

**Minutes  
Selectmen's Workshop  
June 9, 2011**

6:30 PM, Chair Anderson opened the meeting and asked all those present to stand for the Pledge of Allegiance.

Members Present: Gary Anderson, Mary Bonser and Hal Rafter

Others: Charles Brown, Town Administrator; Gail Mills; Chris Mills; Heidi Seaverns

Chair Anderson stated that the first item to be considered at this meeting was to determine the Board's course of action on the Zoning Board of Adjustment (ZBA) decision dated May 18, 2011. Ms. Bonser stated she thinks the Selectmen should appeal the decision to Superior Court. She went on to explain that she believes that the decision renders the Zoning Ordinance unenforceable. She stated that it allows subdivision on a private road, reduces the building envelope from 30,000 square feet to 6000 square feet on one of the new lots, disregards the 2 acre lot size as well as it allows more than 2 houses on 1 driveway. She went on to say that she feels this decision will make it impossible to impose these regulations on other developers. Mr. Rafter agreed that the decision was not in accordance with our Zoning Ordinance. He went on to explain that he would like to allow the project to go through a little further along in the process before challenging it. He stated he was reluctant to commit the town to spend the estimated \$ 10,000 to proceed with the appeal given the fact that the attorney gives a 50/50 chance of prevailing. Ms. Bonser stated that the BOS should ask for a judge's opinion to remove any question of complicity on their part since the case involved the former Chairman of the ZBA as well as a sitting member of the Zoning Board. Chair Anderson then stated that the decision that the BOS was considering to appeal involved a variance that takes 1 existing lot and subdivides it into 3 lots. The original decision, dated March 3, 2011, was appealed by the BOS. The ZBA granted a rehearing of the case and approved the case again on May 18, 2011. Chair Anderson went on to explain that he is also concerned with the cost associated with a Superior Court appeal but he believes that the BOS should pursue this avenue. The cost originally estimated for the appeal was \$12,000-\$14,000. Both the BOS and the ZBA would have an attorney representing them. The revised estimate is \$10,000 for the two attorneys. The ZBA used the minimum state standards in both the original case as well as the rehearing. He stated he believes that this decision puts our Zoning Ordinance in jeopardy and sets a precedent for all future development in Town. Mr. Rafter stated that the Court would look at the procedure and process that the ZBA followed but he hoped that the judge would look deeper into the case.

**Motion:** Bonser, second Rafter to pursue an opinion from Superior Court on ZBA decision dated May 18, 2011.

**Vote:** 2 in favor (Anderson, Bonser)-1 against (Rafter). Motion passes.

Mr. Brown will notify Attorney Donovan of the Board's decision. The appeal to the Court must be filed by June 17, 2011. The anticipated hearing date would be sometime in October 2011 with a judge's decision 6-8 weeks after that. Ms. Seaverns asked if the appeal had any effect on the remainder of the process (Planning Board review). It was stated that the appeal had no effect on the Planning Board process.

Next issue to be discussed was the Emergency Lane (EL) Policy. Mr. Brown had provided the members with a copy of the latest draft. He explained that he had removed some of the redundancy of procedure throughout the document. After a brief discussion, it was decided that Mr. Rafter would make the changes during the meeting on the document on his laptop. Members thought this would streamline the process of getting the latest revision in print. Ms. Bonser then read out loud the Emergency Lanes Statute (RSA 231:59-a) so members would have a frame of reference while working on their policy. After some discussion, it was decided to replace all mention of the word "road" with the word "way" for consistency. The only place it would not be changed is in the Road Conditions section. It was decided to add a reference to the RSA in the title of the document for clarity. Much

discussion took place, all in an effort to make the policy clear as to the procedure involved in declaring an EL and the conditions that must be met in order to do so. There was a reference added to the Vote to Hold a Hearing paragraph about whether or not the BOS would hold a public hearing since there is nothing in the statute that guarantees a hearing once a request has been made. There was a discussion about the public hearing and the acceptance/denial of the EL request. Ms. Bonser wanted both actions to take place at one meeting. After discussion, it was determined that it should happen over 2 meetings. One meeting would be for the public hearing. After written findings from the hearing had been prepared, the BOS could act on the request at a subsequent meeting. There was discussion about the general criteria for acceptance mostly centered on the statement that the way should have 2 or more owners/abutters. Since the members could not agree, it was decided to come back to this item later. Mr. Brown informed the members that the Fire Chief has stated the only points of access that the department uses for Pawtuckaway Lake are the Fundy Boat Launch, the State Park & Highland Avenue. This fact should eliminate the water rescue criteria from the Public Welfare or Safety Requirement section. Instead of the two references to access for utility infrastructure & public infrastructure, it was decided to combine them and have 1 reference to access significant public infrastructure. Under the Road Conditions Requirements, a requirement that the owners/abutters provide Town approved signage for the road indicating the name & status of the road. The Failure to Maintain Road Conditions paragraph was changed to add the condition that if the deficiencies threaten the safety of personnel or equipment, maintenance will stop immediately. The procedure to notify in the event of an EL's failure to meet road conditions was clarified in the document as well. Next to be discussed was the remaining timeframe needed to enact this policy. The members agreed that the attorney should review before they held the meeting for public comment. Mr. Rafter will email the completed document to the members and Mr. Brown, who will in turn forward to the attorney for his review. Mr. Brown will request that the attorney review so the BOS can discuss at their meeting on June 20, 2011. After that final discussion, the BOS would have the meeting for public input on the policy at their meeting on July 5, 2011.

Next item to be discussed was the letter to Wayne Ives in regard to the Pawtuckaway drawdown plan. Mr. Rafter, on behalf of the BOS, thanked Liz Kotowski for the content in the letter. Chair Anderson & Ms. Bonser had no changes to the letter. Mr. Rafter had a couple of minor changes. He will make those and email letter to Mr. Brown.

Mr. Brown informed the BOS that he had received 4 proposals for the River Crossing into the pit. He will make a recommendation to the BOS at their next meeting on June 20<sup>th</sup>. The proposals are in his office for each of the members to review before the meeting. He reminded the BOS that this was a request for an evaluation of what could be done to replace the culverts under the road going into the pit. Once a firm is chosen, they will prepare an engineering recommendation and have an estimate of costs so a warrant article can be voted on at the 2012 Town Meeting.

Having no further business,

At 8:37 PM, **Motion:** Rafter, second Bonser to adjourn the meeting.

**Vote:** All in favor. Motion passed 3-0

Respectfully submitted,

Heidi Seaverns

**Approved as amended at the July 5, 2011 meeting.**