

~~Unapproved~~**APPROVED**  
**Candia's Selectmen's Public Meeting Minutes**  
**August 12<sup>th</sup>, 2019**

**Attendance:** Chair Susan Young, Vice-Chair Carleton Robie, Selectman Russ Dann, Selectman Boyd Chivers, Selectman Brien Brock and Administrative Assistant Andria Hansen.

**7:00 p.m.** Chair Young called the public meeting to order following the Pledge of Allegiance.

Roll call was conducted.

**Approval of Minutes: Public meeting minutes of July 22<sup>nd</sup>, 2019.** Selectman Dann moved to approve the July 22<sup>nd</sup>, 2019 Selectmen's meeting minutes as amended. Seconded by Selectman Chivers. All were in favor. Motion carried.

**Public Comment:** Selectman Brock asked why we have public comment so early in the meeting. Why not wait until the end? Chair Young explained her reasoning to put it at the beginning was if we are going to make a decision on something further down the agenda and people can't say anything during that portion because it is a business meeting, this gives them an opportunity to comment on items we might be making decisions on. If they have input on something after the decision has been made it is a little too late to comment on something then.

Selectman Brock clarified that under "New Business" when those items come up you don't allow for any input. Chair Young said not normally but she does have something that she is going to bring up. If there are no objections from the Board, she would like to move the Candia Crossing item up to after the firefighter or ZBA appointment. Additionally, she would like to request from the Board to allow Mr. Komisarek and his attorney to make comments during the Candia Crossing discussion. The Board didn't have any objections.

Mr. David Baldessari of Fieldstone Lane said he is a taxpayer in this town and the way that he looks at it is there are 42 houses that are going up and it is \$7,000 in taxes per unit. We are looking at \$300,000 coming to the town each year. His understanding is this saga has been going on for 11 years now which says we've cost this town millions of dollars by delaying decisions to let them go forward for whatever reason. They have a lot of roads to fix in this town and a lot of other things to do. He would implore the Selectmen if they were the last ones to make a decision on this to make a decision so this can go forward and we can benefit from the revenue.

**Department Reports: Highway; Police; Fire; Building; Planning; Solid Waste; Budget; Other**

**Highway:** Road Agent Lewis read from the attached report. They put 620 tons on Merrill Road, North Road, New Boston Road, and Blevens Drive. He got estimates on the knotweed spraying. To apply for the permitting and do the work it would be \$2,900. It's three separate permits because the old recycling center is near the wetlands. Same with the end of Island Road. Those two require a separate permit, but the others don't they have a standard permit. They permit that they might not get is for the old recycling center. If they don't get the permit it would be \$2,400. The company that does the spraying does all the permitting.

Selectman Robie said it's now August and will they still have time to spray. Road Agent Lewis said it would be worthwhile because takes a three-year period to eliminate it totally. The first spraying gets 60% to 80% of it. Then there are pieces that keep coming back. Every year the price would go down. Selectman Robie asked if it was too late in the growing season to spray. Road Agent Lewis said the spraying company thought it would be fine. Selectman Brock motioned to authorize Road Agent Lewis to contract with the spraying company for \$2,900. Seconded by Selectman Robie. All were in favor. Motion carried.

Selectman Brock asked Road Agent Lewis when they do the paving on Blevens would he be able to do the two driveway entrances they talked about. Road Agent Lewis replied he didn't know if he was going to do them when he paves the road, but he will get them done.

Chair Young asked about Moore Park and did he think it would be done before Old Home Day. Road Agent Lewis didn't know if it would be before Old Home Day. The money in the budget would do the 24-foot

area around. It wouldn't do the entire parking area. If she wants to do it this year, they'll get it done. They have the cemetery to do and the school parking lot.

**Police:** Chief McGillen noted there were ten arrests in July. The ACO has been issuing the dog fines. They have 190 dogs that are not licensed in town. She had been doing a good job.

Chief McGillen said he had a resident approach him about the stop sign on Baker Road. There have been some cars rolling out from Baker Road onto South Road. The resident felt it was dangerous and he agreed. Road Agent Lewis noted that's a Class 6 road and the town doesn't maintain that road. Selectman Chivers asked if they had any stop signs. Road Agent Lewis said they did but its spending money on a Class 6 road and they have to be careful. They can direct the residents who live to put one up. He can bring it up to some of the people that live on Baker Road. Selectman Brock said if they put the sign in the right of way of the Class 5 road then they aren't spending it on the Class 6. Road Agent Lewis answered whatever the Board wants to do. Chair Young said we will delegate that to Selectman Brock. Fire Chief Young explained if a car pulls out onto South Road the driver is going to get slammed right in their door. The stop thing is the cheapest thing they could do, because they tax money from all of those houses up there. He didn't even know why they are talking about it, please put a stop sign up there.

**Fire:** Selectman Dann read from the attached report.

**Reinstate Joseph Flannigan to the CVFD:** Selectman Dann read from the attached letter. Fire Chief Young explained Joe was on the Fire Department not too long ago. He has been away for a year and he wanted to come back. He's one heck of a good fireman. He's a retired Manchester fireman and he has a lot of good training. We're excited that he wants to come back. Selectman Dann moved to accept the appointment of Joe Flannigan to the Candia Volunteer Fire Department based on Fire Chief Young's recommendation. Seconded by Selectman Chivers. All were in favor. Motion carried.

**Building:** Selectman Chivers read from the attached report. Selectman Chivers wanted to mention a little project that the Land Use Office is working on now. They realized they haven't updated the zoning ordinance since 2017 and there have been changes to the ordinance since then. They are in the process of tweaking the ordinance and having it reprinted at New England Duplicator. He thought it was important to have a current ordinance that reflects all the changes.

Chair Young noted the current budget has a \$1.18 BC said they have discovered they haven't updated the zoning ordinance from 2017. They are tweaking it and he'll have copies made. They'll pay for it out of the building department budget. Selectman Chivers said that's the Planning Board budget, this is going to come from the Building Department budget.

**Planning:** Planning Board Chair Rudy Cartier said he'll give an update after the ZRRC meeting on the timeline for everything they have going on. The Planning Board is having a meeting next Monday night for the Capital Improvement Plan. We are inviting people that are involved in a capital improvement project. Brian Ruoff from Stantec will be there. The CIP meeting is Monday August 19<sup>th</sup> at 6:00.

**Solid Waste:** Selectman Dann read from the attached report.

**Budget:** The Budget Committee meeting is Wednesday August 14<sup>th</sup>, 2019 at 7:00 p.m.

**Budget hearing procedure.** Selectman Robie would like to suggest that they do this a little different then what we have been doing. We've been meeting the third Saturday in September every year. The deadline for department budgets is September 11<sup>th</sup>. He thought we could look at the budgets on a weekly or biweekly basis. It puts a lot of strain on people to do it on a Saturday. What we look at is not really a budget it is what they

hash out. It would for the liaisons to look at the budgets, then come to the meeting with questions and try to streamline the process. The process will work well if we follow. We are still working on this budget into December.

Chair Young asked if he wanted it as an agenda item. Selectman Robie would to see the budgets come in by September 11<sup>th</sup> and we can start reviewing the budgets. Then they can start looking at a couple of the departments at our September 23<sup>rd</sup> meeting. Selectman Chivers thought it made sense. Chair Young said when she hears from the department heads are clearer than the liaisons. Selectman Robie said the department heads would be invited to the meeting.

Chair Young asked if they should start the first Monday of September. Selectman Robie explained that the budgets are due on the 11<sup>th</sup> and the office needs a week to prepare the budgets. They can start the process on September 23<sup>rd</sup>. Chair Young asked if the Board was agreeable to trying this. The Board was agreeable. Chair Young said they'll send out a notice that the Saturday meeting is cancelled, and they will be reviewing the budgets starting September 23<sup>rd</sup>.

Chair Young reminded everyone to keep an eye on their budgets because their getting tight. If they need money and it is not in their budget, then it is coming from someone else's and that can prove problematic.

**Board to appoint Anthony Steinmetz to the ZBA as an alternate member.** Selectman Chivers explained Anthony met with the ZBA last month and our Board voted to recommend Anthony's appoint to the Selectmen. Right now, they have one other alternate and this will give us two. Selectman Chivers moved to appoint Anthony Steinmetz to the Zoning Board of Adjustment as an alternate member. Seconded by Selectman Robie. All were in favor. Motion carried.

**Candia Crossing – Boyd Chivers.** Selectman Chivers said he didn't know why his name is on the agenda. The only reason he's associated with this is because he is reminding them of the process they should follow before the sign the agreement and release. It turns out that it is probably too late to follow that process. His understanding is that agreement and release authorizes the construction of a private road at Candia Crossing. It has already been signed by the majority of this Board. He doesn't know what to do about that.

Chair Young said she had Administrative Assistant Andria Hansen email the release and all the information pertaining to it to the Board.

Selectman Chivers said he sent an email outlining the steps that he thought was appropriate in this case and it was for the Planning Board to review Stantec's recommendation at a publicly noticed meeting and make a recommendation to the Board. The second step would be for this Board to consider the recommendation of the Planning Board. Stantec has yet to meet with the Planning Board and the Planning Board has yet to accept the bond amount that has been recommended by Stantec. He's not sure where it stands right now, if they haven't followed the process that they are required to follow. He's not sure what to do.

Chair Young thought there was disagreement whether we did, or we didn't, this is why she contact our town attorney.

Selectman Brock explained at the last Planning Board meeting that Board asked Brian Ruoff to submit the next day what he thought the bond should be. There was no other decision to be made by at the Planning Board. He was directed by the Planning Board to do that. That deal was supposed to be done Thursday. As soon as he contacted Lisa in the office and gave them that document, that was it and it didn't have to go back to the Planning Board.

Chair Young confirmed that was in agreement with what the town attorney advised. She didn't have a problem with it, and she isn't sure why it is being brought up now.

Selectman Chivers said his concern was if they decided on an agreement and release allowing the construction of a private road on Candia Crossing. We haven't made any determination as to the appropriate number for the bond for the construction. What they have is a reclamation bond for \$118,120. They don't have any assurance now that the road will be completed as required by the subdivision regulations. Under section 18.04 of the subdivision regulations "Subdivider shall execute a deliver to the Selectmen, in a form acceptable

to Town Counsel, a bond or letter of credit to ensure performance of all terms and conditions of Final Plat approval. The bond shall be provided in incremental amounts..." He has read that agreement carefully and they have given Mr. Komisarek permission to proceed with the construction of a private road and they have agreed to issue building permits. Now what protection does the town have once that road construction has started, and they start building homes there.

Chair Young said the document that she signed was generated by the town attorney to protect the town and its residents. She is very confident that the company that we have that represents the Town of Candia that they know what they are doing. She is not a lawyer, but she puts her faith in the town attorney. Originally, they were going to draft a letter and have the Selectmen sign it giving permission to proceed. People on the Board of Selectmen didn't feel comfortable with that which is why it went to the attorney. There was an agreement provide with all the legalese language in it. This has nothing to do with building permits. If you look at our private road policy, it doesn't apply to that.

Selectman Brock noted the Planning Board had that discussion. There was never any intent by the Planning Board to bond an amount to finish the project. The only discussion was if the project created was to reclaim it. They did not want to develop that as a town. This is why it was never discussed about bonding for completing the road, the road is very specific on that type of development compared to a conventional development. There is no defined right of way for the road, so there is no way the town can go in and finish fixing it. It is all part of that whole condo associations. Chair Young added it has to be listed at the registry. Selectman Brock said there was never any discussion about completing the project if it faulted.

Selectman Chivers referred to the 4<sup>th</sup> whereas on the agreement and release which says, "Whereas the town has agreed to issue building permits for the construction of residences on the property within notice of RSA 674:41". So, they've agreed to issue building permits. What assurance do we have that those people are going to be provided with adequate water, sewage and roads?

Attorney John Cronin who represents Amy and Scott Komisarek was present. Atty. Cronin said it was his understanding RSA 674:41 is a typical hearing related to roads which you as Select people have jurisdiction of. There are certain carveouts to that statute, so it has his position with Atty. Courtney that this is more of a boot strap, belt and suspenders approach and not necessary. That statute was designed for remote roads out in the woods that police and fire equipment and ambulances can't get to. The town has an opportunity to say "Hey look If anything goes out there and you want to build a house. Don't be coming to the town because we want to be immunized from liability and we want to make sure something gets on record so that buyer looks at this and has open eyes.". The carveout to those is number one if it is a plat that is approved by the Planning Board, they don't need to do that notice. If the road that gives access to that subdivision aligns with a class 5 or better highway you don't need to do that notice. This (project) aligns with Route 27. If aligns and corresponds with a road that is shown on the town map you don't need that notice. This notice that you're here has nothing to do with water sewer. That is a Planning Board function as is the bond. There was discussion at that meeting about the bond, he believed Mr. Brock was the one that said we as a town don't want to be in the business of finishing that subdivision. His discussion typically in a private development the town doesn't have the authority to go on private property. What they do have the right to do is protect harm to abutters or the public in the form of erosion, siltage or any of that sort of thing. This is what the reclamation bond was for. The letter as discussed, your consultant was here, even saying the bond in place may be adequate, but let me do some more numbers I can do them quickly. The applicants said they were fine with what that person comes up with.

Atty. Cronin wanted to note there were a number of people at that hearing. A few voiced opposition to wells and water none voiced any concern at all relative to the bond. So, his position is there is not a lot to debate here. This isn't water, a well, or public safety. The whole project has to go through the AG's office. They do a fiscal review test and they do a feasibility test and a fiscal review test. They want to make sure that you don't have partially completed developments which nobody wants. But as Mr. Chivers knows well, he and I worked together in the late 80's early 90's, there were a lot of people that had things happen that they didn't expect to happen. He will also note that the legislature had a bill to readdress this statute and do some additional things like many bills up in Concord that was inexpedient to legislate. So right now, they want to put

something on record with the town, "if you buy here, you're getting access, you're on your own and we have no liability". We as the applicant assume that responsibility. So, he thought a very brief discussion, there really isn't a lot to be said. They need the Board's approval and to the extent that they get it all the better.

Chair Young and Selectman Brock agreed with Atty. Cronin's statement. Chair Young asked the Board if they had any other comments.

Selectman Robie wanted to give some of them a little history which happened thirty years ago. The town approved a private road and a small subdivision. They ended up in the same turmoil trying to get closure on that with houses built, a road not completed. As far as topcoat, the Selectmen tried to hold up and they did hold up the CO's on those houses until that had been completed. Whether anybody approved the plan or not, he's not sure about that. What he is sure about is shortly thereafter they changed the zoning regulations to be fairly certain that a development of that nature wouldn't come to Candia again. Whoever orchestrated that he wasn't sure, but he had a good idea. The zoning changed and everyone thought this will never happen again in Candia. It didn't for 18 years until Mr. Komisarek and Mr. Cole came forward with a plan for Candia Crossing. Twelve years ago, he had become a Selectman. The same scenario came before the Selectmen and he didn't know Mr. Komisarek or Mr. Cole. He didn't know the process of the Planning Board or the reason why like he does today. Twelve years of being heavily involved he saw a need to try and fix some of these things that our community keep doing over and over. Today they are here twelve years later in the same scenario. Our community has become divided on some issues, he's not blaming anybody for any of that. All this Select Board needs to do is follow the procedure. The advice they had last Thursday afternoon was "once the bond issue is settled, I encourage the Board to sign the document". When that request came from the Planning Board for the Selectmen to draft a letter of release of the private road, he said certainly we'll draft a letter and they will sign that when the Planning Board has met all the other conditions of this approval. He said that a month ago. There was some turmoil within the office and he also said the same thing to the Land Use Office. Please get your plans approved and he would be the first one in line to sign this release to both offices. It has gone on for 6 weeks since that request for that letter came to the Selectmen's Office. Last week it has nothing but turmoil within our office and amongst ourselves to come to some resolve and now they have gone even further astray. On a Wednesday night this document known as the private road release had been signed by a couple of Selectmen. On Friday or Saturday afternoon the document had been signed by another Selectman. Yes Mr. Brock is right they have three signatures.

Selectman Robie said his point was they are in a democratic society and if you follow the process will work pretty smooth. His point on that is such a document of this importance to our community and the future Boards of Selectmen and also the people that are going to spend their money on that need to know that the Selectmen did their best to make sure all the I's were dotted and T's crossed. Without this kind of format they all get to speak, which he thought he proved to himself and some other people a few weeks ago when we had a discussion about an issue and there was one of us that hadn't made a decision and a said a peep. The more we talked the more time he had to think, and he had the opportunity to talk some more and he thinks that person listened. When they had to vote that person listened to what he had to say and what he had to say was in the best interest of all of us and all the people. So maybe I have made a difference in some of these things, but I don't not feel a three member Board of Selectmen signing a document and then telling us it's a legal document without the rest of us having a chance to talk to each other in a public forum and have the opportunity to change that persons mind, he didn't think anyone of us would like that to happen. He still thought there are some issues that the Selectmen need to address on a project of this scope that we're all new too. This is the third try at such a thing. He would really like to work it down until everyone has done their due diligence. In Candia where we make maple syrup, if you boil it too much it really gets to be a gooey, sticky mess.

Chair Young said she would like to respond to that with all due respect. He is talking about Candia Highlands and it was a cluster development. She was around then too. You spoke about how this is unchartered territory that has happened in many years. They also made a decision a couple of weeks ago about building on a class 6 road that hasn't happened for a long time. She thought he was pleased with that outcome because people agreed with his point of view. That is okay this is what a democracy is this is why they have an

odd number of people on the boards. She personally went above and beyond on that document before it was signed to make sure our attorney looked it over and given advice due to your urging or that hesitance that came from him. So, she is a little offended because she went above and beyond the simple letter that she thought they could have written, we took the time, effort and money to have the attorney look it over and give his opinion on things. She didn't feel in the least that she did not look out for the people in Candia or their interest. You know her and she is not in love with development, but she thought they were doing the right thing. It seems like a couple of people on the Board might have a vendetta, which might be a strong word, so she won't but there are a couple of Selectmen that seem determine to drag this out until it is no longer feasible. It appears that way to her sitting on the outside. She didn't like the decision on the class 6 road that is new before us now and hasn't happened in years. She didn't disrespect the other people on the Board who voted unlike the way she wanted it to turn out. So, you can have your opinions and they were eloquently phrased. She didn't think one or more people on this Board did not honestly sign and do what they thought was in the town's best interest when they had bond information and everything else in front of us. She is personally a little offended with that.

Selectman Robie asked Chair Young to please not be offended by that. What he had said and what she brought up; he was referring to the class 6 road. All he asked by his fellow Board members was to give him a chance to speak to all of them and maybe he could talk enough that they'll realize what one person thinks is the best interest of the community may not be what the other person thinks and make a decision based on that. They didn't have the opportunity to do that and they don't know what each other were told to come to that conclusion. This is the part that bothers him in this. We had the Class 6 road policy in front of us, we talked about it and discussed it in an open forum. Then we voted and that is how the democratic process works. Whether she felt like he won something, or she lost something, he's sorry about that. He felt he talked a reasonable amount and it made that person make that decision that happened to go his way that day. Chair Young said he agreed and that's good. Selectman Robie said that is the democratic process. This is why we meet publicly, and they put things on the agenda, and we get it done. If this is taken away from us what's to say the next time, we bring three people in off the street say I have a document please sign it. Chair Young replied our attorney wrote it. Selectman Robie said it doesn't matter who wrote it. The room looks like its dived and that is fine.

Selectman Dann said he went in Thursday night to sign the document and it wasn't there. He had to come back another day to sign it. They paid the attorney for his opinion and that is what he has gone. It is a private road meeting all these requirements. Now they aren't supposed to accept the attorney's advice who we paid; he is representing our town. If he isn't representing the town properly then they should find another attorney. Now they are rehashing something, it was a piece of paper and it was signed.

Selectman Robie said on the same Thursday that the advice came from the attorney. He did say you do need to sign that document, it's part of what we need to do. He also advised us that he understood there was a bond issue and that was resolved or settled, and he encouraged us to sign that document. He personally didn't need any encouragement to sign that document. He said six weeks earlier get the issues resolved that are very important to the people of our community moving forward with something as new as this to us to make sure those people are covered to the best of our ability. If something goes wrong and they are going to say how did this happen. We'll have to say the Selectmen just let it happen, because they didn't do their due diligence on this. Not that it will or won't, he doesn't know that answer, but they have to follow procedure. He is sorry but that is how he feels.

Selectman Brock explained they had a compliance hearing on Wednesday night. There were only two outstanding issues. The letter that they advised go to Atty. Mayer on a previous Selectmen's meeting. The other compliance was the bond issue. As it stood Wednesday, they wasted a lot of time talking about issues we shouldn't have been. All in good faith to the public which did not have to happen. There were two issues that could have been resolved in 15 minutes and they were here for a better part of an hour. He understood that they sent the letter to Bart. That was our recommendation, let Bart draft the agreement. Once it came back, they would sign it. They often sign things at their leisure it did not require us to sit down again and talk it about it

again. He agreed they had a responsibility to the public, but they also have a responsibility to their applicants to deal with things in a timely manner.

Atty. Cronin said they did have the compliance hearing, and everything was addressed. The bond issue was a small amount of money the applicant came up with the next day. Mr. Robie made some valid comments and he mentioned the Sanderson case. There was a case Sanderson v. Candia back in 2001 which was not a condo. There was a case involving condos that implicated this particular statute. In that particular statute it says typically what the Selectmen are looking at is the type of road with its surface, accessibility for fire and ambulance. You access it from the main roads. So, assuming no one signed that agreement and say it's clean it can impact the process. They have been at this a year and half just estimating. This has been vetted by the Planning Board for a 43-unit elderly. He knows its big for Candia, but in New Hampshire it is not a large development. It has been carefully scrutinized by the Planning Board. They have dotted the I's and crossed the T's. If you looked at those issues that you're supposed to consider and tonight anyone that signed that document would have the right to be persuaded to withdraw their signature. We meet all of those criteria. Everyone of those standards you are supposed to look at we have satisfied, and that documents purpose is to give notice to the public and potential purchasers that this is a private road don't be coming in looking for money from the Road Agent to plow it or to fix the pot holes or drainage. This is on the homeowners, come up with a mechanism to pay for it. Which is what happens in have condo or homeowner's association in the state because the AG requires it. Atty. Cronin thanked the Board for their time and attention.

Selectman Brock believed this has to be recorded with the plans. Atty. Cronin confirmed it had to be recorded.

Selectman Robie said the letter of release has to recorded with the mylar of the subdivision and that hasn't been signed by the Planning Board. That can't be recorded and that was his point. Let the Planning Board finish the completion of the plan and he'll will be the next one in line to sign the private road release. Because that bond number has to come to the Selectmen, they hold the bond for the town. If it doesn't play out right the people are going to ask us, why did that happen. There is a scenario here and yes, they have to issue building permits but without a mechanism in place to be sure, we don't issue occupancy permits with a piece of street that isn't complete and built to the specification approved by the Planning Board. When something goes wrong those people will be down here asking why their street was never completed. We're going to say we really don't care because the release says you are on your own, buyer beware. Well we don't do that in Candia because we inspect buildings and have a Building Inspector/Code Enforcement Officer and once a plan is submitted the contractor builds the structure according to specifications on the plans that they submitted. That's just common practice in the building industry. He didn't know if they needed a bond to the extent that if it doesn't get completed we can finish it, but they need a bond to the extent that you have people living in those homes that we issued, then he feels those people have the right to ask us as a Selectmen "how did that happen". This is the whole point here to ask the Planning Board to submit the agreement that yes, we agree to this bond issue and then it is up to the Select Board to say okay or did the Planning Board consider this and this. He is in complete agreeance; he has been an advocate for development since he has been on the Select Board. All he is asking for is that the process be clean, and they all know where they stand at the end of the day.

Selectman Chivers asked Atty. Cronin by what mechanism is the town protected from giving a certificate of occupancy on a road that is not completed. Please go through that scenario.

Atty. Cronin said you don't have to finish the road it is a private road. Anyone can come down to town hall and ask you to do anything. They can ask you to finish their house or change the sheetrock because you don't like the look of it or the way the paint came out. But respect to a private road it is pretty clear that is going to be the responsibility of the developer to do it. If he doesn't the towns obligations it to it is the towns responsibility to make sure that no abutting property or municipal property (road, drainage, swales) are harmed by it. He says that because of some of the older cases. The developer would come in and stockpile and scrape the earth and they wouldn't finish the development. It would get wet and there would be some washout and it might run down an abutters property or town road or catch basin. The town would go in and smooth that hill down, so you didn't have the erosion. He didn't know of one particular case where a town or a city went in and

actually finish a road or do any productive work. If the town is going to say in every development, we want guarantees to develop. One they aren't going to have development or you're going to have development that nobody can afford. The cost of this particular process now in New Hampshire with the regulations is unbelievable with the engineering costs and legal cost. He's embarrassed, he's been here a couple of times and he sends Scott a bill. It is a pretty simple process. The law sets out exactly what you need to do. You may not like it because you feel this obligation to the general public that might come in and buy that house. Caveat Emptor is the old let the buyer beware, but there are all kinds of safeguards for buyers these days. There are disclosures that have to be signed, they do their due diligence, there are real estate commission rules, consumer protection rules about representation and then there is the eyeball test. If anyone is coming into a development and they say, "Gee I'm buying the first house here" and the road is not done they ought to ask some questions. They ought to go up the AG and take a look at the financial affidavit. They should talk to the AG who has reviewed and approved this file. Keep in mind there are no guarantees in anything in life and he's not here saying that he's going to guarantee it or you should guarantee it. All you should do is make a determination, can the fire, police, ambulance, and municipal services get to this particular site and is the bond sufficient to reclaim so there is no harm to abutting property or municipal property. You're expert from Stantec was comfortable with this. He said we don't want to go in and build road for people. This is up to the consumers to make sure they know what they are buying, and they take the appropriate steps to protect themselves not the towns. The reason for this document is to address that specific concern that you have. They don't want people coming in and saying how could you ever approve this project without some guarantee that the road is going to get built.

Atty. Cronin explained that everyone that is buying a piece of property is doing a title search and if they don't shame on them. In that title they are going to find this document that your attorney drafted. It says, folks this is a private road it is not the responsibility of the town. Now if something goes wrong, they may have recourse to Mr. Komisarek or recourse to the road builder. They may have recourse to a lot of people, but they won't have recourse to the town.

Selectman Chivers said he has something from the NHMA that future town meetings are not bound by this agreement. That if the citizens of this development five years from now could petition the town to take that over as a town road. Atty. Cronin said that was absolutely correct. Selectman Chivers asked if that meant the town should inspect this road as they go along on the outside chance that it could become a town road. Atty. Cronin answered if he was a taxpayer and you suggested doing that, I would say don't waste my money. In any private road in this community or in the state anyone that is in that development, whether they were there in the beginning or they buy next week could go to the town meeting or legislative body and say I think there is an occasion, occasion is the operative word in the statute that gives you as Selectmen, because you are in charge of the local roads, is there an occasion to lay this out as a public road. You have a lot of discretion in doing that and you will have to evaluate the test which is probably the town meeting. Someone will have to make a compelling case as why this is a benefit to the town to accept this as a public road. You can't do things prospectively, because it would be an unconstitutional taking. And everyone has equal rights. He felt NHMA gave Selectman Chivers good advice.

Selectman Chivers said in light of that wouldn't it behoove the town now to evaluate the way that road is being built. Construct it to the standards set forth on the site plan. Is the construction going to be monitor as they go along on this road? Atty. Cronin said that is a Planning Board function and he would assume with Stantec, they have been accused of being over aggressive in their monitoring of construction details. That is not a Selectmen purpose under 41. Selectman Chivers asked if Planning Board address that.

Planning Board Chair Rudy Cartier wanted to address Selectman Robie's concern about the sequence of events. The Planning Board had 15 conditions that Candia Crossing had to meet in the public hearing they had last Wednesday. They discussed them all and it all came down to basically the bond and the letter from the Selectmen. We as a Planning Board refuse to sign anything unless it has been completed. He would never suggest to the Board to sign anything unless they have it in their hands. This is why we didn't sign it because we are going to sign it contingent upon the Board doing this. The other thing with the road. All thought they

are doing a private road agreement that is going to be recorded with the Registry of Deeds the plans are very specific this road can never be extended or connect to any other road. This is also going to be recorded with the deed to the property itself. It's double protection. This document secondarily is making sure that everybody knows that you're building on a private road and the town is not responsible for anything. The homeowners also have caveats in it too. The homeowner's association is responsible for all the roads, sewer, all the water, everything on that property. There are three levels from the Planning Board standpoint that gives the town protection for never having the town actually do anything with it.

Atty. Cronin wanted to follow up on Selectman Robie's comment. It's kind of the chicken and the egg. His comment was they don't want to sign it until we see a plan signed by the Planning Board and the Planning Board is saying they don't want to sign until the agreement is signed by the Select Board. They don't care which it is, and they suggest they sign the plan and hold it in escrow, so we don't have a situation where we have a checkmate, if you will.

Selectman Dann said in the future if this private development turned around and said we want this to be a town road, fine you pay the cost to bring it up to town standard and we would look at it. How do you know what is going to happen six years from now? It is their road they would have to come to the town and say they're fixing it up and it is going to cost us this amount of money, will you accept it. Atty. Cronin said even if they did do it to standards you may find that there is no occasion and you may not want to find there is an occasion and you may not want to find there is an occasion. He didn't know why they would set it up so it would perfectly be accepted. If that event happens which none of us can speculate today whether it will or it won't, address it then. You're going to have to make a decision based on all the circumstances at that time as to whether you want it or not. And it maybe you say "hey this is a short street it services one development it has no connection to other places in town, it only benefits the people here. We don't find an occasion to accept it" and that would be your right as members of the Select Board.

Chair Young said someone brought up building permits. It says right here "prior to the actual issuance of any building permit authorized by the Board of Selectmen the applicant shall sign and provide the town with an executed release and agreement to be recorded at Rockingham County". She didn't think there was going to be a bunch of houses being put in without this protection.

Chair Young asked if Applicant Scott Komisarek would like to speak. Atty. Cronin answered that Scott was parroting on what Rudy said about the association documents really precluding that occasion happening. Again, they can't guarantee what happens in the future. There could be legislative changes, there could be a whole host of things. Chair Young said just like class 6 roads and people want to build on them.

Road Agent Lewis noted the Town of Candia had to finish two subdivisions by taking the bond one of them and he didn't know if they had a bond on the other one. Chair Young asked him to be specific because it is public record. Road Agent Lewis said one was Forest Drive and the end of Blevens Drive. They were left undone and the town did take the bond on Forest Drive to do the work. He didn't do the work it was the Road Agent at the time. The former Road Agent also had to finish Blevens Drive. They were projects that were either abandoned or whatever and there were residents on the road, and they had to be completed. So, Candia has had two. Atty. Cronin said the only caveat he had was were those private roads. Road Agent Lewis said they were roads that were approved, but still they had to take a bond. He asked if there was going to be a performance bond on this. Selectman Brock said there wasn't. Road Agent Lewis believed there was one when they were first doing the culverts.

Applicant Scott Komisarek said it was funny that Road Agent Lewis was bringing this up. The first time around they didn't even have a private road agreement. This has given us quite a few headaches here. It was his attorney's suggestion that they have the private road agreement to protect the town when you voiced that concern. What Atty. Cronin is saying is that this is a private road. There is no performance bond, because there need not be a bond. They can't look at 10 or 11 years ago and say they didn't even need a private road agreement. They didn't even have a compliance hearing. They started that and it is in the condition it is right now without any of those agreements. His point is no one seems to be sensitive to the fact that he's tried to take the high road here and try to be patient and work with everybody. There comes a point in time where he had to

get this going and all of this has fallen on me. The stress of it and the financial burden of it has come onto him. So, at some point there has to be some voice of reason here. He wanted to address Carleton's point. He keeps talking about that performance bond and we keep going back to the fact that it is not the responsibility of the town to take that performance bond and build that road. He is reiterated it four times. He just doesn't understand what the issue is. Chair Young answered there isn't one.

Applicant Scott Komisarek said his attorney has advised him not to get into this. But he is going to save some of these things for later, down the road.

Chair Young asked if they were all set for this agenda item. Planning Board Chair Rudy Cartier asked what the resolution of this is going to be, so the Planning Board knows what our next step is going to be. Chair Young said the town is protected with that agreement; it has three signatures. There is a bond that is going to be higher than it needs to be. Selectman Dann said the bond has been paid. Chair Young said it is higher than it has to be.

Planning Board Chair Rudy Cartier explained the criteria that had to be met is that the applicant needed to maintain the bond that was in place. There was one in place for \$54,000. Chair Young said it has been extended until August of 2020. Planning Board Chair Rudy Cartier said from the Planning Board standpoint the bond being in place met that requirement that we have in the conditions. What transpired is they wanted Stantec to make sure the amount was still proper. So, the applicant met the condition to continue the bond. He is asking because he wants to know when the Planning Board can sign the plans, because the Board is ready if those administrative items have been met. Which is the bond and the fact that there has to be something on file with the registry of deeds about the private road. If those two things are fine, then we as the Planning Board can sign the mylars. He wanted to make sure that is what we can do.

Chair Young said Administrative Assistant Lisa Galica should be able to give him copies. Planning Board Chair Rudy Cartier said he can get that information from her. He noted when they have a compliance hearing there are administrative issues and issues, they needed to look at from abutter concerns. This is one of the administrative ones we didn't need to have the hearing on as long as that was on file in the office, we can sign the plans. So, they will proceed accordingly.

Selectman Chivers asked if it would be appropriate to clean up the record and have a motion and a second to ratify what our Selectmen have done so far to make it clear. Chair Young said he could add his name to the agreement. Selectman Chivers said after hearing what Atty. Cronin had to say and after hearing the arguments and after hearing what Carleton said there is no doubt in his mind that it would have gone through the right process. Selectman Brock said that is where the bone of contention is, it went through the right process. There is a difference of opinion there. Chair Young asked if Selectman Chivers wanted to make a motion or did he want to add his name to the agreement.

Selectman Chivers moved to ratify the agreement that has been previously signed. Chair Young didn't know if that was necessary, but if he wanted to add his name. Selectman Chivers said it is a legally binding document now and maybe they can clean up the record, so there is some record of conversation. Atty. Cronin said we have no objection of the Board wants to ratify it and he thought it was an appropriate procedure.

*Selectman Chivers moved that they ratify the agreement that was previously signed by three of the Selectmen and recognize it as a document that is legally binding in the Town of Candia. Seconded for discussion by Chair Young.* Selectman Robie said the only thing that they asked about this whole process is that 6 weeks ago he asked to see a signed plan by the Planning Board in a formal format that says publicly that the Planning Board voted, they were all in agreeance to sign the mylar. He would like to see that. He the Planning Board complete the process and he will sign the document. This is where the issue comes with him. He has been an advocate for development in our community. All he asked for is the process to be smoother, so they don't get ourselves in this situation. They are all friends and there comes a time where we drive wedges between us, and he doesn't like that. Selectman Brock said there is no signing of the plan until they have this, but the minutes reflect that the Board agreed. Selectman Robie said nobody showed us that. Selectman Brock said the Planning Board isn't required too. Selectman Robie disagreed. Chair Young told Carleton he could listen to the audio from that meeting. Selectman Chivers said we can't unscramble these eggs, just move

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forward in good faith and try to clean this thing up. We would have signed this document tonight if they followed the process. They didn't follow the right process and they can't undo that, so let's try to do the right thing tonight. Chair Young called for a vote. Chair Young, Selectman Chivers, Selectman Brock, Selectman Dann were in favor and Selectman Robie opposed. Motion carried on a vote of 4 to 1 (4-0-1).

**Public hearing for 2<sup>nd</sup> quarter grants and donations per RSA 31:95-BIII(a):** Chair Young opened a public hearing. Selectman Chivers announced the grants and donations. The grant received for the 2<sup>nd</sup> quarter was from State of New Hampshire – Highway Block Grant in the amount of \$23,003.11. The donations received for the 2<sup>nd</sup> quarter: Candia Community Women's Club - \$500 for fuel assistance; Candice Anne Cyr - \$ 100 for the Agricultural Commission; and Heidi O'Connell - \$5,000 to the Police Department. The total amount of donations was \$5,600. Selectman Dann moved to accept the grants and donations for the 2<sup>nd</sup> quarter. Seconded by Selectman Chivers. All were in favor. Motion carried. Chair Young closed the public hearing.

**Planning Board/ZBA warrant article for appointing alternate members:** Selectman Chivers explained in they learned in 2010 the legislature passed a law requiring towns to authorize the Board of Selectmen to appoint alternates for the Zoning Board. So, they have been operating with alternates that haven't been dually appointed. He asked the Board if they would agree on putting a warrant article out to see if the town will authorize the Board of Selectmen to appoint up to 5 alternates under RSA 673:6. He read the proposed warrant article "To see if the town would vote pursuant to RSA 673:6 to permit the Select Board to appoint up to five (5) alternate members to the Zoning Board of Adjustment". Planning Board Chair Rudy Cartier asked if the Board needed this warrant article. They have been doing this for the 20 years he's been here. Selectman Chivers said they changed the law in 2010. There was some further discussion about the warrant article. Selectman Chivers moved to authorize this warrant article to go on the 2020 ballot. Seconded by Selectman Robie. All were in favor. Motion carried.

**Selectmen to request funds from the Future Revaluation Capital Reserve Fund:** Selectman Robie moved to approve the request for funds from the Future Revaluation Capital Reserve Fund for CNP in the amount of \$6,252. Seconded by Selectman Dann. All were in favor. Motion carried.

**Board to approve Carleton Robie to act in a capacity of a temporary town employee.** Selectman Robie explained he needs to be a temporary town employee to act in the capacity that the town has asked him to act in and that is to expend fireworks on town property. If this is to happen the Board needs to recognize Old Home Day as a town function. Selectman Chivers moved to recognize Old Home Day as an official function of the Town of Candia. Seconded by Selectman Dann. All were in favor. Motion carried. Selectman Chivers moved to recognize Carleton Robie as a temporary employee in service of the Old Home Day. Seconded by Selectman Dann. All were in favor. Motion carried.

**Board to consider a Deliberative Session date:** Selectman Chivers moved to set the Town Deliberative Session date for February 1<sup>st</sup> @ 9:00 a.m. Seconded by Selectman Dann. All were in favor. Motion carried.

### Other Business

**Agreement and release:** Selectman Chivers accepted what they said about the process on Candia Crossing, but he thought they got a little ahead of themselves. If something like this comes before the Board again, he would appreciate the benefit of a discussion and hear what everyone has to say in an open meeting. They circulated and signed a document and maybe it was appropriate in this case, but maybe in the future they should try and communicate a little better.

**Agenda items:** Agenda items will be due on Wednesdays by 11:00 am unless there's an emergency.

**Board to authorize payment of payroll and accounts payable:** Selectman Chivers announced the grand total for accounts payable and payroll checks for August 1<sup>st</sup>, August 8<sup>th</sup>, and August 15<sup>th</sup> and was \$1,139,297.73. Selectman Chivers moved to approve the accounts payable and payroll checks for August 1<sup>st</sup>, August 8<sup>th</sup>, and August 15<sup>th</sup> in the amount of \$1,139,297.73. Seconded by Selectman Dann. All were in favor. Motion carried.

**Baker Road:** Road Agent Lewis noted that RSA 231:59 prohibits the town from spending any funds on a class 6 road. He would like to explore this with the residents that live on the road. If he comes up empty handed, they can explore other ways.

Selectman Chivers moved to adjourn 8:41 p.m. Seconded by Selectman Dann. All were in favor. Motion carried.