

HUDSON BOARD OF SELECTMEN

Minutes of the BOS/Planning Board Meeting of November 4, 1997

7:17 - 7:40 Attorney-Client session w/Phil Munck and Attorney Susan Chamberlin re Water Co. acquisition.

1. Call to Order by Chairman E. Lorraine Madison at 7:42 p.m.

2. Pledge of Allegiance led by Selectman Shawn N. Jasper

3. Attendance

Selectmen: E. Lorraine Madison, Rhona Charbonneau, Shawn N. Jasper, Ann Seabury and Terry Stewart

Staff/Others: Paul Sharon, Town Administrator; Priscilla Boisvert, Executive Assistant; Leo Lessard, Road Agent; Keith Bowen, Recreation Director; Recreation Committee Members: Jane Payne, Len Lathrop, Rick Harvey, Jim Joy and Paul DiBenedetto; Howard Dilworth; Coleman Kelly; Mr. and Mrs. Don Jackson; Mike Reynolds, Town Planner; Planning Board Members: George Hall, Don White, Dick Patterson, and Lenny Smith; Tim, SUN; Signe, TEL

4. Discussion with Planning Board

Chairman Madison recognized the Chairman of the Planning Board, George Hall, who presented the Board with a list of topics for discussion, including 1) Recreation; 2) CIP; 3) Bush Hill Road project; 4) Sidewalks; 5) Proposed Zoning Ordinance amendments; 6) Groundwater Protection project. Chairman Madison explained that the purpose for the meeting was for the Selectmen to be kept abreast of what was going on with the Planning Board instead of hearing about things only when there is a problem. She anticipated the meetings would take place every six months. Mr. Hall said the Planning Board felt these types of meetings would be beneficial.

A. Recreation

1) Existing recreational land, needed land, activities to be placed on land

2) Maintenance of Existing and future resources

3) Staffing

4) Contributions to Town from Developers

Mr. Hall said that through the CIP process, by some of the plans that have come before the Board and with some of the issues that have been raised, they've become more aware of the Recreation programs and facilities that are and are not available. Hudson is one of the few towns that does not have a full time Rec Director or maintenance man. A couple years ago, the Planning Board instituted impact fees for the schools and the library. At that time, the consultants felt that the Town had not done enough in the way of recreational programs to justify instituting any of the fees. In the last few months, the Planning Board has made an effort to ask developers, who come in for subdivision approval, to make a contribution to recreation facilities, assessed on a per-lot basis. Some have offered to put in ball fields. He asked if the Selectmen supported that concept because, if they weren't willing to commit money for the Town's portion, there's no sense in continuing with this practice.

Chairman Madison said the Board would be sending to the warrant a request for a full-time Recreation Director, adding that the Board was in agreement that there weren't enough recreational facilities in Town and they needed to work on that.

Selectman Jasper said the Planning Board needs to work closely with the Recreation Department. Mr. Hall said they were and money obtained for the Rec Department is turned over to the Town and it's up to the Rec Department and

Selectmen how to spend it. Selectman Jasper was glad the Planning Board was not out getting parcels of land here and there. Mr. Hall said this was a big issue with the Planning Board. Some members wanted to do that, but Keith didn't.

B. CIP

1) Support and funding for projects scheduled on the 6-year CIP

2) Need to commit to roadway projects in order to spend impact fee money and meet public sector share of all three corridors

3) Town plan for library and school impact fee expenditures

4) Town plan for off-site improvements project

Mr. Hall said one of the reasons the road projects show up high on the priority list is because of the ranking system; they get points in two categories. CAP fees are collected from every structure that is built in Town. It's a project that the Town has identified that needs to be done. Another category that also warrants a priority ranking is if there a time limit of some kind and CAP fees are limited to six years. Once the Town collects the money, they must spend it on the indicated purpose within six years, or they have to give it back. In addition to CAP fees, they've asked for additional donations on some industrial/commercial projects. Two significant contributions have been made to the light at Executive Drive.

C. Bush Hill Project

Mr. Hall said there was some controversy about this project. He said if there were any problems, the Planning Board would do what they could to rectify them. However, he didn't fully understand what the controversy was if, in fact, there was one.

Selectman Jasper said some of it may have been lack of communication and understanding of what monies are being used for what purpose, adding that accepted roads belong to the Town. The Board of Selectmen, who has control over them, has delegated the responsibility for those roads to the Road Agent. Any time a road is opened up in Hudson, it is supposed to be done so *only at the authority of the Road Agent*, acting on behalf of the Selectmen. Improvements need to be made on Bush Hill Road, but they need to be done in concert with the Road Agent, who is responsible for maintaining the road. When Bush Hill Road was opened up, the Road Agent had no knowledge of it. The Planning Board, on it's own volition, can't have developers work on the road--whether or not the project should happen. He is in favor of the improvements, but the Road Agent should be brought into the loop.

Mr. Hall asked if Selectman Jasper thought the Planning Board had given some direction. Selectman Jasper said he was led to believe that the Planning Board communicated to the developer, (adding that things got 'murky' at this point), that since they were out there doing work anyhow, they could straighten out the road. And then there is the issue of impact fees, which are supposed to go into a fund and then are co-mingled with Town funds and spent.

Mr. Hall agreed with Selectman Jasper on how things *should* work. He said the Planning Board recognized something needed to do something with Bush Hill Road, which is currently being used by an unbelievable amount of traffic as an alternative to the Circumferential Highway. The Planning Board wanted to get an off-site improvement over and above the CAP (impact fees) from the developer to make improvements to Bush Hill Road. The Planning Board's direction to the developer was to devise a plan to improve a designated section of Bush Hill Road for X amount (impact fees, plus the amount over and above the CAP fees) and convince the Town Engineer that that amount of work equals that dollar figure. The plan was then to be presented to the Planning Board for approval. He thinks the problem may have been an internal procedural one, but the Planning Board never told anyone what to do on that road. They merely got an agreement for an amount of money and this process has been going on for as long as he remembers. In 1996, Town Meeting approved the \$56,000 article for land taking, which stated, "per the plan," which had previously been approved by the Board of Selectmen. At that time, the plan had to have been presented to the Selectmen in some form. Perhaps it didn't state whose land, or exactly where or when it was going to happen, and those are the things that cause confusion and dissention. He reiterated this is an internal problem between the Selectmen and staff.

Selectman Seabury recalled that the plan was available for viewing in the Selectmen's office. Selectman Charbonneau remembered that when the plan was first brought to the Planning Board, mention was made of the fact that there had been a deal struck with the Town Council that the Town was supposed to do something with that corner portion of land. Mr. Hall said the Town has an easier time getting permits approved through the State, so the developer put down that the Town was the applicant, since it is a Town road, and the developer essentially is doing work as a contractor for the Town. If there is any land taking to be done, they need to have the power for eminent domain. If the developer didn't have that, he'd be using part of the money he's supposed to be using to fix the road. The deal was to spend it on construction, not land taking.

Chairman Madison said work was well underway before everyone was fully aware of what was going on. Mr. Hall said that was the purpose of the article back in '95. Land taking *is* eminent domain. Selectman Jasper clarified that the article didn't say 'land taking,' it said, 'to purchase.' At the time, he assumed that there was a deal already struck with the land owner because, he thought, the figure of \$56,000 indicated negotiation and acceptance. He didn't recall anyone ever taking about eminent domain or land taking; he thought it was an outright purchase. He had been opposed to it from the beginning and had voted against it.

Mr. Hall said the most desirable way to get land is by negotiation, but you can't deal with some people, and you can't let one piece of land stop the progress of a whole road. But even the negotiated purchases are declared eminent domain because that qualifies for certain tax advantages.

Selectman Jasper was not aware of the Town ever doing eminent domain. Mr. Hall said about 10 years ago, one of the biggest lawsuits the Town ever lost was for not doing eminent domain.

(Start Tape 1, Second Side)

You can't even be talking to the people unless you've established that fact that there is a public need for that land, and the optimum way is to negotiate a settlement. If it ends up in court, everyone loses.

Selectman Jasper said RSA 674:21 V c is specific that any impact fee shall be accounted for separately, shall be separated from the municipality's General Fund, may be spent upon the order of the municipal governing body and shall be exempt from RSA 32, which is the Municipal Budget Act. He said he is not faulting anyone, or getting into a power struggle, but it's a procedure they need to get straightened out. He said it was in the jurisdiction of the Planning Board to take the impact money for offsite improvements, but then it should have come back to the Board of Selectmen to approve it. Mr. Hall said this is something that needs further discussion. In the past, they have even waived CAP fees in exchange for some kind of work. In this instance, the Planning Board was able to get the developer to spend an extra amount of money on the road and not have to pay any CAP fees. If they had collected the CAP fees, then Selectman Jasper would be right--but that didn't happen.

Selectman Jasper said when it came to the actual construction, it probably was an internal thing and they need to get their lines of authority straightened out as to who is responsible for the opening of the roads, etc.

D. Sidewalks

Mr. Hall asked if the Board received the packet from Mike Gospodarek yet, dated October 31, dealing with sidewalks. (It was received and marked for inclusion in the Board's agenda packet for 11/10/97.) They have had several developments come in in the recent past that, as part of the off-site improvements, they've requested that sidewalks be built and, in every case, it has been at the direction of the Town Engineer. They identify the number of feet in the general area and state that whatever is built, is built with the approval of the Town Engineer. One area is on Pelham Road by Nottingham West. Mike Gospodarek's memo identifies four sites on existing Town roads that sidewalks are proposed for. The Planning Board feels this is something that should be done, but there are multiple issues involved, such as work being done in the right of way. He personally feels that it is important to construct sidewalks near the school.

Chairman Madison said of concern to the Board is the maintenance of the sidewalks, especially during winter. Mr. Hall

said many towns do not plow sidewalks. Selectmen Seabury and Charbonneau agreed, saying that if you don't keep the sidewalk shoveled in front of your property, you get fined. Mr. Hall said the municipality decides who is responsible to keep the sidewalks cleaned. Nashua cleans the sidewalks within certain feet of the schools. Selectman Jasper said sidewalks are put in for pedestrian safety, but if you don't plow them, the people have to walk in the road and you've created a worse situation. If the sidewalks are build in such a way , with the utility poles to the rear so Leo's crews can drop the plow and clean them off, he does not object to them. Selectman Seabury thought the Town had a sidewalk plow. Selectman Jasper asked Leo how much sidewalk could be done with that plow in a day. Leo said they plow only about 6 miles per storm; they can't do much with it and it takes a couple days to do that. Selectman Jasper thinks sidewalks are great, but only if they are plowed. Mr. Hall agreed that this is a controversial issue, but there will always be mailboxes to contend with, unless they are put to the rear of the sidewalks, and the mailman has to drive onto the sidewalk to deliver mail. There are also the problems with drainage and with existing poles. The Planning Board wants to know if the majority of the Selectmen want sidewalks or not. Selectmen Madison, Charbonneau, Stewart and Seabury all wanted sidewalks. Chairman Madison said if she had a sidewalk in front of her house, she'd shovel it off. Selectman Charbonneau said that was the responsibility of the property owner, adding that she would love to see sidewalks down Old Derry Road. Selectman Jasper said if there isn't any ordinance in place requiring people to clean their sidewalks, they won't necessarily do it. Selectman Seabury said they didn't expect Leo to plow the streets in subdivisions, that the main objective was to do the school areas.

Lenny Smith said there was only one day last year that the sidewalks needed to be plowed and, in the past, on average, snowstorms occur on 2% of the days, so that leaves 360 days a year that people can be safe. If they have to trudge in the snow for a couple of days, most people would get out their snow blower and clean the sidewalk. He thinks its a great safety feature and it helps bring people together as a community.

Selectman Jasper said that, because of a variety of concerns, the Road Agent needs to be brought into the loop on this issue and part of the process. Chairman Madison agreed, saying she was sure the Planning Board will be happy to contact Leo. Selectman Jasper said he thinks the Road Agent has practical experience regarding sidewalks and could make some good recommendations. Mr. Hall said then the Town Engineer needs to be directed to make his decisions, based on input from the Road Agent. Chairman Madison said the Planning Board was doing fine, that it was a lack of communication with staff.

E. Proposed Zoning Ordinance Amendments

1) Aesthetics

2) Communication Towers

Mr. Hall wanted the Board to be aware of the Planning Board's proposed amendments to the Zoning Ordinance. He thinks the date for the public hearing will be during the first week in December. Mike Reynolds has a listing of the amendments, but there will probably be more, which was handed out to the Board, most of which were minor or wording changes. The two major ones (listed above) are being worked on by the Zoning Administrator.

F. Groundwater Protection Project

Mr. Hall said this is something they talked about a couple years ago, when there was some controversy over the project. This is an on-going project and the NRPC is part way through the project. The intent is to try to identify the Town's primary sources of groundwater and to try to put together a program that's mostly informational. Firstly, it would identify all of the property owners in the high-yield groundwater area and to make them aware of the best management practices they can implement to help preserve the groundwater. For example, for people with a septic system, it is a bad thing to flush chemicals down the toilet. Many people who are on a septic system still think they are on some kind of sewer system. It's a program to make people aware that they are part of the problem if they are not part of the solution. The program can be expanded to protect surface water, such as Robinson Pond. The flyers and mailings can be tailored to apply to surface water. He said he has been exposed to other communities in his business dealings who are doing this, and it makes people stop and think how certain operations may or may not affect groundwater, and some simple things that can be done to ensure the safety of water sources.

Don White hoped the Selectmen would endorse this program. He's presented it to several schools already. If people are educated on it, and implement it on their own, there won't be any need to pass more laws.

G. Grassed Cul-de-Sacs

Selectman Jasper said he and the Road Agent were talking about this issue today and it needs to be addressed. There needs to be an understanding of who is going to be responsible for the grassed in areas. They look better than the huge hard-top cul-de-sacs, but it does have an impact on the Highway Department. Pond View Estates has about a half acre of grass with a gazebo. He understands the Realtor is telling people the Town will be responsible for all the maintenance down there. Mr. Hall thinks the abutters will take care of the grassed area themselves. Probably some of the stretches between the road and the sidewalk won't be maintained, but the vast majority probably will. He didn't approve any of the developments with the thought that the Town was going to maintain anything. He wasn't opposed to the green cul-de-sac becoming natural, saying that green is better than pavement. Relative to the gazebo, he thought that there was an association that would be responsible for maintaining the area. Several other members thought so, too.

Richard Patterson said each home owner in that area will pay a nominal fee to an association for the maintenance of cul-de-sacs, etc. Selectman Charbonneau said they could be required to plant low green shrubs that would cover the whole area. Selectman Jasper said this needs to be clarified for everyone so that 10 years from now, the question still remains. They could put a note of the plan stating that maintenance of green space and grass is not the responsibility of the Town. Mr. Hall didn't think it was that simple, because it was a matter of ownership and, in most of the cases, the Town owns the land, so they can't say that the Town won't maintain it. If a tree dies, the Town has to take care of it, just like they would on the side of the road. If there is a liability issue, the Town will have to deal with it, but they won't have to go down and cut the grass or thin out the green space.

Selectman Jasper said that didn't differ from the old dump road where the maintenance of that became the responsibility of Continental Paving. Mr. Hall said the Planning Board can do that, as part of a site-plan approval, but they can't do that in a subdivision. Selectman Charbonneau said that's the way it should be. If Continental's trucks are going over the road, they should be responsible. It shouldn't be up to the Town but up to the business that is creating the problem. Mr. Hall said he understood the concern but didn't know what they could do about it. He didn't have an answer on the spot, but the Planning Board could think about it. Relative to Pond View, the Town couldn't prevent salesmen from making inaccurate representations.

Lenny Smith asked so what if it is the Town's responsibility. He wants to live in a town that he can be proud of, not one that's tacky and he didn't want to see grass growing up in the middle of the street. He'd rather see the streets swept. The tax increase would be so minute, they wouldn't even know it. Some people hate to contribute anything that comes up that will make the Town look good. It looks awful to come across the bridge and see all of the signs. He was willing to pay a few extra pennies to have a nice looking, cleanly swept town. People should be proud of their community. He thanked the Selectman for inviting the Planning Board and hoped these types of discussions could continue. Not only are they not always playing from the same sheet of music, sometimes they're not even in the same orchestra. He looks at his duties as a Planning Board member to help plan the Town. They make a plan and then they present it to the Engineer to see if it's feasible and then they present it to the Selectmen. The Selectmen is the executive committee and they make all the decisions. The Planning Board doesn't want to usurp their authority, but they want to be allowed to do planning. A lot of time the Selectmen beat the Planning Board to the planning.

(Start Tape 2, Side A)

Chairman Madison thanked the Planning Board members for being present tonight, saying she learned a lot of things tonight and hoped they could have another meeting in six months, May '98. If they find out that's not often enough, they can shorten it up.

Selectman Jasper mentioned that the Road Agent was present and suggested that he be given the opportunity to voice any concerns he might have. Chairman Madison recognized Leo Lessard, who said he would like to see, as part of site plan approval, and as a minimum, that in the Town's portion of right-of-ways, at least 10' of driveway be paved so that the run-off from driveways, such as dirt, etc., doesn't get into the street as easily as it would without the paving. He

also said that the discussion of sidewalks got a little out of hand, that he thought Selectman Jasper was in *favor* of sidewalks, but he had concerns about safety issues. Mr. Hall said they were in the process of implementing driveway regulations and staff input was important. He hoped they could all work together to make the regulations better, adding that Leo's suggestion was an excellent one.

Mr. Patterson said each Planning Board member plays a small role but, collectively, they play a big one, and that includes staff members. When comments appear in HLN's "Thumbs" column, praising progress that is being made in terms of beautification of the Town and buildings that are going up, a lot of people on both the Planning Board level and staff level need to be congratulated. Chairman Madison agreed, saying that she thinks the Town has a great staff and Planning Board. Selectman Jasper said the Selectmen can't get everything they feel is necessary at Town Meeting approved. There is a limit to the amount of money that can be spent, and they have to prioritize. Staff is driving around in clunkers and Leo is hauling tons of material with little 6-wheelers. You can't get people to approve everything, even if the Selectmen are willing to spend a few extra cents.

Chairman Madison thanked everyone for coming; Mr. Hall thanked the Selectmen, saying that the Planning Board appreciated the opportunity to be present and they look forward to coming back.

5. Non-Public Session

Motion by Selectman Jasper, seconded by Selectman Stewart, to consider entering Nonpublic Session under 91-A:3 II (b) The hiring of any person as a public employee carried by roll call vote.

Nonpublic Session was entered into at 8:50 p.m. and was terminated at 8:55 p.m. and was terminated at 9:55 p.m.

Motion by Selectman Charbonneau, seconded by Selectman Jasper, to hire Jason Twardosky as Truck Driver/Laborer in the Highway Department at a rate of \$11.25 per hour, Grade VIII, Step Minimum, effective November 30, 1997.

6. Other Business

Phil Munck reviewed the "Water Supply and Transmission Agreement" with the Board of Selectmen. There was some discussion generated on Item 4, Billing and Payment, regarding the phrase, "at least monthly." It was determined to leave it as is for now and amend it later if it was decided to change meter readings to quarterly, or something else.

(Start Tape 2, Second Side)

Selectman Jasper said this was a 20 year agreement and they were only getting the right to transmit the water from the wells to the system for that period of time and then it's subject to renegotiation with no guarantees of successful conclusion. They could conceivably end up with wells in Litchfield and pipes in Hudson. He thought they were being given the rights to access the wells. Mr. Munck said that the Town's protection was that, without the agreement, Pennichuck doesn't have water. He didn't see how one party could hurt the other without being equally hurt in return. There is nothing to be gained by either party trying to damage the other party. Chairman Madison asked if this was something they should run by Attorney Ratigan. Paul said no, that John had participated in drafting the document in the first place. He then asked Phil about the timing on this. Phil said it needs to go with the Purchase and Sales agreement. Chairman Madison said she didn't have a problem with it, as written.

Motion by Selectman Stewart, seconded by Selectman Jasper, to sign the agreement carried unanimously.

They also went over a time line, a schedule of events regarding the acquisition of the water company, including public hearings, informational meetings, budget hearing, etc. They might decide to schedule another information meeting between the deliberative session and Town Meeting.

Coleman asked if the Board wanted him to put the informational meetings on cable. The Board responded with a resounding "Yes!" Selectman Jasper said it might be a good idea to put the informational meeting on cable, before the deliberative session. Everyone thought that was a good idea. The first one is November 18 at 7:30 p.m. at Lions Hall and the second one is December 2.

7. Remarks by the Selectmen

Terry Stewart said CHIPS had a phenomenal Fright Night.

Ann Seabury asked if anyone has traveled Bush Hill Road and if it was nice. Selectman Jasper said yes. She asked if the Town was able to work out anything with Mr. Jackson and his property. Paul said they were charged with coming up with a different scheme and that hasn't surfaced yet.

Shawn Jasper said he's not Robin Hood because he's never stolen from anyone.

8. Adjournment

Motion to adjourn at 9:50 p.m. by Selectman Stewart, seconded by Selectman Seabury, carried unanimously.

Recorded and Transcribed by Priscilla Boisvert

Executive Assistant to the Board of Selectmen

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E. Lorraine Madison, Chairman

Rhona Charbonneau

Shawn N. Jasper

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