

Minutes

Albany NH Selectmen's Meeting

June 4, 2008

At 4:00 p.m., the Selectmen's meeting opened with Robert Mathieu, Daniel Sdankus and Jack Rose in attendance. Many Albany residents were also in attendance.

Appointments: Peter Malia, Richard Lake, Bill Lake, Curtis Coleman, Ann Croto and Brad Donaldson 4:30 p.m.

Regular Business:

- Reviewed & approved May 28 minutes
- Signed checks
- Reviewed & approved one septic design
- Reviewed & signed one timber warrant
- Reviewed & signed two letters regarding debris cleanup
- Reviewed letter from DES—Notice of strict liability
- Reviewed e-mail from David Maudsley-Planning Board Secretary concerning fireworks ordinance
- Reviewed letter from DES regarding wetlands and non-site specific permit
- Reviewed letter from Town of Conway regarding methadone clinics
- Reviewed letter from NH Dept. of Health and Human Services regarding EEE
- Reviewed e-mail from Mt. Washington Valley Economic Council regarding e-peaks after hours invitation

Albany Citizens Coming Together (ACCT):

The previous week, ACCT asked the Selectmen in writing to waive the fee associated with renting the Town hall. They would like to hold their meetings there and feel that because they are a group that is working on town issues, the rental fee should be waived. Bob said he wants to treat everyone equally but there are loose ends surrounding this issue that he would like to see taken care of before agreeing to waiving the fee, such as leaving the hall as it was found, not using the kitchen, the alarm system being set properly and the property being left secure. Jack asked some of the members of the group that were present if the kitchen would be used and if the hall would be left as it was found. The members told Jack that the kitchen would not be used and the hall would be left clean.

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Bob asked if this group was formed from the original group that was meeting at the Darby Field Inn. A group member said that it was busy season for the Darby Field and they could no longer use it. Bob Munroe stated that the group was concerned about the direction of the Town and its future. He said the group wants to be involved and bring the interests to the Board. He continued to say that he didn't feel that the group should have to pay for the facilities.

Dan said he approved of the idea. Bob said he still thought that there were loose ends and that concerned him. He wants this group to be a positive approach for the Town. Bob Munroe said that this group will be cemented with officers and it will be tangible. He went on to say that they were not happy with the Town Meeting when the group formed but they are looking positively at the future of Albany.

Jack motioned to grant waiving the fee for the group on a monthly basis as long as it stays clean and the kitchen is not used. Bob raised concerns about hall keys and the security code to the building. He believes one person should be held liable for this. Harry Richardson said he would take the responsibility for locking up and the security code as he already has a key and pass code for the Supervisors of the Checklist. Jack added that Steve Knox was part of the group and he also has a code and a key. Bob stated that the meetings can only be held if either Harry or Steve is present. Bill Lake added that he is seeing a positive change in the group. As far as the Town aspect, Bill pointed out that issues are coming up that involves a planning stage and re-upping the Master Plan.

Jack asked for a second on his motion. Dan seconded the motion. Jack moved to vote. Jack said yea, Dan said yea, and Bob said nay. Bob stated that there are other issues to consider before approving this. He felt the Board should set rules. The issues to consider are heat, doorway shoveling, and safety issues. He told the others how he had been called to the Town Hall numerous times to reset the alarm by the Sheriff's Department.

Purchase and Sales Agreement:

Peter Malia (town counsel) said before the Town enters into any agreement with the Lakes' and paying them any monies, he felt an agreement with Ann Croto and Brad Donaldson should be secure. The agreement would include that Brad will do his part by connecting to the cul de sac and the current access will be closed off. He went on to say this should be in writing to we don't have the possibility of having a road going to nowhere. He asked Ann and Brad if they were in agreement with this. Ann and Brad both said that

they were in agreement. Peter stated that an existing road will connect to the new road and then the old access will be closed except for maintenance uses. Jack said that Curtis Coleman had suggested a double gate for the maintenance entrance. Brad didn't think that that would be a problem. Curtis stated he meant a double lock, not a double gate and he suggested that the Town should have the authority to lock or unlock it in case of an emergency that the new entrance could not be used. Bob asked if the park would have a separate gate so they could not access Drake Hill Rd. via the old entrance. Brad stated that once the new entrance is opened, no one will want to climb the hill to exit onto Drake Hill Rd. Brad agreed with Curtis about not having a double gate but a double lock. Brad also added that his line of mailboxes would be moved to the bottom of the hill somewhere. Peter asked Ann and Brad if they would sign an agreement with the Town stating they will connect to the new road and close off the current entrance. Both Ann and Brad agreed they would sign it. Peter asked Brad if he were comfortable having the cul de sac on his side of the boundary line. Ann and Brad both said that it was not a problem.

Richard Lake stated that he was under the impression that there would be a contract to sign tonight. He said when the contract is finished, to mail it to him and Bill. If they like it, they will sign it. Richard went on to say that he will come in to meet with the Selectmen next week and expect a check for the deposit. Richard got up and left the meeting. Peter told Bill that a purchase and sales agreement was not necessary. Bill stated that a purchase and sales agreement survives the closing and it was his right as a seller to have an agreement in place. Bill added that he felt it was his obligation as the seller to provide the purchase and sales agreement and if the Board doesn't agree with some of the points, it can be altered. Peter responded by saying that the easement survives the closing also. Bill restated that it was his right as the seller to have a purchase and sales agreement in place. Peter recommended that portions of the Purchase and Sales agreement that was drafted by Richard Lake be either altered or taken out completely. Bill stated that his purchase and sales agreement had been delivered to the Selectmen's office in April and if there were to be amendments to it, it should've been done prior to today. He added that Richard is at his wits end with this and is ready to give up. Bill said that the conditions of the purchase will be in the purchase and sales agreement.

Bob suggested going down the list one by one. Bill asked that the meeting go into nonpublic session, claiming RSA 91-A:3 (d). Peter did not agree with Bill's reasoning to go into nonpublic session. He said that the numbers associated with the sale is already public. Bob asked Dan if the meeting should move into nonpublic session. Dan responded yes. Then Bob asked

Jack the same question. Jack replied no and he agreed with Peter that the money amounts were all public and they were discussing what the documents should read. Bob agreed with Jack and Peter. They would be discussing what would be needed in the contract. Curtis added that it would be highly scrutinized by the residents of the Town if the meeting moved into nonpublic session. Bill said that the facts are the facts and there's nothing shady going on. Jack asked Bill to let Peter address his concerns and Bill can choose to agree or disagree.

Peter asked Bill how the \$80,000 for the purchase of the easement was to be paid. Bill replied that it should be paid at the closing. Bill stated that he needed the deposit money for fuel and he doesn't want the closing to be a month away. He would like to have a good faith deposit. Peter wants to iron out the terms of the purchase and sales agreement, he will prepare a new agreement and will meet again next week and if all is agreed, the deposit of \$16,000 would be paid to Bill and Richard. Bob stated that this deposit puts the Town at risk as it is non-refundable. Peter said that there will be a purchase and sales agreement and he didn't feel comfortable about the non-refundable deposit. Bob reiterated again, his concern of the non-refundable \$16,000 deposit. Dan said he felt that the job will get done. Jack added that this project is going to happen unless the non-refundable deposit is in violation and other stipulations cannot be met. Peter suggested leaving the non-refundable wording in the agreement, then the balance of \$64,000 to be paid on or before July 23, 2008, or 30 days. Bob agreed.

Peter asked Bill about the easement being only 50 feet wide as usually easements are 66 feet wide. Bill pointed out that Albany's ordinances state and easement to be 50 feet wide. Curtis said it was OK but it should be surveyed by next week, Tuesday if possible.

Peter suggested that in paragraph #2 of the Lakes' purchase and sales agreement, a period should be placed after deposit and the rest of the sentence should be stricken to read as follows: if the Purchaser fails to pay the full purchase price within the time set forth herein or fails to comply with any provisions of the Agreement, Seller shall retain the deposit. He added that he could not recommend that the Purchaser (the Town) be liable for cost and damages. Bill stated that the sentence could be tweaked but he thought the Town should be liable for some cost and damages. Peter recommended that the Board remove the rest of the sentence after deposit and the Town shall not be liable. Bill said his position was to have strong language in this paragraph. Jack said there is nothing to negotiate.

Peter asked Bill if he understood paragraph #3, it reads, with no other claims to damages and after the deposit is made, then the Lakes' decide not to sell, they will refund the deposit of \$16,000. Bill said yes, as seller, it is the Town's only recourse to get money back. Peter asked Bill what the intention of this paragraph is. Bill stated that it is the only option of getting back the non-refundable deposit of \$16,000 if Richard backs out of the deal.

Peter stated that paragraph #8 cannot state that this road is solely for Golden Oaks Mobile Home Park. It will be a Class V town road. It will be used by people who live in the mobile home park. Bob added that the language should reflect that it is a Town road not private. Peter rephrased paragraph #8 to say that its primary purpose will be for the residents of the mobile home park and not the sole purpose.

Peter went on to paragraph #9 and said that this should be in the agreement between Golden Oaks and the Lakes, not the Town and the Lakes'. The Town cannot limit the growth of Golden Oaks. Peter recommended that this paragraph be removed. Bill stated that the park had been approved for 50, two-bedroom mobile home lots and somehow there are two double wide mobile home units in there. He went on to say that if it were to expand, it would void his driveway permit. Peter said that the Town has no authority to tell the park what it can and can't do as far as expansion. He recommended again that paragraph #9 be removed. Selectmen agreed.

Paragraph #10 puts limits on how many cars per unit would be allowed to cross the Town road. Peter again said that the Town does not have the authority to enforce or control over this and would recommend that it be removed from the agreement. Bill claims the reason for this paragraph is to control the traffic.

Bill said that the reason behind paragraph #11 is that Drake Hill Rd. used to be the old Nickerson shortcut. Curtis Coleman asked if there were another road in Town named Nickerson. The AA replied, no. The Selectmen agreed that the new road would be named Nickerson Rd.

Peter said that paragraph #12 could be implemented but it was probably should not be posted as a dead end but rather as, no outlet or not a thru road. Bill agreed.

Peter recommended that paragraph #13 states, if the owners of Golden Oaks Mobil Home Park desire a turn around, they shall construct same on their property solely at their expense. Also suggested to be removed is paragraph

#14, which states if the owners of Golden Oaks Mobil Home Park desire, they may post their property as Private Property.

Peter recommended #15 to be approved. The Selectmen agreed. It states, there shall be no standing or parking of vehicles on the 50' wide easement including school buses.

Peter recommended that paragraph #16 be taken out because although it is to be considered and ingress and egress, essentially it is a Town road. Bill asked that Peter re-word paragraphs #8 and #16 into one. Peter said he would come up with the correct language to do so.

Peter said that paragraph #17 is too broad. Construction of driveway accesses from the Town road will require Planning Board approval anyway. Bob asked Bill if he planned to subdivide at some point in the future. Bill replied that yes eventually he will apply to subdivide and then come back for building permits. Jack said that Bill had the right anyway for apply for a driveway permit. With the easement in place he has permission to retain access to five locations for land improvements and paragraph #17 should refer to those accesses.

Peter suggested removing paragraph #18, which stated, there shall be no trespassing by anyone on the driveways that may be constructed or on the lands of Chocorua View Trust, its heirs or assigns.

Paragraph #19, instead of the Town fining people for littering, Peter suggested it should be worded as such that the proper authorities will be notified of littering along the road. Curtis noted that in the past, they have tried to figure out whose trash it is and then notify the Sheriff's Department. Bill would like signs to be placed saying there will be fines associated with littering. Bob said it will be posted, Jack and Dan agreed.

The Board and Peter agreed with paragraph #20 stating that if the Town of Albany or owners of Golden Oaks Mobile Home Park acquire another entry to their park, this road will not be connected in any way, shape or form so as to create a thru road.

Peter recommended that paragraph #21 be removed from the agreement which states that anyone who uses or attempts to use any driveways to lands of the Chocorua View Trust, its heirs or assigns, shall be fined a substantial amount for each trespass.

Peter stated that paragraph #22 was already agreed upon in the agreement between the Town and Croto and Donaldson and would not be required to be in the purchase and sales agreement. It states, the Town of Albany by and thru its Selectmen agree to permanently barricade the existing Golden Oaks road at a location of their choice, which will stop any and all traffic over the old road, as soon as this newly created road is completed. Said barricade shall be no greater than 200' from Drake Hill Rd., which will allow entry into the existing cemetery. Selectmen agreed this paragraph should be removed. Bill stated that the footage could be removed from the wording as long as the road being barricaded with a maintenance gate would remain. Curtis would like to see that the Town has the right to make sure that the maintenance gate would remain secure yet have the authority to open it in case of an emergency. Brad agreed saying that it would not be a full time entrance. It would be an emergency entrance and a maintenance entrance for his equipment. Peter asked Brad if the Town could acquire a key and Brad responded in the affirmative. Peter suggested taking out paragraph #22 and putting it into the agreement with Croto and Donaldson.

Jack asked Brad what he would do about paragraph #23 which states, this easement shall not be used by 3 or 4 wheeled sport vehicles, or 3 or 4 wheeled vehicles of any kind, nor by snowmobiles, whether licensed or not. Motor vehicles only. Brad said he didn't allow these vehicles in the park currently, so nothing would change. Bill noted that these vehicles are in the park and he has a concern for their safety as there are exposed rocks which will become a liability. Bob suggested posting a sign that prevents ATV's and skimobiles from using the road. Curtis agreed to post a sign.

Peter suggested removing paragraph #24 as it is already placed in the road construction agreement. Paragraph #24 states, as part of the Agreement, the Albany Board of Selectmen agree to hire CV Trust and William A Lake, DBA Lake Excavation to construct a gravel road from Route 16 980' in length at the existing grade for the sum of \$50,000 payable \$15,000 upon signing of this agreement, \$15,000 when rough fill for (22') twenty-two foot wide road is in, \$15,000 when gravel is in place, is graded and \$20,000 when crushed gravel is graded and in place suitable for class V road.

Paragraph #25 says, William Lake, as agent for the CV Trust together with the Selectmen of Albany will sign and file for access to the easement for use by the residents of Golden Oaks Mobile Home Park and for the use by the CV Trust, its heirs and assigns for access to the easement for use by the residents of Golden Oaks Mobile Home Park and for the use by the CV Trust, its heirs and assigns for access to their properties, however, this agreement is not subject to Albany said access permit. Peter asked Bill what this

paragraph meant. Bill replied that he did not know as he did not write the agreement, Richard had. Peter asked that Richard get in touch with him to explain the meaning of this paragraph or it will be taken out.

Peter said that paragraph #26 is part of the understanding of Warrant Article 15 of the town meeting. He recommended that “all costs that may be associated with said road,” be removed. Paragraph #26 states, the town of Albany shall pay all costs for title search, if requested, all costs for engineering and all costs for surveying in laying out this Easement and all costs that may be or are associated with said road. Bill stated that the removal of the wording could create snags. Curtis responded by saying that Bill already possesses the driveway permit, so those costs have already been paid for. Peter said permitting expenses could be added to the wording.

Paragraph #27 says, there will not be any mailboxes at the Route 16 access for use of Golden Oaks inhabitants. Bill stated that the mailboxes will have to go to the cul de sac. Brad agreed or somewhere in the park itself.

Paragraph #28, Peter recommended removing because the no parking issue has already been covered. It can be reworded with the same meaning. This paragraph reads, there will be no cars allowed to pick up or drop off school kids etc. on said easement.

Peter recommended striking paragraph #29. It states, this Agreement only allows limited ingress and egress to a residential use mobile home park subdivided on 18 acres +/- . Specifically, it does not allow future expansion or any commercial use or future expansions. Bill stated that the park is already limited to 50 units and this has already been covered. Bob said that this paragraph will make it a mobile home park always. If the ordinances change, the owner of the mobile home park will not be able to take advantage of such changes with this agreement in place. Bill stated that if there were more than 50 units, his driveway permit will be null and void. Brad said that he had no intention of expanding the park but does have some land that is not being used right now. He feels that it would be foolish to agree to this and not be able at some point in the future to develop this land.

Peter recommended that at least the first sentence of paragraph #29 be deleted. It is a combination of paragraphs 8 and 16 stating that this road will be used primarily by Golden Oaks Mobile Home Park.

Bill said that Richard sees this issue as a Chocorua View Trust access first. Peter said that this road will be a class V Town road and it cannot be limited to ingress and egress and again recommended to strike the first sentence of

paragraph #29. Peter added that this agreement does not include Golden Oaks as a party and we cannot restrict them from growth. Bob agreed saying that the Board cannot restrict the potential growth of Golden Oaks. Peter added that the first sentence is wrong. A class V road can't restrict traffic and the second sentence is also wrong because the Board cannot permit or restrict Golden Oaks as they are not a party to this agreement. Bob said he had a concern for Brad and Ann on this issue. Peter went on to say that the Board should not try to bind Brad and Ann without their consent. Jack suggested that the Lakes' and Brad and Ann create their own agreement as this issue should be between the two of them, not the Town and the Lakes'.

Bill stated that Richard is trying to protect himself and the only recourse would go to the Town if it's in the deed, it's locked. Peter suggested that he could add into the agreement with the Town that there be no commercial use and no expansion. Brad said he is not in agreement. The potential for growth is there and he would like the ability to someday take advantage of it. Ann added that the contours of the land would make it difficult to expand, she agreed that Brad should have to option to expand. Peter asked Bill if this issue was a deal breaker. Bill replied yes it is. Peter went on to say that maybe an agreement between Brad and Ann and the Lakes' would be the answer. Jack added that it should not be in the Purchase and Sales Agreement. Bill responded by saying it had to be and claimed as the Seller he can put any encumbrance he wants in the Agreement. Peter said that he could but not on a neighboring property. Bill said that the deed encumbrance would carry over to the neighboring property. Jack again stated that this does not belong in the Purchase and Sales Agreement. Peter agreed stating that it should be in a separate agreement between the Lakes' and Brad and Ann and the Town. He again recommended removing paragraph #29 reiterating that this could be a deal breaker. Bill said that he was the Seller and should be allowed to put it in the agreement. He went on to say that if there was an issue with paragraph #29, the Board should've said something four months ago when he presented the Board with the Agreement. Bob said he had a problem with #29 and it should be removed. Bill suggested that the Board get a legal opinion before proceeding with the removal of paragraph #29. Peter said that if he understood Bill correctly, not only would Golden Oaks have to negotiate the expansion of the park, but would require the approval of Chocorua View Trust. Bill replied yes. Bob suggested that the Board move whether to accept this or not. Bob motioned to not accept paragraph #29. Bill suggested tabling the paragraph for legal representation. Jack seconded Bob's motion and opened it for discussion. Peter suggested amending the motion to delete paragraph #29 but create a document and present it to the Lakes'. Bob agreed. He motioned to drop the offer unless the Lakes' accept the rewritten agreement and deleting

paragraph #29. Bob motion to vote to accept the amendment, Dan seconded and all were in agreement to accept the amendment by deleting paragraph #29 and creating a separate document between the Lakes', the Town, Ann Croto and Brad Donaldson.

Bill said that Richard was not here to speak. Dan responded that he walked out of the negotiations and he cannot speak for Golden Oaks.

Paragraph #30 says that Golden Oaks Mobil Home Park inhabitants and/or owner are strictly prohibited from placing any signage and/or mail/newspaper boxes and/or real estate signage on said road or the join of Route 16 except for one town road sign. Peter said that this would be true anyway.

Bob said that paragraph #31 would have to go before the voters. It says, this Agreement, in combination with a Construction Agreement, is held that the Town performs its due diligence in payments, supplies and perfection of Agreements. Timeliness being of the essence and no later than November 5, 2008, the town of Albany should pave said road with a base asphalt layout to bind and protect the road construction. Jack said that the warrant article stated a gravel road. Bill insisted that the road be paved. Jack replied that the article didn't say paved. Bill responded that part of the negotiation on the tape of the Town Meeting explicitly said how much would be paved. Dan said that it sounded like Bill did not want this project to go through. Curtis said there was a discussion about paving the road and the best thing to do would be to pave it. We could pave a piece at a time and not open the road until it is completely paved. Jack stated that could create a problem with the Purchase and Sales Agreement. Bill agreed that in the Purchase and Sales Agreement it should reflect the fact that the road will not open until it has been paved. Jack said that he didn't like the fact that the Town will give payment to the Lakes' on July 23rd, but it will not be open. Peter added that if the voters do not approve the funding for the pavement, then it could not be paved. Curtis suggested using the road funds in next years' budget. Bob wanted to change the wording so that the road would not open until it is paved. Jack and Dan agreed. Jack said that different terminology should be used and the last two sentences should be deleted.

Bob asked the room for public comment. Sandy Perry said there should be one sign saying no littering and no ATV's. Harry Richardson would like the Board to assure the people that usage will not be restricted on this Town road. He feels that it is not appropriate to place the words "primary usage" in the agreement as he says it could create possible problems. He went on to say it should be left out and it should go in at negotiations and added that he was appalled. Peter agreed that he was a bit uncomfortable with the

wording. Harry said that these issues were not understood at Town Meeting, spending money for this road and then possibly not opening it. This should have been addressed before the Town Meeting. Now it'll have to go before the Town again for money to pave it? What if it's turned down? Then we have paid \$130,000 for an easement? Curtis responded by saying that there is always unforeseen money issues in projects. There will be money in the budget to pave. It could be November or it could be in April. This is not a major project.

Road Construction Contract:

Peter started the discussion with paragraph #3, the commencement and completion dates. Bill said the estimated date of commencement will be upon the conveyance of the easement deed. And the estimated date of completion will be November 1, 2008.

#5, the method of payment should read as follows: \$15,000 upon signing this contract, \$15,000 when rough fill for 22' wide road is in. \$10,000 when gravel is in place. \$10,000 when crushed gravel is graded. No payments shall be made until satisfactory inspection by the Town Road Agent.

#6, Peter and the Board agreed to but will add the wording, 9 inches of 304M base gravel and 4 inches of crushed gravel, specifying the type of gravel that will be used on the road.

#7, will be reworded to read, the Town will accept each level till completion and contractor will be released. Peter will reword to say that the expiration of the warranty will be when the Town takes it over. Bill asked that the sentence that talks of faulty material be deleted as it creates a loophole that he could be held to.

#8, Bill and Richard both want this to be deleted. They claim if it goes to court, it will go to mediation anyway. Jack asked Peter if he could come up with alternative wording. Peter said he would.

#9, is agreed upon between the parties.

Health Officer:

Bob asked the AA if she had any response from Les Horn regarding his property at Tabor Circle to which she responded no. Bob said this means

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that he must move forward and will hire his tractor and dump truck at \$85.00 a load with approximately five loads to be taken from the property. He will then bill the Town; the Town can bill Les Horn. If Les does not pay, then the Town has the ability to lien the property. Jack stated that he would be more apt to pay the Town than a private company. Jack and Dan agreed that Bob should take on the job.

Miscellaneous:

Jack stated he received a quote from Granite State Glass to repair a window in the Town Hall for \$144.00. He moved to have Granite State Glass do the repair. Dan seconded the motion and all were in agreement. Jack also stated that he contacted Bob from the Lock Shop to repair the Town Hall door. Bob said he would arrive Friday morning for the repair. Jack motioned to have the Lock Shop repair the Town Hall door, Dan seconded the motion and all were in favor.

At 8:00 p.m., Jack motioned to adjourn, Dan seconded the motion and all were in favor.

Respectfully Submitted,

Kathleen Vizard
Administrative Assistant

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