

TOWN OF LITCHFIELD BOARD OF SELECTMEN

June 23, 2014

Selectmen's Meeting

Members Present: John R. Brunelle, Chairman
Frank A. Byron, Vice Chairman
Brent T. Lemire
Kevin C. Bourque

Absent: Steven D. Perry - Excused

Also Present: Jason Hoch, Town Administrator

5:00 p.m. Paperwork review
6:00 p.m. Call to Order
6:58 p.m. Non-Public Session per RSA 91-A:3 II (c)

Pledge of Allegiance

Review of Items for Consent:

1. Minutes of June 9, 2014
2. Approval of Accounts Payable Manifest (\$129,229.00)
3. Approval of Payroll Manifest (\$44,276.92)
4. Elderly Exemption Application Approval (1)
5. Elderly Exemption Application Denial (1)
6. Abatement - Map 22 Lot 82 (Administrative)
7. Confirmation to DRA not using PA-28 (Taxpayer Inventory Blank) for 2015
8. Elderly Exemption Re-certification (1)
9. Civil Forfeiture for Unlicensed Dogs

Approval of Consent Items

Selectman J. Brunelle reads aloud the items for consent

Selectman B. Lemire **motioned** for the Board of Selectmen to approve the items for consent

Selectman K. Bourque **seconds** the motion. **Vote carries 4-0-0.**

Request for Items - Other Business - None

Review of Guidance From Counsel

Selectman J. Brunelle states there has been discussions with the Board of Selectmen, Budget Committee and others regarding the use of multi-year leases and the legalities of this topic. He states that the Board did seek a legal opinion and he would like the Boards permission to release

this information to the public.

Selectman F. Byron **motioned** for the Board of Selectmen to release the opinion of Counsel concerning the purchase of items on a contractual basis.

Selectman B. Lemire **seconds** the motion. **Vote carries 4-0-0.**

Administrator J. Hoch reads aloud Counsel's opinion:

Some questions have arisen around the Board of Selectmen's ability to make payments on lease/purchases entered into in prior years. We are trying to provide some clarification on these questions.

- In situations where a mid-year purchase occurs for equipment replacement (i.e. Highway Department equipment, Police vehicles, copiers, etc.), does the Board of Selectmen have the ability to enter into multi-year leases with a non-appropriation clause?

It is our opinion that yes, as long as the selectmen have adequate funds in the budget, they can enter into a lease purchase agreement with a non-appropriation clause mid year. See RSA 33:7-e. DRA takes the position that town meeting approval "should" be sought, because if the town doesn't know about the lease and the non-appropriation clause, how can it non-appropriate?

- If a capital item is "purchased" on a non-appropriation contract and the subsequent year the proposed budget passes followed by a few years later the town operates on a default budget (while the item's debt is still being paid off) does that require the town consider the item no longer has an appropriation and the lease terminated?

No. Unless the lease is specifically non-appropriated (i.e. there is a specific warrant article on that item which is defeated or the line item is zeroed out), the lease remains a contract obligation of the town, which is payable under the default budget, and if the town tried to take the position that the non-appropriation clause was triggered, I believe it would lose.

- If a non-appropriation contract item must be turned into the vendor, what is the timing of this return? For example, the town votes in March and a "non-appropriation" event happens, when must the town turn in the capital item (immediately, when feasible, before year end, etc.)? (remember, the town has already paid 3 months of expense in the current fiscal year.) what must be done with the expenses already paid by the town in the current fiscal year where the non-appropriation event happens?

The answer to this depends on the terms of the lease agreement.

- If a non-appropriation event happens (outside of a "no means no" warrant article situation), can the BOS immediately cut a new contract for a replacement item? For example, if the current police cruisers must be returned, could the BOS approve a new contract for other cruisers under RSA 33:7-e? If the BOS can't do a new contract for cruisers, are the BOS prevented from enacting any new contracts for any items?

The town could probably do this under state law; however, almost all lease purchase agreements provide that if there is a non-appropriation event, the town cannot spend funds on a similar item during (at least) that fiscal year. Doing so would result in liability to the town.

- If a non-appropriation event occurs (again, outside of a "no means no" situation), can the BOS fund the items through their authorization granted under RSA and in various court cases by the shifting of funds?

Yes.

- Under RSA 40:13 Default budget is defined as **"...(b) "Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget. For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body, unless the provisions of RSA 40:14-b are adopted, of the local political subdivision."** This definition states that the default budget is an appropriation and goes on to state that **"X. If no operating budget article is adopted, the local political subdivision either shall be deemed to have approved the default budget..."**. These two sections combined infer that the default budget is an approved appropriation. Does this satisfy the requirement for RSA 33:7-e to have an approved appropriation for continuing a purchase?

Yes.

- In testimony presented to the legislature during testimony on RSA 33:7-e, a question was asked how this would be handled in SB2 municipalities. The response was that the contract appropriation would be contained within the default budget. Does this indicate an intention of the legislature that contracts be continued if a default budget happens. (you can see the history of the testimony on the General Court website under the chapter law of 1999)

Yes.

- Under the authority granted a town under 31:10 for emergency borrowing if states in part that **" ... 31:10 When Allowed. – Towns may incur indebtedness and issue notes for temporary loans, other than loans in anticipation of taxes, in any case where moneys belonging to them are lost or rendered unavailable through any default, suspension of payment or other casualty...."** Would this allow the town to borrow for cruisers or other capital equipment?

I have never used this provision, but it seems as if it could be used if the default budget rendered the lease agreements non-appropriated, which it does not.

Selectman J. Brunelle states that this covers the questions that have been asked by various individuals and Boards. He would like Jason to copy this and forward it to the Budget Committee and other appropriate individuals or Boards. Selectman J. Brunelle states that at the last BOS meeting the Board also shared an opinion from Counsel regarding the Budget Committee's role in the 2014 Budget, and feels this should answer all questions that the Budget Committee has asked the BOS to explore.

Administrator Report

New Business

Tax Deeded Property

Administrator J. Hoch tells the Board that a property was taken by the Town for tax deed purposes, and the owners have moved out by the date that was given to them. He states that the appropriate security measures have been taken, and other than some scattered trash, the house is in good condition (but will benefit from a cleaning). J. Hoch states that time spent on issues related to the property are being logged as they are potentially reimbursable costs, there is a

formula set by state law. He states that the next decision to be made by the Board is the disposition of this property. Does the Board wish to sell immediately or hold onto it for a period of time. He states that if the property is held for three years, the town retains all the proceeds. But if sold before that, the town keeps owed taxes, taxes accrued in the interim, related costs (legal, security, etc). and a penalty equal to 15% of the equalized value (which is currently approximately \$55,000). He has set up a spreadsheet for the Board to view which will be tracking the related costs as well as various taxes and interest. J. Hoch states that as a comparison the property across the street is on the market for \$267,500, which is a smaller property. He tells the Board that if they decide to sell they will need to engage an auction firm, and there is a 90 day notice of repurchase ability to the previous owners. So the soonest the property could be sold would be in late October. Jason tells the Board that some towns choose to hold on to the property for the revenue, others choose to get the item off the books as soon as possible. He states that holding on to land is one thing, but property and a structure are very different for a town to manage.

Selectman F. Byron **motioned** for the Board of Selectmen to sell the property as soon as is feasible.

Selectman B. Lemire **seconds** the motion.

Selectman F. Byron feels the Town should not hold on to someones house and accrue the assets of that house for a period of three years, and is not in favor of supporting that.

Selectman B. Lemire states it is a liability issue for the Town also.

Selectman F. Byron would like to make an **amendment** that the Town decline the 15% penalty for equalized value.

Selectman K. Bourque **seconds** the amendment.

Administrator J. Hoch tells the Board that he would like to confer with legal xounsel regarding approving the amendment, to make sure that the 15% penalty is waivable. He has seen a discussion with colleagues stating the some have waived, and others say the law states the Town "shall" collect the penalty, and he would like to make sure which is correct.

Selectman F. Byron and Selectman K. Bourque **withdraw** the motion and second.

Selectman J. Brunelle states that Jason is to proceed with the 90 notice giving the previous owners the option to get back the property, and if not, the Town shall proceed with the sale of the property. Board discuss the fees for an auction company, and the money the Town will be reimbursed. **Vote carries 4-0-0.**

Administrator J. Hoch states that he will move forward with contacting an auction firm to get necessary information and a date, and then continue forward with the 90 day noticing. He already has the letter that meets all the legal requirements necessary.

Other Items

County Budget

J. Hoch states that a hearing was held on June 17th regarding the County Budget, which was approved with a 4.87% increase. This amounts to a \$40,000-50,000 increase that the Town pays to the County. Jason states it is a .04 cent (per thousand), increase to the Town's tax rate.

Selectman F. Byron mentions there was an effort to try and knock this down by adding an additional \$500,000 into the monies that go against taxes, but unfortunately that motion was

defeated along most all party lines. County taxes were increased 5% last year, and are up this year by 4%.

Cruiser Accident

Selectman J. Brunelle states that he notified the Board that a cruiser (#6) was involved in an accident and suffered damage to the front end of the vehicle, there were no injuries.

J. Hoch states that the estimate for repair is \$4,126.44. Property Liability Trust has already sent a check for \$3,126.44 (balance after deductible).

Selectman F. Byron questioned the \$1,000 deductible, asking if there are any options or variations with the policy if the deductible is changed.

J. Hoch states that he has never seen anything other than a standard \$1,000, but will check into options.

Legislative Wrap-Up

Administrator J. Hoch states that he shared some slides from an NHMA webinar on a completed Legislative session. He expects there will be greater detail in the final Legislative update package that will be issued later this year, stating additional changes to laws. Jason tells the Board this might introduce some necessary warrant articles for Litchfield next year. He mentions there were a couple of things he would like to flag and bring to the Boards attention.

HB1210 will introduce new noticing challenges for Planning Board proposed Zoning Amendments.

Jason states they will be required to send notice to everyone in an area that has a proposed zoning amendment. This will increase their operating costs.

SB236 amends deadline for budget committee to deliver budget to selectmen; allows selectmen (and budget committee, if there is one) to vote on whether to recommend operating budget warrant article if amended at deliberative session

Jason states this made it clear that the Budget Committee can change a recommendation

SB271 Allows moderator at state or local election to begin processing absentee ballots two hours after the polls open (rather than waiting until 1:00 p.m.), if the moderator posts notice of the time processing will begin at the polling place and one other public location at least 24 hours in advance.

Jason states that leading up to the elections, they will meet with the moderator and add this to the pre-election requirements.

HB1350 Increases to \$10,000 (from \$5,000) the threshold amount for a required public hearing on the selectmen's and expenditure of unanticipated funds (effective 60 days after passage)

Jason states that he believes the BOS have a policy of under \$5,000, he will review and revisit this topic with the Board in order to stay in line with the law.

NHMA Policy Process

Administrator J. Hoch tells the Board that the three policy committees have finalized their recommendations, and he has shared those posting with the Board. He states that if there is something the Board feels is missing and they wish to present a floor proposal, this will need to be submitted by late August. It will need to be approved by the majority voted governing body. He

states that the policy conference is at the end of September, so the Board will need to appoint an individual to be the Town's voting delegate prior to the 26th. He would like the Board to review and look through the recommendations and discuss this at a later Board meeting.

Pavement Striping Machine

J. Hoch tells the Board that in ways to save money, Jack Pinciario is considering acquiring a pavement striping machine. He states that after looking at costs of \$10,000+ annually for painting fog lines, center lines, stop bars, crosswalks, parking lots etc., it appears that the payback time for owning a machine is quite fast. Jason mentions that last years stop lines, crosswalks and miscellaneous words and arrows cost around \$4,400, parking lot striping has also been several thousand dollars. There thought is to bring the lot striping and road markings (other than centers and fogs) in house. This would be a manageable workload - probably no more than three work days. The remaining lines would still be contracted out, he states that this is the approach that Hudson takes. He tells the Board that based on the equipment recommendations from neighboring communities, the type of machine he is recommending is a walk behind machine and costs \$5,650. With approximately another \$1,000 needed for reusable stencils for the various words and arrows that would be needed. Administrator J. Hoch states this should mean that in future years, the striping budget could be reduced slightly as a portion would be contracted and a portion would just require the purchase of paint. Paint is \$70/gallon for around 380 feet.

Jason tells the Board that means approximately \$6,000 would be spent for fogs and centers each year, and the balance would be the cost of paint. So they hope that this would reduce the Budget from \$10,000 down to approximately \$8,000 or less.

Selectman Brunelle states that the machine would cost \$6,000 the first year, then each year following it would just be labor and supplies.

Selectman B. Lemire states that this will not increase personnel cost, it would be within their existing job. Jason states that it is an applied cost.

Selectman F. Byron states that there has to be an increased cost attached, unless you have full-time personnel and they are not fully occupied, you will be using part-time people to do the striping and that will be at an increased cost.

Board discusses the cost, savings and benefits of this purchase, and believe it will take over three years to show a return on the investment.

J. Hoch states that he believes the savings will be greater, but does not want to over estimate until they see real amounts.

Selectman F. Byron asks how would this be funded. J. Hoch states from the Highway Road Striping Budget that already exists. Board continues to discuss the Budget and what has been completed as well as spent this year for striping. Jason states that \$495 has been spent out of the budgeted \$10,000 so far this year. Board states that there is still \$6,000 that will be spent on contracted work that has not been completed this year.

Selectman F. Byron states that he feels the numbers are not working and thinks this should be deferred and made a Warrant Article in the Budget for 2015.

Board discusses the rotation of striping year to year and how the Highway department does what they can afford, living within their budget and making it work. They discuss the prices and work

currently being done in Town. Board agrees this could have merit and be a savings to the Town, but feel it should be done as part of the Budget process for 2015.

Public Input

Chris Pascucci 12 Colonial Drive, thanks the Board for holding off on the purchase of a line striping machine and deciding to add it to the Budget process for next year. He states he knows striping and has done it for years and knows additional equipment would be needed, and states how often he thinks certain lines need to be painted, and that the savings would be minimal. Mr. Pascucci also discusses his views with the Board on the appointment of the Road Agent, now that it is no longer a position to be voted on by the citizens. He would like the Board to post and accept outside applications for the position, and pick the best qualified person for the job (which may not be the current Road Agent).

Selectman Reports

The Board would like to wish Jack Pinciario a Happy Birthday

Items moved from consent - None

Other Business - None

Non-Public Session 91-A:3, II9(a) - compensation

Selectman B. Lemire **motioned** for the Board of Selectmen to adjourn the public portions of the meeting to go into a non-public session per RSA 91-A:3, II9(a).

Selectman K. Bourque **seconds**

Roll call vote Selectman Lemire (yes), Selectman K. Bourque (yes), Selectman F. Byron (yes) and Selectman J. Brunelle (yes). Board will only come out of non-public to adjourn.

The next Board of Selectmen’s meeting will be on July 14, 2014 at 6:00pm at Town Hall

John R. Brunelle, Chairman

Frank A. Byron, V. Chairman

Brent T. Lemire

Steven D. Perry

Kevin C. Bourque