

**LYNDEBOROUGH BOARD OF SELECTMEN
MEETING MINUTES
July 11, 2012**

Members Present: Chairman Arnie Byam, Donnie Sawin & Kevin Boette

Staff Present: TA Kate Thorndike, RA Kent Perry, BI/Code Enforcement Peter Hopkins, Fire Chief Rick McQuade

Public Present: Bob Rogers, Mary Alice Fullerton, Tom & Ginny Chrisenton, Ron & Sally Curran, Barbara Fredette, Fred Douglas, Tania & Brendan Philbrick, Lee Mayhew, Ronald Cristofono, Mike Decubellis, Mark Boynton, Jonathan Devens and Atty. Patricia Panciocco

Media Present: Jessie Salisbury, Dave Anderson

Recorder: Pauline Ball

Appointments:

6:30 p.m. Ken Hawkins – Candidate for Senator

Ken Hawkins is seeking election to the NH State Senate for District #9. He gave a brief history of his personal, business (financial) and political background serving on many different boards and commissions both in Bedford and in Concord. He has served five terms as a State Representative and is Vice Chair of Executive Departments and Administration. He has led efforts to reform the NH Retirement System and is trying to get a full scale Veterans Hospital in Manchester. Mr. Hawkins feels that there are too many departments operating by themselves without any oversight, i.e. two Human Resource departments for the Dept. of Corrections; four different Acct. Payable and four Acct. Receivable departments in the Judicial Branch and if combined, they could save \$1.5 million dollars.

Mr. Hawkins asked for questions or concerns from the Board and/or audience.

Selectman Byam asked his thoughts on the State's regulation concerning the need for elected officials to perambulate the town boundary lines every seven years. Mr. Hawkins was surprised that this issue has not been updated and thought that it should be brought to the towns' state representative's attention and changed. These are buried regulations created long ago and should be corrected. Mr. Hawkins would ask one of his researchers to look at this issue and inform the Board.

Selectman Sawin asked where he stood on the Right to Work legislation. Mr. Hawkins is in favor of the statute. Anyone should be able to join a union, if they wish, but should not be forced to do it.

6:45 p.m. Andy Sanborn – Candidate for Senator

Senator Sanborn is running for re-election. He gave a brief history of his personal, business (finance and economics) background and political experience. A small business owner who entered politics because he believes everyone needs a good paying job and given the opportunity to have one. He feels that long time politicians have lost sight of what the job is and have lost respect for taxpayers and their money. The Senate also requires participation on multiple committees; he's knowledgeable with job creation, understanding regulations, working on budgets, etc and has written or sponsored many Bills which address these concerns. He also favors the Right to Work legislation; the right to join a union but not be forced to join.

Selectman Boette voiced concern about the NHDES' grip on small communities and businesses in regard to the number and cost of fees that they incur. Sen. Sanborn understood and related his experience as a restaurant owner, prior to becoming a Senator, in dealing with the government over these issues.

Although there was a dramatic cut to the State budget this year, Sen. Sanborn said that more can be done. His recent project is to modernize the government by data mapping the approval process; having already identified 10,000 separate forms used in 11 of 68 agencies. Bill 292 (Government and Business Modernization Act), if it passes, can cut out hundreds of millions of dollars from of the budget and still make it faster and easier for everyone to transact their business. If re-elected, Sen. Sanborn would continue this modernization plan.

Selectman Byam asked his thoughts on the perambulation issue. **Selectman Boette** interjected that GPS should be introduced by the State to determine the corners of each town. Mr. Sanborn agreed that this technology should be looked into but did not see the government concerned because no one is screaming about it and it's only required every seven years. At this time, Mr. Sanborn asked what the town and its residents expected from their representative.

Selectman Boette, referring to the State's cutting of funds to towns, asked for a more efficient government that could reduce the amount of money needed for a service rather than pushing the cost back onto the town, resulting in higher property taxes.

Selectman Sawin stated that grants on the state and federal level are being taken away because they are no longer being funded, i.e. grants for police and fire dept. equipment. Taxpayers bear the cost when equipment is needed or the departments go without. Sen. Sanborn knew more about the Natural Resources side of DRED and said those grants are user fee oriented so part of the registration goes into the grant process which is secure and dedicated; so far they have not been touched.

RA Perry said that his concern is about town bridges and the State's projected timeframe for bridge aid which keeps moving further and further out. A \$150,000 bridge requires a NHDES permit and the town is expected to pay engineering cost. Sen. Sanborn explained

that he helped to craft legislation to will empower the road agent to replace any culvert under 4 ft. without DES involvement. This can be realistically accomplished by having the road agent complete a training program for certification or have a civil engineer as a consultant. **RA Perry** understood but this is a remediation bridge which has just been turned down by FEMA and he may reach a point where the taxpayers will have to bear the cost. It's important that the State reduce the wait time. Sen. Sanborn explained that deciding priorities has been a challenge and he told RA Perry that he would be willing to work on this situation with him.

7:00 p.m. Mark Boynton – Amherst Fire Chief/EMD re: CERT

Mr. Boynton explained that CERT is a Civilian Emergency Response Team which assists in emergencies such as ice storms, floods and major events that tax all the town's services. Generally retired fire fighters, nurses, emergency workers, etc. with useful skills are members who make up these teams and help with traffic, going door to door, setting up warming stations, etc. He requested that the Board of Selectmen sign the MOU document which formalizes the agreement between the Towns of Milford, Amherst, Mont Vernon and Lyndeborough and states that they will form, utilize and support a regional response team. Amherst will be the coordinator and supplement where emergency response is needed. A standard operating guideline has been developed and regular meetings are held on the 3rd Thursday each month. Background checks are done on each volunteer for safety reasons and one volunteer from Lyndeborough is already on the team; more are encouraged. Mr. Boynton said that the organization is self funded and they take advantage of any state or federal grant funds wherever possible. Workers compensation coverage is required under RSA 281:82; therefore Lyndeborough's insurance will need to be notified. The cost of coverage will increase an additional \$8.00 for a year. He added that the team wants to remain active, are amenable to attending town events to assist in any capacity as well as to demonstrate their equipment and talk about the organization. All members of the Board signed the document and returned it to Mr. Boynton. M. Decubellis asked if there was an impact on the town for the cost of needed equipment. Mr. Boynton replied no that all their equipment has been supplied through grant funds. He was also informed that Lyndeborough's Community Days will be held in August if the team is interested in attending. **TA Thorndike** said that she would send him information on this coming event.

7:15 p.m. Rick McQuade - Emergency Management/CERT

Fire Chief McQuade said that he has thought about the Emergency Management Director's position and it is something that he is interested in doing. He asked what the Board thoughts were and whether former director, Steve Brown had left any directives. **Selectman Sawin** said that with his experience it made sense that he should fill the position. **Selectman Boette** said that it was a natural move and suggested setting up an office upstairs in the fire station. **Chief McQuade** asked about a transfer date and because the Board did not have a set date, he suggested the end of August or the first of

September. He wanted time to research the responsibilities and take some on-line classes to prepare him for the position.

Selectman Boette asked about the red house on Center Road and when the fire department will perform the burn. **Chief McQuade** replied that a rainy period is needed; then it can be considered again. He said all the new air packs are in and in-training was done on Monday night. They have to get the cascade system up and running so that the bottles can be refilled and put into service. As for the old air packs, they will be donated to the students who are involved in a fire fighting program at the Mascenic school. They understand that new bottles will have to be purchased as well as some maintenance but the older air packs are still usable for their training.

Chief McQuade said that Engine #5 will be going in to have the pump rebuilt in August and will be out of service for one or two weeks.

7:35 p.m. Brendan Philbrick – OIC

Brendan Philbrick asked **Selectman Boette** which legal entity in 2008 gave the approval to the Officer in Charge (OIC) position, i.e. a law firm, Local Government Center, municipal resources, etc. **Selectman Boette** replied that the police study committee and town counsel Atty. Drescher helped to work on the job description. He tried to explain to Mr. Philbrick that at the special town meeting there was a vote to dissolve the position of a full time chief after two independent residents formed a petition and pursued the required number of signatures to call the town meeting. Mr. Philbrick responded that in his opinion, there was no legal entity. M. Decubellis interjected that there is an RSA which enables the town to have a chief and if the town does not want a chief, then another position must be formed to replace it.

Mr. Philbrick referred to Selectman Boette's quote in the newspaper sometime ago which stated *"that the OIC policy run by town counsel was found to be OK and legal."* **Selectman Boette** interjected that there was nothing in Atty. Drescher's opinion that said differently. Mr. Philbrick then read several excerpts from Atty. Drescher's memo to the Board regarding RSA 105: *"We must designate one of the police officers as chief or superintendent and the town meeting is not empowered to interfere with that authority."* Mr. Philbrick went on: *"Because the Selectmen may not have the training or the time to manage the police department. The OIC's purpose has serious shortcomings the least of which is the potential challenge to the propriety of that position."* Mr. Philbrick continued: *"the successful legal defense of OIC would be difficult, thus adherence to this strange arrangement, OIC leaves the town a potential legal issue."* Mr. Philbrick said that it's clear to him that the OIC position is against statute and the Selectmen have the power to act to change it.

At this point, **Chairman Byam** wondered where Mr. Philbrick wanted the Selectmen to go with this; did he want them to designate a chief. He reiterated that the decision should

be something that the town votes on; it's always been placed on the governing body and the residents can make that choice at that time. He suggested that if Mr. Philbrick wanted a chief of police he should put together a petition with the proper number of signatures; then a warrant will be placed on the ballot for a vote at the March town meeting. The Selectmen will abide by their decision. A group of people voted to take away the chief of police position and they are the ones who can bring it back. Mr. Philbrick countered that the statute clearly provides the Board the authority to take these actions.

Mr. Philbrick continued to ask **Selectman Boette** if he still held to his quote "*that the town counsel said that the position of Officer in Charge is perfectly legal.*" **Selectman Boette** answered, "Absolutely."

Because this discussion was going in circles, **Chairman Byam** ended it by saying that the Board will abide by the decision the town makes in March.

7:45 p.m. Lee Mayhew – Right to Know law

Lee Mayhew made the following two suggestions: (1) that the Board votes on the acceptance and signing of the CERT program documentation; (2) that the Board takes out of circulation the "Child Registry Handbook" in which Donnie Sawin is listed as Officer in Charge. **Selectman Sawin** responded that it should have been purged out a long time ago. The police department must address this issue because the Board does not have access to it.

Mr. Mayhew then referred to his Right to Know (RSA 91-a) request sent to **Chairman Byam** on the 15th of May, re-sent on the 22nd of May as well as the 5th of June without any response. If the Board is not going to respond in the next couple of days, he will submit his petition to Superior Court and have the court direct the Board to respond. The statute states that he should have received a response within five days or be given an indication as to when the Board would respond. **Chairman Byam** explained that he doesn't have any electronic data to give him but they would have a response by the end of the week. Mr. Mayhew said that the Board must have some record of a conversation with the Local Government Center and he would be interested in any type of data, recollection or records. **Chairman Byam** understood that Mr. Mayhew had called LGC to retrieve information; he questioned how an attorney could give out information on a particular issue to someone who was not a client. Mr. Mayhew said that he called direct, identified himself as a citizen of Lyndeborough and asked for public information, not about what the Board was doing but whether or not the Board had been offered coverage. **Selectman Boette** asked for the name of the LGC attorney. Mr. Mayhew said that he did not have that information with him but would let him know. **Selectman Boette** said that the Board would work on this particular issue and get an answer to him, as soon as possible. Mr. Mayhew said that he had received a response on his questions reportedly from Atty. Drescher and he will hold his comments until the next meeting.

Citizens Emergency Response Team

VOTE: **Selectman Boette** made a motion on the Town of Amherst's memorandum of understanding for the Citizens Emergency Response Team that the town joined and signed at this meeting. **Selectman Sawin** seconded the motion. The Vote in favor was unanimous.

Old Business:

1. Cristofono – Map 251-005; Wilton/Lyndeborough boundary/perambulation

TA Thorndike told Mr. Cristofono that she had made contact with the Wilton Board of Selectmen and both Boards will be perambulating the town line boundary to make an exact determination in its location; but they have not scheduled a date. Mr. Cristofono asked about **Chairman Byam's** offer to speak to the surveyors at Monadnock Land Survey. **Chairman Byam** replied that it did not go as well as he had hoped. Ms. Tuomala was reluctant to go through the archives for old records. He said that she stood behind the surveying work on the boundary done for her client and because of the time and cost she was not willing to do that research, unless it was for a client. Mr. Cristofono thought the error was made in the survey and wondered if there was any to compel them to find those records. **Chairman Byam** thought that someone would have to have evidence to disprove what they have proven. **TA Thorndike** thought that a property survey done by Mr. Cristofono would put an end to this issue. **Selectman Boette** countered that this might only end up with two conflicting opinions. **Chairman Byam** said that the third entity would be the town line and where the actual boundary is situated. **Selectman Boette** did not think this perambulation would solve the property line problem because they are only determining the town line and it could be totally different. Mr. Cristofono agreed. **TA Thorndike** interjected that if the town line wasn't properly identified, it could impact that survey. Mr. Cristofono pointed out that their survey showed the jog; therefore making a jog in the town boundary line. He found out that the town line is a straight line when former town administrator Neal Cass, in his research, discovered that a perambulation sometime around 1917 showed no jog. Mr. Cristofono's deed and two abutters' deeds do not show a jog. These are old deeds from the 1800s with the last one dated 1965. **Selectman Boette** said that this proposed perambulation could help to show that the town line is a straight line. Mr. Cristofono responded that if this is proven, his question will be "How did the surveyor find the jog?" He noted that the deeds do not refer to the stone wall; they state "*to the line*" and "*goes to the corner of stones.*" There isn't any mention of a jog.

After reviewing the site plan and other information collected by TA Thorndike, the Board agreed that a time and date would be set to walk the boundary. Mr. Cristofono said that he would like to walk it with them and if needed, he could even show this Board the boundary concerns, prior to a joint meeting with Wilton.

New Business:

72 Glass Factory Road – Map 239 -063; Planning Board response

Atty. Patricia Panciocco, representing Jonathan Devens of 77 Glass Factory Road gave a summary of her letter and packet sent to the Board of Selectmen and the Planning Board regarding complaints to certain uses of the property across the street at 72 Glass Factory Road.

In 2003, Mr. Devens purchased his property and his neighbor was a young family residing in an 1800 sq. ft home with a single paved driveway providing access. Mr. Devens positioned his driveway away from that area to protect his privacy as well as safe access to the road. In 2004, the property at 72 Glass Factory Road was sold to Michael Parker and during his ownership, a portion of the stone wall was removed, a second driveway was constructed directly across from Mr. Devens' driveway. A large number of trees were cut; loam was stripped from the area and a screener operated on the site until all the loam was removed by trucks to other locations. Mr. Parker ceased his activities after receiving a letter from the Selectmen on July 29, 2008. The mortgage lender foreclosed on the Parker property in July 2010 and the property was bought that November by Helen Whalen (not present at this meeting.) Although logs and odds & ends remained on the property at the time of Ms. Whalen's purchase, other junk and debris (unregistered trucks, old appliances, hot water heaters, trailers, etc) have been accumulating on the site. Truck traffic enters and leaves the site during the day because the present resident (Mr. Jones) is operating a home heating service. Atty. Panciocco noted that in her investigation, this service is listed under three different addresses in the yellow pages although the business does not appear on the Secretary of State's website. All three addresses are residential properties in Wilton. Having checked with Wilton's code enforcement, it appears that no complaints have been made nor did they have any knowledge of a business at any of the addresses. She said that there's activity going on at 72 Glass Factory Road on a regular basis which leads her to believe that there is a business operating from the Lyndeborough property. Since Mr. Devens' complaint, the number and size of the trucks have diminished but there is still a lot of debris. The second driveway which did receive a driveway permit creates a problem because of the truck traffic, especially in rain or wintry conditions. Photographs show that mud is created when water runs down the driveway, accumulates on a public road and debris washes onto the Devens property. In the winter, the water creates an ice problem on the road. When the driveway permit was issued, there were no specifications, just a minor notation about a culvert being installed. This second driveway rises at a steeper grade and Mr. Devens has a lower, relatively flat grade to his driveway which explains why the water runs onto the Mr. Devens' property. Atty. Panciocco noted that Mr. Devens' tax bill is twice the amount of the neighbor who is running a business for profit.

After sending out many letters addressing his complaints and coming before the Selectmen without any assistance, Ms. Panciocco suggested Mr. Devens hire an engineer to investigate this situation and see if any of his concerns complied with the town's regulations. Meredian Land Services' engineer, Ken Clinton submitted a report which found that the driveway was incomplete, it lacked the proper grade, did not include

suitable drainage controls to handle storm runoff. All this is contributing to the silt and mud that runs into the road toward Mr. Devens' property because reclamation was not done to the site after the excavation of the loam. Under Excavation regulations, reclamation is required by stabilizing the site with vegetation. Atty. Panciocco said that the regulations also require a permit application approved by the Planning Board and the abutter, within 50 ft. of the site, gets special attention. Mr. Devens was not allowed the opportunity to comment or object to it and he is now stuck with the aftermath.

Atty. Panciocco and her client are asking that the town take some action; investigate these complaints, rein in the operation and require some remedial results. They want to see that the zoning, driveway and planning regulations are followed by everyone as they should be. The driveway is out of compliance, a major issue, causing problems for her client's property. They are not asking either Board to assess fines or anything of that nature but something clear and crisp, an investigation to see what is going on and require compliance.

Chairman Byam asked the road agent to address this issue. **RA Perry** explained that when he issued the permit, there was a water/mud problem so he required a 12" culvert to be installed and crushed gravel to be added to reduce the mud. There was an existing culvert already across the street. His main concern, when issuing a permit is the driveway entrance (site distance and whether a culvert is needed.) He has not encountered any icing conditions and cannot control the mud in a resident's driveway. Also the town regulations do not allow him to tell a resident with an existing driveway how to reconstruct his driveway.

Atty. Panciocco stated that the driveway regulations require a paved apron on driveways entering a paved public road. M. Decubellis responded that it's only required for new construction/subdivisions. The attorney countered that the regulations do not differentiate between new, subdivisions or old driveways. This driveway was permitted on 5-23-11, until then, it was illegal. She noted that the original driveway is paved and there are no complaints. The second driveway is a circular configuration with a large area of unreclaimed soil that causes issues with the mud and icing on the public road.

TA Thorndike mentioned that crushed gravel was placed on the driveway to reduce mud. Atty. Panciocco replied that it has washed away due to the steep grade as well as from the creation of ruts caused by the truck traffic which track mud onto the public road; the photos presented speak for themselves. T. Chrisenton said that this was an enforcement issue involving the road agent, the code enforcement officer and the selectmen; it is not in the Planning Board's purview. Atty. Panciocco stated, by statute, the Planning Board is in charge of driveways and they may delegate responsibility to the road agent. The Planning Board enforces driveway regulations and the town's regulations are clear on geometric guidelines, minimum standards and safety, etc.

Selectman Boette asked Code Enforcement Officer Peter Hopkins to comment on these complaints and did they exceed standards for a junkyard. Mr. Hopkins said that he did not see any evidence of a business operation but he took photographs, yesterday from the public way, which show a truck body, file cabinet and water heater neatly placed in the back of the property. He continued that two people bringing their work vehicles home did not mean that there's a business on the property. Atty. Panciocco asked if the occupant of the home was asked about this activity and suggested the Board look into this issue. Mr. Devens also stated that some of the debris has diminished but items have been moved to the back of the property out of sight of the public way; a large yellow dump truck body has been removed. He voiced concern about going forward if these issues are not addressed.

Atty. Panciocco, referring again to the driveway issue, suggested a proper design to address the storm water run-off problem and to pave the first 25 ft. of the driveway entrance. T. Chrisenton explained that a graveled driveway needs infiltrated surfaces, paving will only result in a more rapid run-off.

After going back and forth with this issue, Mr. Hopkins suggested that Mr. Devens appeal this situation to the ZBA for a decision on whether the driveway is acceptable or not.

T. Chrisenton stated that maintenance of the driveway has lapsed and sediment is crossing the road; regrading will alleviate the run-off and the water will go into the culvert. He said that this is a land owner's problem.

At this time, **Chairman Byam** said that a letter should be sent to the land owner as well as the occupant of the residence asking them to address the problems. The Board agreed that the letter state maintenance issues at the entrance of the driveway and recommend that the home owner taper it back and replace the crushed gravel. Atty. Panciocco asked for a response "by date certain" and asked the Board to contact town counsel on the ruling requiring a response within 30 days.

Atty. Panciocco also wanted the land owner to go through the Home Business application process. The Selectmen did not see the basis for this request. T. Chrisenton said that a permit is not required for a home business provided that they comply with the regulations, if the business exceeds the requirements, they must come before the Planning Board for a review. **TA Thorndike** said that the occupant has already denied that he has a home business. He has a part time employee who leaves his vehicle on the property during the day while working and traveling to job sites. Atty. Panciocco said fine, as long as the equipment is stored out of sight.

Ending this discussion, Atty. Panciocco told the Board that her client did not want to cause any problems for the town; he just wants the regulations followed.

(copy of the letter and packet are in the town office file)

Old Business cont'd:

2. School Tax apportionment error

TA Thorndike said that she had contacted the Wilton Board of Selectmen and asked them to meet jointly, as soon as possible, to discuss the school tax apportionment error. Two dates were suggested, August 15th and 29th. She also suggested asking Burton Reynolds and Lisa Ambrosio of the SAU to attend as well because they are familiar with this issue.

3. New website/email options

TA Thorndike said that this item would be discussed at the next meeting.

New Business:

Road Inventory Collection Form

TA Thorndike asked the Board to review the Road Inventory collection form and make any changes necessary. **RA Perry** explained that the information given on this form determines the amount of block grant funding the town receives each year.

Chairman Byam noted that Rose Farm Road was listed and the Board agreed to remove it because it is a private road required to be brought up to Class V road standards but was not accepted as a town road.

Police-Job Applicant Review

This issue was not discussed because the Board has already spoken to OIC Sgt. Deware.

Barn Easement- Public Hearing – July 25

TA Thorndike mentioned that a public hearing will be held at the next meeting on July 25th to discuss the applications for two barn easements: Clayton Brown's barn located at Center Road and the barn across the street from the Center Road cemetery.

Center Hall –duct work, HDC recommendations, etc.

TA Thorndike noted the following six items in a memo sent to the office by Scott Roper of the Historic District Commission:

- Flood light has been repositioned
- Water run off from the new gutter is flowing away from the building; will watch when raining
- Clapboards on the ell have been primed

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- Ceiling bulb has been replaced and rewired
- Red Exit light is fine.....Green light leads to exit.....suggest upgrading by changing filter
- Windows that were painted shut are now opened

Approval of Minutes, Manifests, and Items For Signature:

The Board addressed all items that needed their signature.

Adjournment:

All scheduled items having been addressed, the public meeting was adjourned at 9:15 p.m.

Date: July 11, 2012
Pauline Ball, Recorder

Arnie A. Byam, III
Chairman

Donald R. Sawin

Kevin J. Boette

APPROVED BY THE BOARD OF SELECTMENT ON JULY 25, 2012