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**MINUTES OF THE
BOARD OF SELECTMEN**

**MEETING OF
May 7, 2007**

7 The Board of Selectmen held a meeting on Monday May 7, 2007, the Salem Town Hall, 33
8 Geremonty Drive, Salem, NH.

9
10 **PRESENT:** Chairman Everett P. McBride, Vice-Chairman, Elizabeth A. Roth, Secretary Arthur
11 E. Barnes, Selectman Michael J. Lyons, Selectman Patrick Hargreaves, and Town Manager Dr.
12 Henry E. LaBranche.

13
14 **CALL TO ORDER**

15 Chairman McBride called the meeting to order at 6:30 p.m. with the Pledge of Allegiance and
16 introduced the Board members, Town Manager Dr. Henry E. LaBranche, and Planning Director
17 Ross Moldoff.

18
19 Chairman McBride declared the public hearing, item three on the agenda, open and handed over
20 to Dr. LaBranche.

21
22 **1. Public Hearing – Rehearing Request (2007 Town Meeting, Articles 2 & 3)**

23 Dr. LaBranche began by referring to the paperwork and articles in the Board of Selectmen's
24 packages, and provided an overview of the current situation. He stated that he assumed that
25 there would be a lengthy presentation from the petitioners and invited the representatives
26 present to address the Board.

27
28 ***Input from petitioners:***

29
30 **Attorney David Rayment of Cleveland Waters and Bass P.A**, representing Salem
31 Corporate Park Associates introduced himself. He began by explaining to the Board the
32 reasons why his clients had filed a motion for a re-hearing on April 11, 2007, as indicated in
33 the petition. He also stated that he would assume that members of the Board had read the
34 petition and that he wished to introduce tapes of two Planning Board hearings, which he
35 handed to Chairman McBride, for the record. Attorney Rayment indicated that he had
36 flagged the tapes at various points to highlight comments made by Planning Board members.

37
38 Attorney Rayment went on to point out the following, stating that the vote should be
39 overturned for these reasons:

- 40
41
- 42 • That they were cognoscente of the fact that there is a major flooding problem in the
43 Town of Salem, but did not think that Articles 2 and 3 will do anything to alleviate
44 the problem.
 - 45 • That there is a need for a comprehensive study of the flooding and flooding
46 mitigation; however they did not believe that a ban on building would alleviate
flooding in the area.

- 1 • That they believe the tax revenues for the area were different than those stated by the
2 Town, and cited examples.
- 3 • Referred to the hearing on January 9th where the Town made amendments to the
4 articles which applied explicitly to new construction he pointed out that they did not
5 believe there was any scientific evidence for this.
- 6 • That the FEMA flood zone map is inaccurate as his client's property does not appear
7 on the map and that the public is basing its decision on inaccuracies. He stated that
8 he believed the flood zone to be 400 – 600% greater.
- 9 • That Mr. Ross Moldoff had been contacted to provide information on the properties
10 which would be affected by the amendment. This information is attached to the
11 petition and he explained that 35% of his client's lot would be affected by the
12 amendment which is more that they needed to challenge the articles. He also stated
13 that the list appeared to be a comprehensive list and it had been used as a basis of the
14 protest petition. In addition he referred to a newspaper article which quoted the same
15 figures as in Mr. Moldoff's list. He then explained that the subsequent article in the
16 Union Leader came as a shock to them as the acreage mentioned in it was much
17 higher.

18
19 Attorney Rayment stated that it is his belief that there was substantive change and therefore a
20 further hearing under RSA 675:3 section IV should have taken place, which would have
21 provided the opportunity for the public to comment on the change. He pointed out that
22 splitting the articles affected the outcome of the vote and that the vote had been based on
23 inaccurate information as the FEMA map and the tax information are inaccurate. He also
24 stated that the Planning Board was aware that the outcome would be affected by the split of
25 the articles. He further stated that the voting public needs to be aware of the impact of the
26 amendments prior to the vote; but that the actual impact of the amendment was not
27 mentioned until after the vote had taken place.

28
29 Attorney Rayment went on to say that the protest petitions are valid, citing a precedent
30 mentioned in the petition. He asked the Board to recognize that the votes on articles 2 and 3
31 should have been invalidated, and to provide an accurate map to the public. He also
32 requested that the Board have experts testify to say which lots are affected, and asked for a
33 new vote.

34
35 **Mr. Mark Gross of MHF Design Consultants**, representing Dr. Robert Hannon introduced
36 himself. Mr. Gross stated that he felt that the crux of the issue before the Board was a
37 practical and common sense solution to the flooding problem in town, but he did not think
38 the amendments achieve this. Rather they are a feel good measure. He suggested that there
39 should be a co-operative effort to come up with practical solution, and that the Board should
40 look at the use of grants, Federal funding, impact fees and imposing a flood plain impact fee
41 and did not feel that developers would have problem with this.

42
43 Dr. Robert Hannon, general partner of. Salem Corporate Park Associates and developer of
44 the Stiles Road Project introduced himself. He stated that he did not believe that the
45 amendments would make difference to the flooding due to the fact that it takes money to
46 achieve the goals necessary and input from a variety of sources such as Engineering.

1 Referring to the extension on Stiles Road he stated that there has been no flooding there due
2 to good planning. He stated that he did not think that the Flood Mitigation Action
3 Committee has the correct mix of representatives on it. He also stated that it was his belief
4 that no action would take place within the next two years regarding alleviating flooding if the
5 two articles stand and that a more comprehensive approach is needed.

6
7 Selectman Lyons asked whether there was any input from town staff and Chairman McBride
8 stated he would like to hear from member of the public first, but that town staff would
9 answer specific questions.

10
11 ***Input from members of the public:***

12
13 **Mr. Al Cormier, 39 Haigh Avenue** introduced himself and handed out statements to board
14 members and put up a map of the flood zone. He stated that he (represented a group of
15 concerned citizens, and read from his statement, attached. He spoke about the need to limit
16 degradation of the flood zones. He handed out aerial photos which he explained confirm the
17 demarcation of the flood plain as of May 2006. He referred to photos which were taken a
18 few weeks ago showing a lot of water in the area and which show that the petitioner's lots are
19 in the flood zone, contrary to their claim.

20
21 Mr. Cormier read from the Planning Board minutes of January 9, 2007 which clarified that
22 the Planning Board had consulted with town counsel with regards to substantive change and
23 their opinion that there is no substantive change. Mr. Cormier also stated that he felt there
24 had been plenty of information available to everyone and that the Board should respect the
25 right of the voters who had voted. He then stated that the petitioners should have verified all
26 the information they had received and that they had had more than a month to check the
27 validity of the information they had been given. He urged the Board to dismiss the petition
28 on all counts.

29
30 **Mr. Bob Campbell, 25 Scollay Circle** introduced himself, explaining that he had been on
31 the Planning Board but that he was not representing them in any way this evening. He
32 distributed a one page statement, attached, which he read from. He explained that in his
33 opinion there were two possible issues on which to overturn the Town meeting as follows:

- 34 • If there was a legal or disruptive circumstance which could have caused the ballot to
35 be, or
- 36 • If the question being voted on was invalid or had been illegally put before the voters.

37
38 He disagreed that there was any case by petitioners to answer. He also stated that whether
39 the ordinances are effective is a matter of opinion, but it was his opinion that voting again
40 would not make matters right. He urged the Board of Selectmen to deny the petition.

41
42 **Mr. Bob Uttley, 120 Lawrence Road** introduced himself. He stated that he has 8.7 acres
43 affected by the ordinance in question and that he has been a resident of Salem for over 55
44 years. He stated that it was a disservice to take away the development rights of tax payers by
45 reverse eminent domain without paying the taxpayers for the development. He stated that he

1 had sought legal advice on this and he stated that if enough of the taxpayers got together to
2 challenge this there could be a class action lawsuit against the Town.
3

4 ***Input from the Board of Selectmen and Town employees:***

5 Dr. LaBranche asked Mr. Ross Moldoff, Planning Director, to step to the microphone. There
6 followed a brief discussion between the members of the Board during which Chairman
7 McBride indicated that he felt that the issue would go to trial, and asked the Board whether to
8 allow Mr. Moldoff to make his presentation now or wait until the trial. Selectman Lyons
9 stated he felt that they should hear from Mr. Moldoff in order to make a fair and impartial
10 decision at the meeting. Selectman Roth stated she would like to hear from the Town
11 attorney prior to the Board declaring that the issue should go to trial.
12

13 **Mr. Ross Moldoff, Planning Director** introduced himself. He stated that as he read through
14 the petition he was struck by the number of misunderstandings and felt that these were at the
15 route of the issue before the Board and that it was unfortunate that the Town was at its
16 current position with a businessman in the community who has contributed so much to the
17 Town. He stated that he had summarized the request for a re-hearing as he understood it and
18 wished to respond to it. Mr. Moldoff indicated that he saw things differently from the
19 petitioners. He stated that he had talked with the Planning Board and Conservation
20 Commission after the May 2006 floods about what they could do to deal with the problems
21 and mentioned some of the solutions which had been considered. He pointed out that in
22 response to the Planning Board and the Conservation Commission he had researched what
23 other communities had done to solve these problems, listing some of the research he had
24 done. He also stated that he had sought a legal opinion regarding the legality of the issues
25 and that the legal opinion was that the Town should move ahead with limiting building in the
26 flood plain, but that everyone knew that the actions recommended would not solve the
27 problem. He pointed out that the Town had adopted other changes to the flood plain
28 regulations in the past and that they did not do scientific studies. Mr. Moldoff explained that
29 the changes to the flood plain regulations were well thought out; pointing out that FEMA
30 encourages the language which is included in the ordinance. He mentioned some of the
31 things which FEMA indicates make a flood plain worse which includes limiting development
32 as the best approach to limiting flood damage.
33

34 With regard to the impact on Salem Corporate Park Associates, Mr. Moldoff stated that there
35 has been misunderstanding regarding two lots mentioned. He pointed out that one of the lots
36 consisting of a 14,000 square foot development is currently in front of the Planning Board
37 and that they had been given approval from the Conservation Commission to fill in a small
38 area of wetland and the developable land is outside the flood plain. He pointed out that the
39 other lot contains more developable land than the one currently being developed. He also
40 pointed out that there is a variance provision within the ordinance which can be applied for to
41 prevent eminent domain. He also pointed out that a map amendment can be requested if it is
42 felt that the current map is inaccurate.
43

44 With regard to the Planning Board splitting the amendment, he explained that the Planning
45 Board had said they would do this only if they received a legal opinion confirming that this
46 was acceptable.

1 Thirdly, Mr. Moldoff explained that in order to measure the legality of the petition, prior to
2 making any comment on this the Town had sought the legal pinion of town counsel.
3

4 On the issue of the amount of land affected by the amendment, Mr. Moldoff said that he did
5 speak of 137 acres as this was the number he had originally been given from the computer
6 mapping staff as the amount of undeveloped land on the flood plain and the articles apply to
7 the entire flood plain as stated in the regulations. He explained that they had focused on the
8 undeveloped land as the change would not affect existing buildings very much. When the
9 petition had been filed and the figures checked they had discovered that there had been a
10 misinterpretation of the original request from Mr. Moldoff. Mr. Moldoff stated that this had
11 been an error and it was not intended to mislead in order to kill the petition. He further stated
12 that when the error had been discovered he had consulted with town counsel to see what they
13 needed to do.
14

15 Chairman McBride asked for questions from the Board of Selectmen
16

17 Mr. Moldoff, in response to a query from Selectman Hargreaves, stated that the FEMA map
18 was last updated in 1998 and possibly in the 2000's. He pointed out that the map is not really
19 inaccurate as FEMA are constantly changing it due to requests they receive, and it is as
20 accurate as can be. He stated that the town is an up to date one which is based on aerial
21 photos, but in terms of flood plain lines the map shown by the petitioners is accurate.
22

23 Chairman McBride clarified that the Town is not responsible for changing the map. Seeing
24 no other requests for input Chairman McBride closed the Public Hearing at 7:40 p.m.
25

26 Selectman Roth asked town counsel, Attorney Diane Gorrow of Soule, Leslie, Kidder,
27 Sayward and Loughman some procedural questions to obtain clarity on what the petitioners
28 are asking the Board of Selectmen to do and on how the Board should go forward due to their
29 concern regarding acting on the merits of the ordinance and whether there is substantive
30 change. She stated that it sounded like something a judge should decide and asked for legal
31 clarification on what action was within the rights of the Board of Selectmen.
32

33 Attorney Gorrow responded that RSA 677:2 is usually the method used for challenging the
34 validity of ordinances and is seldom used. The cases the Supreme Court usually hears have
35 generally been after the denial of a re-hearing request by a Board of Selectmen, after which
36 the petitioner would appeal the decision at the Superior Court. She indicated that it is seldom
37 used and cited examples of how zoning ordinances are generally challenged.
38

39 She stated that a lot of the issues in this instance are legal issues which she did not perceive
40 the Board would be able to resolve.
41

42 She further stated that the petitioners are looking for the Board to invalidate the articles 2 and
43 3 and they have not mentioned a special meeting in the petition. She stressed that this
44 procedure is seldom used and is not normally used in this particular way. Whether the
45 information presented supports the ordinance is generally challenged through the court
46 system.

1 **MOTION:** by Selectman Hargreaves
2 *To deny the request for a rehearing of Town Meeting Article 2 and Article 3 as submitted*
3 *by Salem Corporate Park Associates*

4 **SECOND:** Selectman Lyons

5
6 **Discussion:**

7 Selectman Lyons asked Attorney Rayment for clarification on the crux of his argument.
8 Attorney Rayment re-iterated that his arguments are the same as those in stated in the
9 petition.

10
11 Selectman Roth stated that the Board needed to listen to the town attorney and that she was
12 in favor of the motion. She also stated that Attorney Gorrow had outlined well that the
13 petitioner has other venues of developing their land and requesting variances, and that she
14 did not think it was the petition of the Board to undermine the opinion of the voters.

15
16 Selectman Lyons acknowledged the contributions made by Dr. Hannon to the community
17 and stated that he would be supporting the motion. He stated that the petitioner had a
18 responsibility to do their due diligence and to do their own homework.

19
20 **VOTE:** 5-0-0

21 The motion carried unanimously.

22
23 Chairman McBride declared a 5 minute recess and called the meeting to order again at
24 7:55 p.m.

25
26 **2. Response to Correspondence from Attorney General's Office**

27 Dr. LaBranche stated that he had met with counsel and recommended that the Board submit
28 letter from counsel to the Attorney General along with the letter has offered relative to his
29 position on the matter.

30
31 **MOTION:** by Selectman Hargreaves

32 *To approve sending the letter as prepared by Legal Counsel, as well as the letter written by*
33 *Selectman Pat Hargreaves, to the Attorney General's Office in response to claims made by*
34 *Stephen Campbell, and further that the letter be signed by each member of the Board of*
35 *Selectmen*

36 **SECOND:** Selectman Barnes

37
38 **Discussion:**

39 Selectman Hargreaves summarized letter as requested by Selectman Lyons, stating that there
40 was a misinterpretation of a conversation.

41
42 Selectman Lyons also stated that in an editorial in the Union Leader on Friday he noticed that
43 Selectman Roth's comments had been taken out of context and he asked for a retraction.

44
45 Selectman Roth stated that the Board being accused of having secret meetings had been an
46 unfortunate circumstance. She commended Selectman Hargreaves for apologizing to her for

1 a situation where he had been misunderstood and hoped that the Board would continue their
2 good work and would continue working together as a group of people from diverse
3 backgrounds towards helping the Town of Salem become a profitable, good community. She
4 stated that she was proud to serve on the Board and that any malfeasance they were being
5 accused of was totally erroneous.

6 **VOTE:** 5-0-0

7 The motion carried unanimously.

8
9 The members of the Board signed the letter as indicated in the motion.

10 11 **3. MEETING MINUTES**

12 **MOTION:** by Selectman Barnes

13 *To approve the minutes of the non-public Session dated April 23, 2007 as written*

14 **SECOND:** Selectman Hargreaves

15 **VOTE:** 5-0-0

16 The motion carried unanimously.

17
18 **MOTION:** by Selectman Barnes

19 *To approve the minutes of the regular meeting dated April 23, 2007, with the correction of*
20 *a space added between the words 'meeting' and 'of' in the heading*

21 **SECOND:** Selectman Hargreaves

22 **VOTE:** 5-0-0

23 The motion carried unanimously

24 25 **4. CIP Committee Update**

26 Mr. Bill Scott referred to his memo of May 3, 2007 and stated that with the Board's
27 permission he would be contacting at large members by the next meeting to ask whether they
28 can be CIP members for this year. He stated that a draft schedule was on the back of his
29 memo.

30
31 In response to Selectman Hargreaves' question about when the new section of the train
32 station would be torn down, Mr. Scott stated that he expected the specs for abatement in two
33 weeks, after which demolition will begin. Chairman McBride asked Mr. Scott to keep the
34 Board informed of progress.

35 36 **5. Ratification of Salem Public Administrators Association Union Contract**

37 Dr. LaBranche explained that in addition to signing off on the SPAA union contract the Board had
38 now signed off on all the contracts, and these will be distributed to appropriate parties.

39 40 **6. Report on DPW Litter Cleanup Effort**

41 Dr. LaBranche stated that Selectman Hargreaves wished to know what the tonnage and cost
42 was of the recent DPW cleanup. He referred to Mr. Dave Wholley's memo dated April 27,
43 2007 which provided the following information:

- 44 ○ A total of 512 hours of labor at a cost of approximately \$10,000.
- 45 ○ A total tonnage of 4.65 tons which took about a week of effort from all staff involved
- 46 ○ The list of streets canvassed by staff.

1 Selectman Hargreaves pointed out for the benefit of the voters that the cost of picking up this
2 trash could have been spent elsewhere if residents covered their trash when transporting it to
3 the transfer station.
4

5 **7. Town Manager's Report**

6 Dr. LaBranche stated that he had met with Bob Puff regarding the infrastructure bids and the
7 challenge by Busby Construction to the validity of the Newport bid. He stated that Mr. Puff
8 would be reviewing this with the consultant used at the time. He pointed out that all bids had
9 come in under budget and his staff will come back with recommendations to extend work on
10 North Main Street and a few other things that they had not anticipated they would be able to
11 do in that section of the community.
12

13 Dr. LaBranche stated that the bids on the Dawn Street project were significantly over budget
14 and they have made attempts to negotiate with the contractors in a couple different ways. He
15 pointed out that they may need to go back out to bid, or add more money to next year's
16 budget proposal. He pointed out that he was not in a position to go to the Sewer Fund at this
17 time.
18

19 Dr. LaBranche stated that he had met with the Budget Committee 2 weeks ago relative to
20 encumbrances, and had answered the majority of questions for them. He commented that
21 throughout meeting suggestions had been made about protocols and procedures which he felt
22 they could incorporate to make improvements and efficiencies to these.
23

24 Dr. LaBranche announced that Captain Mark Pearson of the Police Department would be
25 retiring in 60 days, and that there are three additional retirements in the pipeline in the Fire
26 Department at fire fighter level.
27

28 Dr. LaBranche informed the Board that he had received a letter of commendation from
29 Superintendent Mike Delahanty regarding the response of Police and Fire departments during
30 the recent crisis at the schools.
31

32 Commenting on the Budget Committee meeting, Chairman McBride wanted to emphasize
33 that spending had been frozen back in May 2006 due to the flood. Dr. LaBranche clarified
34 that he had departments submit their paperwork but did not release these until the end of the
35 year. Chairman McBride reiterated for the benefit of the public that the Town had managed
36 to balance the budget by operating in this manner last year due to the impact the flood had on
37 the budget. Dr. LaBranche explained that there were repairs which had to be made to roads
38 and that they had to await reimbursement for these.
39

40 **8. Selectmen Reports and Correspondence**

41 In response to a query from Selectman Lyons on the progress of the work taking place at the
42 dam, Dr. LaBranche informed the Board that there has been a couple of concrete pours, and
43 that starting this week there would be a gradual elevation of the water level at the lake which
44 should be on target for residents. He stated that construction is still on track. Chairman
45 McBride stated he had received information from residents that they are happy that the water
46 level at the lake is down that they can fix docks.

1 Selectman Roth stated she would like the Board of Selectmen to consider contribution to the
2 sidewalk improvement plan and that this was an issue which was repeatedly brought up at the
3 Planning Board. She explained that the Planning Board wished to know whether it was the
4 pleasure of the Board of Selectmen to have developers contribute to the improvement plan
5 and then for the Board to decide which sidewalks should have money spent on them. She
6 stated that she would like to have the issue raised as an agenda item at the next meeting of
7 the Board.

8
9 Selectman Hargreaves requested up to date copies of the volunteer list from Dr. LaBranche.
10 He stated that he has spoken with department heads and residents recently as he was
11 concerned about a report that the Police Chief will not talk to residents as he has a chain of
12 command. He stated that this is not the case with other department heads and hoped that the
13 Board and Dr. LaBranche would make the Police Chief more accessible to residents.
14 Chairman McBride stated he was certain that if Mr. Hargreaves has taken the matter up with
15 Dr. LaBranche it will be resolved.

16
17 Dr. LaBranche stated that if someone is coming in to report a personnel complaint the Police
18 Chief sticks to his chain of command. If action taken at lower level he. If someone wants to
19 talk to the Chief in general this is acceptable. He pointed out that the complaint procedures
20 in the Police department are formalized and explained how they work. If a resident calls Dr.
21 LaBranche with a complaint he stated that he explains what the procedure is and how to go
22 about it. Chairman McBride pointed out that personnel issues are very sensitive. Dr.
23 LaBranche stated he will ensure that the Chief makes the distinction between. Selectman
24 Hargreaves stated that acknowledgement should be given to residents that a complaint will
25 be dealt with.

26 27 **10. Old Business Tabled/Pending**

28 There was nothing to discuss under this agenda item.

29 30 • **ADDITIONS AND/OR REQUESTS BY PUBLIC OR BOARD BY VOTE**

31 There were no items for discussion.

32 33 • **UPCOMING MEETINGS**

- 34 ○ May 14, 2007
- 35 ○ May 15, 2007 (Board of Selectmen /School Board Workshop at Media Center)
- 36 ○ May 21, 2007
- 37 ○ May 29, 2007 (Board of Selectmen /Planning Board/Conservation Commission
- 38 Workshop)

39 Dr. LaBranche clarified what the 15th May meeting was for and where it would take
40 place.

41 42 • **UPCOMING EVENTS**

43 There were none mentioned.

44
45 **MOTION:** by Selectman Barnes

46 ***To move to adjourn the meeting***

1 **SECOND:** Selectman Hargreaves

2 **VOTE:** 5-0-0

3 The motion carried unanimously, and without further business, Chairman McBride adjourned the
4 meeting at 8:25 p.m.

5

6 Notes/Minutes Taken by: Sandra Maxwell

7

8 Approved: Board of Selectmen

9

10 Date: May 21, 2007