

**TOWN OF WINCHENDON
BOARD OF SELECTMEN MINUTES
THURSDAY, APRIL 7, 2011 – 6:00 P.M.
Town Hall, 4TH Floor Robinson-Broadhurst Conference Room**

Present: C. Jackson Blair, Chairman
Elizabeth R. Hunt, Vice-Chairwoman
Robert L. Zbikowski
Keith R. Barrows
Robert M. O’Keefe
James M. Kreidler, Jr., Town Manager
Linda A. Daigle, Executive Assistant

List of Documents Presented at Meeting:

- Town of Winchendon Article 32: Pawnbroker’s Bylaw (filed)
- K.D. Rare Coin Co. Business Certificate (filed)
- September 27, 2010 BOS Agenda Addendum and Pawnbroker’s license application of Mrs. Day

Chairman Blair called the meeting to order at 6:00 p.m. with the Pledge of Allegiance to the Flag of the United States of America. This meeting did not air live on local cable access channel 8 due to the School Committee meeting that evening.

Blair announced this special meeting was called for to ratify a decision of the Board taken at a previous emergency meeting. We are required to have this meeting after an emergency meeting to ratify and to properly post. The emergency meeting was called because the police chief recommended to temporarily suspend the license of somebody that had been charged with a crime. There was no indication of guilt, that’s what without prejudice means. Town Counsel’s opinion was that people shouldn’t be dealing with someone charged with these crimes until the investigation is resolved, whether found guilty or not. That’s why we had the special meeting and voted to temporary revoke the pawnbroker and junk dealer licenses of K.D. Rare Coin, without prejudice, with the intention of restoring the licenses if a determination of innocence is found or remove permanently if guilty. With a full Board present, we will take a vote to ratify the Board’s vote taken on March 31, 2011. It is the proper way to proceed, he concluded.

The Chair recognized Attorney Robert Rice, who was here representing Mr. and Mrs. Day. He thanked the Board for allowing him to speak and had a couple things he wanted to point out. Under the town’s bylaws, the Board can temporarily suspend the pawnbroker license but not the junk dealer second hand license. He also stated the pawnbroker’s license was issued to Karen Day not Lawrence Day. His name does not exist on the license and she has been wrongly suspended for allegations that have been made against her husband. He suggested the Board restore the license to Mrs. Day as pawnbroker to preserve her livelihood. She has not been arrested, charged or arraigned.

Discussion surrounded around the business certificates for both the Junk Dealer’s license and the Pawnbroker’s license. Atty. Rice also spoke about the charges sounding sensational. That Mr. Day was charged with misdemeanors rather than a felony. A misdemeanor does not pose a danger to the public

and suggested to the Board that there is a basic right of fairness in denying a person their livelihood on allegations. Mr. Day has a defense for court. This process could take months and it is unfair to revoke somebodies livelihood on the second hand junk dealers license based on mere allegations, especially misdemeanors. He told the Chairman that suspending the licenses at this stage of the proceedings, is prejudicial to Mr. and Mrs. Day because it is their livelihood. He asked the Board to not ratify their decision in regards to the Junk Dealer's license suspension because the standards are rather vague for its issuance and he felt it in the extreme.

Chairman Blair thanked the Counselor for possible alternative ways at looking at this problem and hoped they would be found innocent of all charges. Discussion ensued on Mr. Day being an employee of the pawnshop and Mrs. Day's possible responsibility of her employee's actions and the Board's definition of a suitable person to hold such a license. The Town Manager reminded the Board that this was an ongoing investigation and cautioned them to be limited in its discussion to the underlying issues. It was presented to you by the Chief of Police and supported by Town Counsel to motion to temporarily suspend without prejudice to protect the public welfare was in order and supported under the law. You do not need a Junk Dealers license hearing because you are not revoking the license, this is a temporary suspension. It was Counsel's opinion you have the right to protect the public's interest and welfare. He told the Counselor that he had read from the business certificate for K.D. Rare Coins that both Larry and Karen are on the certificate. More discussion was had on the business certificate. It was noted that the business registration form was amended by the Asst. Town Clerk to reflect two businesses at 306 School St.

Kreidler stated the coin business could still operate but Mr. Day stated there is no income from the coin business that's why they opened the pawn shop and junk dealer business. O'Keefe inquired if they have removed certain items from K.D. Rare Coin. Rice said most of the contraband has been removed from the home and counseled the Days from answering more questions on this issue. Questions arose again about the business certificate and the application process. The Executive Assistant brought forward information from the Junk Dealer's application process and asked the Board to take a recess to retrieve the Pawn license file.

The Board recessed at 6:37 p.m. and reconvened at 6:42 p.m.

Blair read the agenda addendum notes from the meeting of September 27, 2010 which mention the social security number originally used for the application of the Pawnbroker's license belonged to Mr. Day not the applicant, Mrs. Day. The application was amended prior to the meeting. The application's additional information written by Mrs. Day states her husband and she have been in the pawn shop business since April of 2009 and they also have a junk license at the same address.

Blair offered the documents to Atty. Rice. He glanced over them and said the application shows that the applicant is Mrs. Day. He also wanted to point out that they do employee five or six people stating there are more than two livelihoods here. There are five to six part-time jobs. Kreidler responded, on that great point it was his understanding it was conveyed to the Days by the Police Dept. that the sales of second hand goods at the Lancaster Flea Market is not prohibited because we cannot regulate second hand goods in another community. Those employees could continue to be employed there. Rice said the items sold at the Lancaster flea market come from the business in Winchendon.

Blair said the Board is either ratifying the decision previously taken or if that fails, we can entertain subsequent measures with both businesses and asked for a motion from the Board. O'Keefe

commented that the application for the pawn shop license, being in the name of K.D. Rare Coin Co. and showing in his mind a clear connection, moved to ratify the previous vote taken on March 31, 2011. With no second being heard, the motion failed.

Blair asked the Town Manager what happens if we do nothing. Kreidler said at the advice of Counsel and a matter of enforcement, you had an emergency meeting which was of substance. At your next available opportunity, a meeting is to be scheduled providing appropriate notice and the Board is required to make a ratification vote. If we fail to ratify by lack of a second, is this criteria met, asked the Chairman. Kreidler replied no, it would not be met. Your original vote of the 31st would stand, but it would be a far weaker vote as a matter of process because it had not been ratified.

Barrows having a question in his mind asked for a three minute recess. O'Keefe asked the Board members who were at the emergency meeting last week what changed. They did suspend for emergency reasons at that time but tonight he was not finding a second to ratify.

The Board recessed at 6:54 p.m. and reconvened at 6:58 p.m.

In response to O'Keefe's question, Hunt said she was concerned about Mrs. Day's livelihood. That Mrs. Day wasn't involved in what happened and felt she could run the K.D. Rare Coin Co. Kreidler said there is a connection with K.D. Rare Coin Co. being part of the Junk and Pawnbroker's license. He said they could operate K.D. Rare Coin. Co. if you separate it. You could sell things in Lancaster. The employees would not be impacted if they are coin business related. Zbikowski answering O'Keefe's question, said we didn't know a lot and went on the advice of the Chief, the Town Manager and Town Counsel. Zbikowski said I don't know more than that and this is the advice given by people that should know the facts. Without further information, I am having a hard time. Kreidler said the purpose tonight was not to get into a broad discussion of who has what license but just to ratify the vote. Kreidler said the Chief's position is that Mr. Day is charged with criminal offenses at the location and additionally and still today as investigation continues, Mrs. Day may also be charged. Counsel advised you have the right and recommended, for the public welfare, that you temporarily suspend, without prejudice. This is the Chief's recommendation still today. O'Keefe said the Pawn Bylaws, section 32.13, state we have the right if we deem public health or safety to be at risk to temporarily suspend. If we do that, the license holder needs to be notified and given a hearing. Section 32.14 states we have the right to suspend or revoke but doesn't list to have a hearing. He would like to follow section 32.13 and have a hearing where all the facts can be heard. Kreidler pointed out to keep focus on ratifying a vote taken some time ago and said any information heard tonight should not come in to play. O'Keefe moved the Board to allow such a hearing under Section 32.13 of the Town's Pawnbroker bylaw; Barrows seconded. By roll call vote of all aye, the motion carried unanimously. Kreidler said he will send notice to the license holder.

Hunt moved to ratify the previous action taken by the Board on March 31, 2011; Zbikowski seconded. By roll call vote of all aye, the motion carried by majority vote.

O'Keefe moved to adjourn; Hunt seconded. By roll call vote of all aye, the meeting adjourned at 7:10 p.m.

Respectfully submitted,

Linda Daigle, Executive Assistant