

~~Unapproved~~Approved
Candia Selectmen's Public Meeting Minutes
Monday October 10, 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.

Atty. Seth Pasakarnis to discuss with the Board the Cease and Desist Order for 66 Diamond Hill Road. Attorney Seth Pasakarnis and Stanley and Lucille Stevens were present. Atty. Pasakarnis explained he represents the Stevens in this matter. He sent a letter on August 29th making a proposal to the Board where the Stevens could come into compliance with the Cease and Desist order. The Stevens would like to comply with the Cease and Desist order by removing the pile of loam located on their property. They don't want to engage in any commercial activities until the Board says that it's okay to do so. Those commercial activities would be screening the existing pile of loam, loading it onto trucks, and removing it in a feasible manner with an effort to get the entire pile off of the property in a reasonable amount of time. He sent a proposal to the Board outlining a time frame to allow this to happen. Chairman Kelley asked if there were any abutters present. Brian and Janette Miller of 74 Diamond Hill Road and April and Richard Caswell of 57 Diamond Hill Road were present. Selectman Robie asked if the abutters received a copy of the request. He felt it was very reasonable and it says it will be completed by November 1st, 2011. Mr. Miller replied that he did have a copy of the letter and didn't find it agreeable. Mrs. Miller said her only contention is the Cease and Order was suppose to stop all activity. They tried to make an agreement with Mr. Stevens this summer when it was before the ZBA. They gave him 20 minutes to come back with some type of compromise and Mr. Stevens said he couldn't do it in less than 5 years. The ZBA agreed that was incompetent. He was supposed to have a Cease and Desist order in place. He hasn't stopped anything. The trucks go up and down the road and he is still working on the trucks. So the Board wants to give him another six months or a year and he hasn't even tried to move anything. He hasn't advertised to get the loam off the property. The Town needs to stop him. He's coming to you now to ask for another six months to a year. Mrs. Miller asked the Board what they wanted the abutters to do, give him another 6 months. The Town hasn't stopped him so far. Mr. Miller pointed out that the Attorney's letter doesn't say anything about the other stuff. The July 26th ZBA meeting minutes recognize several hazards and the Attorney's letter doesn't address them. Some of the hazards are sediment running on to the neighbors' property, there is hazardous dust that is recognized as an EPA criteria pollutant, and there are fuel storage tanks that aren't to any code or federal program. He questioned if it would take five years to take care of these issues also. He's supposed to be screening all of the loam by November. What this will do is loosen all

of that soil that's been sitting there for the past five years and its going to kill the existing vegetation. We are on the north side of the hill and from their property they can see Mt. Washington. He gets 84 miles of wind blasting at his house all winter long. The sun is going to melt the piles in the winter and wind will blow the dirt at his house. This just doesn't affect him its affecting the other neighbors on this hill. He can't see why they should be reasonable; Mr. Stevens hasn't given his neighbors any consideration. There has been a previous Cease and Desist and given his history Mr. Stevens is going to come back and do it again. He's doing it anyway in front of everyone's face. They worked Labor Day and the 4th of July. Mr. Miller showed the Board samples of the dust from his house from the loam. He took the samples right after the July 26th ZBA meeting and took another sample on Friday. The samples were the same and it's been 75 days. He felt like he was living like a prisoner and they want him to be considerate. His opinion was they dragged it all here why do they have to wait for the Stevens to sell it. This isn't the neighbors fault. This isn't the neighbors' bad business decision. This is Mr. Stevens's bad business decision and it's being shoved down our throats. The ZBA recognized several hazards including dust and fuel storage. They agreed given the history and its size its way beyond any home occupation. The second criteria of a special exception is "No detriment to property value on account of location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, outside storage of equipment, vehicles or other materials. The Board was in agreement there was detriment due to dust, noise, vibration from vehicles, fumes and stored materials on site." We see an action and we're choking on the dust. There is a fuel tank that isn't even in compliance. They took the hose of one of the fuel tanks and put a pad under one of them. There is no secondary containment to the fuel tank. It's still not set to a fire code. If this tank goes sideways or if an exhausted snow plow driver hits it what will happen. There are no berms or bumpers to protect the tank. Who would clean it up? They are not registered or enrolled in a federal program. If you are enrolled in the program there are federal funds available for clean up. He's not even 150 feet from the Steven's property. Mr. Miller questioned if this operation continues who is liable (me, him, the insurance company). It was determined by the ZBA that this is an illegal operation. He questioned what homeowners insurance company is going to cover an illegal operation set up in a residential zone. He has discussed the road with the Road Agent. He thanked the Board of Selectmen for coming up and doing some temporary repairs to get us through the winter. The continuation of the traffic up there really does present safety concerns and it's documented. He reiterated why should the neighbors be considerate. They are realistically looking at a year. He mentioned that he has done some research and Mr. Stevens hasn't done any advertising to help speed up the removal of the loam. They told the ZBA at the first meeting that they were trying to get rid of the loam. Atty. Pasakarnis replied the Stevens haven't been doing anything since the ZBA meeting, because there is a Cease and Desist order which says they can't engage in any commercial activities on their property. So they haven't done any advertising and haven't made any efforts to screen any of the loam on the property. If they can come to some agreement on the proposal to move forward the Stevens do intend to

advertise and engage in other reasonable commercial activities to get the loam off of the property. Mrs. April Caswell asked if they were combining the Cease and Desist orders. She felt they haven't complied because the trucks go up and down the road numerous times per day. She thought the Cease and Desist order meant everything was supposed to cease. Mrs. Miller said the Stevens came to the ZBA for variances and they were denied and were told they weren't compliant with the business they were running. They were supposed to cease everything that has to do with the commercial operation of their business. She has pictures of everything they have been doing since they've been to the ZBA. Mr. Miller presented the Board with pictures showing that the Stevens are still operating their business. He explained that he worked on all of the trucks in one day, so there would be less of an impact on the neighbors. He mentioned when Mr. Stevens works on his trucks all of the grease and other stuff goes on the ground. When it rains it goes onto the Otis's land and her well is less than 50 feet from his lot. There is no way this is a small scale operation. Mr. Miller explained the various photos. He said the fuel tanks are less than 25 feet to his land. He is violating the groundwater protection act on many things. Mr. Stevens explained the 1,000 gallon tank has been taken out of service and its advertised "For Sale" on Craigslist. He told his neighbors at the ZBA meeting that he would not fuel up on the property anymore. It's a double lined tank which meets federal specs and if the neighbors would like to see the specs he can get them. His neighbors are saying he needs a silt fence, but that is basically for water and he lives on a hill that isn't within a mile of a brook or a stream. There is 4 feet of grass growing between his and Mr. Miller's property. Selectman Soares clarified the tank on the concrete pad is registered with the State. Mr. Miller couldn't find any evidence of it being registered. Mrs. Caswell stated there is a pond not even a 10th of a mile from the Stevens house and there is a spring feed creek in the back of her father's house. So there is drainage and a natural water line there. There are culverts there. This has been shoved down our throats. The traffic causes some safety concerns. Selectman Robie asked Mr. Stevens's attorney what the plan was. Mr. Stevens said he couldn't screen loam until next year it's too late now. Selectman Robie explained if the ZBA has recommended a Cease and Desist that would be the next logical thing. Mr. Stevens thought ZBA Chair Chivers added a lot of things to Notice of Decision. The Cease and Desist is for the loam. Mr. Stevens' abutters adamantly disagreed. Selectman Robie said this is one thing we need to clarify. The abutters are saying one thing about the Cease and Desist and that it's for the whole operation. Mr. Stevens is saying it's for the loam operation. They need to find out what the ZBA's final outcome was. They need their attorney to look at the minutes of the ZBA meeting. Chairman Kelley said we'll contact our Town Attorney with all of the information. Mr. Stevens asked if the ZBA added more variances. Selectman Robie said we need to let Atty. Mayer look at this. Mrs. Caswell noted the original Cease and Desist was in 1986 and back then it was for the full commercial operation. Chairman Kelley reiterated we will forward all of this information to our attorney. Selectman Snow asked Atty. Pasakarnis if the Building Inspector has given a Cease and Desist order to your client and you're interested in modifying that to prevent any problems with the Board of Selectmen. He asked how big the pile of loam was and how long it would take to get it off the land. This would allow us to more

effectively make a decision. Atty. Pasakarnis said they are before the Board this evening because the terms of the Cease and Desist order relate to the processing and the loading of screened loam on trucks is deemed to be a commercial operation in a residential district. Part of the corrective action was to remove the loam. His letter was to follow up on the terms of the Cease and Desist to remove the loam. In order to remove the loam from the property they have to bring trucks on the property to take loam off. He doesn't want his clients to remove the loam if there is going to be a finding that in doing so they are continuing to violate the Cease and Desist order. We are just trying to comply with the terms of the Cease and Desist order. They are not here for any of the other matters this evening. They are trying to propose a compromise in a reasonable amount of time. He noted any screening operations will have to be carried over to the spring. It is something they would like to accomplish within a year. Mr. Stevens said the loam is about 150 truck loads. Selectman Snow thought it was a significant amount. Atty. Pasakarnis said it will have to be done with equipment and trucks. Mr. Caswell asked if he will be notified as an abutter. Chairman Kelley replied the Selectmen's agenda is posted in two places in town – the Post Office and Town Hall. The agenda is also posted on the website.

Eagle Scout Project. Eagle Scout Matt Hawes explained he did the Moore Park sign at the entrance of the park. He would like to formally turn it over to the Town. He and other members of the community have put 450 hours into the project. He hopes the residents of the Town enjoy the sign as much as he does. He thanked Road Agent Lewis for all of the help he gave to his project. Selectman Snow motioned that the Board send Matt Hawes a letter of congratulations and thanks for successfully completing his Eagle Scout project and the Town accepts the sign. Seconded by Selectman Soares. All were in favor. Motion carried.

Rick DiOrio of the NH Snow Slickers to request trail use on Town property. Rick DiOrio was present. He has applied to the State already to get the trail crossing across Route 43. He presented the Board with some specs of the trail crossing. There is an existing trail now, but it doesn't seem to be used. Some brushing will need to be done and a small amount of soil may need to be brought in to even it out. They are looking for the Town's permission to do this and there will be no cost to the Town. Selectman Snow said if any development were to happen on that piece of land it would aggregate the agreement. Chief McGillen asked if it was the State or NH Fish and Game who were involved with the process. Mr. DiOrio explained the application goes to NH Fish and Game. It takes anywhere from 30 days to 3 years to get the approval. NH Fish and Game then send it to the DOT and they check the information that he gave them. Chief McGillen asked if they consult the Police Department. Mr. DiOrio couldn't see why they wouldn't contact the local police department. Chief McGillen said they are more than willing to help out the organization and work with the State to make sure it's safe. Selectman Snow motioned to authorize Chairman Kelley to sign the application. Seconded by Selectman Soares. All were in favor. Motion carried.

Departmental Reports: Highway, Police, Fire, Building, Solid Waste & any other depts.

Road Agent: Road Agent Lewis went over his report (see attached). He did some shoulder work on Murray Hill Road and grading was done on Currier Road. The roadside mowing was completed.

Police: Chief McGillen noted there were no burglaries for the month of September. The incidents were up a little bit compared to last. They had a couple of major investigations. There was a drug investigation that started up last month and an embezzlement case with a business. They are doing some book readings with the children at the library. The Officers have been invited over to the school to have lunch with the kids. They are participating in the Drug Take Back Day on October 29th at the Fire Station from 10:00 am to 2:00 pm.

The Board to reappoint part-time Officer Ken McCarron. Selectman Soares motioned to reappoint part-time Officer Ken McCarron. Seconded by Selectman Duarte. All were in favor. Motion carried.

Fire: Selectman Robie read from the attached report. There was regular truck and building maintenance done. They had training at the Haunted Acres for the Halloween season.

Building: Selectman Soares read from the attached report. She noted that revenue is significantly down from last year.

Solid Waste: Selectman Soares read from the attached report. Selectman Soares said the guys at the center have been doing well. She is working on an Excel spreadsheet similar to our budget sheet, so they can get the yearly percentages. This will be in place by the end of week. The Recycling Center employees and she are working on generating some new projects and changing the structure of how things are run down there.

Parks and Rec: Selectman Snow read from the attached report. The CYAA is going to run the ski program next year.

The Board will accept various donations on behalf of the Town in accordance with policies and RSA 31:95-b III (b). Chairman Kelley motioned to accept the donation of \$300 from the CCWC (Candia Community Woman's Club). Seconded by Selectman Soares. All were in favor. Motion carried.

The Board to discuss switching over phone companies. Chairman Kelley said he had Selectmen's Assistant Cheryl Eastman do some research on the phone bills. There is a company Cheryl found that could save us some money. It would be an annual savings of \$1,899.84 over

the existing Fair Point service. The name of the company is Bay Ring and the information folder is in the office. Chairman Kelley would like to invite them to the next meeting.

The Board to accept the Old Smyth Library Assessment Grant. Selectman Robie brought this to the Board about a month ago and they received a grant of \$2,500 from NH Preservation Alliance. They needed to fund \$1,100 through the Selectmen, so they could apply for a \$3,600 grant from the NH Preservation Alliance. Mr. Thomas applied through the Heritage Committee and we were granted that \$3,600, so the funding is complete. Selectman Soares motioned to accept the Old Smyth Library Assessment Grant in the amount of \$3,600. Seconded by Selectman Robie. All were in favor. Motion carried.

The Board to discuss recent correspondence regarding Raymond Sand and Gravel. Chairman Kelley mentioned the Board should have all read Atty. Mayer's recent letter to Jones and Beach. He thought Atty. Mayer said they need to pick a Selectman to meet with a representative from Jones and Beach. This was his opinion. Selectman Robie read from the letter "It seems to me that it is necessary for a representative of the Board of Selectmen to sit down with a representative of the owner to discuss in a more candid manner the means by which this property is to be reclaimed. Perhaps a discussion of these issues between the parties may lead to a mutually satisfactory resolution." Chairman Kelley said someone from the Board needs to sit down with a representative of the owner. Selectman Snow thought it meant that Atty. Mayer wants the lawyers to sit down and talk. He felt that Atty. Mayer is the Board's representative. If any one of us goes and talks to them and there is any discussion they would have to bring it back to the Board anyway. Let them talk about excavations then the Board can discuss it. He doesn't want one member of the Board talking with the owners, the whole Board should. Chairman Kelley will verify this statement with Bart and he'll find out exactly what he meant. Selectman Robie said the letter says it seemed necessary for a member of the Board to sit down with a representative of the owner. He thought Atty. Mayer might be trying to save the community some money. Selectman Duarte thought there was a court decision and why are we messing with this. If we have a court decision they have to abide by that. How can we negotiate if we have a court decision? Selectman Robie said the reason we would be interested in talking with them is to get that property put back together. It's a good thing to reclaim something that has been destroyed. Selectman Snow asked if they are attempting to reclaim. If they want to excavate they need to go to the Planning Board with an application. The reclamation is a result of the court order and that is our responsibility. Selectman Duarte felt they know exactly what they need to do. The court has settled this. Selectman Soares said we should get clarification from Bart on the last statement.

The Board to approve the hiring of Kathleen Allen as the Trustees of the Trust Funds secretary. Selectman Snow said the only reason he is providing the Board with this information is because there was a question on if the Board had the authority on the final say of hiring the

secretary. The information he has provided is the same as the Board can't tell the Tax Collector who the Deputy Tax Collector is. The action you are proposing as a Board is at best inappropriate and at worst illegal. The Board of Selectman and the Trustees of the Trust Funds are equal. They have already contracted with Kathleen Allen to perform the administrative service. The Board can't make a motion to approve Kathleen Allen as the Secretary of the Trustee of Trust Funds, because they don't have the authority under the statute. The Board doesn't have the authority to tell the Trustee of Trust Funds who to hire. He provided the Board with information from the Attorney General's Office seminars.

The Garden Club to propose planting daffodils at the Exit 3 median. Garden Club member Linda Thomas brought pictures of where they would be planting the daffodils. They called the State to ask questions and Dave Rodrique told them to talk with the Selectmen and Chief McGillen. Chief McGillen has already agreed to write the letter. They have explored all the issues around safety when they plant. She presented the Board with some pictures. They are going to plant some bulbs this year and finish the job next year. They would like to continue planting up towards Stubby's and there is a lot of grass there. Chief McGillen said an Officer will be there to escort them. Linda Thomas explained they need a letter from the Selectmen saying they approve of the project. Selectman Snow motioned to authorize Chairman Kelley to sign letter to the Garden Club and DOT. 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 000647-02, checks to be dated 10/06/2011, with a total gross payroll amount of \$17,633.13. Seconded by Selectman Soares. All were in favor. Motion carried. Selectman Snow motioned to approve payment of accounts payable manifest number 100111 checks to be dated 10/06/2011, with a total amount of \$445,778.24. Seconded by Selectman Soares. All were in favor. Motion carried. Selectman Snow motioned to approve payment of payroll manifest number 000648-03, checks to be dated 10/13/2011, with a total gross payroll amount of \$17,373.68. Seconded by Selectman Soares. All were in favor. Motion carried. Selectman Snow motioned to approve payment of accounts payable manifest number 100211 checks to be dated 10/13/2011, with a total amount of \$15,024.51. Seconded by Selectman Soares. All were in favor. Motion carried.

Approval of Previous Minutes: Public meeting minutes of 9/24/11 & 09/26/11. Selectman Soares motioned to accept the public meeting minutes of September 24th, 2011 and September 26th, 2011 as presented. Seconded by Chairman Kelley. All were in favor. Motion carried.

Other Business:

Chairman Kelley asked if they got the situation squared away at the swap shop. Someone was taking items from the swap shop and selling them at a flea market. Selectman Soares said she is

still working on it and the individual stopped coming to the swap shop. She is also going to address this with the volunteers.

Generator update: Road Agent Lewis told the Board they were going to attempt hooking up the generator to the fire pump this weekend.

Hooksett Banner Article: Selectman Robie was concerned about the recent article that was in the Hooksett Banner. It was in regards to the last Selectmen's meeting. Selectman Snow sent in an application that he signed (on behalf of the Board) to see if we could receive a grant. Selectman Robie thought they were going to wait and see if the grant came back. The information that came back from Holly Green at DES said we could apply if we wanted to. Then he saw the article in the October 6th edition of the Hooksett Banner that says this is a done deal. We are going to sign up for this grant and put all of the Town land in a conservation easement along with a piece Mr. Richard Fitz owns. He doesn't know how this got printed with a headline that says "Land purchase to safeguard water". Selectman Robie read from the article. It says at this point the Board is prepared to move forward and submit a final application. Selectman Robie felt that none of this was true. The lady from the paper got all of the information wrong and he is very concerned. She apparently got her information from Selectman Snow. Selectman Snow replied the only information that is in the article is available on public records. Selectman Robie said the article says the Board is prepared to move forward and submit a final application. He noted the rest of the Board didn't talk to the lady at the paper and if she makes up stories like this she should be relieved of her duties. Selectman Snow replied that he didn't run the newspaper. Selectman Soares said no but you are in their ear constantly. There's always mention of you with articles to do with the Town and everyone knows it. We are not stupid and if anyone else on this Board had done this the s- -t would have hit the fan. You seem to think you can get away with whatever you want and we're going to just pass it off. If any of us did this you would be up in arms quoting RSA's saying this is not legal. If you do it it's a whole different story. The Conservation Commission isn't happy about this and yet you are still pursuing it. Now there is an article in the paper about it. You are always trying to make yourself look like the savior of this Town when you're really causing trouble. Selectman Snow replied for whom. Selectman Soares said for the Board and whoever else you feel like being a p—s ant to. She didn't know what this new attitude is that you have, but we didn't vote on this or approve it. This information that we are supporting this is totally false. She felt the reporter can write what she thinks but she has to get the concept and feeling from someone. Selectman Snow replied he doesn't tell people what to write. Selectman Robie pointed out that it does say "Mr. Snow said the grant would allow the Town to purchase property and protect a total of 9 parcels of land through conservation easements". There are multiple references that say "Mr. Snow said". Someone is telling her because the rest of the Board didn't. Selectman Snow replied it's in the public records. It's in the minutes and pieces of paper that he gave the Board of Selectmen. Selectman Soares said we didn't support this and it's not in

the minutes that we supported this project. Selectman Robie added it's not in the minutes that we received the go ahead from DES. It's not in the minutes because that just came last week after the Selectmen's meeting. We are the only ones that knew we got that. Selectman Snow noted the reporter talked with Holly Green from DES and maybe Holly told her. Selectman Soares said it says we're eligible but we didn't say we are going to apply for this grant. Selectman Snow said he agreed that the Board has not said we are going to apply for it on the first of November. He has worked very hard to try to put together an application. He has a lot of information and it may not be us that put in the grant. The land trust might put in the application. At some point in time the Board of Selectmen will have to vote, either directly or by sending it to a town meeting. This won't happen until next year and they won't have to do a special meeting on it. We have to go through 41:14a and at the end of those two hearings the Board of Selectmen cast a vote to move forward or not. The citizens can petition the Board to have a meeting. Chairman Kelley said he is not in favor of putting an easement on Town owned land and why would we want to buy wet lands. Selectman Snow said the purpose of the grants is because it protects the water supply and it prevents it from being developed. Impervious surfaces allow the water to run off and pollute the water supply. The problems that we are having in this area are we are having too much development, too much impervious surface and it is impairing the water quality of the guys downstream. The guys downstream are having problems with water and so are we as we develop. The water protection grants protect the water supply and one of the best ways of doing it is conserving land. He would prefer to have Mr. Fitz say he would be willing to put a conservation easement on it and he would donate it. He wants to sell it so the option becomes do we want to let it go or don't we. He will be walking the properties over the next couple of days, but he thinks putting in a grant like this is a perfect way to protect the water supply. This is a once in a lifetime opportunity. The opportunity to protect the water supply and clearly define what Town properties we have. We need to get them surveyed. He discussed the property around Kinnucum Pond. They could do the deed research with money from the conservation fund or they could get a grant that would allow them to do it on someone else's nickel. He felt this was a perfect way for us to get a lot of things done on a very small portion of land area in Candia. It would be less than 200 acres out of 40,000. The first of November he is going to be ready to put in a grant, because he spent a lot of time on the first part of it. We are eligible and he is going to put the grant in. Selectman Soares said we don't need to worry about the watershed. Her friend works for water works and Massabesic doesn't have any major contamination problems. Selectman Snow said he disagreed. Selectman Robie said Selectman Snow hit the nail on the head. You said this is a once in a lifetime opportunity. He's concerned about the lifetimes of the next 8 to 10 generations in our community. They have the right to do what they feel is the right thing at that time. Just because you might think this is the right thing to do today, but it is a once in a lifetime. He doesn't agree with that because generations after us have the same rights to move forward without us dictating to them how to take care of their properties. He also mentioned that years ago the City of Manchester dumped their sewage into the Merrimack and it ran down stream. Now those Towns/Cities downstream

drink that water. Selectman Snow questioned who paid for that. Selectman Robie replied the taxpayers. Selectman Snow said it was the federal government. Selectman Robie replied who is that – the taxpayers. Selectman Snow asked if he agreed that the White Mountain National Forest is a good thing, because that was people in the past that did things for us. He questioned what they have done for development in this town in the past twenty years. Selectman Robie said there has been nothing done for development. Selectman Snow said he would keep the Board informed on what is happening. Chairman Kelley stated he was really upset about the article.

Selectman Robie motioned to adjourn 8:36 pm. Seconded by Selectman Soares. All were in favor. Motion carried.