

## Town of Litchfield

Selectmen's Meeting

February 13, 2012

Members present: Steve Perry, Chairman  
John R. Brunelle, Vice Chairman  
Frank A. Byron  
George A. Lambert  
Brent T. Lemire

Also present: Jason Hoch, Town Administrator

5:00 p.m. Review of Paperwork and communications

6:00 p.m. Non Public Session – RSA 91:A:3 II(b) – Hiring of public employees

7:00 Call to order

### **PLEDGE OF ALLEGIANCE**

All rose for the Pledge of Allegiance.

### **Review of items for consent**

1. Appointment of John Pinciario and Doug Nicoll to Highway Safety Committee
2. Veterans Tax Credit applications (2)
3. Abatement for Map 14, Lot 157 recommended by Avitar

### **Approval of Consent Items:**

Selectman B. Lemire motioned to approve the items for consent. Selectman J. Brunelle seconded the motion. The motion carried 5-0-0.

### **Request for Items – Other Business**

Selectman G. Lambert would like to discuss Common Law Doctrine of incompatible offices

### **Public Input**

No members of Public present

### **Administrator Report**

#### **New Business**

#### **Police Detail Cruiser Charges**

Mr. Hoch stated that starting January 1 we implemented a full monthly reimbursement of all detail related charges to the general fund (previously wage and benefits were repaid, but fuel and administration were not – hence the balance of the detail fund). We are showing a few situations where our total reimbursement is negative. This is a very small amount – the two situations from January

triggered our conversation were losses of \$1.79 and \$3.79. Overall our charges remain reasonable and competitive (for information, Mr. Hoch shared a spreadsheet put together by the Police Chief in Milford last fall with detail charges for Hillsborough County Departments). Chief O’Brion and Mr. Hoch are recommending an increase in the vehicle charge to \$15.00 per hour from \$10.00 per hour. Selectman J. Brunelle asked Mr. Hoch if we were up to date with all payments with both Police and Fire. Administrator Hoch stated that we have a couple that are still outstanding, the ones that are outstanding have been in touch with us with their plan for repayment. Selectman F. Byron stated that in order to change these fees he believes we need to have a hearing. Administrator Hoch stated that he can schedule a hearing. Selectman S. Perry motioned to move this to Public Hearing on February 27<sup>th</sup>. Selectman J. Brunelle seconded the motion. Selectman Byron questioned if there was any need to include any change for the detail fees in the Fire Department, in particular there is a fee assigned to the use of a Fire Department vehicle for details. Administrator Hoch stated that there may be an opportunity to revisit Fire and review later in the year. Selectman Lemire stated that if it is the same we can review at the same time as Police. The Motion carried 5-0-0 to have this noticed for the 27<sup>th</sup>.

### **Old Business**

DRA has advised that equalization sales ratio for 2011 is 102.7% (which is up from 100% in the previous year). The median ratio is 101.2% - this is what should be used to modify properties being reviewed for abatements.

There is a copy of the Primex settlement in the Killoran case in the Administrator Report folder and placed on file per RSA with the Town Clerk.

Mr. Hoch will most likely be going to Concord on Tuesday for Senate Commerce Committee discussion of SB 212 which in its current form would be detrimental to continuing insurance pools like LGC, Primex and School Care.

The Town Report has been published on the web. Paper copies will be available at least a week before voting day. Hopefully more people will continue to use the electronic copy. The book form cost us \$7.00 a book to produce. Mr. Hoch opted for the same quantity as last year (we had cut back to 750 copies). We didn’t have excess supplies coming into this year. Karen deserves a huge thanks for compiling everything provided to her. Karen has been thorough in trying to compile an accurate and attractive book. We added a few items this year including tax rate calculation and list of Town owned properties. We entered the LGC’s competition last year and these were a few things on their scoring sheet. Mr. Hoch stated that he is not advocating for us to put a focus on winning the competition, but picking up a few ideas to improve the report will help. Mr. Hoch would encourage people to take a look at page 12 and 13 – Karen has compiled selected excerpts from historic town reports at 10 year intervals to include. Selectman Perry stated that you can tell people to go to the website all you want but if you had a pile of disks on the table people would be more likely to take the disks. He believes that it has to be a lot cheaper than \$7.00 per disk. He believes people will take the disk over the book. Administrator Hoch stated that he would check into this, he doesn’t believe it would cost much. Selectman Byron stated that we should make business cards and put them on the table. Administrator Hoch stated that he has actually been thinking more of the business card idea with the redirect to the address of the Town website clearly on it.

The October storm reimbursement with FEMA has been going on various chunks with the way they break it up into projects – the snow removal aspect they actually considered the first day as an eligible

snow removal project, that has all been processed and approved and our reimbursement for this will be \$12,887.00. The debris removal project with the highway department's work is in at about \$41,000, we have about \$525.00 under the donated resources category and the other chunk was getting over the final hurdle for what we will be eligible for Fire Department response, a little bit for Police, generators, and pump operation. The indications based on all this information of what is approved and what is pending is that we will be receiving reimbursement to cover all of our out of pocket costs. The local tax payer will not have any burden for the added cost we incurred for that storm.

### **Selectmen Committee and Community Reports**

**Pole Tax exemption discussion** – Selectman F. Byron stated that he received communication from the Local Government Center discussing HB 1305 which seeks to reinstate the exemption for pole taxes (the Town's ability to charge a tax on telephone poles for telecommunication equipment.) Currently, the Town is able to tax telecommunication facilities, but HB 1305 would exempt towns from being able to charge this and would mean spreading overall costs for town and school over a smaller number of people meaning individual's taxes would go up. Selectman Byron asked Mr. Hoch to include in the information that went to the Board of Selectmen, a four page fact sheet about the pole tax. It talks about the different types of issues associated with this, the history of the pole tax and some of the arguments that are being used why HB 1305 would make sense, but actually does not from what this fact sheet stipulates. Mr. Byron would like to get a consensus of the Board in terms of the Board's position on this so that we can send this to our House delegation to consider the Board of Selectmen or the Town's position on the elimination of the pole tax. Selectman G. Lambert stated that if this bill is not passed everyone will see a surcharge on every telephone number they have in their house go up 99 cents a month across the board in this State. The tax is a direct pass through on telephone bills, Verizon will not pick up a cent of cost and we will just shift the taxation from one method to another. The town will pick up approximately \$25,000 in tax revenue based on the documentation we have received from Avitar and his conversations with Mr. Hoch. We will see that just like our water bills, the Town just took up starting collecting those fees, in the inverse we will collect these revenues and then see them added just like our fees on our cable bill, and we will end up passing those direct to every telephone in Litchfield. There are great arguments in favor and great arguments against. The entire Manchester delegation is currently voting against it because they want Manchester to get their telephone pole revenue. The House leadership, the Majority Office and the Committee are all in favor because they feel that it is a double taxation on the citizens and doesn't directly impact the company. There is also an argument about whether or not this is an old tax or a new tax. Selectman F. Byron stated that if you go to page 4 and 5 it addresses and rebuts points made by Mr. Lambert. It is Selectman Byron's feeling that the telephone company is a business and should be taxed the same as any other business and whether they pass that tax through or not is actually irrelevant, it is a tax that most businesses will pass through so we are paying those taxes all the time. The telephone company on the other hand is putting it purposely into their statements listed as a tax trying to create negative public perception against it. To exempt one company from paying a tax on their property versus other companies does not make any sense. There is no double tax on customers, it is also addressed on the documents as to why it is not viewed as a double tax and Mr. Byron thinks that if you exempt and allow the exemption to happen then what you are going to end up with is passing that \$25,000 collectively to other taxpayers. The PUC has already authorized telephone companies to make the change to billing to list a municipal tax and whether we vote in favor

of the bill or not, they are going to charge that any way. Administrator Hoch stated that he has two things to point out. There has been a little bit of gamesmanship here. Over the years, the phone companies (Verizon and Fairpoint) have pushed for an exemption and a special carve out from taxation. Until 2010, there were 48 states that taxed telephone poles and two that did not, New Hampshire and Pennsylvania. In 2010, the exemption went away in New Hampshire. Last year was the first year we were able to tax, we sent Fairpoint a bill for around \$25,000, the valuation of their property that is eligible for this is about 1.4 million dollars in Litchfield. The surcharge is a nice little gimmick or distraction to try to position this as something else. Every business that owns property in New Hampshire internalizes into their pricing scheme, paying taxes. If you own a farm stand on Route 3A, there is not a 25 cent property tax surcharge on a bushel of tomatoes, yet that is what is being done in this case. Selectman Lemire stated that he is under the impression that they can't pass that on without approval of PUC permission. Selectman Lambert stated that they have the PUC permission which will be effective the end of March. Selectman Lemire stated that he agrees with what Mr. Byron said. He thinks the arguments of the legislature are moot point because these are going to happen anyway and agrees they area business and why shouldn't they be taxed like everyone else, and why are they being given an unfair advantage. Selectman Lambert stated that this is a great question and to our Town Administrator's point there isn't a 25 cent surcharge tax on a bushel of peas or corn, yet he believes there are some current use discounts that are taking advantage of by those large farms and so we do have a history of going in both directions of saying for certain usage we do discount property for the betterment of the community. The argument goes both ways, and Mr. Lambert stated that he has personally not made a decision and is on record as being undecided on this particular vote but the rate at which we tax different usage for different amounts of property are subject to legislative oversight, we do have a number of things that get taken advantage of and exploited both by individuals and companies so adjustments in taxation happen all the time. Selectman Byron stated that he agrees with Mr. Lambert that adjustments in taxation happen all the time and if any business is able to use a piece of conservation land or putting land on conservation, he does not have a problem with that but on the other hand you have a business here that is actually using Town right of ways to run their poles and their lines and they are using those to make money from the citizens of Litchfield and other towns as well, then as a business we shouldn't be giving them any more or fewer breaks than we give any other business. They are doing this as a gamesmanship issue of trying to put it into their bill to basically say this is being charged by the municipalities and therefore customers you are going to pay it and if your municipalities didn't charge it we would charge you. The PUC has already granted them the ability to put it in and whether they put it in or not is entirely up to them but Mr. Byron thinks they should be treated the same way as any other business that's taxed. Selectman B. Lemire made a motion that the Board goes on record as opposing HB 1305 and ask our Representatives to make that known at the Legislature. Selectman F. Byron seconded the motion. The motion carried 4-0-1 (Selectman Lambert abstained). Selectman Lambert stated that this bill is going for vote on Wednesday and a letter needs to be written tonight. Selectman Byron stated that the Planning Board met February 7<sup>th</sup> and they approved a lot line adjustment to a parcel that was owned by Mr. Charbonneau, which is in the northern part of Town, basically that lot line adjustment did not create any additional lots, it just moved the lot lines. Mr. Steve Calawa of the Litchfield Historic Society appeared in front of the Planning Board and discussed his desire to put in place an overlay district along the Charles Bancroft Highway from Pinecrest to just north of the Library. The Planning Board really does not have enough information to consider whether this

makes sense or not one way or the other and where it stands right now is that Mr. Calawa is going to get more information. Basically, Mr. Calawa was looking to try and preserve some of the historic structures within that small area. There is also some areas that he is aware of on the other side of the streets such as the old parade grounds, etc. and he would like to preserve those. He thought that a zoning ordinance had to passed in order to create the district but what we are finding out is zoning may not have to happen in order to accomplish the purpose. There is going to be an information gathering period before anything can be done and Mr. Calawa will dig into it a little further and come back to the Planning Board with what he has found. The other thing that was talked about was that they were going to start work on the stormwater management program; they also are going to invite Mr. Hoch to the Planning Board meeting to discuss a little bit about the stormwater issues.

### **Items moved from consent**

No items moved

### **Other Business**

#### **Common Law and incompatible offices.**

Selectman G. Lambert stated that while doing some reading and pondering questions that have been posed, the question about moving from an elected to an appointed Fire Chief, we have some potential issues of conflict where the department no longer is self-managed but falls under the governance of the Board of Selectman and the Town Administrator. Mr. Lambert did some research to find out what the potential issues were and the NH Supreme Court in 1994 made a decision involving the question about the possibility of a Librarian who also wanted to serve as a Selectmen. The NH Supreme Court thought that serving as Librarian is not incompatible with being a Selectman because they do not manage each other but that a direct management relationship with regards to spending money, accountability, discipline, etc. actually is a situation of incompatible offices. Mr. Lambert brought this to the Board's attention so that the Board could consider whether or not we wish to set up policy having to do with this to make sure who ever we bring in as our new appointed fire chief has as little contention as possible. Selectman G. Lambert questioned whether or not he should motion to the Board that we should adopt a Town Policy that says that none of our employees who work for a department can be in an incompatible office.

Administrator Hoch stated that the Board may want to investigate a policy because there are a couple of things associated with it. There is the notion of incompatibility of office, RSA 669 lays out what is incompatible. You can't be a Selectman and a Treasurer at the same time for instance; however, the law says that no full time Town employee shall at the same time hold the office of Selectman. The issue in the Taylor case was there is pretty clear separation between being the Library Director who is not supervised in any form or fashion by the Board of Selectmen. What Selectman Lambert pointed out is an interesting common law reference from that case that talks about an incompatibility of office that is not mirrored yet in any state law. Administrator Hoch stated that he would want to review with Counsel and also consider it is an appropriate policy for the Board to enact at this time. This question has been prompted by an upcoming election. Selectman S. Perry asked the Town Administrator to bring this question to Counsel. Selectman G. Lambert stated that as we are making that direction to our Town Administrator, he would like to call to his attention knowing the territory from the NH Municipal Association which refers to the common law incompatibility issue and says two positions might be

incompatible even if they are not listed in RSA: 669:7 Mr. Lambert stated that if we are going to cover this one and the other two, if you want to go back there is a long history of both the two different pieces of language which is both a incompatibility distinct from a conflict of interest and there are two different prongs that could be approached but either one of them could put the Town in a particularly complicated position.

Administrator Hoch will seek counsel and bring the information back to the Board of Selectmen.

**Public Comment**

No Members present

Selectman S. Perry motioned to adjourn the public portion of the meeting to go into non-public per RSA 91:A:3 II(b) – The Hiring of a Public Employee. Selectman G. Lambert seconded the motion. Roll call vote: Mr. Lambert – yes, Mr. Lemire – yes, Mr. Perry – yes, Mr. Brunelle – yes and Mr. Byron – yes.

We will come out of non-public to adjourn.

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Steven D. Perry, Chairman

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John R. Brunelle, V. Chairman

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Frank A. Byron

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George A. Lambert

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Brent T. Lemire