

**Minutes of Meeting
CONWAY BOARD OF SELECTMEN**

June 24, 2008

The Selectmen's Meeting convened at 3:10 p.m. in the Meeting Room of Conway Town Hall with the following present: Selectmen Larry Martin (Chair), C. David Weathers, Mark Hounsell, Howard C. Dickinson; and Bob Drinkhall, Town Manager, Earl W. Sires; and Recording Secretary, Karen Hallowell

PLEDGE OF ALLEGIANCE

Chairman Martin 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 June 26, 2008.

APPROVAL OF MINUTES

Mr. Hounsell moved, seconded by Mr. Weathers, to approve the minutes of 5/13/08 as written. The motion carried unanimously.

The Board agreed to hold consideration of the minutes of 5/20/08 to the next meeting.

REVIEW AND CONSIDERATION OF SPECIAL EVENT APPLICATION

23rd Annual White Mountain Milers Half Marathon – Mr. Sires advised the Town has received all necessary paperwork in a timely manner for the White Mountain Milers Half Marathon event. Mr. Sires recommended approval of the license for the special event. **Mr. Hounsell moved, seconded by Mr. Weathers to approve the application for license for special event for the 23rd Annual White Mountain Milers Half Marathon. The motion carried unanimously.**

NON PUBLIC SESSION: RSA 91-A:3,II(e) / PENDING LITIGATION

At 3:15 p.m. **Mr. Drinkhall moved, seconded by Mr. Weathers to go into non public session under RSA 91-A:3,II(e) to discuss pending litigation. The motion carried by unanimous roll call vote.** Town Attorney, Peter Malia, Town Manager, Earl Sires, Tax Assessor, Tom Holmes, Assistant Assessor, Dale Scholfield, and recording Secretary, Karen Hallowell would be included in the non public session. The taxpayer/petitioner, Patricia Sell, was also present during a portion of the non public session.

At 4:07 p.m. **Mr. Weathers moved, seconded by Mr. Dickinson, to come out of non public session. The motion carried by unanimous roll call vote.**

The minutes were not sealed.

DISCUSSION OF KEARSARGE METALLURGIC SITE
WITH NHDES & EPS REPRESENTATIVES

Andrew Hoffman of the NH Department of Environmental Services (DES) and Project Manager for the Kearsarge Metalurgic Site (KMS) and Dick Goehlert of the Environmental Protection Agency (EPA) joined the meeting for a discussion on the KMS site with the Board. Also present at the meeting were Richard Pease, EPA Superfund Sites Section Supervisor; Rona Gregory, Esq, Regional Counsel/EPA Region 1 (Attorney for Site); Carl Baxter, EPA; Mike Yastremski, EPA Section Chief, NH & RI Superfund Sites; and Laura Blakely, EPA legal intern.

Mr. Hoffman reviewed the agenda material he provided for the agenda packets with the Board. (Copy attached).

Mr. Hoffman advised that research on the Kearsarge Metalurgic Site has been done at the Registry of Deeds. Mr. Hoffman and Attorney Rona Gregory reviewed that there are liens on the property by several different entities, including the Department of Employment Security, some of which may be past the Statute of Limitations. Tax liens place by the Town of Conway were also found.

Mr. Hoffman next reviewed that the building at the Kearsarge Metalurgic Site has collapsed under snow load this past winter and the next phase is to demolish same. Mr. Hoffman further reviewed that the bulk of contamination at the Kearsarge Metalurgic Site is 7-8 feet below the surface and below silt level.

Mr. Hounsell questioned if the plume could still spread. Mr. Hoffman advised they are still monitoring and the plume has expanded. They are watching the plume they and watching for the condition to stabilize.

Mr. Hounsell asked if there was tricholoethane at the site. Mr. Hoffman replied in the affirmative. Mr. Hounsell asked if there is any year when this will dissipate. Mr. Hoffman advised they are monitoring the source and have investigated same. They have excavated this and disposed of this off site. Mr. Hounsell questioned if some portion of the site could have this contaminant for 50 years. Mr. Hoffman advised - potentially. There was further brief discussion regarding tricholoethane.

Mr. Weathers questioned why they didn't finish the work at the site. Mr. Hoffman advised funding and timeframe. Mr. Hoffman advised that under proper institutional controls that site can be safely used.

Mr. Hoffman next reviewed information on the OCR property advising that this site has been abandoned for some time and his research shows tax liens since 2000.

Mr. Hoffman next discussed options available. a). The town takes the parcel for tax liens and they would link restrictions for groundwater use; and b) the state takes the

parcel on judgment and then transfers same to the town or other party with groundwater restrictions attached to the deed.

Mr. Hounsell questioned if the Town can just say we don't want it. Mr. Hoffman and other representatives stated that the town doesn't have to take or accept the property. Mr. Hoffman advised that the State's motivation is to transition the site into reuse and institute controls.

Mr. Weathers questioned does the State put forward a disclaimer of any health hazards or guarantee for the future as this may not be completely safe. Mr. Hoffman stated there would be a covenant not to sue and the State would provide coverage to the Town or third party not to sue based on current conditions.

Mr. Hounsell questioned if the Town took the property and for whatever reason someone brings suit and wins judgment would the EPA be in a position to pay the judgment based on existing conditions. The EPA lawyer stated that if the town takes the property for taxes then you are not liable as per The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Mr. Hounsell reiterated his question and the EPA lawyer advised there is no way for the EPA to indemnify the Town of Conway.

Mr. Weathers questioned how many cases are there where superfund sites have been deemed safe. Dick Goehlert advised there are a number of superfund sites that have been put back into use. Mr. Weathers questioned if they have similar issues to the Kearsarge Metalurgic Site. Mr. Goehlert advised there are a number of superfund site that are going through or have gone through reuse and there are a number of Brownfields sites as well. There was further discussion regarding reuse, condition of the site, etc.

Mr. Hoffman next advised that there is an option "c" which is that the site will remain status quo and no one owns same. Mr. Hounsell questioned if the State will take down the building. Mr. Hoffman replied in the negative.

Mr. Sires spoke about two reasons to take the site – to clean up the site and to use the site. The Board also pointed out reason not to take the site. There was a discussion regarding the pros and cons of taking or not taking.

At 4:48 p.m. Chairman Martin opened the meeting for public comments. Ms. Umberger questioned if KMS and OCR go together or if it is one or the other. Mr. Hoffman advised that both are on the table.

There was brief discussion regarding an interested party for the Kearsarge Metalurgic Site. Carl Thibodeau advised that he is the one that is interested in the property.

Chairman Martin closed public comment at 5:00 p.m.

Mr. Dickinson questioned how interested Mr. Thibodeau was in the property. Mr. Thibodeau further advised he is very interested and he will work with all parties to get this done. Mr. Dickinson suggested Mr. Thibodeau put together a proposal and Mr. Thibodeau agreed.

Mr. Hounsell stated his issues are health concerns. Mr. Hounsell stated he is not interested in holding property longer than facilitating a sale. Mr. Hounsell questioned if Mr. Thibodeau is also interested in the OCR property too. Mr. Thibodeau replied in the affirmative adding that his interest in OCR is passive as most of it, about 75%, is wetland.

Mr. Hounsell questioned if the State would do option b if there is a buyer. An EPA representative it would be possible if there is a buyer, but it would take years. There was a discussion as the length of time it would take for the State to acquire this property.

Mr. Dickinson stated he would like to find out what the exposure to the Town is, what Carl's exposure is and to what extent the EPA and DES would indemnify the Town of Conway. Mr. Dickinson questioned if a report could be written on a proposed property transfer, easements, etc., and for this to be a safe site. Mr. Dickinson further added he would like to know what conditions Mr. Thibodeau would feel comfortable with if this could be arranged through the Town of Conway.

There were no actions taken by the Board. Chairman Martin advised the Board would take this matter under advisement and requested Mr. Hoffman get the information requested to this Board and a decision would be made in the future.

HALE ESTATES OWNERS ASSOCIATION/DISCUSSION OF ACCEPTANCE OF PRIVATE ROADS AS TOWN ROADS

Chris Folsom, President of Hale Estates Owners Association, joined the meeting. There was also 20-25 members of the Hales Estates Owners Association present at the meeting as well. Town Manager Sires recused himself from the discussion as he is a resident of Hale Estates. Public Works Director, Paul DegliAngeli, sat in for Mr. Sires at the meeting for discussion on this matter.

Mr. Folsom advised there are 51 lot owners and 37 homes in the Hale Estates Owners Association. Mr. Folsom explained they are at the meeting today to find out why the Board of Selectmen did not recommend acceptance of their roads on the warrant this year and, also what they can do to get the recommendation of the Board next year on the Warrant. Mr. Folsom further advised he would also like to enlighten the Board on center line and right of way issues on Holly Ridge and explain issues currently between the Town and the current developer.

Mr. Hounsell encouraged Mr. Folsom to get a copy of the minutes of the Boards meeting to find out why the roads were not recommended for accepted as a different Board sat at that time.

The Board discussed what needs to be done to get a recommendation for road acceptance on the warrant. The Board discussed the town's policy of 80% build out. Mr. DegliAngeli reviewed the subdivision is not complete and he does not recommend acceptance. The roads are not done and a topcoat is not on the road. Mr. DegliAngeli advised the current build out is now at 50%. Mr. DegliAngeli next reviewed that only half of the water system in the development is in place. Mr. DegliAngeli further reviewed that there is a right of way that also needs to be corrected before the town can take over

a road. This is due to plowing, etc. Mr. DegliAngeli went on to explain that by not doing road inspections 10 or so years ago there may need to be some corrections to the roads. The Town does do road inspections now. Mr. DegliAngeli suggested they could re-plat the right of way. Mr. DegliAngeli also reviewed other options and needs for plowing, right of way easements, etc., with the Homeowner Association members.

Mr. DegliAngeli next reviewed the water system was installed in 1981 and there is a requirement to have it tested. If we find there are any problems, then sections of the roadway will have to be torn up to get at the pipe. Mr. DegliAngeli stated he thinks they should do testing before deciding what they are doing and if the pipe is sound.

At 5:45 p.m. Chairman Martin opened the meeting to public comments.

Jim Kelly stated that compared to other roads in town, Olympic Lane and another one near the bike shop, he doesn't feel they are being held to the same standards.

Jim Webber stated that he understood that 15 years ago they were told the roads would be accepted in this phased development.

Bill Monk questioned if there are any tax breaks for not receiving full services since they are not on town roads. Mr. Monk was advised that he receives the same services as other taxpayers.

There was next a discussion regarding the petition and warrant process. Mr. DegliAngeli also explained the betterment process.

Mike Monroe had an individual question about his own driveway and questioned if it would have to change assuming the roadway doesn't change. It was discussed that if the easement option was pursued he would be asked to remove stones and put in curbing. Ed Stevens also asked about implications to his property and he and Mr. DegliAngeli briefly discussed same.

Jim Kelly questioned which standards they will be held to for the roads. Mr. DegliAngeli advised the higher percentage.

There were no further public comments and the public comment portion of the meeting closed at 6:10 p.m. The Board informed the Hale Estates Homeowners they will take this matter under advisement. Chairman Martin thanked the Hale Estates Homeowners for coming in to talk with the Board about this matter.

Lastly, Mr. Hounsell advised that there was an article on the Warrant 2 times asking voters to give the Board of Selectmen the authority to accept roads and this was turned down as well.

CONSIDERATION OF PROJECT 6 ALTERNATE A
DRAINAGE ON INTERVALE ROAD

Public Works Director, Paul DegliAngeli, and North Conway Water Precinct Superintendent, David Bernier, were present for discussion.

Mr. Hounsell moved, seconded by Mr. Drinkhall, that we remove from the table the item listed as #4. (Motion that the town does not construct the portion of project 6 of the NCWP identified as alternate A at this time). **The motion carried unanimously.**

Mr. Hounsell made a motion, seconded by Mr. Dickinson, to move the question. The motion carried unanimously.

The Board next voted on the motion. **The motion failed 0-5-0.**

Mr. Hounsell moved, seconded by Mr. Drinkhall, that we participate with the North Conway Water Precinct to complete Alternate A of Project 6 and acquiesce to Parks Construction bid. The Board questioned the bid and final price. Mr. DegliAngeli advised final price to town is \$327,475. Mr. Hounsell commented it is essential to get this project done. Mr. Hounsell further added he did speak with other local contractors and this company will be using locals for things in this project. **The motion carried 5-0-0.**

SOBRIETY CHECKPOINT

Mr. Dickinson stated he felt many people were concerned with the checkpoint that took place on the 13th of June. Mr. Dickinson advised that he spoke with Mr. Sweeney at the State level on this matter to inquire who was involved with this and was advised the State Police. Mr. Dickinson asked that that this be located somewhere else next time so that it is not in the middle of town and won't be so disruptive and more organized.

OLYMPIC LANE – REVIEW OF REQUESTED INFORMATION FROM STAFF REGARDING HAMMERHEAD ON EAST SIDE OF OLYMPIC LANE

Mr. Hounsell stated that due to the way the meeting ended in non public session on June 10, 2008 he would like to make a motion. **Mr. Hounsell moved, seconded by Mr. Drinkhall, to come out of non public session on the matter of Olympic Lane. The motion carried 5-0-0.**

Mr. Drinkhall made a motion, seconded by Mr. Dickinson, to forego Paul DegliAngeli's presentation. Mr. Hounsell stated he wants to see the presentation. There was brief discussion. **Mr. Dickinson withdrew his second and Mr. Drinkhall with motion.**

Mr. Dickinson moved, seconded by Mr. Weathers, that the Town not take over Olympic Lane. Mr. Dickinson suggested we may be able to help by speaking to the school to convince them not to block off this area and this would help with Ms. Sell's problem. Mr. Dickinson further commented that all this construction, etc., is extra added expense to the town that could be spent elsewhere. Ms. Sell stated that is was her understanding that a vote already taken was made to take over the road. The Board held a brief discussion. **Mr. Weathers withdrew his second and Mr. Dickinson withdrew his motion.**

Mr. Dickinson moved, seconded by Mr. Weathers, that we rescind previous action taken on February 5, 2008 whereby we took over Olympic Lane. There was

discussion. Mr. Sires referred to the memo he had forwarded previously regarding the RSA's cited by Ms. Sell. The Board discussed whether the motion on the table would cancel out any action. Mr. Dickinson stated that by rescinding the motion we are clarifying and we can stop the process. Mr. Weathers agreed. There was further brief discussion and a vote was taken. **The motion carried 4-1-0 with Mr. Hounsell voting in the negative.**

Mr. Drinkhall moved, seconded by Mr. Dickinson, that the town not take over Olympic Lane. The motion carried 5-0-0.

Ms. Sell asked for a consultation with Town Attorney Peter Malia as she felt this would be a hardship to those on Olympic Lane.

Mr. Dickinson left the meeting at 6:45 p.m.

Mr. Hounsell moved, seconded by Mr. Weathers, to direct staff to seek the legality of the action we just took. The motion carried 4-0-0

Russ Seybold, owner of Conway Scenic Railroad, spoke. He stated he had not axe to grind and will listen to the process. In this particular case he stated he felt there seems to be a conflict between a residential property and the school district. Mr. Seybold further commented that he felt the town fathers need to make it work best as they can and the Selectmen need to solve the problem that exists.

REVIEW OF STAFF DESIGN FOR ACCESS CONTROL IN FRONT OF TOWN HALL

Public Works Director, Paul DegliAngeli, briefly reviewed plans with the Board for curbing, striping, and access control in front of Town Hall. **Mr. Hounsell moved, seconded Mr. Drinkhall, to extend curbing and sidewalk approximately 20' in a southerly direction across the front of Town Hall property to the corner of Frye's store. The motion carried 4-0-0.**

CONSIDERATION OF RECOMMENDATIONS FOR APPOINTMENTS TO CONSERVATION COMMISSION AND ZONING BOARD OF ADJUSTMENT

Mr. Hounsell moved, seconded by Mr. Drinkhall, to appoint John Colbath and Sheila Duane to full time positions on the Zoning Board of Adjustment. (Three year terms). The motion carried unanimously.

Mr. Hounsell moved, seconded by Mr. Drinkhall, to reaffirm Carol Lyman, Rob Adair and Charles Broomhall to the Conservation Commission for three year terms and to appoint Conrad Briggs to a one year term on the Conservation Commission. The motion carried unanimously.

REVIEW AND CONSIDERATION OF REVISION TO PURCHASING POLICY

It was agreed this agenda item would be rescheduled.

DISCUSSION OF THE CAPITAL IMPROVEMENT COMMITTEE MEMBERSHIP

It was agreed this agenda item would be rescheduled.

DISCUSSION OF SELECTMEN'S REPRESENTATIVE TO VALLEY VISION

It was agreed this agenda item would be rescheduled.

TOWN MANAGER REPORT

Governor Lynch Letter – Mr. Sires reported the Town received a letter from Governor Lynch in response to the letter the Board sent asking not to accept any new applications for methadone clinics. Governor Lynch advised in his letter that he is asking NHHHS Commissioner Nick Toumpas and Attorney General Kelly Ayotte to review and make recommendations on this request.

Fuel Costs - Mr. Sires reported the Town has joined a community coop this year for fuel which has worked for some other area agencies in Town in the past. A price of \$4.67 per gallon for lock has been secured; however we don't have to take use this service and can sit on this and wait until the summer to see what happens. The Board agreed they are okay with waiting to see what summer brings.

Heating Oil and Propane Planning – Mr. Sires reported an initial meeting for Heating Oil and Planning (HOPP) meeting was held on June 18, 2008 and there was a good turnout for this initial meeting. The next meeting is scheduled for July 23, 2008 if any member of the Board would like to be there. Also, they would like to have a forum in August regarding financial management, etc, to plan for winter.

Town Manager Evaluation – Mr. Sires advised that paperwork for his evaluation was distributed last week and should be in the Selectmen's mailboxes.

BOARD REPORTS AND COMMENTS

Planning Board – Mr. Drinkhall reported the Planning Board discussion regarding the MWV Economic Council expansion was continued to the 7/10/08 meeting. Mr. Drinkhall also reported the Planning Board approved the Pittsfield Aqueduct tank project.

Olympic Lane – Mr. Hounsell commented that he felt there were other options regarding Olympic Lane. The parties could work out a private arrangement. Mr. Hounsell further commented we didn't leave this unattended and we have spent considerable time on this matter. Also, there is a business abutter who could facilitate the grievance by Ms. Sell.

Conservation Commission – Mr. Weathers reported there will not be a Conservation Commission meeting in July.

Washington Street Park - Mr. Weathers reported the town will be fixing the pillar at Washington Street Park which was damaged in an accident.

Red Jacket – Mr. Drinkhall questioned if there has been any answer on the fees with regard to the Red Jacket matter. Mr. Sires advised that he will check with Town Counsel on this matter and advise.

Heath Road/Motion on the Table – Mr. Martin reviewed the motion on the table concerning Heath Road with the Board. **Mr. Hounsell moved, seconded by Mr. Drinkhall, to take item 3 off the table.** (Item #3 - To grant second driveway with conditions at 77 Heath Road). **The motion carried unanimously.** The Board next proceeded to vote on the motion on the table and the **motion carried unanimously.**

Parks Commission – Mr. Hounsell stated it is his understanding that the Parks Commission wants a letter before they proceed with making recommendations as requested by the Board. Mr. Hounsell stated he has a problem with this and asked what is wrong with a telephone call.

PUBLIC COMMENTS AND MEDIA QUESTIONS

Casey Conley of the Conway Daily Sun asked for clarification on why the people from Hale Estates were in attendance. The Board explained they had not recommended the taking the roads on the last warrant. The Hale Estates Homeowners wanted input on what to do next year to get a recommendation if they put forward another petitioned article.

Mr. Conley questioned if there is a legal issue with rescinding a previous action regarding the Olympic Lane matter. The Board advised they are checking with legal counsel. Mr. Hounsell also advised that this Board works with *Roberts Rules of Order* and the chair ruled we could do so and it was allowed.

ADJOURN

At 7:15 p.m. **Mr. Drinkhall moved, seconded by Mr. Weathers, to adjourn the meeting. The motion carried 4-0-0.**

Respectfully submitted,

Karen J. Hallowell
Executive Secretary