

~~Unapproved~~Approved  
**Candia Selectmen's Public Meeting Minutes**  
**Monday July 25, 2011**

**Attendance:** Chairman Fred Kelley, Vice-Chair Carleton Robie, Selectman Joe Duarte, Selectman Amanda Soares, Selectman Richard Snow, and Administrative Assistant Andria Hansen.

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

**Resident Joe Henderson to propose having an Old Home Day.** Joe Henderson, Robie Kelley, and Jody Henderson were present. Chairman Kelley explained that Mr. Henderson approached him a week ago and asked why there wasn't going to be an Old Home Day. He told Mr. Henderson they don't have any volunteers. Mr. Henderson would like to volunteer and he has others that would like to also. Mr. Joe Henderson explained that he has participated in Old Home Day for the past several years. He enjoyed and looked forward to it. He said his customers and other people started coming to them and asked him to do it. They were thinking about having a musician's swap meet. They did this last year and they had a jam fest. They played all day and had a barbeque. He held this event at his store The Pickin' Parlor. He thought if the Town wasn't going to have an Old Home Day maybe they could do something like this and get the townspeople involved. He would like to combine the two events. He approached Chairman Kelley to see how they could go about this. Mr. Henderson explained that he already has people that are willing to volunteer. He said that he has sources and musicians. He noted the Robie Kelley is a DJ and he has contacts. They already have the entertainment. So instead of having just musical vendors, they could open it to everybody. Mr. Jody Henderson said there are people who want to volunteer and people are disappointed there won't be an Old Home Day. Mr. Robie Kelley explained he has a friend that wants to do an event at the skate park. This could be something where they can raise money and donate it to a charity. Selectman Soares mentioned that Old Home Day has always been a big fund raiser for the Boy Scouts and the Women's Club. Mr. Henderson thought it would be nice to hold all of the activities at the park without shifting half way through and moving across the street. He was hoping someone would step up and handle the parade. He suggested having the music at the park and doing the fireworks across the street. Selectman Soares said Jerry Becker used to handle the fireworks and wouldn't mind helping. They just couldn't take on the task on this year. Selectman Soares said she handled the ~~entertainment~~ parade and Jerry would get the generators for the lights. Mr. Henderson said he doesn't have the contacts that they do. Selectman Soares said she didn't mind helping and planning the parade is pretty simple. The only thing she thought could change is the parade route, because some of the older cars have a hard time making it down the hill. The old parade route used to start at Adams Road and come down Route 27 and then up to the school. She thought this would be beneficial for some of the older cars. The State is good about getting you the permits and Chief McGillen usually helps out with this. Chairman Kelley told them they need to see Selectman Snow to see if the date is open. Selectman Snow asked if there would be a rain date. Selectman Duarte asked them what date they would like to have it. They would like to have the park on September 10<sup>th</sup> and the rain date would be the 11<sup>th</sup>. Selectman Snow asked what the Board wanted

to do about the insurance. Chairman Kelley said the insurance is under the town. Selectman Robie said they will need a contact person like Rhonda Thyng was in the past. Mr. Henderson replied that he would be the contact person. Selectman Soares said feel free to contact Rhonda. She won't be able to volunteer, but she can help them through the process. Mr. Henderson said he wasn't familiar with the parade and the firework stuff. Selectman Soares explained they did it through donations and would put that money towards the fireworks. They use a company out of Hooksett who do most of the areas fireworks. It was the consensus of the Board to allow Joe and Jody Henderson and Robie Kelley to organize an Old Home Day for 2011. Selectman Soares suggested parking the antique cars at the Smyth Library because there is plenty of room.

**Resident Joni Plante to discuss ownership issues of Aunt Mary Brook Road.** Ms. Joni Plante was present. She explained the parties involved were Christine Dupere, Patty Sherman, and herself. In 1803 Aunt Mary Brook road was laid out 3 rods wide and in 1872 the road was discontinued. This was not subject to "gates and bars" which means the land reverts back to the landowners, so in essence there is no road there anymore. The issue started in 1980 when the Building Inspector at the time Stubby Gilbert issued a building permit to Mike McRae. He issued a certificate of occupancy without a driveway permit. Ms. Plante explained that she wasn't looking to create any issues with the Town, but she is looking for a way to solve a problem. Two building permits were issued where the residents use Aunt Mary Brook as access to their property. So in essence she is trespassing over land and Patricia Sherman is as well. She didn't believe that Patty Sherman has a driveway permit. They currently have two properties that were given certificates of occupancy and don't have access to their properties. This was the same issue that occurred back in the 90's when Ed Weber and Mike McRae had a battle. They went to court and came up with an agreement. This is registered at the registry and the agreement was approved by the New Hampshire courts. The problem with this is that both parties live to the right of Aunt Mary Brook Road. She has a right to half of Aunt Mary Brook Road. Although the agreement says it's an easement over Aunt Mary Brook Road, you can't make an agreement about property you don't own. They never owned the other half of Aunt Mary Brook that currently belongs to Patty Sherman. The current situation they have is Patty Sherman is trespassing on land she doesn't have a right to be on and I am trespassing over land I don't have a right to be on. In theory she has a prescriptive easement, but in reality there has been nothing recorded at the registry of deeds or court action. This is only a theoretical easement. She has owned her property for 11 years and has maintained the access. She felt she had an obligation to maintain the road. The problem has arrived with a new neighbor moving in. They have an issue with her maintaining the driveway because she doesn't own it. She received a letter from her neighbor on June 13<sup>th</sup> asking her to stop maintaining the driveway. She didn't do any maintenance on the property, because the builders for the Sherman's said they would take care of it. He said he would fix the road once he was done building. They didn't do any improvements to the road when they finished. When the spring came there were tons of potholes. She went in and graded and fixed the pot holes. Ms. Sherman's boyfriend was not pleased and told her she had no right to grade the road or fix the pot holes. She couldn't understand why he wouldn't want her to maintain the driveway. She said there was a dispute as to why there was never a culvert put under

the driveway. The water naturally runs down into the branch river. When Mr. Sherman put in the new driveway it blocked the trench, so the water has nowhere to go. She explained to him if they ever get too much rain it will wash out the driveway. They did eventually put a culvert under the driveway. He is now creating the same problem, because he is making a rock wall along the left side of the driveway. He has formed a berm so when it rains the water won't go into the trench. It's probably about 2 feet wide and the water gets trapped in the road. She questioned him and his response was why she is questioning them on what they're doing on their land. She explained that he made the road even narrower and she is going to have a hard time plowing because a plow won't fit through. It's a tight spot and is now about 8 feet wide. She said that she had talked to the Police about it and they said there is nothing they can do. She talked to the Fire Department and got no resolution. She felt the Sherman's couldn't impede any type of access. She consulted her attorney because she needs unimpeded access to the property. She is looking for the Town to help out, so she can maintain access to her property. Selectman Duarte asked what her Attorney said about it. Ms. Plante explained that her intention was to have her attorney write a letter to the Sherman's telling them they can't impede access. Her Attorney asked her for documentation stating that she has right to Aunt Mary Brook Road. She explained that she was going to send her a copy of the easement. She reiterated that she only has access to half of Aunt Mary Brook Road and the Sherman's may have rights to the other half. This poses a problem, because he is building a rock wall on his half of the road. Her Attorney told her that she shouldn't go after the neighbor she should go after the Town of Candia, because they issued two illegal building permits and created the problem. She doesn't want to do this because she is a taxpayer and this is her Town too. The easiest way to solve this is to come up with an agreement with her neighbor. She didn't feel they would be willing to come to an agreement. She wants the town to investigate the driveway permit and maybe put a little pressure on them. Basically tell them the Town will step in and solve the problem legally or make an agreement with your neighbor. Selectman Duarte asked about the letter from the DOT dated November 9<sup>th</sup>, 2006. Chairman Kelley said the State issued one permit to the house down the road (Beck subdivision). The State accepted Aunt Mary Brook Road as a driveway. Road Agent Lewis asked does the driveway exist on the Dupere's property or the Sherman's. Ms. Plante thought it was 50/50. Road Agent Lewis asked if the State looked at the driveway permit when they applied for one and the driveway that existed now is on the property of your neighbor the state wouldn't issue another permit because a driveway already exists. Ms. Plante replied the entire road wouldn't be on their property, but half of it might be. They would have had to have a survey done. Road Agent Lewis replied they did because there was a two lot subdivision done recently. There has to be a corner bound somewhere on that property. Ms. Plante replied that it would have to be in the middle of Aunt Mary Brook Road based upon the rock wall. Road Agent Lewis explained if the road was 20 feet wide where it enters the highway and the bound was in the middle they would say you don't need a driveway permit because you have 10 feet of driveway on your property. When that lot was created the plans showed driveway access on that property for that lot. He suggested that Ms. Plante make an agreement to share the driveway. Ms. Plante replied that would be the best case scenario, but she has a neighbor that doesn't want to make an agreement. She reiterated the problem is the town issued building permits without a

driveway. Road Agent Lewis said he doesn't issue permits on State roads so he doesn't have any input on this. Chairman Kelley questioned how did they issue a certificate of occupancy without a legal driveway for either house. Road Agent Lewis explained they wouldn't have issued a driveway permit, because in their eyes one already existed. This is why knowing where the lot line is located is important. There is a recent survey so it should be easily found. Ms. Plante asked even if they do own all of that land how would I be allowed access to my property. If the Town issued a building permit and certificate of occupancy she should be allowed access to her property. Road Agent Lewis replied when your house was built there should have been a driveway permit issued for Crittle Hill Road where the access for that lot is. Selectman Soares asked if she had access from Crittle Hill. Ms. Plante replied no and it's not really accessible. Road Agent Lewis explained there is an easement over the Dupere property to her house not for the neighbor. Ms. Plante said she only has an easement over 6 feet of that road and that's not enough for a driveway. Selectman Robie said he just went through this in Deerfield and the property was on a closed road. He explained to his neighbor that they both owned the road and he would have access to using it. They came to terms and made an agreement that was amicable for both of us. His neighbor was worried that the land wouldn't be accessible. People have access to using it and you can't close it, the State of New Hampshire says that. Ms. Plante replied that is a 1995 law which didn't exist in 1872 and it doesn't revert backwards. Selectman Robie stated what they should have done was put the driveway on Crittle Hill or get an easement from the Dupere's. He thought this is the route Ms. Plante should be looking at. Ms. Plante didn't feel she should be looking for the problem; the problem was created when the Town issued Mr. McRae a building permit and certificate of occupancy. Selectman Robie said it wasn't an issue because Mr. McRae had access on Crittle Hill. The McRae's were probably using Aunt Mary Brook as appropriate access without any bickering. Ms. Plante replied it wouldn't be appropriate access if it's not on their land. Selectman Robie said it is on their land, because it's a closed road that goes to it. Ms. Plante replied she doesn't own a stitch of that land. Selectman Robie explained you do own the right to use it. Ms. Plante replied than the Town needs to come up with something to prove it. Selectman Robie said when the road closed it reverted back to the landowners. It really has nothing to do with the Town. Road Agent Lewis explained prior to 1903 the Town could only close a legally discontinued road. After 1903 is when the "gates and bars" part came in. Ms. Plante reiterated the Town had no right issuing a building permit and issuing a certificate of occupancy without a person having appropriate access. Selectman Robie replied the Town is not responsible for that. Chairman Kelley thought they could help her by sending a letter asking her neighbors to work with her. Selectman Robie felt there wasn't anything they could do and she needs to get with her neighbors and come to an agreement. Ms. Plante said the neighbors didn't want to talk or deal with her. Selectman Robie suggested that she talk with Chris Dupere and discuss widening the road, so each of you have a driveway. Ms. Plante replied she didn't create the problem the Town did. In order to get a certificate of occupancy you need to have access to your property. The Town cannot provide access over someone else's property. Selectman Robie replied well they did. Ms. Plante said that's illegal. Chairman Kelley told her she would have to get an Attorney and fight this. Ms. Plante said she is going to have to sue the Town and she doesn't want to do that. Selectman Robie reiterate talk with Chris Dupere and see if you can get a driveway or

put a driveway in on Crittle Hill. Ms. Plante replied the cost to do either one would be astronomical. Her Attorney recommended that she makes an agreement with her neighbor, but she would like the Town to help. She will talk to her Attorney about how the State could issue a driveway permit on land they don't own. Road Agent Lewis said the State didn't issue a permit at all because there was one existing. Ms. Plante stated the driveway doesn't exist because there isn't an easement. Road Agent Lewis asked where the lot line was. If the lot line is towards Chris Dupere's on that driveway and there was 10 or 12 feet of gravel driveway the State would say there is an existing driveway. Ms. Plante replied it was there, but it wasn't entirely on their land. Road Agent Lewis asked how much of it was on that land. Ms. Plant replied probably about half of it (about 6 feet). Ms. Plante explained that her Attorney said the Town shouldn't have issued a building permit without the person having access on their property. You can't give access onto someone else's property. However if they can make an agreement with the neighbor then the Town would be alleviated of this problem. If we can't get the neighbor to agree then she will have to go to the Town and they will need to fix this, because you issued a building permit without a driveway. It's clear the road was discontinued and it didn't exist. It was clear that Mike McRae didn't own that property, so he can't use that as access. Selectman Robie replied he did use it as access and the Town allowed it. He felt Mr. McRae should have had a written easement in his deed. Ms. Plante questioned if the Town has a responsibility that each property that builds a house has appropriate access. Selectman Robie replied the Town probably looked at the plans and felt there was adequate access. Mr. Plante replied maybe for the Sherman's, but what about her. Selectman Robie explained she has access on Crittle Hill Road that is why there was a permit issued to build a house. Ms. Plante asked in order to issue a certificate of occupancy wouldn't you have to see that the person has a driveway on their property. She questioned if this was the Town's obligation. Selectman Robie replied this is something from 20 or 30 years ago and was probably overlooked. He noted that McRae's lived there for 21 years and it wasn't a problem. Ms. Plante explained that it did end up in court, because it was an issue that Mr. McRae was trespassing over property. Selectman Robie said you bought the property and knew the circumstances. Ms. Plante replied that she didn't know the circumstances. Selectman Robie questioned if she knew that she had an easement when she bought the house. Ms. Plante replied she didn't know. Selectman Snow said she did have an easement from the court case, because Mr. McRae and Mr. Dupere came to an agreement. It's an easement over a portion of Aunt Mary Brook Road. Ms. Plante explained its only 6 feet wide and that's not appropriate access to her property. Road Agent Lewis note that when McRae built that house there was a gravel pit out there and the road way going in was very wide and well maintained. It looked like a regular Town road so it was deceiving. This is when Ed Weber came in and said this isn't what it appears to be. This is why they went to court and got that easement. They can't make an agreement for land they don't own and they didn't own half of Aunt Mary Brook Road. Road Agent Lewis explained it's a 3 rod road and it was over Ed Weber's half. Ms. Plante said the current driveway is only 12 feet wide. Road Agent Lewis replied you have to look at the property line and half of Aunt Mary Brook Road would be half of 33 ½ feet. Selectman Robie reiterated you have to work this out with your neighbor. Ms. Plante said they wouldn't work it out unless the Town gives him a reason to work it out. Otherwise her other option is to go after

the Town for issuing an illegal building permit. Selectman Robie replied Mr. McRae showed access on Crittle Hill. Ms. Plante said Mr. McRae building permit says he has access off of Route 101 not Crittle Hill Road. Road Agent Lewis noted there has to be a corner bound somewhere if there was a subdivision done. Ms. Plante felt it was the job of the Town to make sure that person keeps access on their property. Road Agent Lewis replied it was probably misrepresented and the Building Inspector was lead to believe that was the access. Selectman Soares looked at the plans and the pin is set at the far side of the Sherman property. Ms. Plante asked if that was where the pin was set, then they don't own any of Aunt Mary Brook Road. Road Agent Lewis told her she is the only one with an easement over it. Ms. Plante said someone needs to explain this to her neighbors. Selectman Robie replied that would be up to her Attorney. Selectman Soares said she could get a copy of this at the Land Use Office. Ms. Plante said according to her Attorney she doesn't have an easement she has a theoretical easement. She said the Town needs to show her where that easement is. The Board showed Ms. Plante the easement they had on file. Ms. Plante questioned why is he using land he doesn't own. Selectman Robie said the State gave him a driveway permit. There was discussion about the bounds. Chairman Kelley thought they (the Sherman's) were going to use the left hand side of Aunt Mary Brook Road. Ms. Plante questioned if she should go after the State of New Hampshire. Selectman Robie reiterated have your Attorney send your neighbor's a letter. He also suggested getting a land surveyor. Ms. Plante thanked the Board for their time.

**The Board of Selectmen to accept donations for the 2<sup>nd</sup> quarter.** Selectman Soares read the following donations: Harriett & David Chalbeck - \$100.00 to the Food Pantry, Nancy Pitman - \$10.00 to the Fire Department, and Frances Gelinas - \$10.00 to the Fire Department. Selectman Soares motioned to accept the donations. Seconded by Selectman Robie. All were in favor. Motion carried.

**The Board to decide on a Deliberative Session date.** Selectman Robie motioned to have deliberative session on February 4<sup>th</sup>, 2012 at 9:00 a.m. Seconded by Selectman Soares. All were in favor. Motion carried.

**The Board to authorize payment of payroll checks and accounts payable checks.** Selectman Snow motioned to approve payment of payroll manifest number 000636-04, checks to be dated 07/21/2011, with a total gross payroll amount of \$15,094.98. Seconded by Selectman Soares. All were in favor. Motion carried. Selectman Snow motioned to approve payment of accounts payable manifest number 070311 checks to be dated 07/21/2011, with a total amount of \$36,750.28. Seconded by Selectman Soares. All were in favor. Motion carried. Selectman Snow motioned to approve payment of payroll manifest number 000637-03, checks to be dated 07/28/2011, with a total gross payroll amount of \$15,873.92. Seconded by Selectman Soares. All were in favor. Motion carried. Selectman Snow motioned to approve payment of accounts payable manifest number 070411 checks to be dated 07/28/2011, with a total amount of \$47,959.02. Seconded by Selectman Soares. All were in favor. Motion carried.

**Approval of Previous Minutes: Public and Nonpublic meeting minutes of 7/11/11.** Selectman Soares motioned to approve and seal the nonpublic meeting minutes of July 11<sup>th</sup>, 2011 as presented. Seconded by Selectman Snow. All were in favor. Motion carried. Chairman Kelley motioned to approve the public meeting minutes of July 11<sup>th</sup>, 2011 as amended. Seconded by Selectman Soares. All were in favor. Motion carried.

### **Other Business**

**Old Smyth Library update.** Selectman Robie mentioned the Heritage Commission sent out RFP's and met with four architects. Hopefully they will be hearing from them shortly.

**Recycling Center.** Selectman Soares mentioned that Facility Operator Chuck Witcher is back on full duty. She told the Recycling Center staff they are not allowed to use accelerants or ignitables for the burn pile and two people must be at the burn pile at all times. If they can't light it she will have someone from the Fire Department come down and do it.

**Closure Plan.** Selectman Duarte asked how the closure was going. Selectman Soares replied it's in Doug Kemps hands and he is finalizing everything. She mentioned they have gone back and forth with corrections and he has made suggestions. Selectman Robie asked if they have received good fill for the site. Road Agent Lewis said they dropped about 3,000 yards. It was very muddy and rocky, so it wasn't good. Selectman Soares said that was okay she was going to bring a roller in and pack it down.

**Patten Hill Road project.** Road Agent Lewis noted Patten Hill Road is coming along good. They will pave on August 5<sup>th</sup>. He mentioned they put a few hundred yards of fill at Hemlock Drive.

Selectman Robie motioned to adjourn at 8:16 p.m. Seconded by Selectman Soares. All were in favor. Motion carried.

Respectfully submitted,  
Andria Hansen, Recording Secretary