

**BOARD OF SELECTMEN
REGULAR MEETING
Thursday, December 4, 2014
AMENDED MINUTES**

Members Present: William H. Rose IV, Irene Schein, John Smith, Suzanne Gluck,
Administrative Assistant and Recording Secretary.

Members Absent: None

Others Present: Jim Randall, Emergency Preparedness; Dick Weingart, Board of Finance

Regular Meeting

1. Call to Order

Bill Rose called the meeting to order at 7:00pm.

2. Additions to Agenda

None

3. First Audience of Citizens

None

4. Approve minutes:

Bill Rose made a motion to approve the minutes of November 6, 2014, Regular Meeting. John Smith seconded the motion. Irene Schein abstained. All in favor. Irene Schein made a motion to approve the minutes of November 25, 2014, Special Meeting. John Smith seconded. All in favor.

5. Communications and Reports

A. Trooper Report– November 2014

Mr. Rose explained the new format for the Trooper reports now shows ongoing monthly statistics so it shows the trends. The months we had the grant we see a significant increase of tickets issued.

B. Board Members Reports

Mr. Rose reported that there was a Special NECCOG meeting discussing the purchasing of new software for the Town's financials. We currently use QuickBooks and there is a grant to purchase replacement software. If all the towns use the same software matching the line items for all would probably be a big project. We will apply for the grant and determine if we will move from QuickBooks or not.

John Smith reported that he attended a CIRMA meeting to discuss insurance coverage when children go from town to town when playing sports and issuing a memorandum of liability. Basically, the town the child is from covers the liability with the exception of negligence within the buildings/grounds they are playing in, then that town would be responsible. Mr. Smith recommended the Board of Selectmen sign off on the memorandum. Bill Rose agreed and stated a Special Meeting can be scheduled to do this.

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Bill Rose also reported on a CL&P presentation from a NECCOG meeting. We are looking at a 26% increase in January, other states are even higher. John Smith reported that he has a copy of all the CL&P bills for the town and will be looking into other providers to cut costs.

John Smith asked about the status of the lights in the parking lot at the Town hall and when they are getting repaired. Mr. Rose reported the issue to CL&P and repair should be done on Monday, December 8th.

Mr. Rose reported that the Airline Trail is complete and working with the town of Windham went very well on the reimbursement process. We went 750ft into Hampton and the remaining \$3500 can be used for signs and benches. John Smith asked if we can get gates, but Mr. Rose stated that the gates are controlled by DEEP. Whenever maintenance is done on the trails we have to contact them to open the gates.

C. Board of Finance Discussion

Dick Weingart reported that Val Garrison distributed agency budget packets the week of the Thanksgiving holiday. The due date is the end of January, one week earlier than last year. No complete schedule of meetings yet. The BOF would like the option to review financial statements ahead of time to have a better understanding of them while the auditors are here. Bill Rose stated that the audit for 2013-2014 is in the final stages. A request for an extension of the audit was sent to the auditing firm. Mr. Weingart informed the board that the upcoming BOF meeting has a couple of initiatives in terms of policies and by-laws to document what they do.

Dick Weingart wanted to know if the Hampton-Chaplin Ambulance contract is a new one or renewal. Bill Rose stated it is a renewal and we are also working with Windham/Hartford hospital contract. There have been increases due to medical insurance changes.

Bill Rose stated in regards to the MD&A that the quote from Noel Cormier was high and that the auditing firm would charge much less, \$350.00. Mr. Rose will have the auditing firm do the MD&A report.

Dick Weingart reported that he spoke with Ken Henrici and that the Special Education expenses for one student are approximately \$150,000-\$170,000 due to out-placement. Only about 40% of this will be reimbursed through Excess Cost Grant and the rest will show as a deficit for the Board of Education.

D. Correspondence

Mr. Rose reported that he received a request from William Jenkins if he can use the town copier for personal business and pay for the copies. Irene Schein made a motion that we do not allow use of Town copiers for personal business to residents. John Smith seconded the motion. All in favor.

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6. Old Business

A. STEAP Grant (Darling Pond, North Bear Hill Bridge).

Bill Rose reported that the application for grant money was submitted for 2014 STEAP grant and hope to get approved. We received a grant on our initial application but we were denied the second time around. Bill Rose reported that the North Bear Hill Road bridge final design is complete. Wetlands permit is in the process and we are getting ready to get specs out for bids. For the Bedlam Road Bridge we received the grant in 2012 and just received the contract. We experienced many delays with this project due to changes of personnel in the State of CT.

B. Community & Economic Development Commission:

Nothing to report at this time. Bill Rose reported that NECCOG talked about applying for new RPI grants. Economic Development Marketing grant to be shared with surrounding towns to develop a group for economic development. We will also apply for regional hazardous waste – indoor facility, maybe Midneroc. Another grant is phase III for Hampton, Chaplin, and Scotland school study to pay for lawyers, researchers, etc. In order to look for a spearhead for this group, Irene Schein will put an outline together so a notice can be sent out via Google groups.

C. Discuss All Pending and New FOI Requests:

None at this time.

D. Building/Infrastructure:

Nothing to report at this time.

E. Discussion regarding Recreation Commission:

John Smith reported that the Recreation Director was hired, Cynthia Lovely.

F. Annual Report

Bill Rose is working on the report and it will be completed next week.

7. New Business

A. Tax Collector Refunds:

John Smith moved to approve tax refunds to:

Mary R Busse	\$27.34
Nelson J Bakken Jr	\$192.29
Cecelia or Stephen Messier	\$74.66
Jara J. Messere	\$169.97
John Vanostrand III	\$107.60
Mary R. Busse	\$27.34

Irene Schein seconded the motion and it passed unanimously.

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B. Resignations/Appointments: None at this time.

C. Finalize dates for 2015 Board of Selectmen Regular Meetings.

Bill Rose made a motion to approve the meetings dates (see attached) for 2015. John Smith seconded the motion. Discussion ensued regarding the January 1, 2015 meeting that falls on a holiday. The BOS agreed to move that day to the next business day, Monday, January 5, 2015. All in favor.

D. Discussion regarding Shuba Lane.

Mr. Rose reported that a portion of Shuba Lane is located in Mansfield, a portion in Chaplin. A resident has shut down ~~some~~ another resident's regular access to a the back portion of their property. They still have access but it is very inconvenient. A letter was submitted by Attorney Dennis O'Brien which was reviewed by the Board of Selectmen (see attached). According to the Town Attorney, ~~Denise~~ Denise Dennis O'Brien, road access is a ~~evil~~ private matter. Mr. Rose stated as First Selectman we will not have Town trucks plow the portion of the road that is private property.

E. Discussion regarding rules and regulations for use of parking lot at the Department of Public Works.

Mr. Rose reported that we have people loitering after hours and hanging out in parking lot. Mr. Rose read a memo notifying all parties of the no loitering policy and would like the Board of Selectmen to approve distribution. Irene Schein moved to approve the memo. John Smith seconded the motion. All in favor.

F. Resolution: 2014 Homeland Security Grant Program MOA

John Smith read the resolution to the board and made a motion to approve. Bill Rose seconded the motion. All in favor.

G. Discussion regarding the Hampton-Chaplin Ambulance Corps, Inc contract.

Irene Schein moved to accept the contract for 2014-2015. John Smith seconded. No discussion. All in favor.

8. Other Business

None

9. Second Audience of Citizens - Note: Comments are limited to agenda items and subject to Chair discretion.

Dick Weingart wanted to know when the school study will commence. Bill Rose stated the timing has to do with when we receive the grants to finish the phases of the study. The next phase probably won't start until January 2015.

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10. Agenda Suggestions for next meeting:

Trooper Report
Board Member Reports
Board of Finance Discussion
Correspondence

Old Business:

STEAP Grant (Darling Pond, North Bear Hill Bridge)
Community & Economic Development Commission
Discuss All Pending and New FOI Requests
Update on Progress Report on the Cohen Project
Building/Infrastructure
Discussion regarding Recreation Commission
Annual Report
Discussion Regarding Shuba Lane

New Business:

Tax Collector Refunds
Resignations/Appointments
Budget Discussion

11. Executive Session: Discussion regarding candidates for the Department of Public Works position for Laborer/Operator/Driver.

Bill Rose made a motion to invite Suzanne Gluck into the Executive session. John Smith seconded the motion. All in favor. Bill Rose made a motion to enter executive session at 8:14pm. Executive session ended at 8:30pm.

12. Possible action regarding DPW position:

Irene Schein made a motion to hire Benjamin Shipton for the DPW position pending pre-employment requirements. John Smith seconded the motion. All in favor.

13. Adjourn

The meeting adjourned at 8:35pm

O'Brien and Johnson

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December 4, 2014

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Mr. William H. Rose IV
First Selectman
Town of Chaplin
495 Phoenixville Road
Chaplin, CT 06235

Re: Discussion regarding Shuba Lane:

Item #7D on the Board of Selectmen's Meeting Agenda for 12/4/14

Dear Bill:

Earlier this week you asked if I could attend this evening's Board of Selectmen (BOS) meeting to provide information about issues regarding Shuba Lane. When I told you I am unavailable tonight due to a prior commitment, you asked me to provide a written report regarding what I know about the situation. This is my report.

As you know, Mr. Hill Bullard has been one of a relatively few residents on Shuba Lane, located off of South Bedlam Road in the Town of Chaplin. Until his very recent move to Storrs, he resided on Shuba Lane. Around October first of this year, Mr. Bullard phoned me in my capacity as town attorney to complain about problems he and his family and a few other owners of property rights on or off of Shuba Lane were having with a relatively new Shuba Lane resident, Mr. Allen Dziavit of 41 Shuba Lane.

Though Mr. Bullard never expressly asked me to get directly involved in this apparent controversy on his side of it, it was clear to me that he would like and seemed to expect help from me and the town. I talked to you, and on my next visit to town hall, asked if you would take me to Shuba Lane to site see. We encountered Mr. Dziavit while we were there, and had a relatively brief and generally superficial conversation with him.

At first glance, Shuba Lane appeared to me to be a relatively short dead end **private** way, the kind I have often seen in the several rural or semi-rural towns I have served as town counsel. From what you and Mr. Bullard told me, the Town of Chaplin has never acted to officially accept Shuba Lane as a Town road or "highway." On the other hand, you and perhaps Mr. Bullard told me from the very beginning that for many years the Town has gratuitously snow plowed the road and patched it on occasion.

I recall that you and I then surmised that the dispute between the Bullards and Dziavits was basically a **private** matter, and that absent a clear indication of Town authority and responsibility to resolve the dispute, at least for the time being the Town

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should not take sides on the matter, which would be more properly addressed primarily by the Bullards and Dziavits or perhaps their own **private** counsel.

The essence of Mr. Bullard's complaint is that Shuba Lane is the sole means of vehicular access to and from his properties, and has been used as such by the Bullards and their neighbors and invitees for a long time. The Dziavits have apparently prevented continuous use of Shuba Lane by the Bullards and company by blocking access with large quantities of rocks, boulders, barricades, posts, a sign facing his former residence at the road boundary threatening criminal prosecution, vehicles, and other obstacles.

The Bullards retained Attorney James Connor of Updike, Kelly & Spellacy of Hartford to represent them in their dispute with the Dziavits. I have worked with Attorney Connor on more than one complex matter in the past, and I believe that the Bullards have acted wisely in their choice of counsel.

On or about November 17, 2014, Hill and Andrea Bullard filed suit against the Dziavits seeking, among other things, an injunction ordering the defendants to cease and desist from impeding their right to travel on and use Shuba Lane for access to and from 35, 42 and 57 Shuba Lane, including the "Old Roadway" at its very end.

The foregoing request for relief made by the Bullards is based on their legal claim to a **private** prescriptive easement right grounded on the fact that they have been able to use Shuba Lane for the full access they seek for more than 15 years, and that therefore they have a right to continue that use.

Based on what I know about this situation, I believe that the Bullards claim to a **private** easement is sound and valid and should ultimately carry the day for them in court. So far, the efforts of their lawyer to persuade the Superior Court to provide them with instant relief has been unsuccessful, probably due to the fact that such relief is difficult to obtain without a clear showing of **immediate and irreparable injury**. The claim of the Bullards that a tenant farmer is being harmed due to his great difficulty in accessing crops on property owned by the Bullards beyond the end of Shuba Lane has apparently fallen short of the level of **immediate and irreparable injury** an applicant must show to get injunctive relief at such a very early stage of the proceedings.

Nevertheless, in **Bullard v. Dziavit**, the court has followed the normal procedure and has scheduled a full evidentiary hearing on the Bullard request for a temporary injunction on January 5, 2015, starting at 2 p.m. at the Superior Court on Valley Street in Willimantic. Again, I believe that the Bullards have a very strong case for an injunction on the merits, though a weaker claim for the conclusion of **immediate and irreparable**

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injury. Nevertheless, I think they have a good chance of getting some relief in January, though it is no sure thing.

Finally, as part of my effort to provide you with a relatively thorough report, I did ask Attorney Connor if he or the Bullards would be or are in fact seeking any help from the town in this matter. Here is his email response made to me yesterday:

“It is potentially premature or a statement of the obvious, but the only thing that the selectmen will probably want to be aware of is that the Bullards hope to get the Town meeting to authorize a **de jure** taking of a public right of way at some time in the near future and will likely continue at least some informal discussion with the BOS toward that goal. We are continuing to look at the factual and legal basis for the existence of a **de facto** public way, although that does not appear at this time to be required to obtain practical relief, since we are confident that we have sufficient evidence of express and implied **private** easements. (Emphasis added).”

This confirms my belief that no doubt this complex matter is unfolding as it should, first as the **private** matter it is, with whatever **public** issue that is left to be resolved patiently addressed once the court has acted in **Bullard v. Dziavit**. Maybe in the **final analysis** the Board of Selectmen and Town Meeting, aided by input taken from the judge and the parties in this court case and with the advice and counsel of yours truly will ultimately **officially acknowledge** that Shuba Lane, an apparently **private way**, is indeed a **public road or highway**, maybe not, but that is not now the case.

Several weeks ago in response to a question I passed on to Mr. Connor from you, he informed me that he was unable to find any authority for the proposition that the BOS is empowered to make a declaratory ruling regarding whether a road is **public** or **private**.

In my view, and apparently in the view of Attorney Connor, the question of whether an undeclared and unaccepted way is by prescription a **public** road or highway is not simple and must be determined by a careful look at all of the circumstances by the BOS and the Town Meeting before a determination is made. A circumstance militating against the proposition of prescription is of course the lack of dedication by the property owners and subsequent acceptance by the Town.

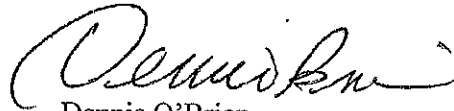
A circumstance in favor of Shuba Lane being a **public** road by implication is the Town's relatively long history of gratuitous plowing and occasional maintenance, possibly a very important factor. Another opposing circumstance is the fact the **public**

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use of the way has been almost exclusively limited to a very few Shuba Lane property owners and residents and their invitees or guests, as the putative road is not a through way, but merely a relatively short dead end. All these circumstances and perhaps more need to be carefully examined by the BOS and maybe then the Town Meeting, but for now the ball is in Superior Court where the real parties of interest, the **private** parties, should be fully heard on the fifth of January next.

I hope this is sufficiently informative for your meeting this evening. Please let me know if you need any more from me on this at this time

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dennis O'Brien".

Dennis O'Brien
Town Attorney