

**Wolfeboro Board of Selectmen  
Meeting Minutes  
Unapproved  
November 20, 2013**

**Members present:** Chairman Sarah Silk, Vice-Chairman Linda Murray, Dave Senecal, Dave Bowers and Brad Harriman.

**Members absent:** None.

**Staff present:** Town Manager David W. Owen, Finance Director Pete Chamberlin, Public Works Director Dave Ford, Parks & Recreation Director Ethan Hipple, Deputy Fire Chief Tom Zotti, Planning and Development Director Rob Houseman and Recording Secretary Amelia Capone-Muccio.

Chairman Silk opened the meeting at 6:40 PM.

**Non-Public Session**

Mr. Owen stated a non-public session is needed to discuss personnel.

**Consideration of Minutes**

➤ **10/29/13**

**Member Linda Murray moved the Wolfeboro Board of Selectmen to approve the minutes of October 29<sup>th</sup>, 2013 as written. Dave Bowers seconded. Members voted, and being all in favor, the motion passed.**

➤ **10/30/13**

Mrs. Murray amended page three, the first motion to change the second from Sarah Silk to Linda Murray. She amended page four, the last paragraph before the motion to add the following: "and she suggested cutting the \$34,000 request to \$17,000".

**Member Dave Bowers moved the Wolfeboro Board of Selectmen to approve the minutes of October 30, 2013 as amended. Brad Harriman seconded. Members voted, and being all in favor, the motion passed.**

➤ **11/06/13**

Mrs. Murray amended page two and added the following be the seventh paragraph; "Mrs. Murray questioned Mr. Lemaire and asked him which document he had read about arbitration since she was not aware of any proposal for arbitration".

Chairman Silk amended page five, the first paragraph, and for the last sentence to include “the broken window was discovered by New Day Window Cleaning when they donated the window cleaning”.

**Member Dave Bowers moved the Wolfeboro Board of Selectmen to approve the minutes of November 6th, 2013 as amended. Brad Harriman seconded. Members voted, and being all in favor, the motion passed.**

### **Public Input**

Suzanne Ryan, Treasurer of the Cotton Mountain Church, addressed the Board regarding her last discussion with the Board regarding the tax status of the parking lot of the church and the status of having the tax exempt status changed back. She noted that the parking lot is used as a turn around by the Town and the school buses.

Mr. Owen replied that in discussion with the Assessing office an abatement can be filed with their office.

Mrs. Ryan stated she was hoping to pre-empt that process since the tax rate wasn't set at the time of her request and questioned if it will need to be abated every year.

Mr. Owen replied the abatement process is filed through the assessing department, which is the process she needs to follow.

Mrs. Ryan replied that they may need to have a discussion about using the lot for a turn around.

Barbara Mosley of Gatherings by Stella Loona addressed the Board about a \$10,000 grant they have applied for that would benefit the L.I.F.E. Ministries food pantry. She explained this grant needs to be voted on through Facebook or Twitter and she provided that information in writing for the ease of the public. She explained the grant is based on the number of children in the district who are homeless and Kind Snacks is where the grant money comes from. She appreciates all the support the community can provide for this endeavor.

### **Public Hearing**

#### **Petition**

##### ***A. Layout of Winnepesaukee Drive and Knights Pond Lane subject to Betterment Assessments.***

Chairman Silk read the notice and opened the public hearing.

Dave Ford addressed the Board and provided a little history on how they got to this point. He explained they have received numerous complaints over the years regarding the condition of this road, but such road is not maintained by the town as it is a private road. He stated that the property owners have been dealing with the issue of the road with the developer but have determined to find an alternative resolution to get the road repaired and have petitioned the town to take over the road after it has been repaired to town standards

and the Town will apply betterment assessments (no cost to the taxpayer) to the property owners to pay back the cost of the repair over a period of 10 years. He stated the cost to repair the road to town standards is estimated to cost \$1.1 million dollars.

Chairman Silk opened the discussion to those who wish to speak for or against the petition.

Jonathan Boutin, attorney representing the Winnepesaukee property owners, addressed the Board and stated the property owners have agreed to this betterment assessment. He explained he is representing some of the property owners in a lawsuit against the developer for road repairs and maintenance promised but not done and the suit is ongoing. He stated the property owners decided to approach the Town with this betterment assessment process as a way to get the road repaired.

Suzanne Ryan questioned the history of the approval of the road and what happened to the bond.

Mr. Ford explained that he is not sure of exactly what happened as this road was approved 30 years ago, but believe that the road probably passed the standards at that time and the bond was released, the damage probably didn't happen until several years down the road after the road was built.

Mrs. Ryan questioned if the remaining lots of the developers can be attached.

Town Attorney Mark Puffer replied that the developer's lots are included in the betterment assessment.

Mrs. Ryan questioned if it could just be the developer's lots and if it would need a vote of town meeting.

Attorney Puffer replied it would need to be all the lots and explained the Selectmen can vote to layout the road.

Mrs. Murray noted that there is a proposed Warrant Article for the cost of the road, which included the betterment assessments.

Mrs. Ryan questioned what happens if the town votes no.

Attorney Puffer replied the road will be laid out, but there will be no funds appropriated.

Attorney Randy Walker addressed the Board and stated he is representing B & H Development, which is the developer and owns 24 of the lots. He provided a brief history of the approval of the subdivision in 1988/1989 and that there were many Planning Board hearings to review the subdivision and that there was a ½ million dollar bond that was released in 1991 after the road was built. He stated that he does not feel a betterment assessment should be based on the number of homes and residents of Wolfeboro living in the development and it is a through way that needs to be accessible for emergency vehicles and school buses. He stated he feels this case is similar to the Wolfeboro Neck case and is asking it be treated in the same manner. He provided several estimates for repair that are much lower in cost than what is proposed by the Town and will bring the

road up to 2013 standards. He is asking the Town to approve laying out the road and accept the road and not levy the betterment assessment.

Mr. Bowers questioned if there is a conflict with Attorney Walker representing such case as he is the Town Moderator.

Attorney Walker replied that there is no lawsuit involved with the Town he represents B & H Development.

Attorney Boutin addressed the Board and stated he agrees with the proposal by Attorney Walker, but feels the estimates provided are not at the level of standard as proposed by Mr. Ford which including drilling test pits. He stated the road was required to be built to town standard and that is what the property owners would like.

Suzanne Ryan stated in order to fully understand the betterment she believes the \$1.1 million dollars is not the only cost. The annual maintenance and repair of the road would need to be included in such cost and noted that over time the Public Works Director has stated they have been behind on road maintenance which is why the amount has increased from \$250,000 per year to \$600,000. She stated that she understands the request to address this road, but she feels the Planning Board needs to have a discussion on bonding private roads.

Chairman Silk stated she has said before the Planning Board needs to have a discussion about only approving roads built to town standards.

Mrs. Murray stated that she believes this process makes the most sense by laying out the road to town standards and noted that these taxpayers on this road do contribute to other town roads. She stated the cost will be put forth as a Warrant Article and the voters will decide.

Bob Enos, 34 Winnepesaukee Drive, addressed the Board and stated that when he purchased his property he was lied to by the developer because he told him he would fix the road and he disagrees with Attorney Walker as he feels the developer should be responsible for what he was supposed to do.

Being no one to speak for or against the petition, Chairman Silk closed the public hearing.

**It was moved by Dave Bowers and seconded by Linda Murray to approve the commencement of conditional layout procedures for Winnepesaukee Drive and Knights Pond Lane in Wolfeboro 10 days following this public hearing unless within that period a petition not to conditionally layout Winnepesaukee Drive and Knights Pond Lane in Wolfeboro signed by the majority of the owners of property abutting or served by the existing private right-of-way is received by the Board of Selectmen. Members voted and being none opposed, the motion passed.**

## **Acceptance of a Grant**

### ***B. Grant in the amount of \$5,000 from New Hampshire the Beautiful.***

Chairman Silk opened the public hearing.

Dave Ford addressed the Board and explained the funds reimburse the Town for costs incurred for the horizontal baler that was installed this past summer.

Being no one to speak for or against the permit, Chairman Silk closed the public hearing.

**It was moved by Linda Murray and seconded by Dave Bowers to accept a grant in the amount of \$5,000 from the NH the Beautiful toward the costs of the new horizontal baler at the Solid Waste Facility. Members voted and being none opposed, the motion passed.**

### **Bulk Vote**

#### **A. Weekly Manifests:**

1. Manifest dated November 15, 2013
2. Manifest dated November 21, 2013

#### **B. 2013 Equalization Municipal Assessment Data**

#### **C. Tax Levy Warrant \$13,070,393.00**

Mr. Owen requested to include the tax levy warrant in the amount of \$13,070,393.00 as the Town has received its tax rate from NH DRA of \$12.83 per thousand, which is a 19 cent increase over last year.

**It was moved by Brad Harriman for the Wolfeboro Board of Selectmen to approve the Bulk Vote items as submitted (including the tax levy). Dave Bowers seconded. Members voted and being none opposed, the motion passed.**

### **New Business**

#### **A. Acceptance of parcel of land off Browns Ridge Road.**

Dan Coons, Chairman of the Conservation Commission, addressed the Board to state they have completed negotiations for the purchase of a parcel of land on the summit of White Face Mountain and a survey has been completed and they will be contributing \$55,000 towards the total purchase amount of \$85,000.

Mrs. Murray clarified this will be purchased with Conservation funds that come from the current use Land Use Change Tax.

Mr. Coons replied that is correct it will be purchased with Conservation Commission funds and noted they will have deeded access to this land.

Mr. Senecal questioned the acreage.

Mr. Coons replied 56 acres and noted that the Conservation Commission already owns 45 acres that abuts this area and will possibly be able to purchase more.

Mrs. Murray recused herself from voting on this request.

**It was moved by Dave Senecal for the Wolfeboro Board of Selectmen to approve the acquisition of the backland portion of a parcel of land, Tax Map 37, Lot 4, off of Browns Ridge Road, consisting of 56 acres of land to be acquired and which includes the summit of Whiteface Mountain, by the Conservation Commission with the use of \$55,000 from the Conservation Fund. Brad Harriman seconded. Members voted, Linda Murray abstained and being none opposed, the motion passed.**

#### **B. Monthly Budget and Expenditures and Revenue Report.**

Mr. Chamberlin addressed the Board to review his monthly report and noted the budget is on schedule for this time of year and is 79.751% expended overall to date.

#### **C. Independent Recreation Provider Procedures**

Ethan Hipple addressed the Board and stated as discussed at previous meetings he has been working on a way to formalize their work with outside contractors. He stated such is common among recreation departments to expand on programs they offer and he found a process used nationally. He stated basically the form outlines the program with independent contractors and the Town will receive 20% of the revenue for their advertising and administrative costs for the program.

Mrs. Murray thanked him for making this clearer and taking the extra time to research the issue more.

Mr. Harriman questioned how much extra time the staff puts into this.

Mr. Hipple replied it is already incorporated in their workload and is about 10 minutes of administrative time per registration.

**It was moved by Linda Murray for the Wolfeboro Board of Selectmen to approve the use of the independent recreation provider contract and independent recreation provider application form and information by the Wolfeboro Parks & Recreation Department. Dave Senecal seconded. Members voted and being none opposed, the motion passed.**

#### **D. Friends of the Town Hall**

Joyce Davis addressed the Board and provided a brief overview of the activities of the Friends over the last five years since 2007 and is pleased to announce they have received \$700,000 in pledges and gifts towards the renovation of Brewster Memorial Hall and are still moving forward with the public/private partnership.

Chairman Silk commends them for their effort as that is an astonishing amount of money.

Mrs. Davis replied that they are not done yet and they are having fun raising the money. She said that she is pleased to see so much excitement about the building.

Mr. Bowers agreed as he loves the Town Hall building and it is an iconic building in Wolfeboro and a benefit to the community.

Mrs. Murray thanked all those who have help make this a public/ private partnership and to all those who have gifted or pledged.

## **E. Capital Projects Report**

Dave Ford addressed the Board to summarize his Capital Project status report date 11/15/2013 (see attached). He also made the following statement updating the Board and public on the RIB lawsuit project:

Wright-Pierce (W-P) Engineers was contracted by the Town in 2005 to study and recommend a long term plan that would resolve our Wastewater Effluent Disposal problem. W-P recommended, permitted and engineered the Rapid Infiltration Bed (RIB) site for 600,000 gallons per day (gpd) as an annual average. The site was placed into operation on March 4, 2009 and after 48 days of operation and an average daily flow of 494,000 gpd, the site showed the first signs of failure or “unexpected issues”. From April of 2009 to January of 2012 the Town worked with W-P to determine the cause of the problem and a long term fix.

Following the initial operation of the Site, an independent engineering firm, SW Cole produced a report which stated that because of the steep slopes at the Site, the maximum capacity of the Site was 340,000gpd. In its civil action against WP, and the Town initially alleged that W-P was negligent in their design and in breach of the warranties it had made to the Town and of its contractual obligations to the Town. Following newly discovered evidence obtained during the civil action, the Town subsequently amended its Complaint to include allegations of gross negligence and fraudulent misrepresentation as well as a breach of the NH consumer protection act. Both the Town’s and WP’s experts have stated that a geotechnical assessment of the Site should have been performed by WP during the design phase (which would have revealed that the Site’s maximum capacity was 340,000gpd).

WP’s strategy in the civil action has been to cause delay and to create confusion. Because of delays caused by WP, WP recently filed a Motion with the Federal Court to extend the time allowed for depositions and to move the trial date to April 2014. The Town, acting through its attorney did not oppose this part of the Motion. However, in the same Motion, WP also asked the Court’s permission to re-open expert evidence and to introduce a new expert. If this was allowed the result would have been the reopening of depositions, the production of new expert reports, and responses thereto, and further delay. The Town, again acting through its attorney, opposed this part of WP’s Motion. On Tuesday, November 19, 2013, the Court ruled in the Town’s favor and did not allow WP to reopen expert discovery. Currently WP also has a Motion to Compel the Town to allow the “new expert” to visit the Site (the Town had previously refused to grant access) pending with the Court. The Town’s attorney has requested that WP voluntarily withdraw this Motion, in the event that WP does not do so, the Town will oppose this Motion and seek to recover the costs of doing so from WP.

A major point of contention between the parties is whether the Site can be repaired so as to dispose of an annual average of 600,000gpd. This issue is heavily dependent upon the NHDES and its interpretation of local and federal laws. A second determining factor is the cost of any repair and whether it make economic sense to “fix” the Site. The Town’s experts remain steadfast in their opinions that applicable laws and the conditions at the Site mean that the Site cannot be repaired and must be abandoned.

W-P has requested mediation on numerous occasions. However, WP has not moved off its initial position that it is not responsible for the damage to the Site and will not contribute to either the repair of the Site or compensate the Town, that is, make the Town whole, for the monies spent on the Site to date. Given WP’s position, the Town has taken the view to date that it would not be productive to mediate this matter with WP. The Town remains open to the idea of mediation in the event that WP’s position changes.

Details of this history were provided to the BOS on April 17, 2013. Below is an updated status update of lawsuit:

### **1- Depositions**

- a.** Town attorney [HinckleyAllenSnyder, (HAS)] have completed 5 depositions
- b.** HAS has 1 more to take and 4 to complete (need a second day )

- c. There are 4 third party Depositions to take by both sides
  - d. W-P Attorney [Donavan & Hatum, (D&H)] has taken 3 depositions, with 4 more to take.
  - e. Remaining depositions have been scheduled and should be completed by end of year
- 2- **Motions Outstanding**
  - a. D&H has submitted a Motion to Compel a Site Visit  
Unless D&H voluntarily withdraws this Motion (as requested by HAS), HAS will submit an opposition on Wednesday
- 3- **Time Table**
  - a. **The trial is scheduled for April of 2014**
- 4- **Discussions with NHDES**
  - a. The Town is participating in negotiations with NHDES regarding the future operation of the Site. The Town has allowed WP to participate in these discussions with NHDES. The Town has been advised not to discuss issues related to these discussions as both NHDES and WP have taken the position that the discussions are confidential and privileged..
  - b. The Town is also in Court this Friday opposing a private citizen's lawsuit regarding the confidential mediation versus the Right to Know law. Again the Town has been advised not to discuss details of the discussions between the Town, WP and NHDES.

Ethan Hipple addressed the Board to provide an update on his maintenance building project and that is behind schedule and they have had to address that with the contractor. He stated that due to some unforeseen items they will have to cover those costs within the budget.

Chairman Silk noted the budgets that would be reduced to address the overages in the Parks & Recreation budget are travel and meetings \$1,000, beaches \$6,000, programs \$3,500, \$500 Abenaki lodge design and Middleton Road cemeteries \$3,000. She also stated she is appalled at the progress of the maintenance building as they have had great weather and no one was there to work on it.

Mr. Hipple stated the Ski Lodge design is ongoing and should be getting some new estimates. He stated they addressed some drainage issues at the Middleton Road cemetery and plans to have it out for bid next week.

Rob Houseman addressed the Board and provided a brief overview of the status of the Town Hall improvements. (See attached)

Chairman Silk questioned the status of the window frame painting.

Mr. Houseman replied that he solicited three estimates as required, but had trouble getting a third estimate. He stated that due to the busy season and rain the project has not been done. He noted the other estimate is substantially lower or he could get new quotes if the Board desires, otherwise the project will not be done until the spring.

## **F. Warrant Article Review-continued**

The Board reviewed the following Warrant Articles:

- A. Election of Officers
- B. Middleton Road Construction \$1,350,000



Mr. Ford noted that this is a municipally managed project and the Town will be reimbursed 2/3rds of the cost by the State to take over the road.

C. Reduced Scope Renovation of Wolfeboro Town Hall \$4,000,000

Mr. Owen stated that the Town has already spent 1/3 of a million dollars on repairs and improvements to the Town Hall plus the parking lot improvements which is about \$400,000 over the last 3 years.

Mr. Houseman reviewed a Power Point presentation outlining the details of the renovation with office space on the first floor.

D. Winnepesaukee Drive Reconstruction \$1,122,000

E. Wastewater Treatment Plant Improvements \$250,000

Mr. Ford addressed the Board and stated that in the past they discussed a new treatment facility, but have decided to make improvements to the facility they have and they did the first phase with some grant funding and because this is on the 10 year plan he feels this project could be put on hold for a year if need be for budgetary reasons.

F. DPW Facilities Upgrade \$160,000

Mr. Ford explained that this project was put on hold last year due to the fire at the public works garage last year and this will make necessary upgrades for maintenance and safety.

G. Operating Budget

Chairman Silk noted this will be updated once the Budget Committee finishes their process.

H. Annual Road Upgrades \$625,000

Mr. Ford stated although improvements have made over the years they still have many roads that are in need of repairs. He stated the big project for next year is Forest Road from Carry Beach to the end as well as Birch Road, Libby Street, Stoneham Road and Jeness Farm Road.

I. Annual Sidewalk Upgrades

Mr. Ford provided an overview of the sidewalks on a spreadsheet.

J. Temporary Relocation of Town Offices

Mr. Owen stated he contacted Huggins Hospital with regards to leasing an unused wing of the hospital and they agreed to lease the space for the same amount as a few years ago of \$50,000.

K. Library Expansion Study

John Sandeen, Chair of the Library Trustees addressed the Board and stated this is the first step in logical planning for expansion of the library and that there would be no tax impact on this article.

L. Replace the Electric Department's Digger/Derrick Truck \$200,000

Mr. Owen stated this is for funds from the Electric Fund to replace the Electric Department's digger/derrick truck.

M. Fire Trucks and Apparatus Replacement Capital Reserve Account \$176,000

Tom Zotti addressed the Board and stated this is a very similar request to last year.

N. Public Works Vehicle and Equipment Capital Reserve Account \$ 165,000

Mr. Owen stated that this is the annual contribution.

O. Abenaki Ski Capital Reserve

Chairman Silk this is also an annual transfer.

***Discussion:***

Mrs. Murray suggested they remove article E at this point and vote to move the bond articles to the public hearing.

**It was moved by Linda Murray to remove Warrant Article E. Dave Bowers seconded.**

***Discussion:***

Mr. Harriman stated he has been thinking about this and feels this is a way to keep up with maintenance each year \$125,000.

Chairman Silk agreed it keeps maintenance going.

Mr. Owen explained the rationale to defer it was due to the litigation case and if the settlement is received some of those funds can be applied to this.

**Members voted, Linda Murray, Dave Bowers and Dave Senecal in favor the motion passed.**

**It was moved by Brad Harriman and seconded by Dave Senecal to fund a capital reserve account for the Waste Water Treatment Plant at \$125,000. Members voted and being all opposed, the motion passed.**

**It was moved by Linda Murray and seconded by Dave Bowers to move articles B, C, D (after 10 days) and F to the public hearing for bond issues over \$100,000. Members voted and being none opposed, the motion passed.**

**It was moved by Sarah Silk and seconded by Dave Bowers to support Articles G-O (5-0). Members voted and being none opposed, the motion passed.**

**It was moved by Linda Murray and seconded by Dave Senecal to remove Article G from that support until they received the figure from the Budget Committee. Members voted and being none opposed, the motion passed.**

### **Any Other Business**

Mrs. Murray stated two properties are up for auction, the New Hampshire Pewter building and the house in between the Wolfeboro Inn and the Meredith Village Savings Bank.

### **Town Manager's Report**

Mr. Owen reported the following:

- Governor Hanssan has ordered a special election to fill Executive Counselor Ray Burton seat with a primary scheduled for January 21<sup>st</sup> unless they only have one candidate for each party in which case it will be the General Election; otherwise the General Election will be on the same day as the town election in March.
- He noted they still have an opening for a Recording Secretary for the Economic Development Committee.
- The Information System Advisory Committee is seeking members.
- He stated the Board has received a memo from the Town's benefits coordinator requesting \$600 to develop a Wellness Committee. The Board agreed to fund this out of the Miscellaneous Expense budget.

### **Committee Reports**

Mr. Harriman stated he attended the Planning Board meeting about the Center Street rezoning.

Mr. Bowers reported he attended the EDC meeting.

Mrs. Murray stated the following:

- The final posting date for the Budget Hearing is January 14th.
- She attended the EDC.
- She attended the Asset Management Committee meeting.
- She attended the Chamber Board meeting.
- She attended a meeting with other concerned towns on lobbying to increase the boat registration to help fund the treatment of milfoil.
- She attended the Milfoil Joint Board meeting.
- She will be attending the Right to Know hearing in Ossipee on Friday.

Mr. Senecal stated he has been attending regular Budget Committee meetings.

- Chairman Silk stated she attended the following:

- She attended the Asset Management meeting present by Woodard & Curran who did an excellent job.
- She attended the LRHHPF meeting.
- She will be attending the retirement party of Kim Koulet on November 25<sup>th</sup>.

### **Chamber of Commerce**

None.

### **Public Comment**

None.

### **Questions from the Press**

None.

*Being no further business before the Board, Chairman Silk entertained a motion to enter non-public session.*

**Member Linda Murray moved the Wolfeboro Board of Selectmen to enter non-public session at 9:36 PM to discuss personnel. Dave Senecal seconded. Roll call vote: Dave Senecal-yes, Brad Harriman-yes, Sarah Silk-yes, Dave Bowers-yes and Linda Murray-yes, the motion passed.**

The Board re-entered public session at 10:21 PM.

Chairman Silk stated the non-public session minutes of November 20, 2013 were sealed by a 2/3rds vote as required by law.

*Being no further business before the Board, Chairman Silk entertained a motion to adjourn.*

**Member Dave Senecal moved the Wolfeboro Board of Selectmen to adjourn at 10:22 PM. Member Sarah Silk seconded. Being none opposed, the motion passed.**

Respectfully submitted,  
**Amelia Capone-Muccio**  
Recording Secretary