

**OFFICE OF SELECTMEN
6 HOLLAND STREET
PO BOX 139
MOULTONBOROUGH, NH 03254**

Selectmen's Meeting

December 4, 2014

MINUTES

Selectmen: Jonathan W. Tolman, Chairman; Joel R. Mudgett, Paul T. Punturieri, Christopher P. Shipp, Russell C. Wakefield; Carter Terenzini, Town Administrator; Hope K. Kokas, Administrative Assistant

- I. **CALL TO ORDER:** Jon called the meeting to Order at 7:00 P.M.
- II. **PLEDGE OF ALLEGIANCE:**
- III. **REVIEW / APPROVAL MINUTES:** Paul said that he wanted to clarify a statement he made at the November 20th meeting, New Business, item #6, that when he said staff, he meant Bruce and Bonnie. On Page 3, #8, he intended to say best advice concerning labor counsel instead of Town Counsel. The minutes of November 21st, page 1, item #2, after Red Hill monies to include *the Red Hill fire tower*. Page 2, item #4, add the sentence, *“Paul noted that one of the capital recommendations for the DPW for the Public Safety Building/Town Hall energy savings was never presented to the CIPC and another, the well/filtration for the Highway Garage was only presented to the CIPC with a place holder dollar amount and none of the supporting information.”* Paul Made the Motion to approve the Minutes of November 14, 2014, November 20, 2014 (2), Public & Non-Public Session, and November 21, 2014 as amended. Chris Seconded the Motion. The Motion carried Unanimously.
- IV. **CITIZEN INPUT:** 1) Alyssa McCarthy introduced herself to the Selectmen and provided them with her proposal to build a portable tool shed at the Community Garden located on the Lions Club property as her Girl Scout Gold Award, which is equivalent to the Eagle Scout award. Ms. McCarthy added that she would be the first Gold Award Girl Scout in Moultonborough. She provided the Board with a photo of the shed she intends to build along with her Girl Scout Project Proposal for their review. Jon told the Selectmen that he is assisting Ms. McCarthy as an advisor. So far she has talked with the Lions Club, the Community Garden Club and DPW Director Scott Kinmond and is seeking donations towards this effort. Ms. McCarthy added that there will be a combination lock and the gardeners will be given the number combination in order to access the tools. The Selectmen agreed that this was a great proposal. Russ Made the Motion to approve Alyssa McCarthy's proposal to build a portable shed to be located on the Community Garden for use by the gardening participants as written. Joel Seconded and the Motion carried Unanimously.
- V. **NEW BUSINESS**
 1. **Public Hearing: Cable Television Franchise, Ascertainment Public Hearing:** Jon opened the Public Hearing at 7:09 p.m., explaining that Time Warner Cable (TWC) contacted the Town and we've agreed to enter into negotiations for renewal. The Town received TWC's letter on June 6, 2014 and had 6 months to being the ascertainment process. Jon introduced Attorney Mark Puffer of PretiFlaherty as the Town's special counsel for the cable television franchise negotiations. Attorney Puffer explained that the agreement

expires March 19, 2017 and is regulated under Section 626 of the Communications Act of 1934 and is known as the Cable Act. There are two purposes of this public hearing. The first is to identify the future cable needs and interests of the Town. The second is to determine the performance of the cable operator. He explained the next steps and process. Tonight's purpose is to focus on the needs and interest of the community and the performance of TWC. In the handout provided, there are 17 items to be addressed. Attorney Puffer explained that there are limits as to what the regulations allow the Board to negotiate. There are only four specific reasons that the Selectmen can deny the franchise renewal: 1. Non-compliance with the contract; 2. Quality of the operator's service, including signal quality, response to consumer complaints and billing practices, etc.; 3. The operator doesn't have the financial, legal and technical ability to provide the contracted services; and 4. The operator's franchise renewal proposal is not reasonable to meet the future cable related needs and interests of the community, taking into account the cost of meeting such needs and interests. Jon opened asked for comments from the audience. 1) Bud Heinrich questioned why the Broadband Committee isn't present and their report isn't available, and thought the hearing should be canceled until the report is made public. Broadband Committee member Bill Gassman replied that they are ready to make their presentation, but cautioned that the internet is not regulated and their report isn't about cable television. Jon further explained that the internet and the negotiations for cable franchise are two different things. Tonight's public hearing is about TWC's performance in regards to cable television. He added that while broadband is related, it is a separate issue. Carter said that he has received the final report and it will be on the December 18th agenda, but it is a separate issue from cable television. Paul asked and Attorney Puffer confirmed that the ascertainment process relates only to the cable television side and not the internet. 2) Jean Beadle felt that TWC is the avenue to get internet and wants to request that in the negotiations to include that 100% of the Town have internet access. Chris agreed, but thought that the cost to do this due to some of the remote properties was prohibitive, but thought that it could be tweaked. 3) Bill Gassman said that they can do 100% of broadband. He agreed that the internet through cable is preferred because it is faster vs. through Fairpoint. Presently the contract calls for the density requirement of 15 homes per mile. In the contract there isn't any consideration for properties who have their utilities through underground conduit and for those with satellite dishes, they are not counted in the density. This needs to be changed. He informed everyone that UNH has a contract template, with a cost sharing formula that should be included in any new contract. Presently Moultonborough is considered in the Portland, Maine market and feels that Boston channels should be included. Mr. Gassman suggested eliminating the clause about competitors which could eliminate open video systems and streaming. He suggested that the Town consider dropping the franchise fee or keeping it at the same amount. Joel told Attorney Puffer that originally the franchise fee was going into the general budget, but more recently a separate account was established with the thinking that it could be used to expand cable services to those who didn't meet the density requirement. 4) Joe Cormier, also a member of the Broadband Committee, said that the contract under section 626 does refer to the internet and wants to see it expanded to everyone in Town. He added that it does address underground utilities and to bring cable to these properties, but states it is at the grantee's expense. The federal cap for the franchise fee is at 5%, and presently the Town is at 2%. He suggested letting the Town's legislative body decide how and where to use this money. He added that cable will become obsolete in the future. 5) Laurie Whitley asked and learned that the Town isn't in negotiations with any other cable provider. She said that when she rented

property in Center Harbor, they received cable television through Metrocast, received Boston Channels and it was a very pleasant experience. As a Library Board of Trustee, Ms. Whitley reported that they recently had to upgrade the internet capacity for a higher speed, which resulted in a higher cost with what they perceived as requiring no additional work on TWC's part. 6) Joe Cormier suggested adding to the contract that TWC will provide high bred technology when the time comes. 7) Steve Maguire said that the original contract with Adelphia required that a local office be set up in Balmoral, which was eliminated and there were no penalties to TWC. Originally there were Boston channels and they were eliminated, again with no penalties to TWC. He stated that TWC's service is terrible. Mr. Maguire asked why the Town isn't negotiating with another provider. Carter replied that another company would have to be willing to bear the cost of buying the infrastructure, etc., and the Town doesn't have the density to recover the cost. Mr. Maguire asked and learned that TWC is aware of the public hearing. He questioned why they weren't present and felt it was because they didn't care. 8) Jean Beadle cautioned against entering into another long term contract, and keep it to 5 years. 9) Joe Cormier agreed that the contract needs to include that TWC maintain a local office for complaints. 10) Hollis Austin said that the original contract required that a local studio be set up with equipment and training for community members to be trained. He asked that this requirement be included in any new contract, adding that if this is done then maybe there would be volunteers to participate in videoing the meetings. Carter reported that he has received two comments through a telephone call and an email. Sue and Dick Snyder asked that the Town not renew unless TWC agrees to restore Boston channels and to discontinue black outs to give preference to Maine channels. Alan Lemay reported poor service and a billing problem. Recently he discontinued his cable service and received a mailer to return the cable box, addressed to TWC, which he used and mailed, but didn't get a receipt. TWC is saying that they didn't receive the cable box and now wants Mr. Lemay to pay for it. Carter reported that he has received in the past numerous complaints and will search his email for them. Joel said that the Board has been told that Moultonborough is in the Maine market due to FCC regulations. 11) Bill Gassman said this was correct, adding that he has sent a complaint to the FCC without any response. The zip code determines the market area. Joel asked Attorney Puffer what the density requirements were for other towns and learned that it varies greatly, and is definitely something to negotiate. Carter said he will check with surrounding towns to learn about their density requirements. Attorney Puffer will check with the AG's office to see if there is a central repository for cable contracts. Jon reported that Carter has reached out to the towns of Ossipee, Tamworth and Jackson and have yet to hear back from them. 12) Joe Cormier thought that the density is negotiable. Russ agreed that it should be reduced to 10-12 home per mile and to include those with satellite dishes. He thought that this would resolve a lot of the issues. He agreed that TWC's service is an issue, but thought there wasn't much to be done about it. He said that weekly TWC notifies the Town of possible channel discontinuations. Paul suggested that as part of the negotiations that they require a percentage of the Town have access vs. density. Russ asked and learned from Attorney Puffer that the franchise fee is passed to the public. Reducing the amount that the Town receives would not have much effect on increasing the service, but would reduce what is being passed on to the consumer. 13) Steve Maguire asked if there was any likelihood that the Town could get back Boston channels. Attorney Puffer replied that he hasn't dealt with this problem yet, but he is learning that it is an important issue to the Town. Joel commented that the FCC says it has to do with advertising. Attorney Puffer said that the cable provider's obligation is to

provide information to the consumer. 14) Bill Gassman suggested that the Board should look at negotiating with Metrocast before they take over TWC. He suggested they also look at UNH's "I Want Broadband" website which has an abundance of information, along with contracts from other towns and templates to use. Carter said that the next step is to review the information the Selectmen have received, along with any additional comments received. Attorney Puffer added that what he needs to do is find someone at TWC that has a real interest in the Moultonborough franchise contract and to explore options with another cable provider such as Metrocast. 15) Joe Cormier suggested that the technology is changing and they need to define OVS and Smart TV. Chris Made the Motion and Paul Seconded to close the public hearing. The Motion carried Unanimously. Attorney Puffer encouraged others to submit their testimony, adding that more is better.

2. Review for Action: Consent & Signature File:

DATE	DOCUMENT	MAP/LOT#
12/4/14	Administrative Abatement	146-022 & 146-023
12/4/14	Administrative Abatement	245-102
12/4/14	Administrative Abatement	245-103
12/4/14	Administrative Abatement	003-001
12/4/14	MPD Officer Daniel Ingram's Resignation - <i>Tabled</i>	N/A
12/4/14	2015 Warrant Citizens Petition, Child & Family Services	N/A
12/4/14	New Sick Leave Bank Deposit, Andrew Wolanek	N/A
12/4/14	New Sick Leave Bank Deposit, Donna Tatro	N/A
12/4/14	Sick Leave Bank Deposit, Jim Nave	N/A
12/4/14	Sick Leave Bank Deposit, Hope Kokas	N/A
12/4/14	2014 Trust Fund Expenditures, Human Services, Fuel Asst.	N/A
12/4/14	2014 Reappraisal of Capital Reserve Fund	N/A
12/4/14	2014 Funding of Community Center & Playground Project	N/A
12/4/14	2014 Funding of Article 12	N/A
12/4/14	2014 Trust Fund Expenditures	N/A
12/4/14	2014 Equalization Municipal Assessment Data Certificate	N/A
12/4/14	Prorated Assessment for Damaged Buildings, RSA 76:21	092-044
12/4/14	Cemetery Deed, #234 Shannon Cemetery	N/A

Jon read the Consent & Signature File and asked that Officer Ingram's resignation be tabled. Joel Made the Motion to approve the Consent & Signature File for December 4, 2014, tabling item #5 (resignation). Russ Seconded the Motion. The Motion carried Unanimously.

2. Review for Action: KV Partners, LLC, Request for Contract Extension: Paul asked and learned from Carter that the contract expires in 2015. Paul thought that they didn't need to act on this yet. Jon agreed, stating that they should just acknowledge KVP's request. Carter said that Highway Agent Scott Kinmond will be before them on the December 12th budget review and they can act then on this at the December 18th meeting. Paul said that considering all the projects that they've done have turned out to be grandiose and big projects, he thought they should get competitive bids. Carter said that KVP was hired under the quality based selection, then the price was considered. He thought that they would be hard pressed to find an engineer for less than \$95/hour. Joel felt that they have

been a pleasure to work with. Russ said he understood Paul's concern, but reminded everyone that KVP has only done what the Town asked them to do and there have been circumstances out of their and the Town's control. He cited the sidewalk citizens' petition which turned into public meetings. The soccer field was another case, where there was one problem after another that required more work. He doesn't think they created grandiose plans on their own, but did what the Town asked them of them. Paul said this wasn't a reflection on their professional behavior. Hollis Austin thought that these grandiose expansions from the original plans didn't seem to come from the public, but from Town officials and employees. Paul Made the Motion to table this item until the December 18th meeting. Chris Seconded and the Motion carried Unanimously.

3. Review for Action: Budget Amendment #2, Tax Collector – Temporary Clerk: Jon reported that in Susette Remson's memo, due to her Deputy Clerk being out on medical leave, she reached out to her associates and found that the Sandwich Deputy Clerk would be willing to fill in during this time. She is requesting 50 hours at \$20/hour from the contingency fund. Russ Made the Motion to approve the Tax Collector's request as outlined in her memo dated November 25th. Paul Seconded and the Motion carried Unanimously.
4. Review for Action: 2015 Holiday Schedule: Paul asked about the last two columns on the schedule and learned that Heidi equalizes the hours for the WMF staff. Joel Made the Motion to approve the 2015 Holiday Schedule as written. Russ Seconded. The Motion carried Unanimously.

VI. OLD BUSINESS:

1. Appointment of Special Counsel Re: Labor Counsel: Carter reported that Attorney Broth was willing to reduce his fee to \$225/hour and associate's fee to \$200/hour, however he will be out until mid-January for a medical reason. After speaking with the three firms, Carter recommended going with Wadleigh, Starr & Peters. Chris asked which was closest and learned that both firms are in Manchester. Paul thought Attorney Broth has more experience and would like to have an attorney present for negotiations. Joel asked if he meant all negotiation sessions. Paul said yes, initially with the Selectmen. Jon agreed. Paul Made the Motion to appoint the firm of Drummond & Woodsum as outlined in Carter's weekly report for labor and employment matters. Russ Seconded and the Motion carried Unanimously.
2. Disclosure of an Actual or Appearance of Conflict, Form #1: Jon reported that they did receive the payment history. Chris said he was satisfied considering the low amount actually billed. Russ agreed adding that he was OK with it before. Paul said it wasn't about the dollar amount billed, which is predicted by the weather, but that he isn't comfortable with a public official being paid by the Town and then his company being hired and paid in addition. Russ said he did not think it was a considerable interest, adding that it is hard to find people to plow considering the cost of insurance that is required, etc. Joel said that that the more contractors doing the job, the quicker the job gets done. Jon said that the statute allows it, although he too is uncomfortable with it. Russ Made the Motion that the financial interest is not substantial enough as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee or officer. Chris Seconded. 4 Ayes and 1 Nay (Paul). Paul asked that a note be added stating that he voted No and refers to Section 4 of the Town of Moultonborough Code of Conduct Ordinance "Requirement for Ethical Conduct"

opening paragraph and specifically section a). Russ commented that this is the way it is in a small town.

VII. OTHER BUSINESS:

1. Board & Staff Liaison and Update Reports: 1) Paul reported that the CIPC met today and the Chair Jordan Prouty said that when he presented to the Selectmen he neglected to say that Town Planner Bruce Woodruff was instrumental in the process. At today's meeting Andy Daigneau did a good job presenting the proposed lighting project for Town Hall and the Highway Garage. Originally the cost presented to the CIPC was \$50,000, but Andy told them that the cost is \$30,000 with an additional NH Electric Cooperative grant. The CIPC is in favor of the LED lights, but feels the police cruiser takes priority considering the small gain from the lighting project. Paul said that what was presented today was not the same as presented to the CIPC earlier. The Recreation Department's window project originally was \$60,000 and today they were given a cost of \$10,000. The CIPC feels it is inconceivable that no one saw this discrepancy before it came to them. Paul added that items cannot go on the Warrant unless first reviewed by the CIPC. The information provided to the Committee for the well at the Highway Department had very little information in it. The Selectmen in their budget book have been provided the detailed information needed. Therefore the CIPC will submit a letter to the DPW asking them to present on the window project for the Recreation building and also on the well project at Highway Garage. Paul reported that the CIPC would like the Selectmen to take direct input from the advisory committees and to not be overruled by Town staff. Paul said he explained to the committee that the CIPC is advisory only and the Board doesn't have to do it. 2) Carter said that they will talk more in detail, but with the suggested revision to the Fund Balance Policy, that as of today they are down to \$400,000 in cash with checks that were written today and some will be held back from going out. The tax bills went out on Tuesday and they should be OK within a week or two, but he wanted the Board to know how close it was. Russ commented that there were a few big purchases for DPW and Fire and thought if we were going to be close then we shouldn't have made the purchase. Carter replied he doesn't have control of the departments' purchases, but can control when it does get paid. Paul asked about the payment to the county and learned that it hasn't been paid. Carter said he talked with the schools and they were OK with holding back. Paul asked and Carter confirmed that the current Fund Balance is at 16% and learned that the floor is now 11.5%. Carter recommends increasing it for next year, adding that if last year they had lowered it they would now be short of funds. He also asked the Selectmen to consider a warrant article that would give the Selectmen the authority to borrow funds in anticipation of taxes. He hoped they wouldn't have to use it, but feels they do need to have that authority.
2. Public Library Board of Trustees Minutes, November 13, 2014: Acknowledged.

VIII. CORRESPONDENCE

1. Time Warner Cable, November 19, 2014, Possible Program Changes: This is their usual letter of possible program changes.
2. Lakes Region Planning Commission, November 20, 2014, Dues Structure: Joel said there had been the same issue with the Lakes Region Dispatchers and former Fire Chief Plaisted complained and they created a three part bill. Carter agreed, saying there was a base everyone paid, then per capita and then by usage. The Board surmised that based on

LRPC's letter and the video of their meeting, they were not in favor of changing the dues structure. Paul asked and the Selectmen agreed to have him draft another letter with a proposal for more equitable dues schedule. Joel agreed that they need to provide them with other ideas. He commented that the cash cow won't keep paying. Carter said that the Town's representative should be advocating for the Town vs. abstaining from the vote. Paul said he will have that conversation.

IX. CITIZEN INPUT: 1) Joe Cormier asked for an update on the UNH study. Carter said that they need time to review it. Russ asked how many responses were received and learned approximately 825 vs. the Village Vision survey is now close to 2,000. 2) Bill Gassman commented on the conflict of interest and code of ethics, which he thinks is a good thing and it provides transparency. 3) Hollis Austin said that based on the unrest in parts of the country and fears of conspiracy, he encouraged the Selectmen to consider the CIPC's score card. He added that in so doing, it would encourage others to participate and volunteer to be on committees. Mr. Austin asked about the Christmas open house for next week which was advertised, adding that it said with additional events. He asked what they were, adding he hasn't seen this advertised anywhere else. He thought in an effort to promote the Town, more marketing needs to be done.

X. NON-PUBLIC SESSION: Jon said that the Selectmen need to go into Non-Public Session per RSA 91-A:3 II (c) and for reputation and will reconvene for adjournment only. Joel Made the Motion to go into Non-Public Session and to return for the sole purpose to adjourn. Chris Seconded. A roll call was taken: Paul – Aye; Chris – Aye; Russ – Aye; Joel – Aye; Jon – Aye. The Motion carried and the Selectmen went into Non-Public Session at 8:57 p.m.

The Board exited Non-Public Session at 9:22 p.m. having voted by a vote of 2/3 or greater of the members present to seal the minutes as it is determined that divulgence of this information could adversely affect the reputation of a person who is not a member of the Board itself.

XI. ADJOURNMENT: Paul Made the Motion to Adjourn. Joel Seconded.
Motion Carried Unanimously
Jon adjourned the meeting at 9:23 p.m.

Approved

Date

Respectfully Submitted

Hope K. Kokas, Administrative Assistant