

**LYNDEBOROUGH BOARD OF SELECTMEN
MEETING MINUTES
April 4, 2012**

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

Staff Present: Town Administrator Burton Reynolds, Admin Asst. Kate Thorndike,
Road Agent Kent Perry

Public Present: Phil Brooks, Mike Decubellis, Lee Mayhew, Brendan Philbrick

Media Present: Jessie Salisbury

Recorder: Pauline Ball

Appointments:

6:00 p.m. Personnel (non-public)

After the conclusion of the non-public meeting, the Board of Selectmen began the public session at 6:30 pm.

6:30 p.m. Phil Brooks – High Bridge Road (LTA bridge)

Lyndeborough Trails Association (LTA) member Phil Brooks gave a brief history saying that a number of years ago, former Planning Board member Tracey Turner, a group of residents and with the assistance of NRPC initiated interest in developing a trails system through Lyndeborough. The association now consists of about 30-40 members and their incentive is to establish a trail in the southwestern part of Lyndeborough, through privately owned conservation lands, state and town owned land, eventually ending at Highbridge Road to link with the trail system in New Boston. These trails will be accessible for horses, bikes and walking. Once the main trail is completed then they plan on making connections to other trails that appear throughout the town as well as in surrounding towns. The initial plan was to repair three bridges on trail routes (one has been completed) with Highbridge, the largest project. In 2010, the association applied for a State Trails grant, submitting a set of stamped architectural plans. The application was approved for a \$25,000 grant subject to their raising matching funds. The association was not able to raise the additional \$25,000 before the deadline of June, 2011, but was granted an extension which expires in June, 2012. They are now within a few thousand dollars of that goal with most of the funding coming from horse owner communities in New Boston who are eager to hook into the trails. The Piscataquoq Land Conservancy, a non-profit organization agreed to hold the funds that have been raised until they need to be released during the construction phase. The contractor for this project, Mike Hansen, is ready to proceed with a completion date by the end of June.

The LTA presented this project to the Board of Selectmen at its inception, and although it met with their approval there was a concern about whether or not emergency vehicles would be able to cross the bridge. Mr. Brooks said that their objective is to keep the bridge as narrow as possible to prevent vehicles from crossing it. He said that both sides of the bridge are in Lyndeborough, but on the eastern side there is only a small triangular section in Lyndeborough. If there was a need for an emergency vehicle, it would be easier to continue down Francestown Turnpike and travel on New Boston Road instead of using a Class VI road to get over the bridge.

TA Reynolds said that he posed a question to the attorneys at LGC concerning the replacement of a Class VI road bridge, which is wide enough for a car, with a bridge that will not allow a car to cross; making it a trail. He said that converting a Class VI road into a trail needs a vote at town meeting. The response from the attorneys was that it does not convert because a Class VI road is for a wide range of uses and not just for vehicle travel.

Selectman Boette asked if the issue before the Board was to determine the width of the new bridge. Mr. Brooks said no, he just wanted to inform this Board that they are now ready to proceed with the bridge construction. He added that letters to the abutters are being prepared so that they are informed, as well.

Selectman Byam asked the width of the new bridge. Mr. Brooks said that the oak plank decking will be about 13 ft wide with railings. This bridge is being designed to hold horse traffic not vehicular traffic. Boulders will be placed on each side with enough space to walk or ride through with a horse. Benches may be installed on the bridge to allow people to sit and enjoy the view.

Mike Decubellis asked if there were any legal requirements relating to the bridge, such as load limits. Mr. Brooks said that it has a limit but it is not designed to support vehicles. **TA Reynolds** stated that LGC stressed that it was important to have good signage present to warn people that the bridge is not for vehicular traffic. Mr. Brook agreed and said that there will be signage.

Ending the conversation, **Selectman Byam** asked Mr. Brooks to keep the Board informed on their progress.

6:50 p.m. Mike Decubellis – Schoolhouse Road Sand Pit

Mike Decubellis said that he contacted the Society for the Protection of NH Forests (SPNHF) and informed them that the purchase of the Schoolhouse Road property was approved at the town meeting in March. The Board was ready to move forward with the transaction. He said that the deed was prepared but he has not been received it, as yet. Because the Board was concerned about a title search, M. Decubellis asked SPNHF if one was done when they purchased the property. They replied that a search was completed in 2001 and the document was to be submitted to the Lyndeborough town

office. **TA Reynolds** stated that the document noted items that might have become a problem; but in the ten years of SPNHF ownership, no problems have occurred.

TA Reynolds asked about an April 30th meeting with SPNHF to finalize the transaction. M. Decubellis replied that a meeting was not necessary, a signed deed was being sent and when it is delivered then payment for the purchase can be sent to SPNHF's office. Referring to the pro-rating of the tax bill for this property, M. Decubellis said that SPNHF would pay up to April 1st eliminating any pro-rating concerns.

On two other issues, **TA Reynolds** told M. Decubellis that the town treasurer would send the Conservation Commission's donation to the LTA for their pledge toward the Highbridge project. He also asked M. Decubellis to clarify the appointed ConCom members and noted that two alternates were still needed for the commission.

7:10 p.m. Citizens Forum

Lee Mayhew said that he had four items of concern and distributed copies containing his comments to the Board. Although Mr. Mayhew read the letter in full, an abbreviated summary of his comments are the following:

- **RSA91-A:3, Access to Government Records and Meetings**

Mr. Mayhew addressed Section III of RSA 91-A:3, non public sessions, their minutes and actions following a non public session, in particular the March 6, 2012 session. No notice of the meeting or reference to its minutes appeared on the website, although it was posted on the bulletin board. He mentioned the "habitual sealing" of minutes after a non-public session which is allowed by law but that this is allowed when "*It is determined that divulgence of the information would likely adversely affect the reputation of any person, other than a member of the board itself or render the proposed action ineffective.*" When minutes are sealed, an unsealing date should be established; other wise they are sealed forever and future selectmen would not sufficient information in understanding the rationale of the decision. Another action that appears to be missing, even in non public sessions, is the requirement to announce that decision in open session. It is important to have the appearance of and the actual practice of an open government. Habitual sealing of minutes, in his opinion, does not lead to the view that this is so and recommended changing the present practice.

- **Donnie Sawin's Leave of Absence (LOA) from the Police Department**

In August 2010, the Board voted for an eighteen (18) month leave of absence from the Lyndeborough Police Department to Donnie Sawin who was elected as a Selectman in March 2010. Eighteen months have passed and no action has been taken by the Board to address this problem. Because Selectman Sawin was only a part time police officer and not full time, the statutes do not see an actual conflict; but there were issues that the

Selectmen at that time tried to address with the LOA. It seems that the personnel manual does not have any provisions for a second leave of absence. When exceptions are made to the personnel manual, criteria should be established so that there is a process to deal with a request of a similar nature. He noted that in most towns, processes and procedures of the Employee Personnel Manual do not cover elected officials. He was not sure that the expired leave of absence accomplished a legitimate separation from selectmen/town departments that was expected and considered appropriate.

- **Town Employees**

Mr. Mayhew stated that he has watched interactions between selectmen and town employees for some time and they are generally OK but at times they get rough, more an interrogation by selectmen who call into question the professional knowledge of these employees. In his opinion, it's fine to disagree as part of the discussion process when dealing with town matters but it is not alright to have a bombastic supervisor/employee attitude. The role of a selectman requires leadership, instilling pride and appreciation of accomplishment for the work of town employees. He felt that the town has excellent employees and he, for one, appreciates the work that is being done for the residents of the town.

- **Police Department**

Mr. Mayhew has not finalized his opinion on the current "structure" that Lyndeborough is working under whereby the police department is viewed and treated as any other town department. It is his understanding that the selectmen are to exercise a general overview of the police department and they are not involved in the day-to-day operations or the management of the department which is the responsibility of the Officer in Charge (OIC). He recalled a past meeting when a selectman mention either asking for or receiving an opinion from town counsel concerning the current OIC setup/function. Mr. Mayhew requested, under the statute (RSA 91-A), a copy of that report, if there was one. It was his opinion that the town now has a fully functional police department and they are a credit to the town; any memory of past problem departments should have no bearing on the current department. Ending his comments, Mr. Mayhew requested a general meeting some time in the near future to discuss the OIC type of department or a statutorily established and functioning police department.

(A copy of Mr. Mayhew's comments can be found in the attachments)

At this time, Brendan Philbrick of Cram Hill Road, stated that a valid reason is needed to enter a non-public meeting, as well as the sealing of minutes. He thought that the time frame for sealing minutes was one year and asked if that was the standard practice now or do they just seal the minutes. K. Thorndike replied that it has not been the practice to put

a time line on it. Selectman Boette said that he wasn't aware, with the exception of a few cases, that the minutes were sealed. Mr. Philbrick thought that the non-public minutes were sealed for one year according to the recorded minutes that are on line.

Mr. Philbrick continued, saying that the Board may be calling town counsel, after this meeting, "with our tax dollars, by the way, that he has issue with; people insulating and protecting themselves from the public with the public's money." He stated that he has all the dollar values paid to Atty. Drescher in 2000 and noticed a flurry of activity, when the selectmen get into hot water, to protect themselves. On the issue of Selectman Sawin's leave of absence which has expired, Mr. Philbrick noted that town counsel, Bill Drescher under RSA 669:7 said that it was OK for Selectman Sawin to continue on the police force and as a selectman because he was a part time employee. Mr. Philbrick stated the following under common law incompatibility: **"Two positions may be incompatible even though they are not listed in RSA 669:7."** He referred to it as "common sense" incompatibility which was passed in 1862. **"For any other statute, when two positions have a special relationship to each, one being suborning or interfering with other inconsistent loyalties and responsibilities, one person cannot hold both positions."**

At this time, he felt that Selectman Sawin should submit his resignation to the police department; then this issue will be closed. He asked if this would be a problem.

Selectman Sawin responded that he would consider his suggestion. Now that this issue has been brought forward, he was unsure if the leave of absence was for eighteen months or until his term on the Board has expired. Mr. Philbrick noted that the law allows an eighteen month leave of absence. He added that former selectman, Steve Brown, knew it and he was shown that acknowledgement over a year ago. Mr. Philbrick said that this was a conflict of interest and he hoped that Selectman Sawin would submit his resignation and avoid a court issue.

Mr. Mayhew interjected that the August 18, 2010 minutes read as follows: **"Selectman Byam made a motion to accept Donnie Sawin's leave of absence up to what the policy allows for the Lyndeborough Police Department."** The motion was seconded and Selectmen Byam and Brown voted in its favor.

Mr. Mayhew continued reading: **"After the work session next week, we will discuss further issues at that point and Donnie Sawin will be acting as a Selectman. Kevin Maxwell asked "What is the town's policy on a leave of absence?" S. Brown responded, "My recollection is that any employee can request one leave of absence and there is a cap of eighteen months."**

Mr. Mayhew thought that the employee manual states six months but according to S. Brown, there's a provision in the town manual that allows the Selectmen to "adjust" policies and procedures as they deem appropriate.

At this time, **Selectman Boette** responded that all these comments have given the Board something to think about. Mr. Mayhew replied that public service is wonderful and with so many demands it is easy to get off track. He just wanted to come to the Citizens Forum to discuss these issues.

Mr. Philbrick, continuing with his comments, said under common law incompatibility that a person could not be on the police department and be a selectman at the same time. He had let that slide without pursuing the issue adding that he could go to Supreme Court tomorrow and file a motion to see what a judge would say; but he hoped that he would not need to do that, "he enjoys going to court, very much because he hasn't lost a case yet."

Mike Decubellis questioned Mr. Philbrick's complaint about our tax dollars going to waste on lawyers and asked if it was his hobby to drag the town to court. Mr. Philbrick responded that the court would serve an injunction which states that he (Sawin) could not be a cop on the police department and serve as a selectman; if the Board "wanted to waste money on a town lawyer for no good reason, they are welcome to do that."

Mr. Philbrick addressed another issue which Mr. Mayhew brought up last fall concerning C & W Auto Body on Rte and the problem with cars leaking oil and unregistered vehicles on the property. In minutes of that meeting, he stated that Selectman Sawin's response was "that we discussed that issue a few weeks ago and we are aware of it." He could not find any reference of that discussion in the minutes of 2011. **Selectman Sawin** replied that the Board did discuss this concern. **Selectman Boette** added that "word for word" it might not be in the minutes. Mr. Philbrick asked the Board to make a note of where it would be in the minutes for the next regular meeting. He then asked if there was any resolution of this issue. Mr. Mayhew stated that the Board has talked about it and there has been progress on the issue. At one time, about eighteen assorted vehicles were on the property and if two or more unregistered vehicles are present it is considered a junkyard. He had voiced concern about leaking oil draining into the river close to the property. He thought that there are about five or six vehicles remaining. Mr. Mayhew noted that minutes can be very minimal in content and C & W has been discussed on several occasions.

Mr. Philbrick touched on another religious discrimination issue concerning the church property on Rte 31 which appeared to have more discussion than the C & W issue. One is a tax exempt issue and the other is an "eye sore" in violation of a number of rules. **K. Thorndike** interjected that they worked with the church so that they could maintain their exempt status and that has been done.

Ending this conversation, **Selectman Boette** commented that the Board has made a lot of changes, they may be small subtle changes but in the right direction and they are on top of a lot of issues. Although some may think that the Board is not being responsive fast

enough, they have been addressing residents concerns, for example, there is now a code enforcement officer who will review any enforcement issues.

At this point, the Board asked if Road Agent Kent Perry had an item to discuss.

RA Perry explained that the cost for paving has increased quickly. He received a quote from Advanced Paving for \$79 per ton, a verbal quote from Pike at \$75.76 and \$72 from Brox (his usual supplier.) This \$72 price will be for last years' stockpile of emulsion and oil. Once that stockpile is gone, the price will rise. He asked for permission to purchase this material which will be used in this year's paving plan. This would address overlay projects on Pettingill Hill, upper section of Old Temple, Locust Lane and the last overlay on Cemetery Road. **TA Reynolds** said that they may be able to Citizens Hall Road, as well. **Selectman Boette** asked if the funds would be available to do this and **TA Reynolds** said that he would discuss a payment plan.

RA Perry voiced concern about tearing up a section of Center Road this year and then paving next year because of the cost for the materials which are projected to be about \$82 per ton. He suggested using the \$30,000 in funds to put down an overlay on the area that he has already repaired. **TA Reynolds** said that to do a mile of road it takes 1110 tons to do a mile. Right now it would cost \$78,000 to do a mile and next year if the price increases to \$80 per ton, it will cost \$89,000 to apply 1.5 inches. **RA Perry** said that if they dig up the road, a base coat of three (3) inches will be needed. After discussing some of the options with more discussion needed on the paving plan, the Board agreed that the price quoted by Brox was acceptable and approved **RA Perry's** request. It was also decided to wait until next year to totally rebuild Center Road from Center Hall to Dutton Road. The money to pave this section is in the 2013 Paving Plan budget. This will avoid this section of road remaining gravel over the winter – a concern of RA Perry.

TA Reynolds was asked to update the paving plan for the new prices to be sure we can do what is in the plan.

Approval of Minutes, Manifests and Items for Signature

The Board addressed all items that needed their signature.

Old Business:

- **Citizens Hall Keys**

Kate Thorndike discussed the issue of obtaining new keys for Citizens Hall. After some research, she had chosen three different options:

1. Buy new keys
2. Rekeying existing locks
3. Medeco key card security locks

After listening to each option, **Selectman Sawin** suggested a key code lock with a different code for each authorized individual's use for entrance into Citizens Hall. **TA Reynolds** cautioned that the Citizens Hall budget was rather lean this year and if the expense was high, it would be preferable to consider this issue for next year.

K. Thorndike, in her opinion, said that the locks should all be rekeyed because the present keys are all coordinated and over time, the list of users having access has changed and no longer up to date. She said that Dependable Lock is willing to rekey the existing locks and make new keys at a cost of \$500. In this way, she would be responsible for the distribution of the keys and a new sign out sheet. **Selectman Boette** asked if a different locksmith could be used if a replacement key was needed. **K. Thorndike** replied no because Dependable Lock owns the blanks to security keys. **Selectman Byam** asked if there was sufficient money in the present budget to consider this option and **TA Reynolds** responded that there was. **Selectman Boette** asked for a plan to determine which rooms will be accessed by certain keys and who will be given a key. **K. Thorndike** responded that she would present a proposal on how the offices should be keyed.

Before ending this conversation, **Selectman Byam** suggested a combination push button lock on the exterior door that could be changed periodically and only keys given to employees who access the building each day. **K. Thorndike** questioned the cost to install this type of lock; this would need to be a project for next year's budget.

- **Cristofono Lot line**

K. Thorndike explained that Ronald Cristofono (Lot 25-005) Baldwin Hill Road has asked for an appointment with the Board of Selectmen to discuss the dispute over the town boundary line which affects his property. Because of the confusion surrounding this issue, the Board agreed that **Selectman Byam** would contact Phil Tuomala of Monadnock Survey for some insight into this boundary line concern and a review of the site plan before meeting with Mr. Cristofono. **Selectman Byam** thought that a discussion with LGC might be useful to see what the town may need to do concerning a town boundary line issue.

- **Appointment Process**

TA Reynolds suggested discussing this issue at the work session on April 11th.

New Business:

- **First Quarter Financials**

TA Reynolds distributed copies of the first quarter financials to the Board and asked them to review the material for next week's work session on April 11th.

Board of Selectmen's Meeting Minutes

4-4-12

Adjournment:

All scheduled items having been addressed, the meeting ended at 9:10.

Date: April 4, 2012
Pauline Ball, Recorder

Arnie A. Byam, III
Chairman

Donald R. Sawin

Kevin J. Boette

APPROVED BY THE BOARD OF SELECTMEN ON APRIL 25, 2012