

**BOARD OF SELECTMEN
TOWN OF MADISON
OCTOBER 15, 2013
MINUTES**

Selectmen Present: Chairman Michael Brooks, Josh Shackford, John Arruda.

Others Present: Town Administrator Melissa Arias; King Pine Triathlon Coordinator Vince Vaccaro; Fire Commissioners Alan Gilman & Joyce Elliott; Fire Captain Jeffrey Eldridge; Conservation Commission Chairman David Riss and member Nancy Devine; Land Use Administrator Chris Young; taxpayer Ben Pomeroy and Attorney Jeremy Eggleton; taxpayers Anne (Pomeroy) & Dick Martin; Attorney Peter Malia, counsel for Thomas & Margaret Ettinger; and Madison TV Videographer Emilie Riss.

Where and When Posted: Town Hall upper & lower bulletin boards and Madison & Silver Lake Post Offices on October 4, 2013.

Meeting Called to Order: By the Chairman at 5:30 p.m.

APPROVAL OF MINUTES – Shackford made a **motion** to approve the Selectmen’s Meeting minutes of October 1, 2013 as prepared, seconded by Arruda, and so voted **3-0**.

APPROVAL OF MANIFEST – Shackford made a **motion** to approve the Manifest of October 7 - 16, 2013 in the amount of \$251,087.28, seconded by Arruda, and so voted **3-0**. The Manifest breakdown is as follows: \$20,905.03 for payroll; \$6,716.00 for payroll liabilities; \$73,466.25 for accounts payable; and \$150,000.00 for the Madison School District (release date 10/24/13).

PUBLIC COMMENTS – Ben Pomeroy indicated his desire to make a few comments pertaining to his building permit application slated to be discussed later in the meeting and asked whether this would be his opportunity or whether the Chairman would allow comments later. The Chairman told Pomeroy the comments would be more fitting at the time of the discussion item. **END OF PUBLIC COMMENTS**

KING PINE TRIATHLON – In preparation for the King Pine Triathlon, Coordinator Vince Vaccaro was in to speak with the Selectmen and ensure they still support the event taking place in Madison. Vaccaro is looking to expand upon the King Pine Triathlon next year by adding a more advanced category which will lengthen the bike route utilizing portions of Route 153, Route 41, Route 113, and East Madison Road within the Town of Madison. Vaccaro presented the Selectmen with a diagram of the proposed course. Arruda asked about the number of participants and Vaccaro said there have been up to 400 participants in past races. Vaccaro said the race is slated for Sunday, June 22, 2014. The swim portion will begin at 8 am with the first cyclists being on the road by 8:30 a.m. and done by 10:30 a.m. Vaccaro said his first step is to meet with the Selectmen and Police Chiefs for the towns that the race runs through to ensure support and discuss specific requirements before submitting all the necessary paperwork and applications to State of NH for use of the their roads. Brooks told Vaccaro that the Town of Madison will be replacing a bridge on East Madison Road next summer which will result in a detour. Brooks said the timing of the detour is not yet known. Vaccaro said the project will likely be a deal-breaker for the proposed course expansion. Brooks offered to have Arias inquire with the subcontractor on whether the June 22, 2014 date will work around their schedule or not. Arruda asked Vaccaro about Police details and was told that numerous local Police Department details have been used for past races and will continue going forward to the level

required by each town. The Selectmen were fine with the race proposal as long as Police details are in place to ensure the safety of the participants and traveling public. Arias will contact the subcontractor and notify Vaccaro as soon as possible on the projected timeline for the East Madison Road detour so Vaccaro can decide whether to seek an alternate bicycle route for 2014.

FIRE COMMISSIONER QUARTERLY MEETING – Fire Commissioners Joyce Elliott and Alan Gilman joined the table for the Quarterly meeting with the Board of Selectmen. Arias passed out copies of the Standardization of Minutes Policy so the Commissioners can ensure departmental minutes are being formatted consistent with those of all other boards. Arruda pointed out that Gilman was at the last Selectmen’s Meeting when the Selectmen briefly touched on lack of storage space within town-owned buildings. As a follow up to that discussion Gilman said he talked with Linda Smith from the Historical Society in an attempt to offer the antique fire truck to them. Gilman said the Historical Society has shown interest in the truck but apparently has no place to store it under cover. The Commissioners would like to restore the antique truck with help from members of the department by taking the Forestry truck out of the Fire Department building and putting the antique truck inside for restoration. Gilman said he confirmed that Sut Marshall stores vehicles for people and might be able to assist if the other options don’t pan out. Gilman said he’ll follow up with finding storage options. Arruda asked about the lighting trailer that was moved outside recently and Gilman said anyone who wants the lighting trailer can have it. Gilman suggested putting a for sale sign on it in front of the Madison Garage. Elliott said it’s impractical and takes manpower to operate. The Fire Department has never used the lighting trailer but they believe Old Home Week may have used it once. Gilman said the Jet Ski and trailer can be sold because it isn’t used for rescues on Silver Lake. Gilman said the department is in the process of removing the Jet Ski lettering so it can be sold. Gilman said the department wants to keep the four-wheeler because it’s a useful piece of equipment with interchangeable winter tracks. Arruda said the legal bill from Cooper Cargill Chant was disbursed to the Fire – Contracted Services line which was fine with the Commissioners. Arruda asked if the Commissioners had anything to discuss with the Selectmen. Gilman said there is still \$8,000 to \$10,000 worth of Fire Department equipment that hasn’t been returned yet. Gilman said the Fire Commissioners have been to the Madison Police Department, the Sheriff’s Department, the County Attorney, and the Attorney General’s Office looking for assistance in getting the equipment back. Gilman said the requests of the Fire Department keep getting thrown back to them with the advice to file a civil suit. Arruda initially suggested the Commissioners follow up with a certified letter specifically outlining the model and serial numbers for any outstanding inventory before Brooks said to convey the information to the attorney representing the Town in the ongoing lawsuit so it can be incorporated into the Town’s claims. Shackford asked if the Town has proof that the items actually belong to us and the Commissioners received an affirmative answer from Captain Eldridge. Brooks suggested the Commissioners provide copies of the proof of ownership to go with the claim of unreturned equipment for the attorney. Arruda also asked for the status of the white enclosed tag-along trailer parked out behind the Fire Department building. Although Captain Eldridge said it had no use to the department Arruda asked for a definite answer from the Chief on whether there is a need to keep it or not.

FIREFIGHTER STATUS – Elliott asked how the Town and Selectmen are going to handle the Fire Department payroll situation based on the August IRS ruling pertaining to firefighter employment status. Brooks explained to the Fire Commissioners that the March 2013 IRS determination letter specified that the case was closed and no changes needed to be made by the Town yet another letter was received from the IRS in early September with a new case number information contrary to the initial ruling. Brooks said both letters have been reviewed by two attorneys working for the Town and a letter will be sent to the IRS requesting clarification on the different case numbers and decisions. Brooks said the Selectmen believe

someone became involved in the matter after the March 2013 ruling that stated the case was closed and the Town was not in the wrong. Brooks said Town Meeting will have to decide on the organization of the Fire Department going forward and whether they want a full-time fire department, a paid call fire department or a volunteer fire department. Elliott asked the Selectmen to keep the Commissioners in the loop.

CONSERVATION COMMISSION RE: CHAIN OF PONDS PROPERTIES – Conservation Commission Chairman David Riss, member Nancy Devine, and Land Use Administrator Chris Young were in to talk with the Selectmen about the ‘Chain of Ponds’ properties which run along the railroad tracks north of Silver Lake. Riss said the Commission has learned that the owners of the ‘Chain of Ponds’ properties are motivated to sell but the sale price is currently unknown. Riss said rumor has it that the asking price will be around \$950,000. Riss said representatives from the Upper Saco Valley Land Trust came to the last Conservation Commission meeting asking if the Town would be willing to partner with them in an effort to help purchase these properties. Riss likened this to the joint efforts of made in the Cascade and Trout Pond land acquisitions. Young said an appraisal needs to be done on the properties so the Land Trust can move forward with negotiations and begin fundraising and grant writing endeavors. Young said the Land Trust asked whether the Conservation Commission would be willing to cover the estimated \$4,500 appraisal cost. Riss brought up the Land Use Change Tax fund maintained by the Conservation Commission as a potential source. Riss said there is a little bit of a risk in seeking an appraisal should the property sale not be successful and the Selectmen agreed. Devine said the Conservation Commission is still in favor of moving forward with paying for the appraisal as a “due diligence” maneuver. Shackford asked about the appraisal selection process. Young said the Town could find their own appraiser but Upper Saco Valley Land Trust has some they would recommend to us who are conservation minded. Riss said the appraisal would likely take a month or two to complete. Devine sits on the SLAM Board and knows that organization is very interested in these properties to ensure the water quality of Silver Lake isn’t compromised. Young said the Land Trust can only pay the appraised value of the land plus 10%. Riss said there is competition in the valley for funds with three land acquisition projects ongoing in the Conway area ranging from \$100,000 to \$175,000 each.

Motion: Shackford made a **motion** to approve up to \$4,500 out of the Land Use Change Tax fund for an appraisal of the ‘Chain of Ponds’ properties, seconded by Arruda, and so voted **2-0-1** with Brooks abstaining.

Decision: A Purchase Requisition will be written up for the Selectmen to sign at their next meeting.

RSA 674:41 BUILDING PERMIT DECISION – POMEROY – The Selectmen received a Memo on October 3, 2013 containing the Planning Board’s review and comment on the building permit application of Pomeroy Limited Partnership (Ben and Debbie Pomeroy) and the applicability of RSA 674:41 to the same. The Memo read, “The Planning Board, after careful review, despite concerns for access and safety which currently exist otherwise has no comment. In the future, it would be helpful if the Selectmen prepared a list of specific questions or concerns they would like to have review and comments on.” The property in question is off private Winter Road Extension and referenced as tax map 125, lot 003-001 where an existing seasonal structure is proposed to be demolished and replaced with a larger seasonal structure setback further from the lake. The Chairman turned the floor over to Ben Pomeroy as mentioned under Public Comments above. Pomeroy said he attempted to address the current condition of the road in writing to the Board and it also came up verbally at the last Planning Board Meeting. Pomeroy said there are 4 families (Pomeroy, Ettinger, Brooks, and Seasholes) that have been contributing annually to the upkeep of the private road through a verbal agreement that’s been in place for years. The arrangement is

that each of the families will contribute 25% toward the cost of brush clearing, filling, scraping, crowning, and general upkeep of the road. Pomeroy said there has been no work on the road for the last four years due to Mr. Ettinger's unwillingness to contribute. Arruda asked what is going to change in the future to prevent the road from deteriorating beyond what it has already. Pomeroy said he is confident that the road maintenance will return to normal once the ongoing litigation is resolved. Pomeroy's attorney, Jeremy Eggleton, concurred with Pomeroy's statement. Pomeroy said a medical aid call took place recently with no access issues to prevent the vehicles from responding to the scene in a timely fashion. Pomeroy said the electric company vehicles have made it out there as well as Quint's septic pumping truck. Pomeroy said he's aware that a Waiver of Liability will need to be signed before a building permit can be issued, he's familiar with the form and he will sign it willingly. Arruda asked for clarification that the property will remain for seasonal use only. Pomeroy said in his lifetime he's only visited the property twice in the winter; the first was by hiking in via the driveway and the other was snowshoeing across the lake. Pomeroy said the new building will not have centralized heat installed but there will be fireplaces and propane hookup. Arruda said he visited the site with the Code Enforcement Officer and noted a very tight spot at the height of the land. Arruda asked Pomeroy whether a flat landing could be established in that area in case multiple municipal vehicles are called in an emergency. Both Pomeroy and Martin said there is probably a way to extend or enlarge the area in question. Attorney Malia asked to speak on behalf of his clients, Thomas & Margaret Ettinger, who abut the Pomeroy's property. Malia feels the Selectmen should deny the building permit application which would give the Pomeroy's the right to appeal the denial to the Zoning Board of Adjustment as outlined in the Town's RSA 674:41 Procedural Guidelines. Malia said the guidelines state that the purpose is to ensure any structures built on a Class VI or Private Road are reasonably accessible throughout the year. Malia said the Fire Department previously submitted their comments about access and safety of emergency personnel to the Planning Board. Malia said the Ettinger's were surprised by the Pomeroy's condominiumization proposal which allowed the Town's Subdivision Regulations to be circumvented. Malia said the Ettingers' are upset by and contest the fact that the Pomeroy's granted The Nature Conservancy the right to use Winter Road Extension to access the land conveyed from Pomeroy to The Nature Conservancy through a boundary line adjustment. Malia said these are the reasons why Ettinger has pulled back from the verbal road maintenance arrangement. Malia said it is incumbent upon the Selectmen to deny the building permit application and have the decision go to the Zoning Board. Malia said the standardized Waiver of Liability form used by the Town when building permits are issued on Class VI and/or Private Roads gives the Licensee (applicant) the license to maintain that portion of the Class VI or Private Road that is used to access the Property as if the same were a private driveway. Malia said this language wouldn't be applicable in the Pomeroy case because their access crosses land owned by others. Malia brought up the new septic design plan approved by the NH Department of Environmental Services and encouraged the Selectmen to find out from the Pomeroy's whether the system will actually be installed as part of the building permit process. Eggleton said the access issue hasn't changed since the Pomeroy family has owned the property and won't be changing in the future because the use of the property hasn't changed. Eggleton believes the condition of the road is something that can be worked out between the four parties involved due to language contained within their deeds which makes clear what should be transpiring. Eggleton said Pomeroy can't widen the road in places because he doesn't own the land for which the encroaching trees are located. Eggleton said sending this to the Zoning Board as another appeal process is not the answer. Arruda said RSA 674:41 was adopted in 1983 and the property in questions was in existence long before the law was enacted. Arruda wondered whether stipulations could be attached to the building permit including seasonal use of the property and expansion of the landing at the height of land for vehicles to turn around. Arruda said he would have serious concerns if the Pomeroy's (or a future owner of one of the three condo units) chose to utilize the property during the winter months. Shackford asked when the cloud of litigation is presumed to be

finished. Malia said the only outstanding issue is whether the Pomeroy's had the authority to grant The Nature Conservancy permission to use Winter Road Extension as access to the Conservancy's property so probably by the end of summer 2014. Shackford said his inclination is to issue the building permit and put the onus on the Pomeroy's for maintenance of the private road through the Waiver of Liability Agreement. Arruda said he spent about six hours on this matter today and feels the access problems are not going to change or go away. Arruda said he's leaning toward issuing the permit but reworking the Waiver of Liability Agreement document. Brooks doesn't think the Town can hold the Pomeroy's to seasonal use through an agreement because it wouldn't be enforceable. Brooks said his vote would be to deny the building permit and let the Zoning Board decide because of strikingly similar circumstances surrounding the issuance of a building permit that has caused the Town to pay out legal expenses.

Motion: Arruda made a **motion** to approve the building permit and review and seek advice from Town Counsel on the wording of the Waiver of Liability Agreement, seconded by Shackford, and so voted **2-1** with Brooks in opposition.

Decision: Arias will convey the Selectmen's discussion and decision to the Code Enforcement Officer who will hold off on issuing the building permit until Town Counsel has assisted with a revision to the Waiver of Liability Agreement. The building permit will not be issued until the agreement is executed by the applicants and Selectmen and recorded at the Registry of Deeds.

RSA 674:41 BUILDING PERMIT REVIEW – POMEROY/MARTIN – The Code Enforcement Officer has received a building permit application from Pomeroy Limited Partnership (Ann [Pomeroy] & Dick Martin) which has been denied in accordance with RSA 674:41 because of the access over private Winter Road Extension. The property in question is referenced as tax map 125, lot 003-003 where an addition is proposed on an existing seasonal structure. Brooks said ordinarily the Selectmen would send the matter directly to the Planning Board for review and comment but the Planning Board already weighed in on this matter recently and Brooks assumes their response would be the same. Martin said the proposal is an addition containing less than half of the original residential square footage. Malia asked the Selectmen to again ask the property owners whether the newly approved septic plan will be installed as part of the building permit application(s). Brooks asked if the boat house has water currently and Martin said it has a sink only with the gray water going into the ground. Brooks received confirmation that there is no bathroom facility in the boat house currently. Brooks said the new septic design will need to be installed in order to provide current bathroom facilities to the boat house and Martin concurred. Martin said the new septic system was designed to service all three condo units. Malia asked the Selectmen to follow their own procedures and send the application onto the Planning Board regardless of the Planning Board's recent review and comment on the application for lot 003-001. After a procedural debate the Selectmen decided to send the building permit application to the Planning Board for review and comment. Brooks offered to draw up an outline of questions to send to the Planning Board per their request from the last review and comment they conducted for the Selectmen.

TRANSFER STATION BRUSH PIT – Arruda wants to find out why the Transfer Station brush pit isn't being burned routinely. Arias explained that the Highway Department had been burning brush at the Transfer Station most recently rather than the part-time employee that initially had taken on the duty. Arruda said he will talk with Bill Chick Sr. to see whether the brush can be burned up before the pit is closed for the winter.

TRANSFER STATION GLASS – Arruda said Coleman’s recommendation on our glass situation is to bring in a D6 bulldozer to crush and push back all the glass in order to buy more time. Arruda said this will cost \$400 to mobilize the unit and \$150 per hour to crush the glass. Arruda said Coleman’s hasn’t put glass through a portable crusher but he will talk more with them about this.

TIME WARNER CABLE PEG CHANNEL 3 – Arruda brought up the issue of Time Warner PEG Channel 3 now requiring a digital adapter on certain model televisions in order to continue viewing that channel. Arruda said his personal televisions, regardless of age, are now unable to show Channel 3 without the adapter box. Arruda said the adapters will cost \$1 per month, per unit after January 1st. Arruda reviewed the PEG Access portion of the Cable Franchise Agreement but didn’t find an answer. Arruda is going to call Time Warner in the hopes of learning how many people have asked for an adapter and if they can estimate how many people have been inconvenienced by this. Brooks asked Arias to put something on the website encouraging them to contact Town Hall if they can no longer view Channel 3. Emilie Riss said Jim Molloy could also include a message to this effect in his e-mail Monday when the Madison TV schedule is sent out.

CARROLL COUNTY DISPATCH SERVICES – Arruda attended a meeting last week at the County Complex to hear about a proposal that would lessen the County tax burden on those town’s that have their own police and fire/rescue dispatch centers (Moultonboro, Wolfeboro & Conway). Arruda said the proposal would increase the County tax contribution of all the towns that utilize Carroll County Sheriff’s Department dispatch services. Arruda said Madison’s anticipated tax increase is over \$30,000. Arruda said a County sub-committee was listening to proposal and testimony of those in attendance and he got the feeling the proposal wasn’t going anywhere. Arruda said the three towns having their own dispatch centers could opt to revert to the Sheriff’s dispatch if the cost is becoming prohibitive for them.

PERAMBULATION – Arruda said the Town has received a copy of the Town of Conway’s Return of Perambulation Reports for 2012. Arruda would like the last sentence of the report for the Conway-Madison line amended and clarified for the archival records because it says, “Old markers and stone monuments were relocated and in satisfactory condition”. Arruda said grammatically it sounds like the monuments were moved when what it should convey is that they were found on the face of the earth. Arias will send an e-mail to the Town of Conway stating the Town’s concern over the language used.

WEBINAR – Brooks said he has signed up to participate in a webinar next Tuesday evening which will overlap with part of the Advisory Budget Committee meeting. Arruda said he would remain at the Budget Meeting while Brooks did the webinar with Arias.

SIGNATURE ITEMS –

Manifest

Payroll & Accounts Payable Checks

Purchase Requisition #2013-FINA-001 – Town & City Reprographics (\$1,152) tax bill postage
#2013-FIRE-005 – Industrial Protection Services (\$2,348) Rit-Pak III

Veterans Credit Application – (243-002)

Intent to Cut Timber #13-283-11-T – Chick Sr. (229-001 & 229-023)

DRA Equalization Municipal Assessment Data Certificate – 2013

Letter to NH Retirement System re: full-time to part-time position

Letter to NH DMV re: permission for Town Clerk’s Office to process boat registrations

Workers’ Compensation Notice of Compliance – August/September 2013 revision

NON-PUBLIC SESSION – 7:41 PM – Brooks made a **motion** to go into non-public sessions under RSA 91-A:3II(e) to discuss a legal matter, seconded by Shackford, and so voted. Roll Call Vote: Shackford – aye, Brooks – aye, Arruda - aye. **8:25 PM** – Brooks made a **motion** to return to public session and seal the minutes of the non-public meeting, seconded by Shackford, and so voted **3-0**.

8:25 PM – Shackford made a **motion** to adjourn, seconded by Arruda, and so voted **3-0**.

NEXT SELECTMEN’S MEETING – The next Selectmen’s meeting will be on October 29, 2013 at 5:30 p.m. in the Town Hall Meeting Room.

Respectfully submitted,

Melissa S. Arias, Town Administrator
Recording Secretary