

~~Unapproved~~ **Approved**
Candia Selectmen's Public Meeting Minutes
Friday, January 16, 2009

Attendance: Chairman Fred Kelley, Selectman Tom Giffen, Selectman Joe Duarte, Selectman Carleton Robie, Selectmen's Assistant Chabot, and Secretary Andria Hansen

Absent: Selectman Lazott

7:00 p.m. Chairman Kelley called the Public Meeting to order and immediately followed with the Pledge of Allegiance.

The Board to discuss and vote in regards to a petition warrant article that was served to the Selectmen's Office on the morning of 1/14. Selectman Lazott joined the meeting by speakerphone. Assistant Chabot presented the Board with handouts pertaining to the petition warrant article received on 1/14. Assistant Chabot explained this was an issue because the petitioner mentioned that she attempted to serve the Town Clerk during her evening hours and the petition was not accepted. Assistant Chabot sought legal advice from Town Counsel (outlined in memo). Selectman Lazott asked for a motion. Selectman Giffen moved to accept the petition warrant as submitted despite its tardiness since the doctrine of "substantial compliance" appears to apply in this instance. Chairman Kelley seconded for discussion. Selectman Lazott stated the petitioner had the option of presenting it to one of the Selectmen on January 13th (outside office hours) and that would have been legal. He had a hard time breaking the rules or making exceptions and would like to vote no on this motion. Chairman Kelley agreed with Selectman Lazott. Selectman Giffen thought the citizens should have chance to vote on this petition warrant article and it was a minor technicality. He doubted the petitioner had any clue they could seek out a Selectman to deliver the article. Selectman Giffen felt it would be fair and in the best interest of the Town. Selectman Lazott stated they should follow the rules. Selectman Giffen pointed out that the doctrine of "substantial compliance" could come into play and it would be grounds for a lawsuit. It's best to avoid litigation in this matter. Selectman Lazott believed Atty. Mayor felt comfortable defending that. Selectman Giffen pointed out that Atty. Mayor's letter suggested we have latitude but this doctrine opens us up to litigation. Selectman Robie stated the petitioner failed to file the petition warrant in a timely fashion according to the statute. The Board conducted a vote. Chairman Kelley, Selectman Lazott, Selectman Duarte, and Selectman Robie voted not to accept this petition warrant article. Selectman Giffen voted in favor of accepting the petition warrant article. Motion failed in a vote of 4 to 1.

The Board will address any petition warrant articles that have been received. The Board addressed the articles in order. Assistant Chabot noted Town Counsel and the DRA have reviewed the articles:

ARTICLE 29: Are you in favor of constructing a swap shop at the Candia Recycling Facility located on 29 Deer Run Road at a cost of \$15,000.00? (Article by

Petition): Selectman Giffen moved to place Article 29 on the warrant as submitted. Seconded by Chairman Kelley. All were in favor. Motion carried.

ARTICLE 30: Under the provisions of RSA 32:14 V, Are you in favor of rescinding the adoption of the budget committee? (Article by Petition): Selectman Giffen moved to place Article 30 on the warrant as submitted. Seconded by Chairman Kelley. All were in favor. Motion carried.

ARTICLE 31: "Shall the town vote to fund the Conservation Commission Fund with an amount not to exceed twenty five thousand dollars (\$25,000) annually? Said funding shall come primarily from the Conservation Commission's escrow account (if one exists) until depleted, and then secondarily from the Land Use Change Tax (LUCT) annual revenues, not to exceed twenty five percent (25%) of said revenues, nor exceed twenty five thousand dollars (\$25,000). All LUCT funds remaining after funding the Conservation Commission Fund shall be placed in the General Fund to reduce property tax." (Presently, the Conservation Commission receives 100% of the LUCT with no cap.)

Furthermore, the Conservation Commission Funds shall only be used for the acquisition of donated land and donated Conservation Easements. The money is not to be used to partner with any other group nor will it be used for any purpose external to Candia. This Article will take effect immediately upon passing. Acceptance of this Article repeals Article 14 voted at the 2001 Annual Town Meeting. **(Article by Petition):** There was some discussion on the wording of this article. Selectman Giffen stated if the Town Attorney deems a provision of the article void, illegal, and unenforceable then the Board shouldn't place the article on the warrant or edit the article. Assistant Chabot stated they couldn't edit it. Selectman Giffen read from Atty. Mayor's letter. Selectman Giffen motioned to place Article 31 on the warrant and will be addressed by Atty. Mayer at the deliberative session. Seconded by Chairman Kelley. All were in favor. Motion carried.

ARTICLE 32: "Shall the town vote to cap the Conservation Commission Fund to fifty thousand dollars (\$50,000) except for monies already encumbered, and accordingly, to require the Conservation Commission to establish an interest-bearing escrow account for the remainder of the Conservation Commission funds to be used solely for annual replenishment of the Conservation Commission Fund?"

The funding of the escrow account will be one time only, will not receive any additional funding from the town after its establishment, and the money is not to be used except for annual replenishment of the Conservation Commission Fund. If said account ever becomes exhausted, it will not be reestablished. The Article to take effect immediately upon passing. **(Article by Petition):** Selectman Giffen stated that this article is similar to Article 31 and that Atty. Mayer will speak to it at deliberative session.

ARTICLE 33: "Shall the town vote to Amend RSA 36-A:5, II to read as follows? This Article to take effect immediately upon passing.

II. The town treasurer, pursuant to RSA 41:29 shall have custody of all moneys in the conservation fund and shall pay out the same only upon order of the Board of Selectmen. The disbursement of conservation funds shall be authorized by a majority of the Board of Selectmen. Prior to the use of such funds for the purchase of any interest in real property, the conservation commission shall hold a public hearing with notice in accordance with RSA 675:7. (Article by Petition): Selectman Giffen noted you can't change an RSA; it's something that is done at the legislative level. He added that SB381 has been put forward to clarify RSA 41:29. Town Counsel will address this article at deliberative session.

ARTICLE 34: "Shall the town vote to adopt the provisions of RSA 36-A:4 Powers?" This article to take effect immediately upon passing.

Said commission may receive gifts of money, personal property, real property, and water rights, either within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire in the name of the town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas with their town, and shall manage and control the same, but the town or commission shall not have right to condemn property for these purposes. (Article by Petition): It was the consensus of the Board to place this article on the warrant as submitted.

ARTICLE 35: "Shall the town vote to rescind the provisions of RSA 36-A:4-a Optional Powers?" This article to take effect immediately upon passing.

The purpose of this Article is to prohibit the Conservation Commission from expending funds: (1) To purchase interest in any lands external to Candia and; (2) For contributions to "qualified organizations," for the purchase of property interests, or facilitation transactions related thereto, where the town has not interest. (Article by Petition): Selectman Giffen stated this article is confusing, because the Conservation Committee hasn't adopted anything yet. He further stated there should be a notation on this article stating the following "If Article 35 passes, then an affirmative vote on this article will rescind Article 36".

ARTICLE 36: "To see if the Town will adopt the provisions of RSA 36-A:4-a, I(b) to authorize the Conservation Commission to expend funds for contributions to qualified organizations for the purchase of property interests, or facilitating

transactions related thereto, where the property interest is to be held by the qualified organization and the town will retain no interest in the property.” (Article by Petition)

The Board will determine the order of articles, determine recommendations, and who will move and speak to the articles. Assistant Chabot explained they need a Board member who will motion, second, and who will speak to them.

- Articles 3 –14: Chairman Kelley will move and speak to these articles. Selectman Giffen will second.
- Article 15: Selectman Giffen will move and speak to this article. Selectman Duarte will second.
- Article 16: Selectman Robie will move to this article. Chairman Kelley will second. Pat Lakin or Janet Lewis - Fitts Museum Trustees can speak to this article.
- Article 17: Selectman Robie will move and speak to this article. Selectman Duarte will second.
- Article 18: Selectman Lazott will move and speak to this article. Chairman Kelley will second.
- Article 19: Selectman Giffen will move. Chairman Kelley will second. Road Agent Lewis will speak to this article.
- Article 20: Selectman Giffen will move. Chairman Kelly will second. Road Agent Lewis will speak to this article.
- Article 21: Selectman Giffen will move. Chairman Kelley will second. Rick Mitchell may speak to this article.
- Article 22: Selectman Duarte will move. Chairman Kelley will second. Fire Chief Cartier will speak to this article.
- Article 23: Selectman Duarte will move. Selectman Giffen will second. Fire Chief Cartier will speak to this article.
- Article 24: Selectman Duarte will move. Chairman Kelley will second. Fire Chief Cartier will speak to this article.
- Article 25: Selectman Duarte will move. Chairman Kelley will second. Assistant Chabot stated DRA Rep Greg Heyn would speak to this if the Board felt it was necessary. Chairman Kelley didn't feel there was a need, it was pretty straight forward.
- Article 26: Selectman Duarte will move and Selectman Giffen will second.
- Article 27: Selectman Lazott will move and Selectman Robie will second. Selectman Lazott will speak to this article.
- Article 28: Selectman Giffen will move and Selectman Duarte will second. Matt Zola will speak to this article.

Assistant Chabot noted the only warrant articles considered special were 19, 22, 25, and 27 (per Jennie Samms memo). She advised the Board to vote on these four articles and whether they were recommending them. Chairman Kelley moved that the Selectmen recommend article #19. Seconded by Selectman Giffen. All were in favor. Motion carried. Chairman Kelley motioned that the Selectmen do not recommend article #22. Seconded by Selectman Robie. Chairman Kelley and Selectman Robie were not in favor

of recommending this article and Selectman Giffen and Selectman Duarte were in favor of recommending it. Motion failed due to a tied vote. (A phone call was placed to Selectman Lazott after voting was done on the other articles.) Selectman Giffen motioned that the Board of Selectmen recommend article #25. Seconded by Chairman Kelley. All were in favor. Motion carried. Selectman Giffen moved that the Board of Selectmen recommend article #27. Seconded by Chairman Kelley. All were in favor. Motion carried.

* A call was placed to Selectman Lazott to revote on article #22. Selectman Lazott stated he was not in favor of article #22. Assistant Chabot read the motion to Selectman Lazott. A vote was called on the motion. Chairman Kelley, Selectman Robie, and Selectman Lazott were not in favor of recommending article #22. Selectman Giffen and Selectman Duarte were in favor of recommending article #22. 3 were in favor of not recommending this article and 2 were in favor. Motion carried that article #22 will not be recommended by the Board of Selectmen.

Assistant Chabot to discuss Town report dedication. Chairman Kelley stated he would strongly recommend Ken Purington for the dedication page of the town report. Assistant Chabot stated that Pat Larkin did a write up of Mr. Purington. Chairman Kelley motioned to dedicate the Town Report to Ken Purington in recognition of his service to the Town. Seconded by Selectman Giffen. All were in favor. Motion carried.

Assistant Chabot to discuss with the Board proposals for the required 2009 update. Assistant Chabot explained that Assessor Tammy Jamison and DRA Representative Greg Heyn reviewed the proposals. She explained that DRA Rep Greg Heyn thought that Vision Appraisal was right on the money, but there were a couple of things missing. The items were abatement review and court time. Assistant Chabot explained she discussed the missing items with Dick Romano of Vision Appraisal and he explained that the abatement review was an over site and he was willing to do five court days (prep time included). Assistant Chabot explained that DRA Rep. Greg Heyn will be coming to the February 9th meeting to discuss some upcoming items.

Other Business

Selectman Giffen moved to seal the non public minutes of 1/13/2009. Seconded by Selectman Duarte. All were in favor. Motion carried.

8:25 p.m. – Chairman Kelley requested a Non-Public Meeting in accordance with RSA 91-A: 3 II (c) immediately following the public meeting.

Respectfully submitted,
Andria Hansen, Recording Secretary