

**BOARD OF SELECTMEN
TOWN OF MADISON
OCTOBER 29, 2013
MINUTES**

Selectmen Present: Chairman Michael Brooks (joined late), Josh Shackford, John Arruda.

Others Present: Town Administrator Melissa Arias; Attorney Peter Malia; resident Robert D. King; Planning Board Chairman Marc Ohlson; 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 Shackford at 5:30 p.m.

APPROVAL OF MINUTES –Arruda made a **motion** to approve the Selectmen’s Meeting minutes of October 15, 2013 as prepared, seconded by Shackford, and so voted **2-0**.

APPROVAL OF MANIFEST – Arruda made a **motion** to approve the Manifest of October 21 - 30, 2013 in the amount of \$194,563.31, seconded by Shackford, and so voted **2-0**. The Manifest breakdown is as follows: \$21,394.41 for payroll; \$6,332.36 for payroll liabilities; \$41,836.54 for accounts payable; and \$125,000.00 for the Madison School District (release date 11/07/13).

PUBLIC COMMENTS – Bob King said he talked with Brooks about allowing a second Public Comment period after the Pomeroy building permit discussion and review of the Agreement drafted by Town Counsel. King and Malia indicated their interest in seeing a copy of the draft document in advance as long as the Selectmen were agreeable. Malia asked the Selectmen to take a look at Town Counsel’s cover letter or e-mail that accompanied the document to help determine whether the document was intended to be public or not. Malia assumes because it pertains to someone’s personal property that the document wasn’t intended to be attorney-client privileged. **END OF PUBLIC COMMENTS**

VETERANS ADVISORY SUB-COMMITTEE – Arruda said the Veterans Advisory Sub-Committee would like to open a Post Office Box at the Madison Post Office for the purpose of receiving donation checks and other correspondence. Arias believes this is being requested to ensure everyone making a donation receives a personalized thank you card on behalf of the committee. The committee’s concern is that deposits made by the Trustees of the Trust Fund might not be itemized out by donor name causing a donor to not receive a personal thank you. Arias said the bulk of mail for the Town comes to PO Box 248 and is distributed to the proper department internally, although there are a few departments that pay for their own PO Box from their annual operating budget. To save unnecessary expense, Arruda suggested the Trustees be asked to keep a list of donations and turn it over to the committee on a monthly basis for the purpose of sending thank you cards. Arias was asked to convey this request to the Trustees of the Trust Funds.

NEW BACKHOE – The Selectmen discussed the invoice from South-worth Milton CAT in the amount of \$111,000.00 for the new backhoe and payment of same from the Highway Backhoe Capital Reserve Fund. Selectman Brooks joined the meeting at this time.

Motion: Shackford made a **motion** to authorize the Trustees of the Trust Funds to pay Milton CAT \$111,000.00 for the new backhoe out of the Highway Backhoe Capital Reserve Fund, seconded by Brooks, and so voted **3-0**.

Decision: A copy of the approved minutes of this meeting, the invoice, and the Trustees of the Trust Fund payment authorization form will be given to the Trustees' on November 13, 2013 so the payment to CAT can be made at that time.

AUDITOR ENGAGEMENT LETTER – The Selectmen were provided with the Auditor Engagement Letter from Roberts & Greene for fiscal years 2013, 2014 & 2015. Arias explained that the letter had been reviewed by Sue Stacey and was similar to the previous engagement letters. The cost for 2013 and 2014 will be \$250 more than what was charged in 2012 and the 2015 cost will be \$500 more than what was charged in 2012. The Selectmen were fine with the document and will sign it later under Signature Items.

RSA 674:41 BUILDING PERMIT APPLICATION REVIEW – POMEROY/MARTIN (125-003-003)
The Selectmen discussed potential questions to be asked of the Planning Board during the review and comment on the Pomeroy/Martin building permit application for tax map 125, lot 003-003 at the November 6, 2013 Planning Board meeting. Brooks said the difference between this building permit application review and the one from Ben Pomeroy on tax map 125, lot 003-001 is that Unit 3 is the furthest most building into the Pomeroy property and away from private Winter Road Extension. Arruda said one of the things the Planning Board might have to look at is the distance from the height of land and the turn-around to Unit 3 because of the steep and narrow sloping access. Arruda said a truck might be able to get down to Unit 3 but would have a heck of a time getting out. Brooks said the accessibility from the end of Winter Road Extension to Unit #3, also known as the “Boat House”, is one issue for the Planning Board. Ohlson said the Planning Board would consider this from a safety standpoint, not a legal one. Brooks said the safety issue comes about for the Planning Board because of the condominiumization plan approval. Ohlson added that the Town Regulations/Ordinances do not define seasonal dwellings, which in his opinion potentially opens up a can of worms now that the Selectmen have authorized the issuance of the building permit for Unit 1. Ohlson said there are no such things as seasonal dwellings where the Ordinances are concerned yet the Town Attorney is referencing the replacement of a seasonal dwelling with another seasonal dwelling on Unit 1 in the draft Agreement document. Arruda said the proposal for Unit 3 is to add onto an existing seasonal dwelling and Malia pointed out that Ohlson’s comment about seasonal dwellings and their definition would be more fitting for the next discussion item on the agenda. The Selectmen will have the building permit application for Pomeroy/Martin (125-003-003) sent to the Planning Board for review and comment at their next meeting with the request that they pay particular attention to the internal access across the property from the end of the private road to the furthest most building known as Unit 3. This matter will be put back on the Selectmen’s agenda for either November 12th or 26th depending upon the timing of the Planning Board’s written review and comment.

RSA 674:41 BUILDING PERMIT – POMEROY (125-003-001) – The Selectmen reviewed a document drafted by Town Counsel titled Notice, Agreement & Release which was modified from the Town’s Private Road Waiver of Liability Agreement based upon the specific circumstances in the Pomeroy Winter Road Extension case. Arruda would like to have language added to the agreement defining the seasonal camp reference made within. Arruda suggested defining the season as being “from the end of mud season to the first plowable snow”. Ohlson asked whether the Selectmen would be enforcing the seasonal use or prohibiting the Pomeroy’s from snowmobiling across the lake to spend the weekend in their camp. Shackford asked what would happen if the owners purchased a tractor to clear out the private road, which

isn't the Town's to regulate in the first place, to utilize their dwelling during winter months. Brooks said he voted against issuing the building permit at the last meeting because he saw it as the safest way to proceed due to the number of unanswered questions and possibilities. Arruda doesn't want to see a private road start to be used during the winter months with the false expectation that it will always be accessible by emergency service vehicles. Shackford said a lawsuit is likely coming in this case either way so his decision on the building permit issuance was based upon what he thought was in the best interest of the property owner and their right to use their private property. King said plenty of seasonal camps exist in Madison, like up on Whitton Pond off the North Division Road. King said the Town's responsibility lies solely around the road and its accessibility. Shackford said there must be a standard definition of "seasonal camp" within the State Law and he'd like to review that definition before agreeing to add a restriction in the agreement. King said RSA 674:41 is a road issue and there is road law out there that recognizes how summer cottages are different from year-round houses. King said the condition of the private road in question is dismal and the Town has never been faced with having a house built out in the boonies accessible by such poor access. King said the Selectmen have sent previous building permit applicants back to the Planning Board due to poor accessibility. Arruda suggested substituting the word 'summer camp' for any reference to the term 'seasonal camp' in the agreement. Arruda said that change would require that any future change to the property occupancy status come back before the Selectmen and probably the Planning Board for review and approval. Arruda is less concerned about this happening under the current ownership and more worried about what could happen after one or more of the condos units are sold. Arruda has reviewed copies of the deeds for Seasholes, Ettinger, and Pomeroy in which the private road and maintenance thereof is mentioned, some in more detail than others. Brooks said the agreement specifies that Owner has the responsibility of maintaining and repairing Winter Road Extension to a suitable and passable condition upon signing the agreement. Brooks said the Town doesn't care whether the Pomeroy family has to accomplish this requirement solely on their own dime or whether they convince the other parties to contribute monetarily as long as the maintenance is kept up. Brooks would like to ask Town Counsel whether there was a reason she used the term 'seasonal camp' versus 'summer camp' before the Selectmen agree to send the document to Pomeroy for review. Brooks would like to know if the term 'seasonal' means something different legally than 'summer'. King also suggested considering the word 'cottage' instead of 'camp' because 'cottage' is already recognized in NH State Law. King said the private road is not feasible to plow because it is so narrow that snow would have to be pushed onto private property, which he said is not legal. King would like to see the reference to RSA 674:41 added to the end of item #1 in the agreement. King also said item #4 could state that, "Owner, *alone if necessary, or in cooperation with others*, shall be responsible..." King said ideally a written Joint Maintenance Agreement should be a condition of all building permit issuances along Class VI or Private Roads so that any future development of vacant land which uses the same accessway doesn't become clouded by disgruntled neighbors who refuse to cooperate in keeping the private or Class VI Road in safe condition. King suggested item #8 read 'layout or acceptance' instead of 'layout or alteration'. The Selectmen asked Arias to communicate with Town Counsel and ask her to consider and modify the draft document as she sees fit for review at the next Selectmen's Meeting.

TIME WARNER CABLE PEG CHANNEL 3 – Arruda said the Town received a letter recently from Mike Edgecomb, Government Relations Director at Time Warner Cable, regarding our recent negative comments about the digital conversion of Time Warner PEG Channel 3. Arruda said there have been 8 residents who have responded so far to the Selectmen's inquiry about being inconvenienced by the digital conversion. Arruda said Time Warner reports in the letter that 70% of Madison viewers already have digital viewing capabilities. The Selectmen said no further action needs to be taken on this matter at this time.

WARD PARCEL PAVILLION – Shackford asked Arias where the Town stands on the septic design plan renewal for the Ward Parcel Pavillion given that budget season is upon us. Arias said former Madison surveyor Gene O'Brien recently sent Briggs Land Surveying an electronic version of our expired septic design plan and she will follow up with a phone call to Briggs about having the plan updated and resubmitted to the NH Dept. of Environmental Services for re-approval.

TRANSFER STATION GLASS – Arruda said he is still working on remedying the Transfer Station glass issue without having to pay out \$10,000 for grinding. Arruda said Bill Chick Jr. obtained prices from local contractors to mobilize and use an excavator to crush down and push back the glass to buy the Town a few more years. The lowest price was for \$200 in mobilization and \$100 per hour for the excavator and operator. Arruda assumes the work can be done in 8 hours. Arruda said the cost will come from the solid waste budget in December when the excavator is freed up from another job. In the meantime, Arruda said the Highway Department will push the glass away from the front of the pit with the backhoe. Arias will prepare a Purchase Requisition for signature at the next meeting in an amount not to exceed \$1,000.

CIP WORKSHEETS (2015-2020) – Brooks brought up the Highway Department's CIP Worksheets given to the Planning Board for 2015-2020. Brooks said questions on these forms were raised at the last Planning Board meeting during the CIP review and Brooks was unable to answer the questions on behalf of the Road Agent. Brooks wanted to ensure the 1996 backhoe replacement item could be stricken from the next CIP version since we're buying a new backhoe this year with surplus funds. Brooks said we now have more vehicles than we have drivers so the Selectmen need to get a better idea of the truck rotation schedule. The Selectmen asked Arias to schedule the Road Agent during the next meeting so the questions can be answered before department heads meet with the Advisory Budget Committee. Brooks said the Planning Board is also looking to finalize the CIP so the Selectmen and Budget Committee can use it as the planning tool it was intended to be.

AMBULANCE MEETING – Brooks said he and Arias attended a Freedom Selectmen's Meeting last night where representatives from CarePlus North Conway Ambulance had been invited to discuss some recent changes within their organization and how it might be affecting the 4-town ambulance contract with Freedom, Madison, Tamworth & Eaton. Brooks said there has been no breach in contract but North Conway Ambulance has begun servicing the Town of Ossipee and has established a base in Ossipee which has affected the number of ambulances housed at the Tamworth base. Brooks said Ossipee has recently gone out for ambulance proposals and received only two back with a very large range in cost to provide the various options included in the proposal. Brooks said Ossipee could structure their contract around the December 2015 expiration of our 4-town contract in an effort to get all the area towns working cooperatively in an attempt to save taxpayer dollars. Brooks said Effingham has found themselves in a bad place recently without an ambulance provider so they may also be looking to work cooperatively in future contract negotiations. Brooks said the President of North Conway Ambulance, Eric Damon, sent out an e-mail today to address some of the questions or comments that came up in Freedom last night. Brooks is going to reach out to Damon to continue the discussion and attempt to clarify a few points he tried to make.

FIRE COMMISSIONER MEETING – Brooks said he received word today that the Fire Commissioners meeting posted for last Thursday had been cancelled at the last minute and attempts to make contact with the Madison TV videographer via phone were not successful. The videographer was met at the door by the recording secretary saying the public meeting had been switched to a non-public meeting. Brooks said he went to the Fire Department last Thursday night for training and found the Chief, two Commissioners, and the recording secretary behind closed doors. Brooks said the public notice that was posted was for a public

meeting and no posting was put up in advance to allow a non-public meeting to be held. Arruda said a Memo needs to be sent to the Commissioners as soon as possible based on the appearance that they held an illegal non-public meeting. Arruda said the Town has been challenged in court over breaches in RSA 91-A before and instances like this must be avoided to keep the Town out of court where we'd be guaranteed to lose. Shackford brought up the presentation made at the Elementary School gym several years ago by Local Government Center Attorney Susan Slack on the topic of RSA 91-A. Arias said we have the presentation on DVD so Shackford suggested the Fire Commissioners take a look at the presentation to familiarize themselves or recall the letter of the law for strict adherence to.

SIGNATURE ITEMS –

Manifest

Payroll & Accounts Payable Checks

Purchase Requisition #2013-CONS-001 – To be determined (<\$4,500)

#2013-PARK-001 – Reimbursement (\$1150) new Head of Lake dock

#2013-GGEQ-001 – Reimbursement (\$4346.66) 2 Dell PC's & 1 laptop

Intent to Cut Timber #13-283-12T – Chapman (221-022 & 221-022-001)

#13-283-13T – Smith Rev Trusts (234-036 & 234-039)

#13-283-13T – Whitelaw (227-029-001)

Auditor Engagement Letter w/Roberts & Greene

NON-PUBLIC SESSION – 7:20 PM – Brooks made a **motion** to go into two separate non-public sessions under RSA 91-A:3II(c) to discuss (1) a property tax matter with a resident and the Tax Collector and (2) a property tax matter with a resident and the Tax Collector, 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 meetings, 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 November 12, 2013 at 5:30 p.m. in the Town Hall Meeting Room.

Respectfully submitted,

Melissa S. Arias, Town Administrator
Recording Secretary