

BOARD OF SELECTMEN
Minutes of December 14, 2009

MEMBERS PRESENT: Chairman Galen Stearns called the meeting to order at 7:25 PM. Selectmen Bruce Breton, Ross McLeod, Charles McMahon, and Roger Hohenberger were present, as was Town Administrator David Sullivan. Mr. Stearns read the agenda into the record, followed by the Pledge of Allegiance.

Mr. Sullivan advised that the paving bid award had been postponed at Mr. McCartney's request.

PUBLIC HEARINGS: Mr. Stearns read the notices into the record. Mr. Sullivan explained that the first pertained to the funds donated toward the completed Londonbridge Road project, all of which have been expended to date. Mr. McMahon moved and Mr. McLeod seconded to accept the donation of \$500K from the Windham School District and \$250K from Twin Harbor Irrevocable Trust/James Logan relative to the second access road for Windham High School. Brief discussion ensued as to the status of the road. Mr. Sullivan indicated the roadway is open to public safety vehicles and complete save for the final coat of pavement. Motion passed unanimously.

Chief Lewis explained that the funds totaling \$24,725 from the 2009 Recovery Act: Justice Assistance Grant will be utilized to reimburse the Department for the purchase of protective vests. Mr. Hohenberger moved and Mr. McLeod seconded to approve the acceptance of \$24,725 in funds from the Justice Assistance Grant. Passed unanimously.

Mr. Sullivan noted that the grant funding of up to \$93,218.25 from the Dept. of Homeland Security and EM pertained to the December 2008 ice storm and served to reimburse the Town's clean up expenses under the FEMA-1812-DR-NH disaster declaration. Mr. McMahon moved and Mr. McLeod seconded to accept the funds as described. Passed unanimously.

ANNOUNCEMENTS: Mr. Stearns noted the sad passing of long-time resident and volunteer J Gross, and extended the Board's sympathies to his wife and son. Mrs. Barbara Coish approached, noting that a public memorial will be held on December 28th beginning at 5:00 PM at the Searles facility.

Mr. Sullivan advised that he had spoken to Dr. Bass relative to holding joint deliberative sessions, and that the District had concurred. The School District Deliberative Session will begin at 9:00 AM on Saturday February 6, 2010 at the High School auditorium, with the Town session to follow immediately thereafter.

MINUTES: None.

CORRESPONDENCE: Request received from Kathleen DiFruscia and others to place an article on the Town warrant relative to amending the Zoning Ordinance to include a Cobbetts Pond Watershed Protection Overlay District. In addition, a citizens' petition was received to amend the Zoning Ordinance to adopt a Workforce Housing Overlay District. Mr. Sullivan noted that both had been verified by the Town Clerk and sent to the Planning Board. Mr. McLeod moved and Mr. McMahon seconded to accept the two petitions as received. Passed unanimously.

Mr. Sullivan advised the Board that the Wyman Road petition received the previous week was being corrected and will be resubmitted by the petitioners.

Memo received from Code Enforcement Officer Elizabeth Wood relative to a request by the Windham Community Band to place temporary signs on Town property. Mr. McMahan moved and Mr. Hohenberger seconded to waive the sign ordinance and allow the request as presented.

Discussion ensued regarding the language of the ordinance, and Mr. McMahan amended his motion and Mr. Hohenberger his second to allow the placement of temporary signs as requested. Passed unanimously.

Memo received from Code Enforcement Officer Elizabeth Wood relative to a request by the Windham Women's Club to place temporary signs on Town property. Mr. McMahan moved and Mr. Hohenberger seconded to approve the request for temporary signs. Passed unanimously.

Discussion then ensued regarding future requests, and Mr. Hohenberger moved and Mr. McMahan seconded to allow those civic organizations included on the Searles facility and Town Hall non-profit listings to place temporary banners/signs on Town property per the Zoning regulations. Passed unanimously.

ENFORCEMENT MATTER/BAUCHMAN: Town Counsel Bernard Campbell approached indicating he was in attendance to brief the Board and community at large regarding Mr. Bauchman and his property at 120 Haverhill Road. Atty. Campbell noted that the site has a long enforcement history back to 1995. He then gave a brief background of the following court activities:

- In 1997, Judge Gray ruled in favor of Mr. Bauchman and concluded that three vehicles could be maintained on the property provided there were no employees and no towed vehicles at the site. The Town appealed this ruling to the Supreme Court which rejected the appeal as it was satisfied with Judge Gray's order.
- A subsequent enforcement action in 2006 at the Superior Court was postponed to allow Mr. Bauchman an opportunity to go through the Board of Adjustment process by which he obtained a variance for his property. The residents appealed this variance to the Superior Court and it was overturned. Mr. Bauchman then appealed to the Supreme Court which, in 2009, refused to overturn the Superior Court ruling. As a result, the 2006 postponed enforcement could then be pursued.

Atty. Campbell noted that there has been much correspondence exchanged between he, the Code Enforcement Officer and Mr. Bauchman's counsel relative to relocation of the company to Londonderry and the timing thereof, and the agreement executed the previous week between Ms. Scott and Mr. Bauchman. Atty. Campbell stated he had advised the Selectmen that the Code Enforcement Officer has the vested authorization to determine how and when violations will be prosecuted. He then added that Ms. Scott had the authority to enter into the agreement with Mr. Bauchman, and that the Board of Selectmen cannot modify the document.

Atty. Campbell noted that there is nothing in the agreement that impacts the abutters' rights to seek relief under RSA 676:15, and advised that in speaking earlier that evening with Mr. Bauchman and his attorney, it had been agreed that the document would be submitted to the Court as a stipulation. Atty. Campbell explained that this action would convert the agreement to an order issued by the Superior Court, via which the Town could then bring forth expedited enforcement and/or sanctions as contempt.

Atty. Campbell noted that the CEO is granted sole discretion per statute for several reasons, and that he had advised the Board that it was not advisable for them to seek to rescind the signed agreement. He indicated that he felt, with the agreement of Mr. Bauchman and his attorney to file the document as described, the Town's position had been strengthened with additional enforcement tools.

Atty. Campbell then summarized by noting that he had reviewed the agreement and deemed it to be within Ms. Scott's legal authority and that, with Attorney Cronin's assent it would be filed with the court by week's end. The Board then thanked Attorney Campbell for attending.

LAURA SCOTT: Ms. Scott requested the Board's authorization to utilize \$6,000 in unexpended funds from this year's budget toward completion of several projects that were removed from the 2010 budget as part of the global process. Discussion ensued regarding the available funds, the letter of support for Ms. Scott's request as submitted by Mr. Lochiatto, and the timing relative to the purchasing policy. Mr. McLeod indicated that he would like clarification as to whether Mr. Lochiatto was lending his support as an individual or on behalf of the Planning Board.

Mr. Breton moved to accept the recommendation of Ms. Scott to retain the services of Keach Nordstrom as outlined in her letter of 12/7 up to \$6,000, contingent upon receipt of a letter from the Planning Board. Discussion ensued.

Mr. Breton retracted this motion, then moved to waive the bid process as requested. Mr. McMahan seconded and the motion passed 3-2 with Mr. Stearns and Mr. Hohenberger opposed.

Mr. Breton then restated his retracted motion, which was seconded by Mr. McMahan and passed 4-1 with Mr. Hohenberger opposed.

Ms. Scott then requested the Board's authorization to proceed to draft a proposal for the use of \$10K in Phase II CTAP funding towards community/economic development projects. Discussion ensued regarding the ongoing sewer project and additional CTAP funds available for joint community projects, and it was the consensus of the Board that Ms. Scott proceed to draft a proposal as discussed.

OLD/NEW BUSINESS: Mr. Breton inquired as to whether statements were available from the new investment accounts. Mrs. Call noted that an account had been opened at Centrix Bank relative to future investment of up to \$3M in general fund monies when available, however, no other action had been taken by the Treasurer relative to the Special Accounts. Discussion ensued, and it was the consensus of the Board that Mrs. Call request a status update from the Town Treasurer. Additionally, Mr. Breton requested that Mr.

Skinner be scheduled on the next available agenda.

Mr. Sullivan reminded the Board that the following evening was their annual joint meeting with the Planning Board to review impact fees.

Mr. Sullivan advised the Board that Transfer Station Manager David Poulson had presented the opportunity, via a contract extension with the current solid waste vendor, to save approximately \$17-18K in 2010. After a brief discussion, Mr. McMahon moved and Mr. McLeod seconded to approve the recommendation to extend the current contract with Covanta and authorize Mr. Sullivan to execute the documents. Passed unanimously.

Mrs. Call reviewed with the Board quotes received relative to financing of the lease to purchase for Highway Department vehicles, and recommended TD Equipment Finance, Inc. be approved. After a brief discussion, Mr. McMahon moved and Mr. McLeod seconded that a 3-year tax exempt municipal lease be entered into with TD Equipment Finance, Inc. for \$81,790 at a 3.95% interest rate to finance the purchase of a Highway Truck; with the Town to purchase the truck at the end of the lease for \$1.00; and to authorize the Town Administrator to execute all related documents. Passed unanimously.

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

The Board reviewed several evaluations with the Town Administrator, and executed each accordingly.

Mr. McMahon moved and Mr. McLeod seconded to recess the meeting until 7:00 PM on Tuesday December 15, 2009. Passed unanimously.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

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