

HUDSON, NH BOARD OF SELECTMEN

Minutes of the May 11, 2004 Meeting

1. **CALL TO ORDER** by Chairman William P. Cole at 7:00 p.m. in the BOS Meeting Room at Hudson Town Hall.

2. **THE PLEDGE OF ALLEGIANCE** was led by Selectman Teresa Stewart.

3. **ATTENDANCE**

Selectmen: William P. Cole, Teresa Stewart, Kenneth J. Massey, Kathleen MacLean and Richard J. Maddox

Staff/Others: Steve Malizia, Town Administrator; Priscilla Boisvert, Executive Assistant; Police Captain Ray Mello; Town Engineer Tom Sommers; Sabrina O'Connell; State Representative Shawn Jasper; Michelle Champion; Linda Kipnes; Brynn Campbell; Joe MacLean; Julia MacLean; Leo Bernard; Tim Quinn; Bob Haefner; Leo Bernard; Digit Taylor; James Battis; Jean Serino; Ken Dickinson; several unidentified observers; Hunter McGee, Union Leader; Anne Lundregan, TEL

4. **PUBLIC INPUT**

Chairman Cole read a Kids' Day Proclamation that he presented to Sabrina O'Connell of Chiropractic Works, proclaiming May 22, 2004 as Kids' Day America/International in Hudson, NH and urged that this day be dedicated to the efforts of Chiropractic doctors in helping to educate citizens on the importance of health, safety and environmental issues affecting the community.

Shawn N. Jasper, 83 Old Derry Road said he was present in his capacity as State Representative to talk about the Education Funding issue. Although it would be more appropriate to address the School Board, Hudson's Senator opened this forum a few weeks ago. The solution the Legislature found after the Claremont decision has been less than satisfactory. Last year, Hudson lost about \$600,000 in State funding. Under that plan, Hudson would lose \$1.9 million this year. The School Board and Budget Committee worked to keep the growth to a bare minimum, but they could find no way to mitigate the impact of those funding cuts. SB-302 would restore only \$200,000, resulting in a property tax increase of about 85¢ per \$1,000, or about \$210 for a home valued at \$250,000. The House found those funding cuts to be unacceptable and amended the Senate Bill by funding \$28 million of additional education grants for this year by passing a cigarette tax of 17¢ per pack. The grants would still go down over time, as with the Senate plan and the tax increase would be about 7¢ in the second year and repealed after that. For Hudson, this means \$1 million more than planned for the coming year, which would reduce the property tax increase by about 50¢ per \$1,000 or about \$125 less of an increase for that \$250,000 home. For someone who smokes a pack of cigarettes a day, the increase amounts to less than \$65 per year since over 40% of cigarette sales are from out of State. Eight out of 10 Hudson-Pelham Representatives who were present voted for the cigarette tax to reduce the impact on the property taxpayer. Senator Robert Clegg is on record against the tax and said the tax was dead on arrival in the Senate. He will be heading up the Senate Committee of Conference and Hudson's property tax increase will be to no small measure in his hands. Selectman Jasper urged everyone to call or e-mail Senator Clegg to let him know whether or not they wanted the property taxpayers to bear the full brunt of the cut in State aid. Sen. Clegg's phone numbers and e-mail address can be found on the State web site on line. He's confident Senator Clegg will listen to his constituents, if a large number let him know how they feel.

His next issue had to do with the rededication of Central Fire Station, which he and Marilyn McGrath have been working on. He presented to the Board the wording for a plaque to be placed inside the station. He apologized for the long delay, and asked for an answer by the Board's next meeting on whether or not it is acceptable: Central Fire Station -- Dedicated To The Memory Of Leonard A. Smith -- July 5, 1915 -- November 10, 2002 -- Community Leader For Over 50 Years -- World War II Veteran -- Volunteer Fire Fighter -- State Legislator -- Budget Committee Member -- Planning Board Member -- Building Board Of Appeals Member -- Hills Memorial Library Trustee -- Alvirne Trustee -- Nashua Regional Planning Commission -- Designer of this and other Town Buildings.

Regarding the subject of ethics, his comments were as former Selectman and the senior member of the Joint State Legislative Ethics Committee and current chair. Selectman Massey had questioned why the Conservation Commission members didn't get a hold of members of the Board when they found out [the presentation] wasn't allowed to be taped. Many months ago, he was approached by Michelle Champion on how she could get the presentation on cable TV. He told her to talk to Coleman as the Board doesn't and shouldn't have a role in deciding what goes on community access TV. The policy should be through the Cable Committee. Since an issue had never come before the Board, he was confident in his advice to her. In conversations with Michelle, he encouraged her to get on a Selectmen's agenda. She spoke with her liaison, Selectman Massey, who worked to put that off because of busy agendas--but that didn't get the issue out to the voters, and this was a generic issue, not about a particular warrant article. It was about land preservation, which was a timely issue. When that didn't happen, they had further conversations and he told her to proceed with Coleman. It wasn't until the night of the presentation, which was the same night as Candidates' Night, when they had been told that Coleman wasn't allowed to tape it, even with his equipment, and it would not be shown on cable TV. Michelle Champion didn't find out about that until about 5:15 that evening. Obviously, there was no time to get a consensus of the Board to deal with that issue. She did try to contact him, but he wasn't home. When he got to the hall, the people had packed up and gone home. The presentation had been given without cameras. Another comment that was made was that this was going to be shown the night before the election--but it was a week before the election, so there would have been time for a differing opinion to be aired. The Board could have held a special meeting or they could have been polled to decide whether or not the presentation should be broadcast. No harm would have been done for it to have been taped. Once that was prevented, there was no way to go forward--a critical issue. At a previous meeting,

Selectman MacLean asked if the issue was Selectman Cole making the right decision or not, but the fact that he didn't have the right to make a decision at all. One Selectman had no authority under State law. It's only when three Selectmen make a decision that there is legal impact. One or two Selectmen can't do anything. And that was the findings of the Ethics Committee.

Mr. Jasper said in his role as Ethics Committee Chairman, he recused himself on the case involving Representative Kearns because of the perception that he might be too close to the issue, not because of any public declaration he had made. The ultimate result was Mr. Kearns' expulsion from the House, and then he resigned. Mr. Jasper said that Mr. Massey, who as a Selectman, was sitting in a judicial capacity, needed to have a mind set like that of a jurist. Since Selectman Massey has stated he felt Chairman Cole made the right decision, Mr. Jasper didn't think Selectman Massey should vote on the censure issue of Chairman Cole, without finding himself guilty of a misjudgment. Mr. Jasper said Selectman Massey should recuse himself because he has become too embroiled to be perceived as making an impartial judgement.

Mr. Jasper said that at the last Board meeting, he was embarrassed for the Town during a discussion of meeting rooms when a member of the clergy handed out a court decision. The Chairman had told him that a piece of paper meant nothing. While that is technically true, that person was owed the courtesy of time and consideration, and it should have been run by the attorney to see if it was valid. The Chairman simply dismissed the Pastor. There was no reason a decision had to be made that night, as there was no immediacy to the issue. The Board should have waited a couple of weeks in order to make a well thought-out decision. When someone comes before the Board, they should be listened to and dealt with appropriately, which was not the case in this instance.

No one should be dismissed in that manner and he was dismayed that no member of the Board spoke up at that time.

Michelle Champion, 7 Chiswick Road, said relative to her Ethics Complaint, which she wanted to wait until it worked its way through the process before speaking up, but after lack of action by the Board of Selectmen at their last meeting, she wanted to clarify misconceptions and ask for the Board to act. She thanked the Ethics Committee for their prompt consideration and for the thorough job they did in making a unanimous recommendation. She also thanked the newest members of the Board for having the courage to support that recommendation. She admonished Selectman Massey and Selectman Stewart for the total lack of respect they showed to the Ethics Committee in ignoring the recommendation to censure Chairman Cole. There is no point in having an Ethics Committee if they are just going to be ignored. The insinuation that her action was an attempt to get revenge on Mr. Cole for his opposition to the Nadeau Farm warrant article is an insult. Selectman Cole was on medical leave at the time of this vote, so if she was out for revenge, it probably would have been against Selectman Massey or Selectman Stewart, who voted against that article, but she is not a vengeful person. The item in *Thumbs* that stated this was an orchestrated effort to get rid of Mr. Cole was ridiculous. It was coincidence that her complaint and Jean Serino's occurred within a couple weeks of each other. She did discuss both of the matters with Jean Serino many times at great length because they were both equally outraged at Mr. Cole. She had voted for him twice in the past, but she did not like his recent behavior, and there was no conspiracy being directed by Shawn Jasper, which was implied. She has talked with Mr. Jasper about this matter three times—the night of the Selectmen's meeting when she made her initial complaint, the following day at Lions Hall and tonight. Mr. Jasper's only role was to point out at the Selectmen's meeting that this was a violation of the Code of Ethics. She followed up on that, then filed her complaint. A third misstatement about this matter was Mr. Clegg's remark that this occurred the night before the election in order to influence the voters. It was eight days prior to the election, plenty of time to present opposing views. The presentation was factual information they thought would be of value to the voters in deciding on the Nadeau Farm warrant article, but it did not advocate a particular position. The Friends of Hudson's Natural Resources and the Conservation Commission wanted that information presented prior to the deliberative session because they wanted it to be before the public so they could discuss how it could be related to this article, and to future articles on open space. At the last meeting, Selectman MacLean was correct in saying that Ms. Champion would not have been upset had Mr. Cole decided to allow the broadcast because that was a right, and it's upsetting when government takes away rights. Mr. Cole didn't have the right to make *any* decision in this case. Selectman MacLean was correct, that it was the nature of Mr. Cole's decision that was upsetting as the manner in which it was done. She is sure that he and other Selectmen in the past have made unilateral decisions without any complaint, probably for any number of reasons. Maybe they didn't want to go through the unpleasant ordeal. Maybe they figured nothing would be done, anyway. She didn't think anyone had filed an ethics complaint like this before, but she felt that the Chairman abused his power that was too serious to ignore, in a way that denied her, the Conservation Commission, the Friends of Hudson's Natural Resources and the members of the community their First Amendment rights to free speech. He decided that he alone had the power to decide what would be aired on the public access television, a clear violation of FCC regulations. Mr. Cole was re-elected as Chairman under the flag-waving banner of *his* First Amendment rights, while being told by the Board that it was ok to suppress those rights of the community. The Code of Ethics does not address First Amendment rights, but it does address abuse of power through unilateral actions by one member. This serious abuse of power cannot be ignored, especially since Mr. Cole has stated that he will continue to do so. She asked the Board to uphold the unanimous recommendation of the Ethics Committee to censure Mr. Cole, to let him know that he cannot continue to abuse his power in a way that suppresses the fundamental rights of the citizens of Hudson.

Chairman Cole asked for a clarification on a statement, in that Selectman Jasper had stated that he (Chairman Cole) had informed Ms. Champion at 5:30 on the night of the presentation. Mr. Jasper said that he learned of the decision at 5:15. Chairman Cole asked Ms. Champion to clarify when he notified her about this for Mr. Jasper. Ms. Champion said she received the first e-mail on Friday (February 27th) for a Monday presentation. She had called Mr. Cole, but he was away for the weekend, so she sent Mr. Cole an e-mail, asking about the financial obligations, and for a response. She received that Monday afternoon, but Coleman Kelly and she had talked about using his personal equipment to tape the presentation and she and Linda Kipnes was to be here at 5:00. Chairman Cole clarified that he had communicated to her prior to 5:30 on Friday. Ms. Champion said yes, but she was prepared to go forward with the presentation at 4:45 on Monday, when Coleman called to say he was told that afternoon that he could not tape the presentation, even using his equipment. Chairman Cole said he got the word to Coleman long before Monday afternoon; he had notified Ms. Champion and the Town Administrator, and via the Administrator, Coleman, on Friday. The comment that he did not do something until 5:30 on the night of the presentation is not the case.

There was no response when Chairman Cole asked if anyone else wished to address the Board at this time.

5. NOMINATIONS AND APPOINTMENTS (There were none.)

6. CONSENT ITEMS

Selectman Maddox had questions on a couple of the items that were addressed. Chairman Cole noted that a late submittal was added as #C-5, to which there was no objection.

Motion by Selectman Stewart, seconded by Selectman MacLean, to accept Items 6 A-E, as noted or appropriate carried 5-0.

A. Assessing Items

- 1) Elderly Exemption, 1 Summer Avenue, w/recommendation to deny.
- 2) Yield Tax Warrant, Map 109/Lot 010 w/recommendation to sign.
- 3) Charitable Exemption, 321 Derry Road, w/recommendation to sign denial letter.
- 4) 14 Charitable/Religious Exemptions, w/recommendation to grant.
- 5) 38 Re-qualification/re-granting of Elderly Exemptions, w/recommendation to grant.
- 6) Disabled Exemption, 72 Mobile Drive, w/recommendation to grant.
- 7) 6 Re-qualification/re-granting of Disabled Exemptions, w/recommendation to grant.
- 8) Blind Exemption, 68 Windham Road, w/recommendation to grant.

B. Sewer/Water Utility Items

- 1) Sewer allocation request, River ridge Subdivision, w/recommendation to approve.
- 2) Exemption from Glen Drive District, 40 Burns Hill Road, w/recommendation to grant.

C. Licenses and Permits

- 1) Outdoor Gathering Permit by the Alvirne Friends of Music for a Chili Festival at the Hills House on June 6, from 11 – 4.
- 2) Raffle Permit by Alvirne Friends of Music for June 6.
- 3) Raffle Permit by Chiropractic Works for May 22, 2004.
- 4) Petition/License for Poles, 9AAN5X, w/recommendation to approve.
- 5) Raffle Permit by Alvirne Mechanics Club for May 23, 2004 During Car Show at Alvirne

D. Acceptance of Minutes

Minutes of the BOS Meeting of April 27, 2004

E. Committee Announcements

- 05/12/04 6:00 Benson's Committee in BOS Meeting Room
- 05/12/04 7:00 Planning Board in CD Meeting Room
- 05/13/04 7:00 Sewer Utility Committee in BOS Meeting Room
- 05/13/04 7:30 ZBA in CD Meeting Room
- 05/17/04 6:30 School Board in BOS Meeting Room

05/17/04 7:30 Conservation Commission
 05/18/04 7:00 BOS Workshop re Cable TV
 05/19/04 6:00 Library Trustees at the Annex
 05/19/04 2:00 Library Building Fundraising Committee in BOS Meeting Room
 05/20/04 7:30 Budget Committee in BOS Meeting Room
 05/22/04 9 – 2 Cleanup Day at Benson's
 05/22/04 Firefighters' Ball @ Lions Hall
 05/25/04 7:00 BOS Meeting in BOS Meeting Room
 05/26/04 7:00 Planning Board in CD Meeting Room
 05/27/04 7:30 ZBA in CD Meeting Room
 05/31/04 2:00 Memorial Day Parade

(Start Tape 1, Second Side)

7. OLD BUSINESS

A. Ethics Report

Chairman Cole recused himself and stepped away from the table, turning the gavel over to Vice Chairman Stewart, who said this item was deferred from their last meeting so all Board members could read the legal opinion, which wasn't received until that morning. She asked for the will of the body.

Selectman MacLean the Board *did* take action at their last meeting by a motion to censure, but it failed. Another motion to disagree with the Ethics Committee also failed. She felt that the Ethics Committee's recommendation was clear and fair so, if she had only one option to either agree or disagree with the Ethics Committee, she would have voted for censure. If those are the only options, she will vote the same way. If the final vote results in the Board agreeing to disagree, at least everyone would have said their piece, indicating their reasoning for voting as they did. She has prepared a motion that she called a middle ground to, hopefully, break the deadlock.

Motion by Selectman MacLean, seconded by Selectman Maddox, to respectfully and gratefully acknowledges the findings and recommendations of the Ethics Committee and, while the Board understands the Chairman technically overstepped the boundaries of his duties, the Board does not issue a censure because the Board understands the personality and leadership style of the Chairman and does not feel his actions were malicious towards any person or group or intentionally disrespectful to the Board as a whole; and the Board has every expectation that in this new light, the Chairman will make every effort in the future to consult with the Board for all decisions, barring an emergency."

Selectman MacLean compared this to someone getting stopped for speeding, who receives only a warning and not a ticket, even though that person did break the law. She thought that's what this motion accomplishes; and it was a fair compromise. The other recommendations of the Ethics Committee are being addressed, so similar situations should not become an issue because of the policies in place. Selectman Maddox said the motion doesn't say what needs to be said. He didn't think censure would deter the Chairman from doing what he wants to do, which he has stated repeatedly. The Chairman had said that if he is censured, or if he is not censured, he would do as he has always done. Whether or not they censure the Chairman, they will probably have to continually deal with this, so the Board is beating themselves up needlessly. He can support the motion, because they are not going anywhere otherwise. Selectman MacLean said if behavior does continue, more action would be taken. She said Selectman Jasper had stated that three Selectmen could work on their own, but she believed that three Selectmen don't have the right to meet and make decisions, excluding two. It should be done as a five-member body. This action is the first step of possible actions that she thought would adequately address the issues. Things won't continue as usual. There being no further discussion, Vice Chair Stewart asked the Recorder to call the roll.

Vote: Motion carried 3 – 1. Selectmen MacLean, Massey and Stewart voted in favor; Selectman Maddox was opposed.

Selectman MacLean wanted the record to reflect that the Board did take action on this issue. It is clearly stated what is expected from here on out. Vice Chair Stewart said this issue has generated a great deal of negative controversy with both sides equally adamant in their beliefs. Hopefully, they have all learned something from this episode that has consumed way too much time lately, and that they can move forward together in a positive manner, bearing in mind that they are public servants, doing the best they can, as a body and individually, to fulfill the wishes of the voters and taxpayers of Hudson. She asked the Town Administrator to draft a letter to Ethics Committee, indicating the action taken by the Board. She then turned

the proceedings back over to Chairman Cole.

B. Merrimack Valley Regional Water District Public Hearing

Selectman Massey said 16 communities have banded together to create a regional water district for the Nashua area. The Charter Committee has met over the last two years, with a vote on April 22 to ratify the charter. Once three communities become members of the district, and the Attorney General approves the charter, the district is officially formed. To date, Nashua and Bedford have voted to join, with other communities considering doing so.

Chairman Cole opened the public hearing at 7:39 p.m., but there was no response, so he closed it at 7:40 p.m.

Motion by Selectman Massey, seconded by Selectman Stewart, to join the Merrimack Valley Regional Water District.

Selectman Maddox preferred to wait until some of the dust settles with Pennichuck and Nashua and he couldn't understand why Hudson should jump on board so soon. He asked about the cost and what benefits would be realized, since Hudson is a bulk water user. Selectman Massey said the entire cost of the water district will be borne by the ratepayers of the district. If Hudson joins, there will be no expenses, other than the \$5,000 that they voted last year to add this coming fiscal year and the legal fees that were used to help in the creation of the charter, which will be returned to the towns if everything is approved and it becomes a reality. It's important for the Town to join because Hudson has its own water utility. In 1998, the citizens voted to acquire the assets of So NH Water Co and has owned and operated its own utility ever since. One of the items in the charter is that no member community will be subject to eminent domain on the assets that they own. Therefore, Hudson will not be subject to eminent domain proceedings. That, alone, is sufficient reason to join. Secondly, the Town will have a voice in setting the bulk rates that Hudson will be paying for its water from the district. Long term, the district is set up in such a way that if a member community needs help in acquiring watershed lands that would benefit the district, the district will help that community in that effort. Everything he has seen points to being in Hudson's advantage to join. The water rate that users pay would fund the entire operations of the district. The eminent domain proceedings in Nashua might not be as successful as they would be with the district because of the nature of the assets that Pennichuck has.

Selectman Maddox didn't think it would hurt to wait until June 2005. Under the charter's powers, the district has the ability to sue or be sued. Seeing the propensity for Pennichuck to do that, he didn't think they should get on board until they know in what direction this sale is going. As a rate payer, the money would be coming from him, so it's not that it's not going to cost the Town anything. Hudson has a water utility and does not need to be part of the district, at the present time. Once the regional authority is established, they will have a better picture. In reading their minutes, a lot of difficult questions still being asked, as if they do not have a total grasp of their direction. If a member can pull out, how can they set the boundaries, the rates or capital reserve plans. There are still a lot of unanswered questions. Both as a Selectman and a ratepayer, he sees no need to jump on just to be number three. Selectman Massey said Selectman Maddox had some good points. The world won't come to an end if the motion fails.

Vote: Motion failed by a roll call vote of 2-3. Selectmen Massey and Cole were in favor; Selectmen Maddox, Stewart and MacLean were opposed.

Selectman Stewart opposed this because of the problems between Nashua and Pennichuck. She'd like to see this come back at the first meeting in December, when they are further along in the process. Chairman Cole agreed to do that.

8. NEW BUSINESS

A. Stop 'n Shop Supermarket re. working in Right of Way

Town Engineer Tom Sommers and Bob Hudson from Vanasse Hangen and Brustlin were recognized. Mr. Sommers said his memo of May 6, 2004 stated the facts of this issue. This improvement was reviewed in detail on behalf of the Planning Board by an independent consultant, CLD. The Planning Board approved this project, including this off-site improvement. Engineering also reviewed the improvement independently, as did NHDOT. It is before the Board because it is in the Town's right of way, and the Board of Selectmen is the decision-making authority.

Selectman Maddox said at the time, there was a discussion on whether or not VHB would be able to get a construction easement to do some widening on Market Basket property. Mr. Hudson said an easement is not required because all of the work is being done in the right-of-way. It was a construction easement in order to get equipment on there. Their design was careful to maintain the grades in that area. There is a widening coming up Lowell Road to the Market Basket driveway, so they had to construct a short retaining wall to save trees and retain existing grade. Mr. Sommers said all of the improvements are in the right-of-way and then move over into the Stop and Shop property. They also discussed the sewer line that is running up there. They thought a lot of that was going to be an easement, but more of it is now in the right of way, although there is still an easement there. Selectman Maddox thought he remembered Atty. Hollis saying that was one of their issues. Mr. Sommers said it may have been at the time, but they realized they had to do something else. Selectman Maddox said then that would not be the plan the Planning Board saw. Mr. Hudson said it was a preliminary plan that didn't go into the level of

detail that the construction plans did, and the final plan was approved by DOT. They do need an easement along the property, which Morgan Hollis is working on.

Selectman Maddox asked what the time frame was for the work to be done. Mr. Hudson hoped to be done by Labor Day. Selectman Maddox didn't want to see both Lowell Road and Wason Road under construction at the same time. He hoped there would be coordination between the parties to avoid two bottlenecks at the same time. Mr. Sommers said they've had three pre-con meetings on this project, with a lot of discussion about traffic control and project coordination. They have also been coordinating with Mark Caesar, the Field Supervisor for NHDOT on the Lowell Road project. Signals on Lowell Road will be operational at all times, even during construction. Selectman Maddox asked when the store opening was planned. Mr. Hudson said mid-August. Selectman Maddox asked if it would be prior to the completion of road construction. Mr. Hudson said they need to be completed by the time the store opens.

(Start Tape 2, Side A)

Mr. Sommers said substantially complete means that the roadway is done, with the exception of minor items, such as landscaping. The intent is no occupancy until that off-site improvement is complete. Selectman Maddox said he'd like to know that *only* landscape, drainage, slopes, seeding, etc. are the things left to be completed before they get an Occupancy Permit. The store is going to attract traffic and if the improvements have not been completed, the roads will not handle the traffic. The Fire Department was to get a tie-in to the traffic lights for their emergency vehicles, and that should be completed prior to the store opening, too. Mr. Sommers said the Opticom system has been clarified to the degree of stating the exact manufacturer. Selectman Maddox hoped the road work would go smoothly and that the Board will stand firm in not allowing any excuses if the road is not done when the store is ready to open.

Chairman Cole asked if there was a punch list of substantial items. Mr. Sommers said substantial means that the improvement is safe and operational, such as the final paving is done, striping is in, signage is in, signals are in and operational, etc. What may not be completed is landscaping, minor repairs to something that may have gotten damaged such as a piece of curbing, etc. There will be a signoff by the State and all the appropriate staff. Selectman Maddox wanted them to understand that if the roadway improvements aren't done, the Town won't allow the store to open, even if it is full of food. Chairman Cole asked if the Board of Selectmen has the ultimate say-so on the CO. Mr. Sommers said they are normally issued through the Zoning Administrator, but the Board could add any stipulation they'd like.

Chairman Cole said that, in this case, they are to come back to the Selectmen when they believe they have reached the substantial threshold at which time the Board can decide whether or not a CO can be issued. He believed this project demanded that level of attention. He asked when to expect this would come back to the Board, cautioning that they should give themselves some wiggle room, in case the Board deemed that the work was not substantially complete. Mr. Hudson expected it would be in August. Following a brief discussion of dates and when agenda items were due, Mr. Hudson thought they might try for a July Board meeting.

Selectman Maddox thought construction of the ball field was part of the substantial work to be completed. Mr. Sommers didn't know anything about that. Mr. Hudson said the ball fields were going on State property, so the Town has to obtain permits for them, but he didn't know the status of that. Selectman Maddox said the building of the ball fields was one of the reasons for the approval of the Stop 'n Shop.

Chairman Cole asked for clarification of what the Board was being asked to do tonight. Mr. Sommers said the Board was being asked to approve a plan for a proposed roadway and intersection improvements for Wason Road, Lowell Road and Flagstone Drive, as prepared by VHB Engineering, dated 11/21/03. Chairman Cole asked why he should vote in favor of this project which, aside from some roadway plans, he knew nothing about, and if the roadway improvement plans were adequate and sound, from an engineering perspective. Mr. Sommers believed they were, as they have been through a review by several different parties. Selectman Massey concurred. Selectman Maddox said Atty. Hollis thought the additional lane on Wason Road would require a construction easement on DeMoula's property and wondered why they now don't need to, and that the motion should state who would decide "substantially complete."

Motion by Selectman Maddox, seconded by Selectman Massey, to approve the plan of proposed roadway and intersection improvements at Wason Road/Lowell Road and Flagstone Drive, as prepared by VHB Engineering, dated November 21, 2003, and further that this work is to be substantially complete and operational, as determined by the Board of Selectmen, before a certificate of occupancy is issued for the Stop 'n Shop Supermarket, carried 5-0.

Motion by Selectman Stewart, seconded by Selectman Maddox, for a recess at 8:09 p.m. carried. The meeting resumed at 8:15.

B. Formation of Steering Committee for Stormwater Management Program, EPA—NPDES-II

Town Engineer Tom Sommers said this was an unfunded Federal mandate for the Town to clean up their storm water with a number of best management practices they have to meet over the next five years. One of them is to form a group that steers

the process. Up to now, it has been him. The Town Planner, Zoning Administrator and he attended a seminar and an EPA administrator made a presentation which made it very clear that a steering committee was necessary to direct the process that has already started. They will give the Board periodic updates. Selectman Maddox asked what the people at the seminar were looking for. Mr. Sommers said participation by the Town and, through education, changing of habits. They are looking for a steering committee, but they did not specify who was to be on it.

Motion by Selectman Massey, seconded by Selectman Stewart, to form a steering committee for the Storm Water Management Program, to consist of five members to include the Town Engineer, Civil Engineer, Director of Community Development, Town Planner and Road Agent carried 5-0.

C. Emergency Boat Ramp to Merrimack River

Town Engineer Tom Sommers said his memo dated April 13, 2004 is a result of discussions with Deputy Chief Chalk and his own visits to the locations. If these sites are going to be considered for an *emergency* boat ramp, he thought it would be best to create a task force so that recommendations would be from a group, not just from one person. It might be one or more of the suggested locations, none of them, or some other location. Both the Police and Fire Departments would like this to move forward. Litchfield Fire Department expressed an interest in this, too.

Selectman Stewart asked what was meant by a short window of time relative to 138-5. Mr. Sommers said the owner of Serenity Estates is willing to work with the Town until the common land out of his control, maybe three-four months. The best site would be Radcliffe at Oban Drive. He didn't think anyone they spoke with would be open to a public boat ramp on their property; but they are talking strictly about an emergency boat ramp. Selectman MacLean said once the task force chooses a site for recommendation, if there would have to be a vote before any monies are spent. Mr. Sommers said yes, but if the site with the short window was chosen, they would attempt to work with that person to get an easement in order to hold that piece. Selectman Stewart asked if any grants were available. Mr. Sommers said there might be something through Homeland Security, but they have to be careful not to get into public ramps.

Selectman Maddox said the road does not go anywhere near the water at Serenity Estates. It is an open space development, with everything pulled more towards the main road, so serious roadway would have to be put in. Mr. Sommers said it would have to be a cart-path roadway. Selectman Maddox asked why Merrill Park wasn't on the list. It's next to the Fire Department and already has a ramp started. Mr. Sommers said it was at one time and it can be looked at again, as well as other sites. Selectman Massey said Deputy Chalk said there were problems with using Merrill Park. For a drive-down slope, they will have to cross a brook, which means Army Corps of Engineers problems. If not, then they are talking about a steep wench. He supports forming a task force. Selectman Maddox thought the Town Planner should be a member because he would be aware of plans and zoning issues.

Motion by Selectman MacLean, seconded by Selectman Massey, to authorize the formation of a task force to look at sites for an emergency boat ramp and bring recommendations to the Board of Selectmen, as appropriate, and that the task force is to be made up of the Town Engineer, Town Planner and Deputy Fire Chief Chalk, 5-0.

D. Public Hearing re. Expenditure from Planning Board Residual Agency Fee Account for Traffic Study at Constitution Drive/Park Avenue/Clement Road

Town Engineer Tom Sommers said when the Town acquired this property, an amount of money was supposed to go into the Agency Fee Account for an off-site improvement having to do with taking the traffic through Clement Road between Park Avenue and Constitution Drive, but the money apparently didn't get into the proper account. The money that was collected for this is not in the Agency Fee Account, where it should be, but into the general fund instead. A traffic consultant estimated a cost of \$15,000 to decide what traffic improvements might be necessary. If this passes, they would seek proposals from several different consultants, along with a scope of work.

(Start Tape 2, Second Side)

Chairman Cole opened the public hearing at 8:34 p.m. and asked if anyone wished to speak. There was no response, so he closed the hearing.

Motion by Selectman Stewart, seconded by Selectman Massey, to authorize an expenditure of an amount not to exceed \$15,000 from the Planning Board Residual Agency Fee Account to conduct a traffic study for Constitution Drive, Park Avenue and Clement Road, as recommended by the Planning Board.

Selectman Maddox opposed the motion because it didn't make any sense to pay \$15,000 for something that won't go anywhere. The \$75,000 was not Planning Board-imposed, it was when the Selectmen sold the property, and he'd like an explanation of how the money got into the wrong account. The Planning Board should get the study done, paid for by the people moving into that park who are going to generate the traffic. Chairman Cole asked how the \$75,000 was derived and if it was specified on how it was to be spent. Selectman Maddox said the Selectmen negotiated a deal to sell land that, in the

Master Plan, said was going to be Town offices, etc., for \$525,000 with an additional \$75,000 going into a fund for improvements to Clement Road, from 111 to Park Avenue—and did not solicit any input from the Planning Board. That the money got into the general fund was disturbing because it was collected for a purpose, but it is not there. Selectman Massey said the Planning Board has no way of assessing impact fees to a developer that comes into that development. The most recent applicant volunteered to contribute \$7,500. Developers should pay, but there is no formula to assess an amount. The Town might be able to recoup the money by charging it back to the developments as they come before the board. The three potential uses for that property are an ice skating arena, a refuse station and a cabinet-making shop. The Planning Board wants to assess impact fees at the time development is proposed.

Selectman Maddox said he'd be more supportive if there was a mechanism by which that money could be re-deposited after the study had been done but, at present, that fund cannot be added to, only taken from. Chairman Cole agreed with that the Town is occasionally study-poor. In the early 90's, money was repeatedly spent on studies, that have been invariably ignored. That may not be the case here, but that's been the history in Hudson. When he hears that it's a bad thing when money goes to the general fund, he cringes, because there is nothing wrong with that.

Vote: Motion failed by a roll call vote of 1-4. Selectman Massey voted in favor, with Selectmen Cole, Stewart, MacLean and Maddox opposed.

E. Public Hearing on the receipt of a Federal Grant in the amount of \$3,436.44 for the Police Department's participation in NH Join the Clique Seat Belt Campaign

Captain Mello said this is a campaign they participate in every year at Memorial Day and Labor Day, which involved education and enforcement of seat belt use. Other Police Departments throughout the state also participate, handing out leaflets and taking enforcement action on people who aren't complying with the seat belt law. They will do seven 6-hour patrols. Selectman Maddox asked if signs would be put up, or if the education is after a driver is stopped. Captain Mello said they usually use the Wal*Mart roadway and will either congratulate people for using seat belts or, if they are not, give them leaflets on the benefits of using them. If children aren't belted properly, people will be cited.

Chairman Cole opened the public hearing at 8:46 p.m. No one wished to speak, so he closed the hearing.

Motion by Selectman Stewart, seconded by Selectman MacLean, to accept the \$3,436.44 grant carried 5-0.

F. Request by the Police Department to apply for a \$3,000 Grant from the NH Department of Justice, Enforcing Underage Drinking Laws... and

G. Request by Police Department to apply for a Highway Safety Grant in the amount of \$468 for Hudson Corridor DWI Saturation Patrols Project

Captain Mello said this grant is for \$3,150 from the Department of Justice, with no required match. It will help to address juvenile-related alcohol-related incidents. They will be conducting alcohol compliance checks to coincide with the prom, help raise awareness with stores selling liquor to juveniles and will target underage parties and underage drinking. Selectman Maddox asked at what point the stores would have their license pulled. Captain Mello said the HPD cites the person who makes the sale, and the store is dealt with by the State Liquor Enforcement, which could result in a suspension of their license. Selectman Maddox said the stores have a responsibility to ensure they are not selling to underage teens and hoped the Police Department is working with whomever controls their licenses to make sure they are aware of the Board's displeasure at their failure to meet the requirements. Captain Mello said when they do the compliance tests, the State is with them. Selectman Massey believed if a clerk sells to an underage person, it's a \$250 fine. Captain Mello said the clerk is also taken to court and could be made to attend an education program. Chairman Cole asked how much saturation they got for \$468. Captain Mello said this program was in conjunction with the State on the Route 3 corridor on August 13 and 14. They will have an extra patrol out just to target DWI's.

Motion by Selectman Stewart, seconded by Selectman Maddox, to approve the request to apply for the grants carried.

H. Public Hearing on proposed Ordinance #04-01, to install a Stop Sign at Intersection of York and Bockes Roads.

Captain Mello said this came from the Highway Safety Committee at the request of residents from 3 York Road. Coming up York Road to Bockes, there is a grade. There is a driveway across from Bockes Road that used to be blocked off. If a person is not familiar with the area, they might think the road continues going straight. If a stop sign is erected, drivers would be forced to stop and address the traffic on Bockes Road.

Chairman Cole opened the public hearing at 8:53 p.m. There was no response, so he closed the hearing.

Motion by Selectman Stewart, seconded by Selectman Maddox, to adopt Ordinance 04-01 to install a Stop Sign at the intersection of York Road and Bockes Road carried unanimously.

I. Shared Driveway Agreement, Derry, NH, Map 11-25/Lot 122

Town Administrator Steve Malizia said when the Town took over the water utility, they owned two pieces of unimproved property. One of the lots was sold and the owner wants to put a driveway in so he can build on it. The lot is off Bypass 28, so he needs a curb cut permit from the State to do that. In 1989, there was an approved permit, but it has expired. This gentlemen will also service the lot the Town owns, which will make it more marketable. This is a simple agreement that says the Town OK's a curb cut. Selectman Maddox said the request was for a shared driveway, not a curb cut. Mr. Malizia said he's got to come off Bypass 28 and the State will allow only one cut out there, as they did back in 1989. The owner will go to the right on to his lot and isn't encroaching on the Town's lot. Selectman Maddox said a curb cut and a shared driveway are two different animals entirely. Before they approve something, they should know what they are doing. He wanted to know why the Town still owned it. Mr. Malizia said not all of the properties sold and this buildable lot may have to go to auction. There is an old abandoned well on the property, but has no value to it. The Town picked it up in the transaction and attempted to sell it, but there were no takers. The owner is interested in buying the second lot, but the Town can't just sell it to him outright. It has to be put out to bid.

Motion by Selectman MacLean, seconded by Selectman Stewart, to approve the Declaration of Shared Driveway Entrance Shared Driveway Agreement between the Town of Hudson and Gary and Lynn Woodward and to authorize the Chairman to sign the declaration carried 4-1. Selectman Maddox voted in the negative.

Motion by Selectman Stewart, seconded by Selectman Massey, to direct the Town Administrator to initiate the process to put the properties in Derry and Londonderry up for auction carried 5-0.

Motion for a brief recess to set up for the slide presentation for the next item by Selectman Stewart, seconded by Selectman Maddox, at 9:00 p.m. carried. The meeting resumed at 9:10 p.m.

(Start Tape 3, Side A)

J. Presentation of Dollars and Sense of Open Space

Chairman Cole introduced Michelle Champion, Vice-Chairman of the Conservation Commission, who welcomed everyone to the presentation by Dijit Taylor from the Center for Land Conservation Assistance, a non-profit organization located in Concord with the Society for the Protection of NH Forests and exists to help communities in their efforts to protect open space. The Conservation Commission hopes to form a sub-committee to look at preserving some of the open space in Hudson. She hoped this presentation would be of benefit in the effort to preserve open space.

Ms. Taylor said this presentation was created by the NH Wildlife Federation and the Society for the Protection of NH Forests, adding that a set of handouts had been distributed which contained much of the same information as in the slide show. Open space provides running water, for ecological and scenic values, habitat for animals, wildlife and plants, farming and trees. NH is the 2nd most heavily forested state, and an important part of the economy. Open space also provides recreation and has aesthetic and spiritual value, which are hard to measure against economic value. NH is the fastest growing state in the northeast, at a rate of about 13,000 – 15,000 per year. The State is losing 25,000 acres of land to development every two years. A few years ago, a group of lay people and scientists put together a list of top environmental risks in NH and found that of the top 10, five of them are things that are controlled locally by land use decisions, and that 88% of the drinking water supply land is not adequately protected.

Many towns operate under the misconception that growth and development/commercial and industrial development are best at lowering taxes; residential development will lower taxes; and open space will increase taxes. Studies have shown that this is not the case. A summary of a series of studies that looked at economic value of development showed that growth and development actually increased taxes. Commercial and industrial development have some high hidden costs. Residential development almost always increases taxes, but keeping land in open space can stabilize taxes. A 1994 study, commissioned by the Squam Lake Association, looked at the towns in NH and found that taxes were higher in towns that had more taxable property, more residents and more land in commercial and industrial development uses. Any community with a large number of residents costs more to run than one with fewer people. Conventional wisdom says more people, more taxes, but studies have shown those communities are paying a higher per capita tax. The analysis also found that taxes are lower in towns that have kept more land in open space and with more vacation homes. Another study indicated that open space for recreation--tourism, agriculture, vacation homes and forest products--contributes \$8 billion a year to NH's economy, 25% of the gross State product and 35% of income to communities. The communities paying the lowest taxes are those that have kept the most land in open space.

A study called *Cost of Community Services* was created by The American Farm Land Trust and looks at both income and expenses for types of land use. In NH, they are residential, open space and combined commercial and industrial land use. This study was based on the income and expenses for a single year in a single town. It doesn't predict anything, but it does show the situation for that particular year. People who are familiar with a town's budget look at the income and expenses and

allocate them to one of those three land-use types. For example, in Fremont, they found that 90% of the cost of the Fire Department was attributed to residential land use; 5% to open space and 5% to commercial and industrial land use. That is done for every item in the Town budget. Dover was the largest community at around 20,000 when the study was done, to a community with a population under 400. All of the towns have varying amounts of open space, yet the results of the studies are similar. Open space requires much less in services than it pays in taxes. In Stratham, for every dollar residents pay in taxes, the town has to provide \$1.15 in services, but for every dollar that open space pays in taxes, the town has to provide only 40¢ in services. There is a pattern. Residential property isn't able to provide enough income to cover all of the services that it requires. Open space always pays more in taxes than it requires in services from the community, so it's a good deal for the community.

Commercial and industrial land use might be appropriate, but there are some hidden costs, illustrated as follows: Farmer Jones decides to sell his home and move out of state. People had been complaining that he hadn't been paying enough in taxes over the years because his land was in current use. A widget business buys the farmland and puts up a factory. The Fire Department says it's ok because it's only three stories high and they can cover it and the Police Department says they have enough officers, etc. The widget factory starts paying taxes, and that is great, but then the factory needs to hire more people, many of which decide to move into town, so housing starts to boom to provide homes for the people who work in the factory. Because the taxes on the new property are not enough to provide for all the required services, taxes start to creep up—to pay for the additional services required by the new houses for the people that came to work in the new factory that was put on the farm in order to get more money off the farm land instead of what the farmer was paying in taxes.

Open space provides a long-term benefit to the community with multiple paybacks. It pays more than it requires in services. If it's not permanently protected, it's available for future use. You have the tax benefit in the short term and availability for any number of uses in the longer term. There may be an ecological value that's not yet known on protected open space—some animal or plant that will be found to contain the cure for some worldwide epidemic. If a town has farmland, they are part of the contribution that agriculture makes to the State's economy, and there may also be a farm stand that sells fresh, local food. Money spent at farm stands tends to circulate in communities six or seven times or more. If a town has timber land, every time a tree gets cut, the town gets 10% of the value of those trees through the timber harvest tax. Trees keep growing, so it's a long-term benefit to the community to keep land in productive timber. In almost every town that has been studied, residential properties are not paying enough in taxes to provide for the services they require, but open space property is, even though it is paying at the current use tax rate.

A study done in Chester compared the cost for education with the tax revenue for four different residential neighborhoods, the results of which were similar. To combat that, they were one of the first towns to pass a bond for open space and have been using it to acquire conservation properties. Another study was done by looking at an orchard, if it was developed with the number of houses allowed at that time by zoning. That was going to cost the residents \$1.21 in services for every dollar paid in taxes, as opposed to leaving it as an orchard with just one house on the property. That only required 75¢ in services for every dollar generated. In Londonderry, a comparison was done on developing the orchard land versus the Town purchasing a conservation easement on it for \$1.5 million with a 20-year bond. The data showed that over time, spending the money on the conservation easement was cheaper than allowing the land to be privately developed. In conclusion, Ms. Taylor said that studies show that growth and development increases taxes; commercial and industrial development has hidden costs; residential development almost always increases taxes; and land in open space can stabilize taxes. Chairman Cole thanked Ms. Taylor for the presentation and called for a short break at 9:41 p.m. in order to clear the presentation equipment from the meeting room.

(Start Tape 3, Second Side)

9. OTHER BUSINESS/REMARKS BY THE SELECTMEN

Terry Stewart said 1) May 22 is cleanup day at Benson's and she hoped a lot of residents would show up to help out; 2) she asked Mr. Malizia to look into the ball fields on State property issue that Selectman Maddox raised earlier; and 3) she wished Selectman Massey a happy birthday--and apologized for not bringing a cake.

Ken Massey said 1) when his mother wished him a happy birthday, he told her he was 33. . . time two; 2) he congratulated the Hudson United Soccer Club for a successful opening on their beautiful new ball field. It is a tremendous asset for the club and the Town. He was surprised at how well it was built; and 3) May 15th is West Road dump day. Kevin Burns and his crew have done an excellent job out there and he's sure the citizens will be very happy with it.

Kathleen MacLean said she hasn't developed a thick skin yet and wanted to address a comment made by Representative Jasper earlier, that the Board embarrassed him at their last meeting when the clergyman gave them a handout concerning the use of Town meeting rooms. She believed the policy was clear, concise, fair and completely unbiased. She saw no reason for embarrassment and thought it may have been because Mr. Jasper hadn't read the policy.

Rick Maddox 1) asked about the legal opinion on the use of meeting rooms. Town Administrator Steve Malizia said the policy was vetted through the Town attorneys to ensure that it is not prejudicial or discriminatory, and it was looked at with an eye to issues of religious

affiliations. Selectman Maddox said the Friends of Hudson's Natural Resources wondered why they can no longer use Town Hall for their meetings. Mr. Malizia said the policy that was adopted at the last meeting did not allow for a group to meet at Town Hall unless it was an official Town board or committee. If they make an exception, it sets a precedent; and 2) he was glad to see that they are moving forward with the Leonard A. Smith, Central Fire Station effort.

Bill Cole 1) in response to the issue of the meeting room policy and Mr. Jasper's feeling embarrassed, the Reverend was not treated disrespectfully and later on that evening, he and Chairman Cole had a good conversation. The issue was the fact that a document was put in front of the Board, and they didn't have any idea of what it was. If anyone disagrees with a Town policy, they can bring a lawsuit, which has happened in the past, but the Board cannot just accept at face value every document put before them at the last minute. If Selectmen Massey and Maddox want to revisit the policy, he'll be glad to at a future meeting; 2) he wished, on behalf of the Board, happy birthday to Selectman Massey; 3) Michael Shearer, the Boy Scout who came before the Board, began his Eagle project at Benson's last Saturday. He heard there was a great turnout. Lunch was brought in by various businesses that supported him. Not only did they clean up their area, they stayed extra hours and cleaned up other things. He's scheduled to finish this Saturday, with the help of Continental Paving and Tate Brothers.

10. NONPUBLIC SESSION

Motion by Selectman Stewart, seconded by Selectman MacLean, to enter Nonpublic Session under RSA 91-A:3 II (b) the hiring of a public employee carried 5-0 by roll call vote.

Nonpublic Session was entered into at 9:49 p.m. and was terminated at 10:00 p.m.

Motion by Selectman Maddox, seconded by Selectman Stewart, to hire the following 2004 Summer Recreation Staff, effective June 17, 2004: Jaci Bergeron, Sarah Jardim, Kaitlin Laquerre at \$7.75 per hour; Ralph Carpentier, Leslie Desrosiers, Michael Morin, Ryan O'Toole and Sean Sendall at \$8.25 per hour; and Frank Girginis, Heather Leyden, Michele Martineau, Shawn O'Donoghue, Christine Shaw, Michael Simoneau, Debra Smith and Janice Walsh at \$8.75 per hour and further to hire the following on-call personnel: Derek Lee at \$7.75 per hour; Thomas Tollefson at \$8.25 per hour; and Kim Malley, Erin Murphy and Kristin Yates at \$8.75 per hour as recommended by the Recreation Department carried unanimously.

Motion by Selectman Maddox, seconded by Selectman Stewart, to hire the following 2004 Summer Recreation Counselors-in-Training, effective June 17, 2004: Rich Dauber, Diana Parsons, Quinn Sendall and Tommy Scurini @ \$6.00 per hour and further to hire Krista Stott as substitute Counselor-in-Training @ \$6.00 per hour, as recommended by the Recreation Department carried unanimously.

Motion by Selectman Stewart, seconded by Selectman MacLean, to hire Alison Shupe as the 2004 Tennis Instructor at \$10.50 per hour, effective June 5, 2004 and Jennifer Quinn as substitute Tennis Instructor at \$10.00 per hour, effective June 5, 2004, as recommended by the Recreation Department carried unanimously.

11. ADJOURNMENT

Motion by Selectman Stewart, seconded by Selectman MacLean, to adjourn at 10:03 p.m. carried unanimously.

Recorded and Transcribed by Priscilla Boisvert

Executive Assistant

HUDSON, NH BOARD OF SELECTMEN

William P. Cole, Chairman

Teresa Stewart, Vice-Chairman

Kathleen R. MacLean, Selectman

Richard J. Maddox, Selectman

Kenneth J. Massey, Selectman