

**Minutes of Meeting**  
**CONWAY BOARD OF SELECTMEN**  
February 15, 2011

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, Howard C. Dickinson, Robert Drinkhall and Michael DiGregorio; Town Manager, Earl W. Sires; and Recording Secretary, Holly Meserve.

PLEDGE OF ALLEGIANCE

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

CONSENT AGENDA

A. Signing of Documents:

1. Application for Current Use Map/Lot 12/57
2. Permanent Application for Property Tax Credit/Exemptions Map/Lot 219-97
3. Permit to Sell Raffle Tickets/Friends of Conway Rec/Drawing 3/19/11

B. Manifest dated 2/17/11

**Mr. Drinkhall moved, seconded by Mr. Dickinson, to sign the Current Use application for Map/Lot 12-57; the permanent application for property Tax Credit/Exemption for Map/Lot 219-97; the permit to sell raffle tickets/Friends of Rec; and the manifest dated 2/17/11. The motion unanimously carried (5-0-0).**

REVIEW AND CONSIDERATION OF SPECIAL EVENT APPLICATION(S)

**Mr. Dickinson moved, seconded by Mr. Drinkhall, to approve the Special Event Application for Up North Orienteer's. Motion unanimously carried (5-0-0).**

CONSIDERATION OF MINUTES

**Mr. Drinkhall moved, seconded by Mr. Dickinson, to approve the Minutes of 1/25/11 as written. Motion carried with Mr. Martin abstaining from voting (4-0-1).**

UPDATE ON STREETLIGHT PROJECT

Mr. Sires stated he asked PSNH for an update on their removal of street lights. Mr. Sires stated that he does not think the removal has been completed, but he does not have an update yet. Mr. Sires stated that he did look at the billing and it looks appropriate as they have removed lights from the list. Mr. Sires stated that they have not received bills from NHCOOP as yet and he does not know if they have completed the removal.

**Adopted: March 15, 2011 – As Written**  
**BOARD OF SELECTMEN – FEBRUARY 15, 2011**

Mr. Sires stated he would recommend looking at the cost of removing the Town fixtures and pedestals in the spring. Mr. Sires stated they look like they are unmaintained and we are receiving many calls that they are out. Mr. Sires stated it is a good idea to remove them and maybe store them at the Whitaker Barn. Mr. Martin stated a licensed contractor or the NHCOOP, depending on the maintenance agreement, should remove them.

Mr. Sires stated that the light that illuminates the flag at Town Hall is on and is an LED light.

Mr. Weathers asked if Mr. Sires reviewed the lights at the corner of Hobbs Street and West Main Street and the corner of Kennett Street and West Main Street. Mr. Sires answered in the negative and stated he would try to get down there. Mr. Drinkhall asked if we knew where PSNH is on removing the lights. Mr. Sires stated that he is trying to get that information, but has not heard from them yet. Mr. Martin stated the NHCOOP has an accurate assessment of what lights the Town of Conway pays for.

Mr. Dickinson stated there is a very dark spot on West Main Street and he is not sure if it is out or if it was one that was removed. Mr. Sires stated they will look into it. Mr. Dickinson stated that it is located around 203 West Main Street and the Pole number is 333-358. Mr. Drinkhall stated he would have a problem with turning it on. Mr. Dickinson stated Maureen Seavey has said there were a lot of lights left on unnecessarily on Seavey Street and if removing them could leave the one on West Main Street on. Mr. Martin stated Seavey Street is a cantankerous intersection that she is speaking of.

REVIEW OF ZONING WARRANT ARTICLES

Thomas Irving, Planning Director, appeared before the Board. Mr. Irving stated there were no petitioned articles submitted and there are only two zoning articles, both proposed by the Planning Board. Mr. Irving stated amendment #1 was requested by the owner and the Board concurred. Mr. Weathers stated part of the campground is in the floodplain. Mr. Irving stated that it is entirely within the Floodplain Conservation District and the wetland regulations still apply.

Mr. Sires asked if they could expand. Mr. Irving stated the overlay districts restrict construction. Mr. Martin asked why you would want to change the zoning. Mr. Irving stated it is a commercial use in an area not zoned commercial and it is treated as a nonconforming use. Mr. Martin stated this is a cleanup issue. Mr. Irving stated the use will no longer be nonconforming based on the Residential Agricultural District.

Mr. Sires asked how does this benefit the landowner and how does this benefit the Town. Mr. Irving stated for the owner it is one less set of restrictions that applies to the property; as for the community it may not be as much of a benefit as he can do what he wants to anyway. Mr. Martin stated it would be less time consuming for staff as they don't have to go through so many processes. Mr. Irving stated under grandfathering statutes they are still allowed to continue with the use and can make expansions, but very restricted in what they can do.

**Adopted: March 15, 2011 – As Written**  
**BOARD OF SELECTMEN – FEBRUARY 15, 2011**

Mr. Sires asked would this enable them to add more camp spaces. Mr. Irving stated he might be able to add more camp spaces, but he could also have added them without this change if they were found to be accessory to the existing facility. Mr. Irving stated that this particular zoning restriction would not prohibit the expansion, but the Floodplain Conservation and the Wetland and Watershed Protection Overlay Districts are still in effect. Mr. Irving stated this makes it easier for a more intensive use of the site because it would be considered commercial.

Mr. Sires asked if there are other commercial zones next to the river. Mr. Irving answered in the affirmative. Mr. Martin stated this is basically a process to cleanup so this doesn't have to go back to square one regarding nonconformity. Mr. Irving agreed, but it would still have to go through the floodplain and wetland process. Mr. DiGregorio asked do you foresee a big box store down there knowing the restrictions on the property. Mr. Irving stated the floodplain prohibits structures, however, a building would require a variance or a special exception from the Zoning Board of Adjustment.

Mr. Dickinson stated just by changing this not necessarily going to see a commercial use. Mr. Irving agreed and stated they still have floodplain and wetland issues. Mr. Irving stated commercial campgrounds are only permitted in the commercial districts and most all of our campgrounds are nonconforming. Mr. Weathers stated structures have negative impact on the floodplain and the wetland districts. Mr. Irving stated the floodplain conservation district restricts structures.

Mr. Irving stated amendment #2 changes the criteria's for an accessory apartment. Mr. Irving stated after seven or eight years of dealing with this section of the ordinance we have determined that it is not feasible to have the applicant obtain a septic approval prior to the Zoning Board of Adjustment application as they don't know if they would be granted a special exception. Mr. Irving stated that the Board has been making that requirement a subsequent condition. Mr. Irving stated also the building permit requires a septic approval.

Mr. Irving stated the second change to this section is the elimination for accessory apartment form. Mr. Irving stated that you still need to apply to the ZBA, but the information asked on the form is redundant and some is premature. Mr. Irving stated most of the information asked for will be required on the building permit application.

Mr. Sires stated this is not on the agenda, but asked Mr. Irving to give the Board a heads up on changes to the site lighting code [§123-26]. Mr. Irving stated the best way to deal with lighting was in the Site Plan Review Regulations. Mr. Irving stated the purpose and intent was to facilitate energy efficiency, eliminate light trespass, and embrace and incorporate dark skies.

Mr. Irving stated that the amendment establishes maximum size/intensity; maximum lighting budget for an entire site based on disturbed area; approved light fixtures; light trespass; and a more uniform maximum height. Mr. DiGregorio stated most lights on Route 16 will not be in compliance with the 25-foot maximum height requirement. Mr. Irving stated these regulations do not apply to road right-of-ways.

**Adopted: March 15, 2011 – As Written**  
**BOARD OF SELECTMEN – FEBRUARY 15, 2011**

Mr. DiGregorio asked if these regulations would apply to residential properties. Mr. Irving answered in the negative and stated they would apply to multi-family or commercial properties. Mr. DiGregorio asked how they would affect a baseball field with lights. Mr. Irving stated if it was proposed by a local government on government land the regulations would not apply, but a private property would require applying for waiver from the Planning Board.

Mr. Martin suggested adding language that indicates that the lighting fixtures shall be installed to the manufactures specifications as they could tip them back. Mr. Irving stated he would suggest that to the Board. Mr. Irving stated the public hearing for this amendment will be on February 24, 2011 at the Planning Board Meeting.

APPROVE AND SIGN THE 2011 WARRANT

Mr. Sires submitted the final version of the warrant to the Board. **Mr. DiGregorio made a motion, seconded by Mr. Drinkhall, to approve the 2011 Warrant. Motion unanimously carried (5-0-0).**

UPDATE ON KEARSARGE METALLURGIC PROPERTY

Mr. Sires stated with the help of Ray Burton we were able to arrange a meeting on March 10<sup>th</sup> with NHDES and the EPA. Mr. Sires stated they are still hesitant to meet with the Board and want to iron out the process first. Mr. Sires stated they want to outline in more detail the technical process and then have the public hearing to brief the community.

TOWN MANAGER REPORT

Mr. Sires stated we have created an information package for the deliberative session and it has been expanded upon from last year. Mr. Sires stated that they added a narrative section on the warrant articles that the Town is putting forward that explains them in plain English. Mr. Sires stated that this information package will be available around Town and on the web.

Mr. Sires stated we have been experiencing theft of materials from the landfill and the Police set up cameras and have recorded theft. Mr. Sires stated that he just wants the public aware that there are cameras at the landfill.

Mr. Sires stated Shawn Thomas of Congressman Frank Guinta's office will be here tomorrow at 11 am.

Mr. Sires stated there was a meeting of the Solid Waste District and they still have concerns about the transfer station hours. Mr. Sires stated that they had concerns about the role of this committee and they seemed to think the committee should be involved in commenting on the operational changes. Mr. Sires stated his opinion is that this committee deals with long range planning, but is not involved in the operation or decision making. Mr. Sires stated that we agreed to have this reviewed by a third party.

BOARD REPORTS AND COMMENTS

Mr. DiGregorio stated we asked Mr. Sires to send letter to Budget regarding the lack of appointing members and they did appoint someone.

Mr. DiGregorio stated he did some research on insurance and sidewalks and their stance is you can get sued for anything. Mr. DiGregorio stated that the Town needs a policy. Mr. DiGregorio stated he interprets RSA 231:90 that we are responsible to take care of the sidewalks. Mr. DiGregorio stated he interprets RSA 231-92-A as the Selectmen's gross failure of not maintaining them. Mr. DiGregorio stated he would hate to see sticking our necks out there by not taking care of what we are supposed to be taking care of. Mr. DiGregorio stated we should have legal opinion if this is not clear that we need to take care of our sidewalks.

Mr. Drinkhall stated RSA 231-92 is another unfunded mandate from the State. Mr. Martin stated that this pertains to something that you have opened and maintained, but if not open or maintained then the liability is not there. Mr. Martin stated if you clearly are not maintaining something then he doesn't think the liability issue comes into play. Mr. Martin stated this sidewalk was never maintained and the only time it was cleaned was after there was snow removal. Mr. Martin stated he believes it would be more liable if it was a messy job then if you didn't maintain it.

Mr. Drinkhall read RSA 231-90. Mr. Martin stated if you are using it, but we're not using it. Mr. Martin stated we meet ADA by having the other side open. Mr. DiGregorio stated the law doesn't say if you disregarded it for 100 years you can disregard it for another 100 years. Mr. DiGregorio stated we need to have a policy in place, which we don't. Mr. DiGregorio stated if we look the other way we are being negligent.

Mr. Sires stated there are different views and it is open to interpretation. Mr. Sires stated we do have a winter maintenance policy, but nothing on sidewalks. Mr. Sires stated we need to take a look at it in more detail and help you decide what your responsibilities are and budgeting. Mr. Sires stated there is some lack of clarity on this; what is clear is we cannot have business owners maintaining their sidewalks. Mr. Sires stated we need to explore more and develop a policy.

Mr. Martin stated businesses can be required to clean their sidewalks. Mr. DiGregorio stated not in New Hampshire. Mr. Martin stated we should look into this. Mr. Martin asked what the difference is when we close a road for winter and closing one sidewalk out of two. Mr. Sires stated the difference is under law you can close certain roads and if you had a sidewalk along one of those roads you wouldn't have to maintain it, but that is on a road classification.

Paul DegliAngeli stated there are two classifications of town roads; class IV and class V. Mr. DegliAngeli stated class IV has a subcategory that includes roads to summer cottages and those roads are maintained in the summer only and closed in the winter. Mr. DegliAngeli stated that he cannot draw parallel to sidewalks on both sides and not maintaining one side.

**Adopted: March 15, 2011 – As Written  
BOARD OF SELECTMEN – FEBRUARY 15, 2011**

Mr. DegliAngeli asked if it is responsible to expect people to travel on one side Kearsarge Road, which is a two lane road, or Route 16 which is a four lane road. Mr. DegliAngeli stated why be more stringent on sidewalks then on roads. Mr. DiGregorio stated the area of sidewalk we are discussing we are ignoring. Mr. DegliAngeli stated we need to develop a policy. Mr. DegliAngeli stated it is hard to keep consistency when we contract out the maintenance of the sidewalk. Mr. Weathers stated this will be discussed again when we are developing a policy.

Mr. Dickinson stated David Tillie from Congressman Frank Guinta's office will be here on Thursday. Mr. Dickinson stated that the New Hampshire Municipal Association has filed a lawsuit against the State regarding retirement contributions.

Mr. Drinkhall reviewed the last budget committee meeting on Sunday, February 13, 2011. Mr. Drinkhall stated after several motions, the Committee agreed on \$29,445,982 (6-4-0) for the school budget.

Mr. Martin stated the Board should review the Board of Selectmen etiquette and see what is required. Mr. Martin stated that we are not driving the bus, staff is driving the bus. Mr. Martin stated that we are the keeper of the funds and we are not supposed to micromanage or tell staff how to do their jobs. Mr. Martin stated that we have a variety of opinions and when the vote is done it should be done and we shouldn't keep revisiting it.

Mr. Martin stated we cannot lose track of why we are here. Mr. Martin stated our job is for the good of everyone and not just the squeaky wheel and not our personal belief. Mr. Martin stated you should look at your Selectmen's policy and see why we are here.

Mr. Weathers stated the Citizen Design Review Committee met today looking for direction from the State in regard to what the impact would be if they build just the southern section bypass. Mr. Weathers stated there is no date for funding for the central and northern sections. Mr. Weathers stated the model they are going to use will be based on the 2005 data and they will bring back information in the fall. Mr. Weathers stated we asked about reactivating the rail system.

PUBLIC COMMENTS AND MEDIA QUESTIONS

Eric Eisele of the Conway Daily Sun asked if the meeting regarding the Kearsarge Metallurgical Property was going to be an open meeting. Mr. Sires stated he would check.

ADJOURN

**The Board adjourned without objection at 5:40 pm.**

Respectfully submitted,

Holly L. Meserve, Recording Secretary