Sullivan, Ms. Scott, and Ms. Devlin were in attendance in the first session to discuss staffing. Mr. McMahan moved and Mr. McLeod seconded to approve hiring of the recommended part-time, temporary candidate. Passed unanimously.

*The Board*, Mr. Sullivan, Chief Lewis, and Ms. Devlin were in attendance in the second session. Chief Lewis discussed the vacant officer position, and Mr. McMahan moved and Mr. McLeod seconded to extend an offer of employment to the recommended candidate in accordance with the Employment policy. Passed unanimously.

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

Mr. Sullivan reviewed three employee evaluations with the Board, which the members executed accordingly.

*Mr. Sullivan* discussed a department head request with the Board relative to donation of earned-time. Mr. Stearns moved and Mr. Hohenberger seconded to deny the request. Passed unanimously.

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

The meeting was adjourned at 11:00 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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



*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

PO Box 120, Windham, New Hampshire 03087  
(603) 432-3806 / Fax (603) 432-7362  
[www.WindhamNewHampshire.com](http://www.WindhamNewHampshire.com)

To: Mr. Brian Bauchman  
From: Laura Scott, Community Development Director  
Date: December 7, 2009  
Re: Code Enforcement Agreement

This is to serve as a written agreement of our previous understanding about Zoning/Code Enforcement actions at 120 Haverhill Road (Lot 9-A-400).

You are in violation of the recent court orders (NH Superior Court 08-E-273 & NH Supreme Court 2008-901), which requires you to have no more than 3 tow trucks stored on the site (two "hook" trucks and a flatbed). You currently have 8 tow trucks stored on the site.

This agreement was made in good faith by that Town due to the fact that you entered into a purchase and sale agreement to relocate a portion of your business to another location in Londonderry. Regardless of whether you follow through on the purchase & sale and/or gain approvals from the Londonderry Planning Board and relocate your business, this agreement is still valid.

- 1) This agreement not to take enforcement action expires March 31, 2010, unless the termination or cancellation of the referenced purchase and sale agreement for any reason occurs, which will cause the agreement to become immediately null and void.
- 2) As of April 1, 2010, at the latest, you are to come into full compliance, which requires you to (1) have no more than 3 tow trucks stored on the site (two "hook" trucks and a flatbed); (2) no storage or maintenance of towed vehicles on the site; and (3) no tow truck drivers, mechanics, or repair technicians shall work at the site if they do not live on the site.
- 3) You may continue to maintain your own personal & business vehicles, as well as those of friends and family members for no monetary compensation, on the site.
- 4) Unannounced inspections of the site can happen by myself, or other Community Development Department staff at my direction, during the time this agreement is in effect.
- 5) If a violation of this agreement is found by myself, or other Community Development Department staff the Town then pursue all enforcement actions available to it, subject to your rights of due process. A cease and



- desist order may immediately be issued, per diem penalties of up to \$275 a day may accrue; Town attorney fees of \$700 for legal fees from September 1, 2009 to December 7, 2009 may be due to the Town; and the Town shall be entitled to an award of fees and costs for the commencement and prosecution of any enforcement of this agreement.
- 6) If you are not in full compliance by April 1, 2010, A cease and desist order may immediately be issued; per diem penalties of up to \$275 a day may accrue; Town attorney fees of \$700 for legal fees from September 1, 2009 to December 7, 2009 may be due to the Town; and the Town shall be entitled to an award of fees and costs for the commencement and prosecution of any enforcement of this agreement.

By signing this document, you are agreeing to abide by the six conditions listed above.

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Laura Scott  
Community Development Director

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Brian Bauchman  
Bauchman Towing, Inc.

CC: Bernie Campbell, Beaumont & Campbell  
John Cronin, Cronin & Bisson  
David Sullivan, Town Administrator  
Town Files

#### 1993 - 1997

- November/1993 Mr. Bauchman purchases the property at 120 Haverhill Road.
- April/1995 The Town of Windham sends Mr. Bauchman a zoning violation letter because he is running a towing business on that property and is storing large towing trucks outside.
- November/1995 – The Town of Windham serves Mr. Bauchman with a court petition to stop towing related activities and storage of towing vehicles.
- March/1997 The Superior Court rules that Mr. Bauchman can store 3 towing vehicles on his property and that no business is running on that site and that all towing related activities are done offsite. This allows Mr Bauchman the ability to respond to towing calls during the night without driving to get his trucks at a secondary location.

#### 2001

- November/2001 The town of Windham issues a zoning violation to Mr Bauchman for running a commercial auto repair business and for construction of an additional storage building on the property without a permit.
- December/2001 Mr Bachman writes a letter to the Town of Windham stating he will make the corrections necessary on his property and his business to comply with all regulations. He did not make these corrections.

#### 2002

- March/2002 The Town of Windham sends another zoning violation to Mr. Bauchman for running a commercial auto repair business and for the construction of a storage building without a permit.
- April/2002 Mr. Bauchman writes a letter informing the Town of Windham that that he has hired Attorney Mason and Herbert Associates to bring his property into compliance
- June/2002 Mr. Bauchman verbally informs the Town of Windham that he no longer repairs vehicles at that site and that he is in compliance with the 1997 court order that allows him to store 3 towing related vehicles but not run a business there. Whether he complies for a short time or not is not part of the record but it doesn't stay that way.

#### 2006 – 2008

- March/2006 Mr. Bauchman applies for use variances to build an additional commercial building with the Zoning Board of Adjustment. He testifies at that meeting that he is running a towing business on that property; has 4 employees; 8 tow trucks and is storing towed vehicles at that location.
- April/2006 The Town of Windham sends Mr Bauchman a letter citing zoning violations for running a towing business on his property.

- August/2006 The Town of Windham sends Mr Bauchman a letter threatening legal action for violating the zoning ordinance by running his towing business at 120 Haverhill Road.
- October/2006 The Town of Windham turns the case over to town council for legal action
- November/2006 The NH Superior court issues an order to stop Mr. Bauchman from towing or accepting vehicles at 120 Haverhill Road. He has 30 days to remove all vehicles other than his personal vehicles from the property. He cannot repair vehicles on that property.

Nearly a year passes....

- September /2007 Herbert Associates submits a plan for compliance with the zoning ordinance for Town review on behalf of Mr. Bauchman. The Town sends the plan back to Mr. Bauchman with extensive comments – it does not address the zoning violations.
- October/2007 Superior court grants permission to Mr. Bauchman to pursue use variances through the Windham Zoning Board of Adjustment PROVIDED HE DOES NOT FURTHER DELAY THE ENFORCEMENT PROCESS. This was more than 2 years ago.
- October/2007 Mr. Bauchman applies for use and area variances that did not address the existing zoning violations.
- November/2007 The Town of Windham sends Mr. Bauchman a letter indicating that his application does not address the existing zoning violations.
- December/2007 Mr. Bauchman withdraws his application to the Windham Zoning Board of Adjustment.
- February/2008 Mr. Bauchman applies for use variances that would allow for both a commercial towing business and an automobile repair business at 120 Haverhill Road.
- March and April/2008 – The Windham Zoning Board of Adjustment grants Mr. Bauchman a use variance to allow a towing business at 120 Haverhill Road but deny the application for a vehicle repair facility at that address