

Commission Meeting
Minutes
May 13, 2009

The Commissioner's meeting convened at 10:00 a.m. in the training room at the Wastewater Treatment Plant, 104 Sawmill Lane North Conway, NH. The following were present: Chairman James Umberger, Commissioner Robert Porter, Commissioner John Santuccio (arrived late), Superintendent David Bernier, Chief Patrick Preece and Recording Secretary Kristine Cluff.

Meeting called to order by Chairman Umberger at 10:00 a.m.

Chairman Umberger stated at some point during the meeting, the Board will need to take ten minutes to have consultation with legal counsel upon the arrival of Commissioner Santuccio. We will continue with the regular agenda until then.

Fire Department

Membership:

42 Members: No changes since last report

Personnel:

Training:

Engine one, Engine Three and Engine Four held joint relay pump training and tanker shuttle, this went very well and the new truck performed very well. We were able to dump 2500 gpm in 1.50 seconds and 1800 gpm in 1.45 seconds.

Department Activities:

The fire department had a fire prevention table set up at the home show last weekend at the Ham; this was received very well with the public. I have been working with the White Mountain Hotel on their Emergency Response Plan and this is going very well. All the small fire hose has been tested and 5 lengths of 1 3/4" failed and needs to be replaced. The large diameter hose will be tested in October during the monthly training.

Emergency Calls:

The fire department has responded to 31 calls for the month of May.

The fire department has responded to 348 calls year to date.

Karen Umberger questioned if this is up/down from last year. Chief Preece noted calls are down a little due to Mother Nature. We did not have the snow issues as the previous year.

Apparatus / Trucks:

We had to replace an air brake on Rescue Truck; it was leaking air and not maintaining air pressure.

Equipment Issues:

We took delivery of 7 new 4.5 SCBA Bottles and saved \$154.00 on the shipping charges as the supplier delivered them. The two air bottles on the air truck should be delivered next week.

Purchase for New Equipment:

We will be ordering four new firefighting helmets as we are down to our last spare helmet.

Seavey Street:

Chief Preece sent the Board and Maureen Westrick Forbes the bid draft. He met with Commissioner Umberger on some changes and made the revisions. Chief Preece resent the bid draft to the Board and received no additional comments. Chief Preece is intending to send the bid out to the three bidders today. After a short discussion, it was agreed the bids would be

opened during the next Commission Meeting on May 27, 2009. This bid is for Option 1 with Maureen Westrick Forbes drawings.

Retiree Health Benefits

We will skip over the Retiree Health Benefits and take the Superintendent's report

Superintendent's Report

Depot Road: Waiting for startup next week, Force main invert is ready to accept flow into Route 16 interceptor. Superintendent Bernier is preparing to send letter to the Depot Street homeowners and give them the standard 90 day hookup timeframe. If they are not hooked up in 90 days, they will start receiving a bill.

Contract 6: Park Construction has completed all water, sewer and drain work in the vicinity of Intervale Crossroads and Dinsmore Road area. Park has started raising sewer manhole frames & covers and also will begin building manhole inverts. This work should be completed by the end of the month and we should be in a position to send letters to all the property owners in these area that they can begin hooking up to the sewer services provided at each property line. Kearsarge Road is scheduled for base pave by the end of the month.

Mechanic Street: Park started working on the installation of sewer and is working from West to East; they are just beyond the intersection of the Lane. Once they have completed the sewer work they will begin the installation of water main. The wall at Bob Duff's was pushed out about two and half feet. There is a meeting scheduled today with Paul DegliAngeli, Park and Superintendent Bernier to discuss this matter.

Kearsarge Street: All water main work is complete; Park has started installation of sewer along Kearsarge Road. They installed five lengths of pipe and ran into ledge. They will blast through the overburden to eliminate the need for mats and rocks.

Continue working the NHDOT on possible funding for the widening of Kearsarge Road. WE have exhausted all avenues of funding for this project. This was originally specific to the Town of Conway By Pass Project and incorporated in the ten year plan of NHDOT However, the State has stimulus money for paving and why the don't want to earmark \$100,000.00 for that project. We have submitted several letters on this and Councilor Burton is involved. Commissioner Umberger noted the road widening is for the construction of bike lanes. Superintendent Bernier stated there is unlined cement pipe in Echo Acres slated to be done this year and that could be a project that deferred to the Kearsarge Road widening. Superintendent Bernier will contact Paul DegliAngeli and start this discussion.

Kearsarge Estates: Generator is still working well, however we still have a problem with the pressure relief valve, once we have the new Pressure Relief/ pressure sustaining valve installed this will eliminate the problems we are currently experiencing. Superintendent Bernier noted the Caterpillar repairman reworked the gensets and reprogrammed fuel pump to utilize the glow plug relay.

Superintendent Bernier attended Board of Directors meeting for Granite State Rural Water in Pembroke last Monday. He is continuing to work on Easements for Contract 7, Pierce Road and Well # 6 Projects.

Encountered failure of the Parco Surge control valve at Well#3 had service tech from Stonkus Hydraulic repair same and service Well #2 Parco Valve while he was here.

Superintendent Bernier now has the capability of checking alarm status of the water & sewer system via computer at home.

Superintendent Bernier noted that he is perplexed the press has not contacted the Precinct and other water departments as to the money being lost by the state grant funding and aid in 2010 and 2011. The 25% interconnection money is not funded in the next budget. The press has talked about the schools and room and meals tax. The Precinct is losing \$116,000 or \$.20 on the tax rate not including the 25% of interconnection on Well #6.

The Precinct is losing over \$200,000.00 in the next two years as a result of the current budget situation. North Conway is the highest generator of the rooms and meals tax and we are not getting our fair share. There is a gross inequity in the Governor's budget that is hurting the valley. Superintendent Bernier feels he would be remiss in not mentioning this to the public.

Non Public Session

Ten minute recess for consultation with legal counsel at 10:23 a.m.

Reentered public session at 10:40 a.m.

Retiree Health Benefits

Chairman Umberger read the following prepared statement, " We have received a request from a retired member of the bargaining unit for the Precinct to pay a portion of the retiree's medical benefits. We asked counsel to review this issue. The advice of counsel is that the existence of medical benefits for bargaining unit employees is governed by the collective bargaining agreement and to the extent the collective bargaining agreement is silent, the employee handbook. Since neither of these documents provides for the Precinct to pay medical benefits for a retiree, I would entertain a motion that I will move the Commission deny the retiree's request for the Precinct to pay for medical benefits and to authorize Superintendent Bernier to send a letter to the retiree regarding this decision. " **So moved by Commissioner Porter and seconded by Commissioner Santuccio the Board of Commissioners deny the retiree's request for the Precinct to pay for medical benefits and to authorize Superintendent Bernier to send a letter to the retiree regarding this decision. Motion carried by voice vote 3-0-0.**

We also asked counsel to look beyond the CBA and the handbook for authority to pay for retiree medical benefits and Attorney Judge will summarize the opinion.

My name is Steve Judge and I have been practicing law in New Hampshire for 27 years spending 21 years working for the State of New Hampshire with 19 of those years being in the Attorney General's Office. I was Acting Attorney General for Governor Benson and Governor Shaheen.

I have handled a lot of important questions in my career and this is an important question because it has to do with medical benefits and it important because it has to do with the use of power by a governmental entity and we have to get that right. I want to emphasize right off the bat I am not predicting the future. What I have been asked to do is summarize the current status as far as this issue is concerned and let me skip ahead a bit and say right away that I understand there are individuals who are receiving medical care benefits right now and those benefits have been approved by the voters in the budget. I don't know of any reason why that won't continue to happen. That is not the issue I am really dealing with. The issues that I am dealing with here are the people who are not retired now. To the extent we have people currently receiving benefits as retirees, the voters have approved that for this year's budget and they have approved for many years in the past and I would expect they would approve it again in the budget. The key is the voters approved it.

So, let me tell you what I have reviewed and describe what I am going to talk about and summarize an opinion for you.

I have reviewed the collective bargaining agreement and the handbook. As you just heard a minute ago as far as the collective bargaining employees are concerned there is nothing in there that gives retirees medical benefits. What is significant in the collective bargaining agreement is the provision in there that says this is the universe of benefits you are receiving and the union agreed that is the extent of the benefits.

I have reviewed the charter, bylaws, Annual Meeting minutes particularly for 1989 and especially the Commission Meeting Minutes for December 28, 1988. I want to discuss some basic principles with regard to voter authority, commission authority, and legislative powers. I am going to conclude that the issue of retiree medical benefits must be decided by the voters. The Commissioners can't decide unilaterally and voters must be presented with potential costs of this issue just as they had been presented with the costs for medical benefits for those who have been retired and there is a line item and it tells the voters how much they are going to spend.

There has been no general authority or authorization by the voters or no calculation of potential costs for individuals who are not retired at the moment as far as health benefits are concerned. Therefore, there is no existing general authority to pay for retiree medical benefits for those who are not retired. Again, for the people who have already retired and are receiving medical benefits that has already been approved by the voters. That is the key distinction between the situation that you're in and the situation to those who have been retired and those who have not been retired. That was done through the budget with the voters voting and the information was identified to the voters.

Let me just say as far as the future is concerned, I am not predicting the future but if there is to be some movement on this issue as far as the bargaining unit employees is concerned, it would have to start with negotiations. Depending on how that came out it would go to the Commissioners and the Commissioners would decide and then it would go to the voters. There are a lot of steps and the issue has not been raised as we are not in the negotiation process at this point.

I promised I would talk about basic principles:

The first basic principle is the power that is exercised by this entity comes from the legislature in the form of the charter. Without the charter there is no authority here. The legislature gave the Precinct specific authority in the charter. One of the powers given to the Precinct and when I say that I mean the voters have the power to raise and appropriate money and enter into contracts. In order to do that, the voters must have reasonable information regarding a cost item.

Let's talk about 1988. There were two employees back then who were asking about retirement and neither of them retired. The issue came up as a hypothetical and no decision was made at that point. At the annual meeting on March 29, 1989, there was a fire department budget question that came up and there was a motion to amend that budget so that the Precinct would pay 100% of medical benefits. That motion was hypothetical because there was no one retiring at that point. There was no effect on the budget at that point and it was confined to one specific employee who had not retired and no potential cost that were identified and that point was made several times during the meeting. People from the audience were stating there were no costs identified here and we don't know how much it is paying and there was no identification of the scope and never any discussion that I can find on what medical benefits we are talking about single medical benefit, husband wife or family - again, as far as those people who have not retired yet. In fact, a specific comment was made that a future body will have to approve this. That was prophetic comment and that is exactly what happened - my understanding is the individual being discussed at that annual meeting ultimately retired and ultimately there was an item budgeted to fund medical benefits and voters voted on it and it was a future body that approved it and the voters have continued to authorize that for that individual and for other who have retired. The important point here for those who have not retired is the vote that did not authorize medical benefits and not a general authorization.

The second basic principle is the Commissioners get their power from the voters and the voters get their power from the charter and they (commissioners) need authority to enter contracts and appropriate funds. There is no record by the voters giving the Commissioners the authority to give retirees medical benefits. If you look at the bylaws and the by laws have only been around since 2005 even if you look at those by laws the Commission only have the authority to appropriate money through the budget and appropriation process. The Commissioners don't have the ability just to decide to give retirees medical benefits and this important to keep in mind when we look at the Commission minutes of December 28, 1988. At that meeting there was a motion that for every five years a person worked for the Precinct the Precinct would pay 25% of their Blue Cross Blue Shield benefits. Mind you that was before the Annual Meeting of 1989 and that didn't give the authority and there was certainly no authority earlier in 1988. Again benefits were not identified as single, spouse or family. The retiree issue is one of the terms that is used there. This motion is troubling in one regard because it suggests after five years a retiree would receive 25% of medical benefits. It is very difficult to retire after five years especially if you are in the retirement system because generally you don't vest until you have been working for ten years. I think you could look at that and say that board misunderstood what they were saying because they were saying something that was pretty non sensible.

If you are disabled or worked for some other retirement system entity where you could stack time and maybe some situation where someone could work for five years and get 25%. No discussion of that at all. It is difficult to do and there was no discussion of potential costs and no authority to provide the benefit.

There are a number cases and I have an opinion here which I will give to the commission. It is a public opinion and the commission has asked that it be made available to anyone who wants one and I have extra copies here. I have cited a lot of cases, statutes, the charter and the bylaws. I'd like to focus on one case - this case involved a gentleman by the name of Stanton. He was an employee of the City of Manchester – a governmental employee. Manchester has a retirement system that is only for city employees. This gentleman, Mr. Stanton, worked for Manchester for a term of years and then he went over and started working for the retirement system – the Manchester Retirement System. So we've got two entities – one the city and one the retirement system. You now have two separate entities the City of Manchester and the Retirement System (Manchester). There he continued to pay into the retirement system. Paid it when he was a city employee and when he was a retirement system employee. Mr. Stanton retired and was given credit for his service to both entities. There was a legal opinion that was issued by the retirement system that the employees of the system are employees of the city. Yet, remember you have to be an employee of the city to be in the retirement system. He retired; Mr. Stanton retired and received credit for the time he worked for the city and the time he worked for the retirement system. He received that benefit for several months and he received a notice that he was not a city employee when he worked for the system and therefore they were going to reduce his benefits. to only the time he worked for the city. He appealed and went all the way up to the Supreme Court and they agreed the system had done the legal thing here. The principle they enunciated is you have to follow the statute even where the agency has issued an opinion and a practice that is contrary to the statute. We had a statute in this case that says only people who can receive retirement are city employees despite the fact there was a legal opinion, despite the system had taken money out for retirement, despite the fact somebody else retired, and the system was wrong, in fact, as what the Supreme Court described as incorrect in reaching that conclusion. Therefore, this gentleman's benefits were reduced. There is a statute here and the statute is the charter and the language in the charter is the voters have the power to appropriate money and enter into contracts. It's the third principle I want to talk about and I'm also most done. They (the voters) have the legislative power and the commissioners have the executive power. As a general rule and we are getting deep in the woods here but as a general rule the legislative power is something that goes from each annual meeting to the next annual meeting. The people who make up that power change because it's made up of the people who are living in the Precinct. One annual meeting cannot bind another annual meeting. As a general rule the legislative power needs to be open so future legislatures can make decisions and not handcuffed by a decision in the past. I am not saying that you can't make obligations that will last for a number of years – you can do that but there is a particular way to do it but what I am saying is that particular way was not followed in this case and not even close to being followed. The particular way to do it is first of all identify for the voters the potential future cost of the items if it is we are talking about CBA employees or employees not in the bargaining unit that is a big number and something that needs to be calculated and never has been calculated. The voters need to understand that and the best practice is to start a fund even though no one has retired at the moment who is going to tap into this and start contributing money to it because it is going to be a big cost item in the future.

In sum, the conclusion is there has never been any authority for someone who is not retired to receive medical benefits the voters never decided it and the voters have never given the Commissioners the authority to and the Commission has never had the authority. In closing, I just want to say one more time, as far as those employees who are retired now whose medical benefits were approved in the last budget they have been approved by the voters and so their medical benefits are going to be paid for in this budget and I don't see why they won't be paid for in the next budget but I can't predict the future but I am here to talk about is those employees who aren't retired.

Commissioner Umberger asked if anyone has any questions please direct them to attorney Judge. Former Fire Chief, Clyde Merrill stated, "sounds good to me". Commissioner Umberger - sorry didn't hear you and Attorney Judge stated he said that "sounds good to me" and I would be happy to repeat that. If there are no questions, I'll entertain a motion to receive the opinion of Attorney Judge. **So moved by Commissioner Porter and seconded by Commissioner Santuccio. Motion carried by voice vote 3-0-0.**

Maintenance Garage

Superintendent Bernier and Assistant Foreman Hill have been working on changing out the light fixtures in the water maintenance garage. Superintendent Bernier is looking at more energy efficient lighting and motion detection lighting with an override switch. The T5 light is a small diameter and works well in the cold. T5 lights are also eligible for a NH Electric

Cooperative rebate of up to fifty percent. Superintendent Bernier has received only one price. Commissioner Umberger would like more than one bid. Commissioner Porter questioned if this is something that staff can do and it is not because they are not licensed.

Signature Document

Superintendent Bernier and office manager have been working on selling the \$2,088,000.00 bond with Rural Development. Basically, we are converting the short term borrowing of \$2,088,000.00 issued through Northway Bank to a bond with Rural Development.

Motion of Commissioner Santuccio and seconded by Commissioner Porter to authorize the Chairman Umberger to sign the Rural Development Resolution with regard to the \$2,088,000.00 Bond. Motion carried by voice vote 3-0-0.

Sign Checks

Motion of Commissioner Porter seconded by Commissioner Santuccio to sign checks out of session. Motion carried by voice vote 3-0-0.

Public Comment

There was no public comment at this meeting.

Adjourn

Having no further business to discuss, **Motioned by Commissioner Porter seconded by Commissioner Santuccio to adjourn this public meeting at 11:05 a.m.**

Respectfully,



Kristine M. Cluff
Recording Secretary