

MINUTES OF HAVERHILL SELECTBOARD REGULAR MEETING
Monday, December 16, 2013
Draft Subject to Review, Correction and Approval at Following Meeting

Board Members Present: Wayne Fortier, Tom Friel, Lynn Wheeler, Roderick Ladd and Robert Roudebush

Town Manager: Glenn English

Administrative Assistant/Finance Officer: Jo Lacaillade

Selectboard Clerk: Karen Hyde

Members of the Public Present: Tom Cohan and Howard Hatch

Call Meeting to Order:

Chairman Wayne Fortier called the meeting to order at 6:00 pm

Pledge of Allegiance

Approval of Agenda: Robert Roudebush made a motion to accept the Agenda; seconded by Lynn Wheeler and carried unanimously.

Approval of Consent Agenda: Rick Ladd made a motion to accept the consent agenda; seconded by Robert Roudebush and carried unanimously.

Scheduled Public Appearance(s): None

Town Manager's Report: TM English presented the new policy book to the Board. He stated that he received input from Rick Ladd and followed that input somewhat. He then explained the contents of the book, which had all the policies and procedures of the Town, except the Personnel Policy, which would go into the book at a later date. He asked that the Board look over the book and if there were any suggestions, the book could be changed. He also stated that when the Personnel Policy is ready, it will go in the front of the book as a separate document. The book would be updated as policies and procedures were updated.

Pending (Old) Business:

- **Charter Cable Franchise Agreement:** Mr. Thomas Cohan from Charter Cable was attending the meeting to discuss the Charter Cable Franchise Agreement. TM English stated that there was a proposed agreement with the only debatable item being the term of the franchise agreement. Chairman Fortier asked if the Town was requesting a five-year term and was told that they were with Charter requesting a ten-year term. Mr. Cohan stated that they were requesting a ten-year term because they would be doing a major system upgrade in 2014. This upgrade, which will probably be in the second half of 2014, will double the number of HD channels and increase the capacity to carry more channels and double the internet speed. This is not something that cable companies do often; it's almost the equivalent of a new cable system. He stated that they prefer ten years, but they could live with five years. Chairman Fortier asked Mr. Cohan how many towns go with the less-than-10-year contract and Mr. Cohan stated that it was very few. Robert

Roudebush made the motion to accept the five-year Charter Cable Franchise Agreement; seconded by Rick Ladd and carried unanimously.

Public Hearing:

6:15 Pole License Revision: Lynn Wheeler made a motion to suspend the regular meeting and go into public hearing; seconded by Tom Friel and carried unanimously. The public hearing began at 6:26 PM.

Chairman Fortier: We are formally in a public hearing to amend the current pole and conduit licensing and agreements to use. We will now conduct a hearing on a Petition to universally amend the pole and conduit licenses [agreements] the Board of Selectmen or their agent has issued for poles and conduits in the public rights-of-way, to require payment of properly assessed property taxes and notify the Town of additional attachers on the poles and conduits, as required by the New Hampshire law. The Board of Selectmen received the Petition on November 18, 2013 from Mr. Glenn English. I will not read the whole Petition out loud, because it is lengthy, but there are copies available here.

Chairman: Mr. English, would you like to address the Board and explain why the licenses [and Agreements] need to be amended?

Mr. English: Thank you, Mr. Chairman. I would just remind you that the Petition was submitted by me as a citizen of the Town of Haverhill. There are copies of it in front of you. The Petition includes the language for the amendment to the pole license that allows us to comply with the new legal requirements. We have never really had our own pole license so this is really the first time we have actually instituted a pole licensing system. We have always accepted the license from the company as it was offered and our legal team is recommending that we have our own license document. The amendments proposed are in the public good because they would change the licenses [and agreements] to comply with the requirements of New Hampshire law by referencing the statutory scheme which authorizes the Town to tax entities with poles and conduit in the public rights-of-way [and others using the rights-of-way]. Additionally, the amendments would require the license holders [and those with such agreements] to notify the Town of additional attachers on the poles and conduits who have perhaps avoided taxation until now. Properly assessing property taxes against all entities using the public rights-of-way is required under the law and is in the public good.

The law of New Hampshire is clear at this time that licenses such as those held by [License/Agreement Holders] are required by law to include a section requiring the licensee to pay properly assessed real and personal property taxes. Specifically, I point the Board to the cases of N.E. Tel. & Tel. Co. v. City of Rochester, 144 N.H. 118 (1999) (“Rochester I”), Verizon New England, Inc. v. City of Rochester, 151 N.H. 263 (2004) (“Rochester II”), N.E. Tel. & Tel. Co. v. City of Rochester, 156 N.H. 624 (2007) (“Rochester III”). This requirement also covers others with agreements with the Town to use the right of way, such as gas or water companies. However, we don’t have gas or private water companies that use our right of way at present.

Additionally, RSA 72:23, I(b) currently requires that all leases or other agreements for the use or occupation of real property owned by the Town “shall provide for the payment of properly

assessed real and personal property taxes by the party using or occupying said property no later than the due date.”

The law also requires that if the leasee or person using or occupying the property fails to pay the duly assessed real and personal property taxes on the due date, the tax collector must notify the Town and the Town must terminate the lease or agreement. RSA 72:23, I(c). If you remember this matter came up with the Agricultural Lease and we are allowed, by law, to modify that to include services rendered in lieu of taxes.

The Petition to the Board of Selectmen is to universally amend the licenses [and agreements] they have issued for conduits or poles in the public right-of-way to include these requirements and the requirement for the licensee to notify the Town of additional attachers on the pole or conduit to conform to the law.

Chairman: Thank you, Mr. English.

Chairman: Is there anyone else who would like to speak? Any of our current license [or agreement] holders? Any of our citizens?

Howard Hatch: Mr. Hatch asked about lines going across private property and in the way of machinery and who do they address. He was told to get in touch with whoever owns the pole.

Chairman: Anyone else wish to speak?

Robert Roudebush asked if the amount of the taxes were being addressed in this particular Petition. TM English stated that that is decided by our Utility Assessor. For years, it was legally permissible to tax the electric companies for their poles and wires and the Town has been doing that with the special assessor who does the utilities. Recent expiration of the exception to the telephone companies has allowed the Town to now tax telephone poles and telephone companies and also allows the Town to be able to tax cable conduit and poles. The cable company probably does not own any poles.

Chairman: If no one else wishes to speak, then the hearing is now officially closed. Thank you, Mr. English. We need a motion to come back into regular session.

Robert Roudebush made the motion to come back into regular session at 6:35 PM; seconded by Tom Friel, and carried unanimously.

Chairman Fortier asked if there was any further discussion on the hearing that was just held. Robert Roudebush stated that he saw no reason why they couldn't move ahead. Lynn Wheeler made the motion to grant the Petition to Amend Pole Licenses and the Agreements to use the public rights-of-way; seconded by Rick Ladd and carried unanimously. Lynn Wheeler asked if they were going to do a supplemental tax bill for 2013 or just go ahead with this in 2014. TM English stated that it was the Board's choice; he had no idea how much money was involved. He would confer with the Town's Attorney, but he thought that they should wait until 2014. Chairman Fortier asked TM English if he

could have the information that they need from the assessor by next meeting on December 30, 2013 and TM English stated that he try to get it.

Pending (Old) Business:

- **Tax Deeds:** Chairman Fortier stated that the Board had a list of tax deeds. In the past, the Board has gone down the list individually or in groups; he would leave that entirely up the Board. AA Lacaillade stated that if the Board chooses not to take a property, they must sign a waiver individually for each property. The first property belongs to Eugene Bellis of Tannery Road. After a brief discussion, Robert Roudebush made the motion to issue a waiver to Eugene Bellis, Map 207, Lot 61, land and buildings; seconded by Lynn Wheeler and carried unanimously. Next was Mary Burke, Map 203, Lot 225, land only. Lynn Wheeler made the motion to accept a tax deed for the property; seconded by Robert Roudebush and carried unanimously. The Board then had a lengthy discussion about mobile homes in parks and what they need to do to clear up back tax issues. Next was Joanne Carter, Map 402, Lot 45; Tom Friel made the motion to issue a waiver; seconded by Lynn Wheeler and carried unanimously. Wayne Chaplin, Map 413, Lot 20-20; Robert Roudebush made the motion to issue a waiver to Mr. Chaplin; there was no second. Further discussion ensued about the lengthy list of outstanding back taxes. Rick Ladd made the motion to support taking those properties that were marked for taking; seconded by Tom Friel and carried unanimously. Rick Ladd made the motion that anyone who was making payments or was in a payment plan and following the plan would be granted a waiver; seconded by Tom Friel and carried unanimously. The property owners that would be granted the waiver are: Federal Financial/Arcangelo, Daryl Hamlett, Sonia Lapierre, John Lucio, Roy Palmer, Sandy Sargent, and Ricky Stygles.
- **Life Safety Code and Fees:** Rick Ladd stated that there were more materials to be passed out about the Life Safety Code and Fees. He stated that he had met with two of the three Fire Chiefs, Richard Morris and Brad Kennedy, as Don Hammond couldn't make it. The areas that the Chiefs recommended were: (1) Page 3, Line 29, which now reads: "11. The local fire chief, designee, or health officer has the authority to order occupants to vacate a building". The words "health officer" was added to the language as he also has that authority based on health. (2) The next change was on Page 6, Lines 11-16, which now reads: "or health officer may seek other means to meet compliance. "Any person who is found guilty of criminal mischief under section RSA 634 because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor. (RSA 634:2.IX)." (3) On Page 7, Lines 9-11, reads: "Further, the Haverhill Selectboard adopts this resolution with the intent of supporting fire chiefs, their subordinates, designees, or health officer with a consistent inspection process that better serves life, safety, and fire needs throughout Haverhill." The changes on the Fee Schedule had nothing to do with the dollars and cents; it was underneath the "Renewal and Change of Use Fee – Certificate of Compliance (all categories). (Cost for expired inspection Certificate of Compliance. Certificate of Compliance not transferable w/ownership change. Change of use may require additional hour costs.)" Rick stated that he had spoken with J. William Degnan, State Fire Marshal, about the Life Safety Code adopted in 1984, the Building Permit Ordinance and the three Fire Departments and Precinct Commissioners and the fact that the Selectboard had no authority over the Fire Chiefs. He asked the State Fire Marshal the question: "Do the Fire Chiefs have the authority to develop their own fee schedule?" The Fire Marshal stated that they did. He continued that there is a little known

piece of statute where the Chiefs are empowered to conduct a hearing for their ordinance, not the commissioners, to set their fee schedule. However, very few or any towns in New Hampshire do that because it puts the Chief in a very political position which you don't want the Chief to have to get into – setting the fees that he is going to charge. Rick asked Mr. Degnan about having a common inspector, one inspector, so there would be consistency. Mr. Degnan stated that Haverhill did not have a Building Code Ordinance, it has not been adopted. If a Fire Chief goes into a building, they go in under the guise of going after Fire or Life Safety Code. If they go in and see something contrary to the International Building Code, the Chief can write them up for it. The Town can hire a housing inspector as they have a Life Safety Code. Rick asked Mr. Degnan how the inspector was going to enforce the Fire Code and Mr. Degnan said only if the Fire Chief designates that housing inspector to enforce the Fire Code. There would be further discussion at the next meeting on December 30, 2013.

New Business:

- **Investment Policy:** AA Lacaillade presented the annual adoption of the Investment Policy with new language set by statute. Lynn Wheeler made the motion to adopt the new Investment Policy with the changes; seconded by Rick Ladd and carried unanimously.
- **Fund Balance Policy:** AA Lacaillade also presented the Fund Balance Policy, which is also mandated to be adopted annually. There is no change to the Policy itself; the only thing that the Board needed to decide on was what their goal was for fund balance retainage. The information changed a little bit this year because fund balance doesn't need to be retained for Precinct payments. The goal has been to have 4% ending fund balance; they are under that. The 4% this year would be \$459,455; they are at \$346,057, which is somewhere between 3 and 3 ½% that they are retaining. Lynn Wheeler made the motion to keep the Fund Balance Policy goal at 4%; seconded by Robert Roudebush and carried unanimously.
- **Business Survey:** Chairman Fortier stated that the Board had received the completed Business Survey. He commented that 42% of the businesses that were surveyed responded that they were seasonal. The Economic Development Committee met with Brad Allen last month and Mr. Allen indicated that if they wanted to tweak anything in the Survey, it could be done. Mr. Allen then made the suggestion that members of the Committee go to Plymouth State University to one of their computer centers; he would set them up and show them the answer as they sit there and tweak it more. One of the items was the website, which is in the process of being renovated. The Economic Development Committee is concerned about whether or not the Board really supports the effort. The Committee knows that Chairman Fortier supports the effort and they would just like to get a handle on where the rest of the Board sits with it. The next meeting of the Economic Development Committee is January 29, 2014, so the Board has time to come up with any questions they may have. By the next Selectboard meeting on December 30, Chairman Fortier was hoping for comments and questions from the rest of the Board.
- **Town Report Delivery:** Chairman Fortier stated that the 4-H group that has delivered the Town Report for the last few years is unable to do the deliveries this year. He was looking for suggestions from the Board on who could do the deliveries this year. Rick Ladd stated that there was a group at the Middle School, who takes a trip to Washington, DC and they are always looking at monies to raise for kids who don't have the wherewithal to do it. He suggested calling Brent Walker. TM English stated that the Town Reports that go to Mountain Lakes are left at the office for residents to pick up. Leaving the Town Reports at various locations could be an option. The Board would continue with this discussion at the next meeting on December 30, 2013.

Commission/Committee Reports: Chairman Fortier reported on the last big event of the 250th Committee at the Newbury Common. It was very well-attended, lots of children and a good time. There is only one item left for the 250th and that is a candlelight service at the Church in Newbury on December 29 at 7 PM.

Correspondence: Chairman Fortier stated that the Board had received a letter from Mr. David Roberts, a resident of Mountain Lakes. Mr. Roberts stated that he did not receive his tax bill in July and was requesting a waiver of the penalty fee of \$91.58 as his record of payment has been stellar for the last 12 years. Robert Roudebush made the motion to waive the fees without prejudice; seconded by Tom Friel and carried unanimously. On November 26, the Board received a letter from Tri-County Action Program giving the Board an update on their new CEO and new executive director. The Board also received a flyer from Ammonoosuc Health Services telling the Board about a change in what was scheduled to be lectured on. The date has already gone by; it was late. The Board also received a new pamphlet from Ammonoosuc Health Services about what their agency provides. Chairman Fortier also received a confidential letter from Mr. Paul Forcier of Cleveland Heights, OH, who owns property in Town. Mr. Forcier sent along a newspaper article about an ordinance taking aim at problem properties. Mr. and Mrs. Ronald Collins sent the Board a Christmas card with thanks for all that the Board, staff, and employees do.

Comments of the Public: Howard Hatch asked if he could get a copy of the Land Acquisition Report of the Airport. Robert Roudebush stated that that was an ongoing situation with Doug Henson. Mr. Hatch was told that he could come into the office and either review it or get a copy.

Comments of the Town Manager/Administrative Assistant-Finance Officer: AA Lacaillade stated that the IRS mileage rate for 2014 had changed. It was going down from \$.565 per mile to \$.56 per mile. Rick Ladd made the motion to approve the IRS mileage rate to the recommended .56 per mile; seconded by Tom Friel and carried unanimously. Rick Ladd made the motion to change the meal reimbursement limits to \$7 for breakfast, \$11 for lunch, and \$23 for dinner; seconded by Robert Roudebush and carried unanimously.

Comments of Selectboard Members: Lynn Wheeler reminded that there would be an Employee Appreciation Coffee Hour on Thursday, December 19 from 9:30 to 12:00. Rick Ladd stated that there was a wonderful memorial service for Ray Burton at Plymouth State University; it was very well done. Chairman Fortier wished everyone a Merry Christmas. Rick Ladd stated that the County Delegation would meet on Friday to look at the applications for Commissioner. He stated that they had 12 or 13 applicants.

Adjourn Meeting: Robert Roudebush made a motion to adjourn; seconded by Lynn Wheeler and all approved. Chairman Fortier adjourned at 8:30 pm.

Minutes transcribed by Karen Hyde