

## OFFICIAL

### TOWN COUNCIL MINUTES Regular Meeting Wednesday, January 25, 2011 MINUTES

**CALL TO ORDER:** Chair Sullivan called the meeting to order at 6:30 pm.

**PRESENT:** Leslie Boswak, Nancy Comai, John Danforth, Michael Downer, Vincent Lembo, James Levesque, Todd Lizotte, Susan Lovas Orr, Chairman James Sullivan and Dean E. Shankle, Jr. (Town Administrator)

#### **PLEDGE OF ALLEGIANCE**

#### **APPROVAL OF MINUTES**

**January 7, 2012 Budget Workshop** – *T. Lizotte moved to approve the minutes as amended. Motion seconded by J. Levesque. Motion carried. M. Downer and N. Comai abstained.*

**January 11, 2012** – *T. Lizotte moved to approve the minutes as amended. Motion seconded by M. Downer. Motion carried.*

#### **CONSENT AGENDA**

None

#### **TOWN ADMINISTRATOR'S REPORT**

D. Shankle informed the Council of the following:

1. The Economic Development Committee requested the Administration meet with area business leaders in the community. Meetings were held with the General Manager of Shaw's and the President of SNHU. Shaw's experienced a slight decline in business with the recent opening of Market Basket but is no longer an issue. The President of SNHU stated that the college is still very interested in developing a bypass road.
2. The Shelter Workshop which was put together last Thursday night, resulted in 25 volunteer names.
3. The Court Case regarding copies was negotiated and resolved.

#### **PUBLIC INPUT**

**Don Winterton, 10 Prescott Heights Road:** I am here to ask that you not appoint Mr. Duhaime to the Planning Board. This Board must not underestimate the importance of a Planning Board and its members. Those appointments are there until they are up for reappointment. Once on the Planning Board, their decisions carry the weight of law. For someone who went before the Planning Board in the past, one of the problems that happened is transparency. The transparency of government needs to be addressed. I talked to this Board in June when Mr. Duhaime was up to be reappointed. I don't want to repeat those points. Mr. Duhaime is not a welcoming person to someone bringing business to town. I was involved with a situation where I was denied a waiver. My attorney wrote a letter in 2011 asking the Town Council and the Planning Board if I could reapply for a waiver. Mr. Duhaime, on May 2<sup>nd</sup>, motioned to enter into non-public session, seconded by Mr. Cannata. The law is they can go under consideration for litigation or filings. There was not a threat of lawsuit or a file threat of lawsuit so that body met illegally. As a result, I can sue the town for the minutes of that meeting. I will read the minutes of that meeting. *Read from the non-public minutes.*

I think as you can see, none of this met the legal criteria for non-public session. This is all they will tell me. Under the Supreme Court ruling, the Board can get legal advice in non-public but must do all other business in public. The Planning Board then discussed me and how to deal with me in non-public session. The audio of that meeting has been destroyed. I am left with my rights being denied. I've been fighting this since January of 2011. Yesterday, after over a year, someone with the Town of Hooksett said that the Code Enforcement Officer made a mistake. This Town has denied my rights and that was led by Mr. Duhaime. You better be careful and I do not recommend you reappoint him.

Chair J. Sullivan stated that Dr. Shankle will respond to Mr. Winterton's concerns.

**Robert Duhaime, 1779 Hooksett Road:** Transparency in government; that is an interesting place to start. Six months ago I was up for reappointment to the Planning Board and wasn't able to attend the meeting so I couldn't address Mr. Winterton's concerns. As a Board, we must take everyone's point of view into consideration. We are supposed to be somewhat patient and hear them out. Someone on the Board must take into consideration their view. The biggest point being, he was very reactive. He bought a house and didn't want to put a sprinkler in. This wasn't just him. Other homes had installed sprinklers. For that subdivision, the previous house was not required to do sprinkler because they were grandfathered. It didn't come into the subdivision. The Planning Board did not do anything to slight Mr. Winterton. I sat on the Board with a State Representative and the Town Administrator. I didn't have any grudge against him. He wasn't going to take no for an answer. He wants to get rid of the entire Planning Board. I had 8 years on the Planning Board and would like reappointment. I am a landscaper, and I do business in this town with many new businesses. I am therefore very welcoming to new businesses.

**Dick Boisvert, non-resident:** I am not for Mr. Duhaime being appointed to the Planning Board. One reason is I went before the Planning Board with Mr. Duhaime. A lot of time you go before the Board without everything in place. I have never seen anyone so condescending to people going before the board. Ridiculing and making you feel this big. The Planning Board should be a Board that is patient and willing to listen to whatever it is and instruct people who don't have their ducks lined up. Mr. Duhaime does a lot of landscaping with businesses in town. If I was looking to come before the Planning Board, I would hire Mr. Duhaime to do landscaping for me if I want to be approved to do business in Hooksett. This gives an appearance of impropriety. He was responsible for doing the landscaping layouts and designs for the Planning Board. Some of the things he didn't consider were salting and who would maintain the trees and shrubs after they were installed. I have a problem with someone doing that work and Planning Board.

**D. Winterton:** One point regarding what Mr. Duhaime said. He said the Belezna lot was grandfathered and I asked him to present the rule or ordinance which states that. The rule says all subdivision of land of 3 or more lots including the parent lot. There is no provision for grandfathering. Having a new foundation was determined to be a replacement of construction. They all knew that the building inspector made a mistake and when that happened, they circled the wagons and made Mr. Winterton the villain.

**R. Duhaime:** I would like to see both these Hooksett residents volunteer for Boards.

#### **NOMINATIONS AND APPOINTMENTS**

**Appointment - Robert Duhaime, Planning Board, exp. 6/2012**

J. Levesque: I talked to the chair of the Planning Board today regarding the legality of going into non-public session. He said they went into non-public to discuss attorney privilege information

***J. Levesque moved to appoint Robert Duhaime as alternate to the Planning Board, exp. 6/2012. Seconded by J. Danforth.***

V. Lembo suggested tabling this until Dr. Shankle can discuss this with Mr. Winterton.

Dr. Shankle: As Mr. Winterton said, we spent an hour yesterday discussing this. He brought in the Supreme Court case and my understanding was they discussed a letter from their attorney in Non-Public Session. It was not uncommon for Boards to discuss letters from their attorney because the understanding is if you discuss a letter in public session it is a public document. The Court case wasn't argued until 2011. This said, no, you cannot just discuss attorney letters. And if you have a letter from an attorney, you can discuss it in public session but in a way that nothing in the letter is obvious to what it says and you don't have to disclose the contents of the letter. What he is arguing is now true but that wouldn't have been known by the Planning Board last summer.

N. Comai: I would like to know if Chairman Gryval supports Mr. Duhaime's appointment.

T. Lizotte: It is important with public input that it is just public input. We have to take the personalities out. The information must be gained and we need to look at the knowledge gained. Making a motion to go into non-public, the control of that is the chair. I can't in good conscience say that because Mr. Duhaime made the motion, he did it with malice. As far as perception, I lean toward Nancy's position of getting a recommendation from the Chairman of the Planning Board.

S. Orr: I agree with T. Lizotte, and I don't think one member of the Board can carry the blame for a decision that could have turned out to be a wrong decision. If it was incorrect, we find ways to make that good. I don't think you can blame one board member. On the other side, I was not aware that Mr. Duhaime is a landscaper whose business may have benefited from his participation on that Board. I think I would want to learn more about that and if his knowledge was gained by his placement on the Board, that is a conflict. If his mannerism offend people, that is a judgment call. When people are stressed, they may not come across well. I tend to think we need to be careful with blaming one individual for an entire Board.

***V. Lembo motioned to table the vote. Seconded by T. Lizotte.  
Vote unanimously in favor.***

***M. Downer motioned to ask Dr. Shankle to gather more information and seek the recommendation from the Planning Board chair. Seconded by T. Lizotte.  
Vote unanimously in favor.***

#### Available Positions

Heritage Commission, (2) Alternate Members

No action

#### **SCHEDULED APPOINTMENTS**

Public Hearing re: Designation of Goffstown Road as a Scenic Road per RSA 231:157.

V. Lembo recused himself.

Chairman Sullivan called the Public Hearing to Order at 7:14 pm

Kathie Northrup, Chair of the Heritage Commission stated that a petition was filed with the Town Clerk to designate Goffstown Road as a Scenic Road. Scenic Roads are local town designations and are only recognized locally. Any town road may be designated as a scenic road and offers some protection for trees and walls in the public right of way. It prohibits public utilities from removing trees or walls without permission. It doesn't restrict land owners. Goffstown Road was selected because of its unique characteristics including cultural and historic features. Signs were requested to be placed at both ends of the road. The Conservation Commission agreed to oversee the program and DPW will keep an inventory of all scenic roads and will install the signs.

J. Sullivan submitted the email from J. Duffy for the record dated January 25, 2012:

*"I fully support your efforts to designate Goffstown Road as a scenic road. The scenic road designation will contribute to the preservation of the rural and historical character of this roadway, particularly the stone walls. The Public Works Department reclaimed Goffstown Road this past summer. It is unlikely that additional trees would be removed in the near future. I believe the scenic road designation would not have a negative effect on the town or the homeowners who live on this roadway. The Conservation Commission has agreed to oversee the hearing requirement, should it become necessary."*

D. Hess, member of the Conservation Commission, stated that the Conservation Commission voted unanimously to support this proposal and will take responsibility for overseeing this property.

D. Winterton: As a descendent of the Robies and the Prescotts, I would like to donate \$400 for the purchase of the signs.

Denis Demers: I own property near Hackett Hill and Goffstown Road. My concern is how if I do develop my land or buy land on Goffstown road, how will this designation affect my development.

My concern is for future development, I don't want to be hindered with this designation. I know sometimes Scenic Roads are used to stop development and hinder them. Currently, that road is a cut through to Goffstown. How will this designation and traffic will be dealt with in the future.

J. Sullivan: Under charter 231, it states *shall not involve cutting of trees without prior written consent of the PB for future subdivisions*. It is my understanding that it won't impact any work by a land owner.

Dr. Shankle: What they truly do is keep town government from widening or changing drainage. I haven't seen it affect private landowners.

D. Demers: In developing property, sometimes we have to widen road due to increase traffic from the subdivision. Yes, it is a nice designation, as long as the land owner won't have to go through a special exception or variance to widen the road and the owner will not be hindered. You are looking at a vista of buildings overlooking Manchester and not a natural vista.

K. Northrup: There are two things to consider.

1. After you've heard the public input, we ask that you designate the length of the road as a scenic road
2. Designate the Conservation Commission as the body to oversee this road.

Leo Lessard, DPW Director: I am for this designation and if someone wants to develop the land, I don't think there would be a conflict.

T. Lizotte: Has there been a traffic study done on that road?

L. Lessard: No, they haven't done a study but if there was development, we would have to do a study. We did repave. It is 22 feet wide now and could handle a few developments. When we were reclaiming it, the State was doing a count.

Dr. Shankle: The practical reality of what you are doing is making it necessary to do a few extra steps before you make any changes to the road.

#### Kimberly Blichmann, Tax Collector, re: Quarterly Delinquent Taxes Report

K. Blichmann presented a list of unpaid tax liens. The breakdown of residential and commercial liens is not available with the current system.

V. Limbo: How long can someone be delinquent before we can take their property?

K. Blichmann: 2 years and 1 day. The Tax collector presents a list to the Council and they decide whether to take the property.

S. Orr requested an itemized report of the properties that are beyond 2 years and 1 day including the amount owed.

K. Blichmann stated that House Bill 1674 is before the House which will decrease the interest rate charged on delinquent taxes. This change is proposed to be effective July 2012 and will result in a loss of revenue and require a change in the software to adjust the bills which has an associated cost.

***L. Boswak motioned to send a letter opposing the bill to the State Representatives from the Council, signed by the Chair. Seconded by T. Lizotte. Vote unanimously in favor.***

#### **OLD BUSINESS**

##### **Budget**

##### **Town Clerk**

Linda Pischetola stated that her budget did not include one state election.

Voting Booth requirements - The Town currently has 8049 registered voters. The minimum requirement for the Presidential election is 1/100 voters (80 required). The Town has 85 which include one AVS tent and three handicap voting booths. The town is in compliance. There are 36 new style booths and 45 older booths which are starting to fall apart. The plan is to gradually replace the booths by purchasing 20 new quads every 3 years at a cost of \$4700 in this year's budget. The other election costs were

associated with memory cards and wages for poll workers. There is also \$200 for maintenance of the voting machine by Accu Vote.

***T. Lizotte motioned to approve \$27,178 for the Town Clerk budget. Seconded by M. Downer. Vote unanimously in favor.***

### **Sewer Department**

Bruce Kudrick presented the Sewer Budget.

B. Kudrick: New Equipment line #36 is for a ph meter. ARA money for the upgrade of the plant was used to purchase the new 2012 dump truck. That purchase was approved by DES as part of the upgrade. In 2011 and 2012 we budgeted 213,000 and now we budget 110,000 because we are now hauling our sludge to Merrimack for \$55/ton. We cut our budget on just that line item by hauling it ourselves. The legal line is \$120,000 which may not cover all our cost due to pending litigation.

V. Lembo: Has there been an increase in the sewer bill?

B. Kudrick: At this time the board is not planning on any increase in the rates.

V. Lembo: What is the charge per 1000/gals of water.

B. Kudrick: \$5.60/1000 plus \$33/quarter.

B. Kudrick: The wage increase is 2%. One individual is more than 2% because of a change in position.

S. Orr: How did you determine the \$120,000 for legal fees?

B. Kudrick: It was based on spent at \$300/hr. If the current litigation cannot be handled through mediation, it will have to go to court. If we have to go to Court, I don't think the \$120,000 will be enough.

B. Kudrick: The telephone system is a SCATA system which allows us to retrieve the data without going to the station.

***T. Lizotte motioned to approve the Sewer Commission's budget as presented. Seconded by J. Levesque. Vote unanimously in favor.***

### **Police**

Dr. Shankle stated that the Chairman of the Police Commission and the acting Chief are looking at 2 things that could impact their budget. They have the transport van that they are not using and the Fire Department is looking for an incident command vehicle. They have gotten together and will see if they can transfer the police vehicle to the Fire Department. That puts the police in a position to adjust their budget because they were going to trade that vehicle in. They also had not included the 2% wage increase in their budget. The other change to the Police budget is the person doing their fleet management is going to retire and they are looking to replace that lieutenant position with a part time civilian position if DPW can take over their maintenance. Before I finalize that agreement, I want to insure that DPW can handle the extra work.

J. Levesque suggested getting the trade-in value of the vehicle prior to making the transfer.

Dr. Shankle: The Police Department is offering to give the van to the Fire Department with the agreement that they will increase their budget.

V. Lembo: Doesn't that take away the ability for voters to decide whether to increase the vehicles.

M. Downer: We can still put this in as a warrant article.

T. Lizotte: the Police Commission came to us requesting two (2) cars. Without the van, they don't get the discount but the money is already there for 2 vehicles. We've approved that they will have those two cars. It only makes sense to give the van to the Fire Department to lessen the burden on the taxpayers.

***N. Comai motioned to give authorization to chair to sign as the agent to expend any capital reserves for his term as Chairman of the Council. Seconded by S. Orr. Vote unanimously in favor.***

The Cemetery Commission revised their budget from their original request for \$5000 for Martin's Ferry and \$5000 for the Riverside fence to just \$7500 for the Riverside fence.

***M. Downer motioned to reduce the Cemetery Commission budget to \$7500. Seconded by S. Orr. Vote unanimously in favor.***

**Christine stated that the adjusted budget number is \$15,968,007.**

#### **Council Rules – Public Input**

S. Orr: When I became a member of this body, the restriction with regard to public input is we are to **not** respond and remain mutt. I went through the Council rules and I couldn't find anything saying this. I found in Rules & Procedures, (page 4) it doesn't say we can't ask a question and if we can answer that night that we can. It does say that the Chair will not enter into a debate. It doesn't say questions can't be asked. Riggins Rules, page 2, item 15 states, don't direct someone to directly interrogate but it doesn't say we can't ask a question for clarification. It doesn't say we must sit mutely and listen. Page 3 of Riggins Rules says don't answer or defend yourself. That gets into personalities. If we decide there is no ability to question, I'm fine and if we allow questions that's fine, but we must have a clear rule. I think it is more efficient if it can be answered simply or a question for clarification; it should be done. This is always at the discretion of the Chair to limit debate.

T. Lizotte: I think if it is something simple, the Chair can make a simple answer. We have appointed Mr. Sullivan as Chair and we should allow him to control the input and the question. Possibly the procedure is we defer to the Chair.

S. Orr: I would agree to that, I just think we need to write that clearly in the procedures.

T. Lizotte: I think we have the procedure to ask the Chair for the floor and it is his discretion.

J. Sullivan: I think it would be good if we that would have clarification because now we cannot respond at all.

S. Orr will look at rewriting the procedure and will be bring it back to the Council for approval.

#### **NEW BUSINESS**

##### **City of Manchester Memorandum of Understanding re: Homeland Security Grant Program**

The City of Manchester is applying for a NH Homeland Security grant for a large Unified Command vehicle, 100% grant funded. Hooksett would have mutual aid use of this vehicle. The Town of Hooksett has no monetary commitment and there is no cost associated with this vehicle but it would strengthen the Incident Command capabilities.

***M. Downer motion to accept the agreement with condition that Hooksett has no monetary commitment. Seconded by T. Lizotte. Vote unanimously in favor.***

***N. Comai motioned to authorize the Chair to sign the agreement. Seconded by T. Lizotte. Vote unanimously in favor.***

#### **OLD BUSINESS**

J. Levesque stated that he believes the presentation regarding the prison falls under regional impact and the Council should direct the Hooksett Planning Board to notify the Manchester Planning Board of the impact.

V. Lembo stated that he feels the Council should send a message to the Planning Board regarding their opinion of the Auction Company being proposed at the Palazzi Property at Exit 11.

L Boswak: We can't recommend whether a business goes in. However they will be looking for the town to support their Right of Way issue with the State. That would be a time that we could show our support or lack of support. We could address this with the Economic Development Committee

### **SUB-COMMITTEE REPORTS**

L. Boswak - Economic Development: The committee has been looking at developing a mini-master plan for Exit 11. Dr. Shankle pointed out that with the proposed use of a major parcel at Exit 11 by an auction company, they should look at working with the Council and the town to develop a plan similar to what the town of Peterborough did. It would be a good idea to determine what the community's vision is for the town.

S. Orr - High School Study Committee: The charge of the committee is to create an analysis of the total costs associated with a High School. The next meeting is Feb. 7<sup>th</sup>. S. Orr was appointed Chair of the committee.

Planning Board: A joint meeting was held with the Zoning Board of Adjustment. The Planning Board voted to recommend removal of the Sprinkler requirement from the Development Regulations. Proposed Zoning amendments were presented.

Old Town Hall Preservation Event has been changed to February 18th at 1:00 pm.

Perambulation meeting will be organized by Dr. Shankle with Harold Murray and Nancy Comai.

J. Sullivan - Heritage Commission: The Commission continues to work on all projects including the WWII memorial and the Heritage Day activities scheduled for May.

J. Levesque – ZBA: A joint meeting was held with the Planning Board on Monday to discuss the proposed excavation expansion at Brox Industries. The Planning Board voted in favor of the expansion. TNT Palace was discussed regarding displacement of residents at the Park Place motel site. The Board Assessors held a non-public meeting.

T. Lizotte - Kiwanis wants to do trail work.

### **PUBLIC INPUT**

**Harold Murray, 311 Hackett Hill Road:** Regarding Public Input procedure, it states no person shall address the Council more than twice in one meeting. You may want to add, "On more than one subject". The curb cut for the proposed prison will be on Hackett Hill Road in Hooksett. That is an impact to the town. Heavy equipment auctions were held at the Palazzi site at Exit 11, Palazzi held auctions of heavy equipment for many years and it wasn't really a problem. I suggest you include Denise Pichette-Volk in the Perambulation meeting. She has a lot experience and information.

**Michael Sorel, 54 Cross Road:** The Palazzi Property on Hackett Hill Road presents some legal hurdles. It is my understanding that the access to that property on Hackett Hill is by easement and the use of that property would have to be resolved with a curb cut from the DOT. When Cabela's was proposed, the State was looking for 2 million dollars for the curb cut. I don't know if that was resolved.

Proposed Prison: When doing real estate appraisals, there are three areas of depreciation that are considered. You want to consider whether the prison would be in the best interest of the town with respect to economic depreciation. An example of economic depreciation is when the highway went through, they experience an economic depreciation and it certainly would have regional impact.

There is a history of the Police Department giving vehicles to the Fire Department. I was on the Budget Committee 4 or 5 years ago when an SUV was given to the Fire Department because the Police Department didn't need it and it is now used by the Deputy Chief. At the same time, they were looking for a new Tahoe. The Fire Department gained a new vehicle by one department helping another department.

Robert Duhaime: I served on the Planning Board with Robert. I came to the Council a few years ago and asked the Council to thank Mr. Nahikian and Mr. Duhaime for serving on the aesthetics and beautification committee. I used the Walmart building as an example. When Walmart first came to the Planning Board, it was just a box and the engineer presented very little landscaping. Robert Duhaime, on his own, drove to Amherst to learn why the landscaping was not successful in Amherst. Thanks to him, we have a nice building with nice landscaping. Mr. Duhaime worked long and hard and went beyond his duties to serve. He also served on the CIP Committee.

**Marc Miville, 42 Main Street:** I agree with Mr. Sorel on two issues. It is true there is a history of the Police Department passing cars to the Fire Department, however in this case, this is a new van which cost \$43,000. So I think they needed more value than just donating it. There was discussion on how to make it transparent to the public in making that transaction.

I agree with Mr. Sorel as well on his support for Mr. Duhaime. I fear this will not end tonight. On the Planning Board, there is an inherent opposing side, either way someone will be unhappy when they leave the meeting. Mr. Duhaime served as only one (1) board member and should not be held as a single member responsible. I would support Mr. Duhaime on the Budget Committee but I understand that he wishes to continue to serve on Planning Board. In addition, the potential \$400 donation made by the individual who gave public input against Mr. Duhaime should not be accepted. I would view his donation of \$400 when only \$200 was needed as influential. I would not accept his \$400.

Closed Public Hearing on Scenic Road at 9:42 pm.

**NON-PUBLIC SESSION**

***J. Levesque motioned to enter into non-public under RSA 91-A:3, II (a), "The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee effected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted."***

***Seconded by T. Lizotte. Roll Call in favor.***

***T. Lizotte motioned to seal the minutes. Seconded by J. Levesque. Roll Call in favor.***

***J. Levesque motioned to exit non-public session at 10:10 pm.***

**ADJOURNMENT**

***N. Comai motioned to adjourn at 10:15 pm. Seconded by L. Boswak. Motion carried unanimously.***

Respectfully submitted,

Lee Ann Moynihan

Leslie Boswak  
Town Council Secretary