

**Minutes of Meeting
CONWAY BOARD OF SELECTMEN**

June 15, 2010

The Selectmen's Meeting convened at 4:04 p.m. in the Meeting Room of Conway Town Hall with the following present: Selectmen, Larry Martin (Chair), C. David Weathers, Howard C. Dickinson and Bob Drinkhall,; Town Manager, Earl W. Sires; and Recording Secretary, Karen Hallowell

Selectman, Michael DiGregorio, was not present due to another obligation.

PLEDGE OF ALLEGIANCE

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

CONSENT AGENDA

A. Signing of Documents

1. Tax Abatements:

- a. Map/Lot 218-94
- b. Map/Lot 232-34
- c. Map/Lot 202-212
- d. Map/Lot 246-62

Mr. Weathers moved, seconded by Mr. Dickinson, to grant the tax abatements. The motion carried 4-0-0.

2. Elderly Exemption(s)

Mr. Drinkhall moved, seconded by Mr. Weathers, to accept the elderly exemption applications. The motion carried 4-0-0.

3. Ratification of:

- a. Timber Tax Warrant and Certifications
- b. Abatement for NH Electric Co-op
- c. Abatement for M/L# 276-93.1
- d. Abatement for M/L# 254-29.192
- e. Abatement for M/L# 203-146
- f. Abatement for M/L# 299-85
- g. Abatement for M/L# 276-93.1
- h. Intent to cut for M/L# 284-21
- i. Intent to cut for M/L# 262-9
- j. Application for Veteran's Credit M/L #240-40

Mr. Weathers moved, seconded by Mr. Drinkhall, to accept the documents. The motion carried 4-0-0.

B. Consideration of Bills:

1. Manifest dated 6/17/10

Mr. Drinkhall moved, seconded by Mr. Weathers, to approve the signing of the manifest dated 6/17/10. The motion carried 4-0-0.

2. Ratification of Manifest dated 6/10/10

Mr. Drinkhall moved, seconded by Mr. Dickinson, to ratify the manifest of 6/10/10. The motion carried 4-0-0.

REVIEW AND CONSIDERATION OF SPECIAL EVENT APPLICATION(S)

A. Conway Village Chamber of Commerce Concert in the Park – July 5, 2010 – **Mr. Weathers moved, seconded by Mr. Drinkhall, to grant the permit for the Conway Village Chamber of Commerce Concert in the Park. The motion carried 4-0-0.**

B. Conway Village Chamber of Commerce Annual village Festival Soup-A-Thon – June 26, 2010 – **Mr. Drinkhall moved, seconded by Mr. Weathers, to grant the permit for the Conway Village Chamber of Commerce Annual Village Festival and Soup-A-Thon. The motion carried 4-0-0.**

CONSIDERATION OF MINUTES

The Board considered the minutes of 3/30/10 and 5/11/10. **Mr. Drinkhall moved, seconded by Weathers, to approve the minutes of 3/30/10 and 5/11/10. The motion carried 4-0-0.**

Consideration of the minutes of 5/4/10 will be held until the next meeting.

PUBLIC HEARING: BEAR/WILDLIFE CROSSING
SIGNS ON WEST SIDE ROAD

Mr. Martin read aloud the public hearing notice regarding Bear/Wildlife signs on West Side Road and opened the hearing at 4:15 p.m.

Mr. Dickinson moved, seconded by Mr. Drinkhall that we install a bear crossing sign in the area of Justamere Road and at the north end in from River Road on the West Side Road.

Mr. Weathers advised that he had a couple of people speak to him stating that the signs will attract people to the area to look for bears. Mr. Weathers further commented that there are 52 signs on West Side Road at this time. Mr. Weathers further added that previously the Board had discussion regarding Share the Road signs and this was turned down and these were for cyclists. Mr. Weathers stated he has been out on this road; there are bears occasionally, but no more than other areas. Mr. Weathers further reiterated that the signs may attract more traffic.

Mr. Dickinson stated he feels there is a difference between bears and cyclists as bears do not stop.

Mr. Drinkhall stated he is on the fence on this issue due to the request from others asking for signs and the Board not granting them. However, he understand the need for the bear crossing signs.

Mr. Martin asked for public comments.

Bill Cuccio of the Lobster Trap Restaurant stated that he is closely identified with this issue because of his location. Mr. Cuccio stated the Lobster Trap would be willing to absorb the cost of the signs as he thinks this should not be a cost to the taxpayers. He feels this is a public safety issue for motorists, motorcyclists, etc and also a safety issue for the bears. Mr. Cuccio added that it is not his intention to bring attention to this to draw more traffic. Mr. Cuccio further added he would like to sleep at night knowing the area is safer for motorcycles. He does not want to see a bike or a bear outside on the road.

Animal Control Officer, Betty Holmes, stated the reason they wanted the signs is because of the area. We know this area is heavily traveled by bears and this is a public safety issue.

There were no further public comments and the public hearing was closed at 4:18 pm.

Mr. Martin stated he agreed with Mr. Drinkhall regarding the fact that others had asked for signs along this road before and were turned down. However, there is no opposition from the public to the signs here today.

The Board proceeded to vote on the motion and the **motion carried 3-1-0** with Mr. Weathers in the negative.

There was next a brief discussion regarding the cost for the signs. Mr. Cuccio again offered to pay for the signs and stated the Town could send the bill to him.

RAFFERTY'S CONDITIONAL LICENSING AGREEMENT: OUTDOOR SEATING

Linda Rafferty, of Rafferty's Restaurant, was present for discussion.

Mr. Sires reviewed this agenda item is in regard to a proposal by Rafferty's Restaurant on Kearsarge road. Rafferty's would like outdoor seating and this would be in the Town's right of way. Mr. Sires advised that he spoke with Public Works Director, Paul DegliAngeli, and he is feels there is room for the seating. Mr. Sires reviewed that the Town does have other similar Conditional License Agreements. Mr. Sires next advised that if this Board approves the proposed Conditional Licensing Agreement between the Town and 36 Kearsarge Realty Trust (Rafferty's), this will then go to the Planning Board for review.

Mr. Sires next reviewed the proposed Conditional License Agreement with the Board. Mr. Sires reviewed that the Agreement is valid until the Town asks for it to be revoked. Mr. Sires reviewed this will allow Rafferty's to have seats outside for the summer. Mr. Weathers questioned if this is only for tables and chairs and no dividers. Linda Rafferty responded in the affirmative.

Mr. Drinkhall moved, seconded by Mr. Dickinson, to grant the Conditional License Agreement for Rafferty's. Mr. Drinkhall noted that in the Agreement Kearsarge Road is actually Kearsarge Street. Mr. Weathers questioned if there is a seasonal cut off for the outdoor seating. Ms. Rafferty advised that she will only have the seating out in good weather in the summer and maybe during foliage and then the seating will be back inside. **The motion carried 4-0-0.**

The Board next briefly discussed the outdoor seating at Conway Café in Conway Village.

SUBDIVIDER IMPROVEMENT AGREEMENT – TOWN OF CONWAY/CVFD/PAUL
AND KATHLEEN BROWN, CO TRUSTEES
OF THE RIVER VALLEY REALTY TRUST

Mr. Sires reviewed this subdivision came before the Board several years ago and there was discussion regarding a fire pond and, often, as a condition of approval the Planning Board will ask for a fire pond. Ordinarily this will be part of the subdivision plan and/or this did not happen the way the Fire Chief at that time wanted it and now they will give the town surety which covers their responsibility to build this fire pond. Mr. Sires reviewed that if it is not done by 2014 the Town will revoke the bond and do the work ourselves. Mr. Sires reviewed that also included with the Subdivider Improvement Agreement is a Easement Deed. **Mr. Drinkhall moved, seconded by Mr. Weathers, to accept the Subdivider Improvement Agreement. The motion carried 4-0-0.**

REVIEW AND CONSIDERATION OF JOINT MAINTENANCE AGREEMENT BETWEEN
THE TOWN OF CONWAY AND STATE OF NEW HAMPSHIRE, DEPARTMENT OF
ADMINISTRATIVE SERVICES REGARDING THE COURTHOUSE PROPERTY

Mr. Sires reviewed the history regarding the Courthouse Property in Conway. Mr. Sires advised that in 1988 the voters approved a bond and the courthouse was built and we then leased same to the State of NH. The original lease called for the Town to turn over the land and building once the bond was satisfied. Mr. Sires reviewed that the proper maps regarding this could not be located and this property had to be resurveyed. Mr. Sires next reviewed that once the property is turned over to the State we will share in the maintenance of the parking area and, also the State will have an easement to use the walkway etc. Mr. Sires next reviewed that the proposed Joint Maintenance Agreement also includes a Deed where we give the State title to the property and give the easements. The Joint Maintenance Agreement is a so that we cooperate as co-tenants to the property. Mr. Sires next reviewed the Joint Maintenance Agreement and Deed with the Board. **Mr. Drinkhall moved, seconded by Mr. Dickinson, to accept the Joint Maintenance Agreement as presented.** There was brief discussion by the Board as to what happens if the State does not keep up with the payment agreement and/or if they decide not to fund and the Town ends up with all the costs. Mr. Sires reviewed that we may need to pave the area at some point and this will depend on voter approval. We will have to hope for the best as the Town is in the same situation as the State in this regard. **Mr. Drinkhall amended the motion, seconded by Mr. Dickinson, to accept the Joint Maintenance Agreement and Deed as presented. The motion carried 4-0-0.**

KEARSARGE METALLURGICAL PROPERTY ACQUISITION AND DISPOSITION
PROCESS

Mr. Sires reported he has been working with Attorney David Hastings regarding the Kearsarge Metallurgic site. The Board has previously asked if we can put the property back on the tax rolls and how this would work. Mr. Sires next reviewed a memo from Attorney Hastings concerning the matter with the Board. (See attached). Mr. Sires next reviewed there are interested parties in the property. Mr. Sires next reviewed this Board is not committed to doing this until the Board signs a deed. Mr. Martin questioned if the town will incur costs if we start the process. Mr. Sires advised there are legal costs but after the sale the town will recover the costs. **Mr. Drinkhall moved, seconded by Mr. Weathers, to direct staff to proceed with the acquisition of the Kearsarge Metallurgic property and subsequent disposal.** Mr. Drinkhall stated that different attorneys sometimes have different opinions and questioned what happens if the buyer backs out at the last minute after we take possession. Mr. Sires advised that Attorney Hastings advised we have the paperwork signed prior to taking the property. **The motion carried 4-0-0.**

MISCELLANEOUS DISCUSSION

Boy Scout Troop 150 - Mr. Martin acknowledged a Boy Scout in the audience from Troop 150. It was advised that this Boy Scout is going to his merit badge regarding community citizenship. Mr. Martin thanked the Boy Scout for coming to the meeting today.

Balloon Festival – Mr. Weathers commented on the Balloon Festival over the weekend. He stated it was his understanding it was supposed to be three days. Mr. Weathers went up to North Conway a couple of times on Sunday and nothing was there; however, Friday and Saturday there was a lot of activity.

DISCUSSION OF TAX STATUS OF STARTING
POINT/COVERED BRIDGE REALTY TRUST

Tax Assessor, Tom Holmes, joined the meeting.

Mr. Holmes advised that annually charitable organizations have to file applications with the Assessor's office to determine if they are charitable, etc.

Mr. Holmes next advised that the transfer of Starting Point to their new location has caused a problem because somewhere along the line they were advised to put property into a trust. This causes a problem because it is now in the name of the trust and not a charitable organization. Mr. Holmes advised the Covered Bridge Realty Trust beneficiary is 100% Starting Point. Mr. Holmes advised that he has contacted the Department of Revenue Administration, has researched case law, etc., and can't find his way clear to exempt the property because of the title issue. Mr. Holmes stated he is here to ask the Board, who does have authority for good cause shown, to exempt the property. **Mr. Drinkhall moved, seconded by Mr. Weathers, to grant the tax exempt status for the Covered Bridge Realty Trust who is 100% affiliated with Starting Point.** Mr. Dickinson asked about the Trust. Mr. Holmes explained they were advised to do this due to liability issues. Mr. Dickinson questioned if the Trust owns the land and

building and Mr. Holmes replied in the affirmative. Mr. Weathers questioned if Starting Point changes locations, would this bring this property back on the tax rolls. Mr. Holmes replied in the affirmative and advised they do have to come in annually. Mr. Dickinson questioned how much real estate there is at this location. Mr. Holmes advised it is a small lot with a house and an out building for the office.

Mr. Martin asked Mr. Holmes' opinion. Mr. Holmes replied this is a gray area not yet decided by the courts. Mr. Holmes stated we had no problem exempting Starting Point in the past and the only thing giving him pause is there is a statute allowing blind, elderly, etc, but it omits charitable. Mr. Holmes advised he does not have a problem with this so long as Starting Point continues as a charitable organization. Mr. Drinkhall questioned if Mr. Holmes spoke with the town attorney concerning this matter. Mr. Holmes he did speak with him and also to the Starting Point attorney as well as he did research on his own on this matter. Mr. Holmes advised that the Starting Point attorney will get back to him if he finds case law but he does not think there is any.

Mr. Drinkhall questioned if we should hold on this. Mr. Martin stated this would need to come back every year anyway and if we find out anything from the attorney we can bring discuss again in the future. Mr. Dickinson suggested approving this year subject to the issue being clarified in the statute. There was further brief discussion. Mr. Sires pointed out that the Board can abate for good cause shown. **The motion carried 4-0-0.**

UPDATE ON STREET LIGHT AND ENERGY CONSERVATION PROJECT

Mr. Sires reviewed a memo with the Board discussing how the Street Light and Energy Conservation Project will be handled. Mr. Sires reviewed this proposed plan handles the whole town at once and not part of the Town at a time. The Board agreed with the process as presented.

Mr. Sires next reported on a meeting held with Bill Johnstone of New Hampshire Electric Coopertive. The will be replacing the light at Schouler Park by the railroad station and, also, on the corner by the backstop. They will change three lights out to see if less maintenance, etc.

Mr. Sires next reported that Public Service of New Hampshire also has contacted the t town about relamping. Mr. Sires suggested tol wait to see about LED technology instead of relamping now to see how LED lighting works out. The Board agreed.

Mr. Sires next reviewed that the Planning Board is also looking at issues regarding lighting as the Board of Selectmen have asked –i.e. commercial lighting, etc., and the sign code. They have committees working on issues brought up by the Selectmen.

TOWN MANAGER REPORT

Valley Vision – Mr. Sires reported the Valley Vision monthly report is available for the Board's review.

Time Warner – Mr. Sires reported the Town has not received word back yet from Time Warner concerning the proposed cable contract. Mr. Sires advised that the Town had asked for money for capital equipment and Time Warner wants to audit the list. Mr. Sires further advised that we are looking at them to come over and review the list with Valley Vision and, hopefully, we can then proceed.

Road and Bridge Maintenance – Mr. Sires reported we are pouring the cement on the abutments on Tasker Hill Bridge. The Town is also working on Kearsarge. Also, we are paving the approach to the railroad on Intervale Crossroad. Mr. Martin commented on the construction on Route 302 and stated he has not hear any complaints and they are doing a good job.

Census - Mr. Drinkhall asked about the Census consequences if Conway's population goes over 10,000. Mr. Sires advised that we will no longer be in the rural category and he is not sure what the ramifications are should this happen. Mr. Sires reviewed the Town has been involved to make sure we get an accurate count and after we get the numbers they will be brought to the Board for review. Thereafter, if the Board would like to make a case for one way or the other regarding the count, the Board can do so. Mr. Drinkhall stated that the when they did the NCWP Master Plan, they calculated 9504 people. Mr. Drinkhall further added that he has been contacted four times recently by census takers and feels we might end up with a more thorough number which may put us over the limit. Mr. Dickinson stated he thought that he has heard things about road maintenance costs, etc, if we go over 10,000. Mr. Dickinson asked to find out what the impacts are if we do go over 10,000. Mr. Sires advised he will look into the compact issues with the NHDOT.

Mr. Dickinson next commented that NH revenues were \$4,000,000 behind in May and these are falling further behind and this will affect us in the long run. Mr. Sires stated that he has not received any legislative bulletins from the state; however he thinks we will receive \$30,000 to \$40,000 this year.

BOARD REPORTS AND COMMENTS

Budget Committee – Mr. Drinkhall reported the Budget Committee had a scheduled meeting on June 9; however there was not a quorum in attendance. They did still have a discussion and all members wanted something brought up again regarding the garage. The Budget Committee wanted both the Planning Board and the Garage Committee to recommend holding off on the repairs and go for the original new garage. They wanted to do a letter regarding this and they also want the Planning Board to do a letter. Mr. Drinkhall next produced a letter dated May 27, 2010 he prepared to the Planning Board for the Board's review. Mr. Drinkhall advised that he passed this information on to the Planning Board and one member, Ted Sares, commented that he felt the Selectmen should have a copy of this letter. Mr. Dinkhall next questioned if the Board would like to address this or wait until next meeting to discuss it with Paul DegliAngeli. Mr. Martin stated that out of the cage we told everyone if we didn't get the money for the new garage we would have to put money into the old garage. Then, when we talked about a special town meeting, people came out against this idea. Mr. Martin stated he understands that Mr. Drinkhall is uncomfortable with spending the money to fix the garage. Mr. Martin further added that we need to stay on track and stay with what we said we would do. Mr. Dickinson commented that if we have a good alternative we can, but we haven't heard any good ideas. Also, we never said we were going to have a

special town meeting and only discussed looking into it. Mr. Drinkhall stated he feels the criticism of this Board is incorrect regarding this Board not presenting the garage correctly. Mr. Drinkhall next stated that he also feels we could ask again next year for the garage – not using a bond article – and we would only need 50% of the voters approval. Mr. Martin stated he is not going to ask again next year and Mr. Weathers agreed. Mr. Martin added that he appreciates what everyone is saying out there but we need to go forward with this. Mr. Martin again stated that he will not come back next year after spending the money to fix the garage to ask for a new garage. Mr. Martin next suggested putting a copy of Mr. Drinkhall's letter with the minutes of this meeting. Mr. Martin read aloud the letter for the viewing audience. The Board agreed without objection to include the letter with the minutes. (A copy is attached hereto).

Mr. Sires next advised that Mr. DegliAngeli is reviewing the costs and if the bids come in low there might be an option to do other things. If this is the case, he will have some options for the Board to look at in the future. However, the primary goal is the safety issues.

Planning Board – Mr. Drinkhall advised the Planning Board did conditionally approve the Cranmore plan at their recent meeting.

Tasker Hill – Mr. Dickinson commented that he hopes the whole apron in front of the legion is put back right when construction is completed on the Tasker Hill Bridge project. Mr. Sires reported the Legion has been in contact with the Public Works Director and they are trying to come up with an amicable agreement.

O'Rourke v Town of Conway – Mr. Martin asked about the O'Rourke v Town of Conway matter. Mr. Sires review there is a mediation hearing scheduled in July. He will be attending unless a member of the Board would like to do so instead. If there is a settlement proposal after the mediation he will bring same back to the Board for review.

Next Meeting – Mr. Martin reviewed the next meeting of the Board of Selectmen is scheduled for June 29, 2010 at 4:00 p.m.

PUBLIC COMMENTS AND MEDIA QUESTIONS

There were no further public comments and no media questions.

NON PUBLIC SESSION – RSA 91-A:3:II(e)/Litigation:

At 5:34 pm, **Mr. Drinkhall moved, seconded by Mr. Weathers, to go into non public session under RSA 91-A,II(e) to discussion a litigation matter.** The session included the Town Manager, Earl Sires, Tax Assessor, Tom Holmes, and Recording Secretary, Karen Hallowell. **The motion carried by unanimous roll call vote.**

At 5:48 p.m. **Mr. Dickinson moved, seconded by Mr. Drinkhall, to return to public session. The motion carried by unanimous roll call vote.**

The Board did not discuss O'Rourke v. Town of Conway in non public. The Board did discuss litigation regarding the Walmart matter.

WALMART V. TOWN OF CONWAY

Mr. Drinkhall moved, seconded by Mr. Dickinson, to grant the Walmart tax abatements totaling up to \$240,594.10 based to the Board of Tax and Land Appeal decisions. Mr. Martin asked that the record reflect that this litigation is from 2004 and this Board decided that granting the abatements at this time is in the best interest of the town due to the Board of Tax and Land Appeals decision. The Board agreed. **The motion carried 4-0-0.** The board signed the abatements

Mr. Holmes briefly discussed other abatement applications filed in town.

ADJOURN

At 5:50 p.m., the meeting was adjourned at the call of the Chair.

Respectfully submitted,

Karen J. Hallowell
Executive Secretary