

**Minutes of Meeting
CONWAY BOARD OF SELECTMEN**

February 5, 2008

The Selectmen's Meeting convened at 4:06 p.m. in the Meeting Room of Conway Town Hall with the following present: Selectmen C. David Weathers (Chair), Larry Martin, Gary Webster, Mark Hounsell and Howard C. Dickinson; Town Manager, Earl W. Sires; and Recording Secretary, Karen Hallowell

PLEDGE OF ALLEGIANCE

Chairman Weathers led the Board in the Pledge of Allegiance to the Flag.

SIGNING OF DOCUMENTS

The Board reviewed and signed various documents contained in the signature folder.

CONSIDERATION OF BILLS

The Board reviewed and signed the manifest dated February 7, 2008.

APPROVAL OF MINUTES

Mr. Martin moved, seconded by Mr. Webster, to defer consideration of the minutes of 1/15/08 to the next meeting. The motion carried unanimously.

SPECIAL ORDER ORDER OF BUSINESS

Mr. Dickinson moved, seconded by Mr. Hounsell, that the town designate Olympic Lane as a town road consistent with RSA 231:27 and 229:1.

Mr. Sires briefly reviewed discussions held at the previous meeting regarding this matter. Mr. Sires advised he has met with Attorney Malia, Doug Burnell and Patricia Sell on the matter. Mr. Sires advised there is nothing that shows this (Olympic Lane) is a town road. Mr. Sires further advised that Olympic Lane was in the road book and the town did some maintenance work over the last few years, but there is no clear cut evidence this is a town road

Attorney Malia explained Patricia Sell is relying on prescriptive use as her argument and he took a look at this. Attorney Malia advised that he also spoke with Doug Burnell about the facts of this matter and Doug concluded that the 160 foot has never been a town road. Attorney Malia next advised that we do not have a deed to this road. Attorney Malia further advised that the Statute about Railroads gets in the way of Ms. Sell's argument regarding prescriptive use. Attorney Malia next advised that if the Town wanted to go along with it and so far there hasn't been any opposition and if Mr. Seybold will give a deed they could move forward or the town could also put this on the warrant if those choose. Attorney Malia stated they could do this by means of dedication and acceptance and then get CSRR to give the Town a deed and then put

this matter on the warrant or they could agree with Ms. Sell despite the railroad stature and reestablish the boundaries of Olympic Lane to be consistent with today.

Mr. Weathers pointed out that Olympic Lane is not up to town standards and it would cost the taxpayers money to bring it up to standards.

Mr. Hounsell stated he feels the town needs to do something as this road is used for school busses, etc.

There was further discussion. The motion was reviewed. Mr. Sires questioned if the motion passes, what does the town need to do. Attorney Malia advised the Town would need to have it surveyed to have the boundary lines established and send notice to the property owners of the reestablished boundary. Mr. Webster questioned if both RSA's apply. Attorney Malia advised both are consistent with one another. **A vote was taken and the motion carried 4-1-0.** (Messrs. Dickinson, Webster, Martin and Hounsell voting in the positive and Mr. Weathers voting in the negative).

BURBANK ROAD

Mr. Sires reviewed a petition was put forward last year regarding Burbank Road. Mr. Sires reviewed the location and facts concerning Burbank Road with the Board. Mr. Sires reviewed the Town still owns the land under Burbank Road.

Mr. Dickinson moved, seconded by Mr. Hounsell, that the Town of Conway does not own fee simple interest to the soil lying beneath that portion of Burbank Road described in Article 35 which passed at 2007 town meeting. Mr. Dickinson stated he feels this clears up what people thought they were voting for last year. Mr. Webster stated if there is a petition prepared for this year he would like to see this go back before the voters again for consideration as no one appeared to speak to it last year. Dave Douglas stated he feels if motion passes the land under road should revert to Elbridge Russell. After further discussion, **the motion failed 2-3-0.** (Messrs. Dickinson and Hounsell voting in the positive and Messrs. Webster, Martin and Weathers voting in the negative).

RED JACKET MOUNTAIN VIEW WATER PARK

Attorney Randy Cooper was present representing the Red Jacket Mountain View. David Beaudoin, General Manager, of the Red Jacket Mountain View was present in the audience. Also present for discussion was Tom Irving, Town of Conway Planning Director. David Pandora, Town of Conway Building Inspector and Attorney Peter Malia, Counsel for the Town of Conway.

Mr. Sires advised that Town staff discovered the Red Jacket Mountain View constructed a feature associated with their water park project that was not on the plans. Mr. Sires explained it is about a 1500 square foot mechanical air exchange unit, which is about the size of a small house. Under our ordinances town staff has advised them they need to go back for site plan review regarding same.

Attorney Cooper reviewed a photocopy of the plan with the Board. Mr. Cooper also reviewed photocopies of photos of the area where the unit is located. Mr. Cooper advised this is an after-the-fact design that happens with water parks. Attorney Cooper

advised that it happens with water parks and no one ever considered the size of this and they installed it. Attorney Cooper advised that Paul McBride, who is chief of operations, said let's put it there and no one ever considered its size compared to the size of the 32,000 square foot water park with this mechanical unit beside it. Attorney Cooper stated his client made a mistake when they put it there and when the error was pointed out they thought there was three ways to handle this and this is addressed in his letter to the Town.

Attorney Cooper next went on to explain that his client felt this could be handled as a small undertaking however, this has been denied at the staff level. They will now be going to the Planning Board on February 14, 2008, to determine if this is a small undertaking and insignificant or whether this needs to go back for a planning board hearing and review. Attorney Cooper also mentioned the neighbors may have concerns over the unit and noise. Attorney Cooper next stated that his client wants to operate the water park for the upcoming February vacation week. Attorney Cooper stated that the Board of Selectmen determines if someone gets a C.O. or gets fined. Attorney Cooper stated his client is asking for a conditional occupancy permit until February 28, when the Planning Board decides how to handle this matter. Attorney Cooper added that his client is asking the Board of Selectmen for help to provide this amenity to their hotel guests. Attorney Cooper also added he felt this would be a good opportunity to experience how the equipment (the mechanicals) will operate and sound. Mr. Cooper further added that his client is willing to pay an administrative fine of \$275 per day to operate until the planning board makes the decision or they would ask for a conditional occupancy permit until they can appear before the Planning Board on February 14 or February 28. This conditional occupancy permit can end on February 28 or until the Planning Board can make a decision on how to handle it. Attorney Cooper added you have an amazing thing people want to use and a mechanical unit that didn't get approve -- I wish I knew about it in November or this would not have occurred.

Attorney Cooper next explained the pad for the unit is 1595 square feet. Attorney Cooper next displayed a diagram of where the unit is located compared to the abutters to the Red Jacket property. Attorney Cooper explained that he is not asking this Board to overrule the Planning Board but based on the Planning Board meeting schedule they are not yet able to meet with them.

The Board asked to here from staff. Mr. Sires advised that the staff recommendation is that this matter needs to go back to the Planning Board. The Site Plan process is so that everyone can be heard. Mr. Sires further pointed out that the facility does not need to be open to hear the unit operate.

Mr. Martin commented that he feels this is smoke and mirrors and there is no way you can miss something this size on your site plan and they would have had to have known they were going to put this on the plan at some point for this park to operate and to not put this on the initial plan is appalling. Further, he does not think that this Board should be second guessing the Planning Board and this needs to go back to the Planning Board. Mr. Dickinson agreed.

Mr. Cooper stated that it was told to him by Mr. McBride that in the October/November timeframe is when the design came and they realized that they couldn't put it on the roof and they had to do something else. Attorney Cooper stated he feels there are a lot of mechanical units on roofs in town and his client should be given

the benefit of the doubt. Attorney Cooper stated that he could have told the client to go ahead and open and just get fined \$275 but he does not operate that way. Attorney Cooper stated he advised his client to come to the only Board who may be able to help and ask and that he was not trying to undermine the in any way.

Mr. Hounsell explained that he feels it would be totally inappropriate for this Board to step in at this point when the Planning Board handles this. Mr. Hounsell further stated he does not support granting the conditional certificate of occupancy until such time as the Planning Board does their review and their criteria is met.

Attorney Cooper stated that it is one thing to come before a Board and ask and another thing to thumb your nose. \$275 is a lot of money and his client has agreed to pay a fine. His client will agree to whatever the Planning Board requires.

Mr. Dickinson questioned when they first noticed this wasn't on the plan and the planning board's permit--October or November? Mr. Cooper advised that he just got involved with this two weeks ago but what occurred was, they designed it and said you have to put it up, and Mr. McBride of the Red Jacket saw the design for the unit and he made a decision in his own mind and said it was minimal as compared to the overall thing and then Tom Irving of the Town came up to inspect the site and it was discovered. Mr. Cooper further added that if it happened in November, and if it would have been brought to the Town's attention in October/November, we would have been through the Planning Board process.

Mr. Webster pointed out that the problems don't lay with the town. The Red Jacket's reader board outside has had signage up that said opening in November, opening in January, etc. The problem here is not with the Town of Conway and is with the architects, contractors, etc. The Town has done what they should be doing and now there is a request to help bail them out so they can open. There has been a series of issues. Attorney Cooper stated that "if there is anything that gave the impression that his client is blaming anything on the town of Conway, eliminate that." Mr. Cooper stated he was here to see if they could work something out.

Mr. Weathers asked if the Board would like to entertain a motion regarding legal action should it be necessary. **Mr. Hounsell moved, seconded by Mr. Martin, that the Town be authorized to take any and all legal action necessary with respect to enforcement action. The motion carried unanimously.**

BUDGET

The Board reviewed the recommendation letter received from the Budget regarding the proposed budget.

Chief Wagner and Lieutenant Perley of the Conway Police Department were present for discussion. The Chief and Lieutenant addressed items concerning the Police Budget. The first matter discussed was Item #3 of the Budget Committee's letter which stated: "Request clarification on the Capital Reserve Fund for Police Vehicles. It was our understanding that Chief Wagner stated they would not request same this year." Chief Wagner stated this may have been misconstrued and he does not remember saying this. Budget Committee member, Bob Drinkhall was present and stated to the Board that he agreed with Chief Wagner. Mr. Sires suggested sending a response to the

Budget Committee stated that the fund would be set up with \$38,000 and to see the scheduled attached. Mr. Hounsell suggested language be forwarded that we continue to support this item and this was set up for the next several years. All agreed.

The Board and the Police next discussed Item #5 of the Budget Committee letter which stated the following: "Recommend to review the need for the new position of a Police Officer in the Police Department Budget and look at the possibility of using the part-time staff to replace the one person requested." Chief Wagner explained they Police Department is trying to provide more service to the Town of Conway. The Chief explained the difficulty with trying to hire part time officers who have other job commitments etc. The Chief further explained the number of officers they would need to fill the 2080 hours then need someone to work. Chief Wagner also explained this would require more training and outfitting with uniforms and guns, etc. The Chief and Lieutenant gave further explanation to the Board of the need for a Police officer. There was discussion with the Board. **Mr. Hounsell moved, seconded by Mr. Webster, that we include on the lines that the Board of Selectmen continue to agree with the Police Commission and the Department that there is a need for a new position for a full time police officer within the department and, furthermore, the recent trends have proven the better way to fill a full time need is to avoid part time personnel. The motion carried 5-0-0.**

The Board next discussed the Budget Committee's Recommendation #1 which read as follows: "The proposed Warrant Article concerning an increase of \$500.00 for the five (5) members of the Board of Selectmen be eliminated." The Board held discussion and Mr. Dickinson and Mr. Hounsell discussed withdrawing the article this year. Mr. Hounsell stated however the increase is needed as time commitments, etc, have increased but that he would be willing to forego the increase this year. **Mr. Hounsell moved, seconded by Mr. Dickinson, to acquiesce to the Budget Committee request and eliminate the Warrant Article for the increase of \$500 for the Board of Selectmen.** Mr. Webster stated he felt this was unfortunate as compensation has not increased and time commitments have in the last several years. Mr. Webster further stated that removing the article this year isn't solving anything and feels the voters should be given the chance to vote on same. Mr. Dickinson stated he would withdraw his second; however, Mr. Hounsell would not agree to withdraw the motion. Mr. Weathers stated he agreed with Mr. Webster's comments. Mr. Martin stated that it is not worth fighting about but he also agrees it should stay on the ballot for the voters. Budget Committee member, Bob Drinkhall, was in the audience and stated he feels it should go before the voters as well. **The motion failed 1-4-0 with Mr. Dickinson in favor and Mssrs. Webster, Martin, Hounsell and Weathers voting in the negative.**

The Board next discussed the Budget Committee's Recommendation #2 which read as follows: "The proposed Warrant Article concerning an increase of \$400.00 for the three (3) members of the Supervisors of the Checklist be eliminated." Mr. Hounsell pointed out that this increase is for 2008 only. Mr. Dickinson suggested that Carol Lyman be contacted to come to the Budget Committee meeting tomorrow night. **Mr. Hounsell moved, seconded by Mr. Webster, that after the word increase we eliminate the period and add "for 2008 only after which compensation will be reduced to the current \$1,000 per supervisor annually."** The motion carried 5-0-0.

The Board next discussed the Budget Committee's Recommendation #4 which read as follows: "Recommend that the ending balance in the Recreation Revolving Fund in amount \$29,786.52 be left alone for one more year; see where we are at that time." Mr. Dickinson suggested writing back to the Budget Committee saying that this is our intention. The Board agreed. Mr. Hounsell stated that we would also advise that in December we extract from the Fund. **Mr. Hounsell moved, seconded by Mr. Dickinson, that we respond to this one – please be advised that the Selectmen will continue to administer the proceeds in accordance with the legal purpose for which the recreation revolving fund was established. The motion carried 5-0-0.**

The Board next discussed the proposed warrant articles regarding the CIP Plan and an article for revising signage and sign lighting regulations. Town Planning Director, Tom Irving, and Planning Board Chair, Bob Drinkhall, were present for discussion.

With regard to the article for the CIP Committee, Mr. Hounsell questioned if the Planning Board will be at Town Meeting to support this article. Mr. Irving stated he has advised them they will need to be there to support the article at town meeting. **Mr. Hounsell moved, seconded by Mr. Webster, that the Selectmen put the following article on the April 2008 town warrant. To see if the Town will vote to authorize the Board of Selectmen to appoint a capital improvement program committee, pursuant to RSA 674:5, to prepare and amend a recommended program of capital improvement projects over a period of at least 6 years. The motion carried 5-0-0.**

There was next discussion regarding proposed article for \$25,000 to contract an outside planner to consult for revisions to the signage provisions in the zoning ordinance. Mr. Irving reviewed a memo he had provided to the Board regarding same. Mr. Hounsell advised that his problem is not with the task but with the cost. Mr. Hounsell questioned if we could look at a fee structure to try to recoup some of this money. Mr. Irving stated this would be charging the people who are trying to comply with regulations. There was further discussion. The Board asked for the fees to be reviewed. **Mr. Martin moved that we put together a warrant article for funds for a consult for revision to signage and sign lighting regulations. The motion carried 5-0-0.**

The Board next reviewed the Warrant Article for the Operating Budget. **Mr. Martin moved, seconded by Mr. Martin to reconsider this article. The motion carried 5-0-0. Mr. Martin moved to recommend Article 4 as presented with the default budget.** There was no second. The Board held discussion as to whether voting should take place now or after the Budget Hearing and after the Budget Committee makes recommendations on the articles. **Mr. Hounsell moved, seconded by Mr. Webster, that we withhold any action until such time as we have formal recommendations from the Budget Committee or until February 19, whichever comes first. The motion carried unanimously.**

TOWN MANAGER REPORT

Budget Committee – Mr. Sires reported the Budget Committee public hearing on the budget is scheduled for February 13, 2008 at 6:30 p.m. at Kennett High School. The Budget Committee also meets tomorrow night.

Mill Street at Winding Lane – Mr. Sires reported the causeway needs to be replaced. We need to either build a little bypass or we can close the road for a couple

of days and people will use Davis Hill. Mr. Sires advise this is being brought forward to get the Boards thoughts before this takes place this summer. Mr. Webster stated he would like to know fire, police and emergency response times. The Board asked that this be put on as an agenda item in the future. Mr. Dickinson suggested waiting until after Labor Day to do this work.

Snow – Mr. Sires commented on the high amounts of snow we are receiving. Mr. Sires reminded the public that you can't put snow into the roadway.

Intervale Scenic Vista Map – Mr. Sires advised the Town received a grant from the Connie Davis Watson Fund for a molded map at the Intervale Scenic Vista Center. This will be presented to Governor and Council and needs formal action from this Board. **Mr. Martin made a motion, seconded by Mr. Webster, authorizing the chair of the Board to sign a letter to Governor and Council. The motion carried unanimously.**

BOARD REPORTS AND COMMENTS

Children Unlimited – Mr. Hounsell stated that he was asked by Children Unlimited to ask for the Board's support of the application to the USDA/Rural Development for a natural playground. **Mr. Hounsell moved, seconded by Mr. Martin, that the Board of Selectmen authorize the Chair of the Board to execute the form on behalf of the governing body. The motion carried 4-1-0 with Messrs. Dickinson, Webster, Martin and Hounsell voting in support and Mr. Weathers voting in the negative.**

PUBLIC COMMENTS / MEDIA QUESTIONS

There were no public comments or media questions.

ADJOURN

At 6:55 p.m., **Mr. Martin moved, seconded by Mr. Webster to adjourn the meeting.**

Respectfully submitted,

Karen J. Hallowell
Executive Secretary