

**BOARD OF SELECTMEN
MEETING MINUTES**

January 31, 2005

PRESENT:

Ruth I. Clough, Chair, Board of Selectmen
Douglas W. Lyon, Selectman
Mark Kaplan, Selectman
Jessie Levine, Town Administrator

OTHERS PRESENT:

Lawrence Rupp, New London resident
Gary Gibson, New London resident
Dianne Yelton, New London property owner
Susan Hankin-Birke, Esq., McSwiney, Semple, Hankin-Birke & Wood
Peter Stanley, Zoning Administrator
Carolyn Dube, Argus Champion
Debbie Cross, Intertown Record

Chair Clough called the meeting to order at 8:00 AM.

NEW BUSINESS:

Balsam Acres: Chair Clough recognized Lawrence Rupp and Gary Gibson, residents on Balsam Acres, and noted that the Selectmen needed to spend a few minutes reading the material that Mr. Rupp gave them at the opening of the meeting. Mr. Rupp said that he understands that the Selectmen have not seen the documents before them and that now might not be the best time to discuss them. Chair Clough said that she is familiar with the background of the situation on Balsam Acres.

Mr. Rupp explained that in 1989, the Town enclosed the drainage system running down Squires Lane (formerly Burpee Lane). He was not aware of the project at the time that it occurred, but believes that it is the cause of the "oceans of water" that runs onto his property. He has had to clear debris out of the culvert that runs under Balsam Acres and outlets on his property, and he has had to clear the debris when his yard is flooded out. Ms. Levine stated that she and Road Agent Richard Lee had met with Mr. Rupp and the Gibsons in October, and that the flooding to which Mr. Rupp referred happened in 1999 or 2000, and that the Highway Department had cleared the blocked culvert and later installed a larger culvert so that the smaller culvert would not block up again. She is not aware that there has been flooding since that time. She said that Richard Lee had offered to meet with the Gibsons at their property to assess the drainage problems that they were having, but the Gibsons canceled that meeting.

Mr. Rupp said that he is not questioning that the Town has an easement perhaps by the operation of law, for the 12" culvert that runs under Balsam Acres. However, he said that he is disturbed by Richard Lee's comment that the Town can put as much water as it wants to through the culvert and through the new 15" culvert that was installed in 2000, without the benefit of an easement.

Mr. Gibson said that he and his wife did cancel the meeting in November, and had written to ask to meet with the Selectmen instead. They have not received a response to their letter. Mr. Gibson said that he is present to support Mr. Rupp, because he has noticed the excessive water. He added that he cannot say that there should be no runoff coming down hill, but agreed that culverts installed up hill were outletting

onto Balsam Acres. He is concerned that continued development up hill, such as on property owned by Colby-Sawyer College, would result in additional water running onto private property.

Ms. Levine stated that she does not recall Richard Lee saying that the Town could put as much water as it wanted through existing drainage systems. In fact, the Town cannot increase or change drainage outlets without first securing proper easements. Furthermore, if there is development up hill, such as a subdivision or development of Colby-Sawyer's land, this would require a Planning Board review, which would include a study of the drainage requirements.

Chair Clough said that it is not appropriate to have this conversation without Richard Lee present, and she would like to postpone the discussion until that can happen.

Mr. Kaplan questioned whether the water should be considered public water, and whether it was the Town's obligation to take care of the water. Ms. Levine said that water collected from the road was generally the Town's obligation to collect and disperse.

Mr. Rupp said that he first realized the situation when he saw workers from Andrews Construction working behind a house on Squires Lane, replacing two 6" pipes with one 12" pipe. He explained that this doubles the capacity of the pipes, which would increase the flow into the drainage system. Mr. Rupp asked why the Town did the work on Squires Lane in 1989, and why it did not secure easements at the time. Chair Clough said that none of the current administration was involved at that time, but that the Town is continuously performing upgrades throughout the town. She added that there is no question that Mr. Rupp lives down hill. She said that the Selectmen would investigate the question and postpone the discussion until Richard Lee can be present. She added that she would like to have that discussion in a civil manner and with courtesy. Mr. Rupp said that he has lived with this problem for a long time, and has gone to great lengths to be accurate with his information.

Mr. Lyon asked Mr. Rupp if it would comfort him to know that Colby-Sawyer has no intentions of developing the property next to the President's House. Mr. Rupp said that he had heard that the President would move into the DiLorenzo house behind the new Ivey Science Center, and that the Main Street property could be used for other purposes. Mr. Lyon said that there is no truth to that rumor; the President will remain in the existing house and the College has no plans to use the land next to that house, which is in the residential zone. He asked Mr. Rupp if that assurance made him feel better, and Mr. Rupp said that it did not.

Mr. Rupp and Mr. Gibson departed at 8:20 AM. Ms. Levine said that by way of background, at the meeting in October, she and Richard Lee had asked Mr. Rupp whether he had incurred any recent damage that could be addressed, and he at first said that there was nothing new, but later retracted that statement. The Gibsons had said that their basement was flooded, and Richard Lee had planned to meet with them to assess whether it was coming from the Town's culvert, road runoff, or whether it was due to the low setting of the house. She added that the drainage work was performed while Fred Welch was Road Agent, and she is not sure whether easements were secured or whether they were necessary for the work performed. Chair Clough said that she would like to get to the bottom of the easement question and meet with Richard Lee and Mr. Rupp and the Gibsons another time.

Phillips Preserve: At 8:30 AM, the Selectmen were joined by Peter Stanley, on behalf of the Conservation Commission. Mr. Stanley said that the timber harvesting project at Phillips Preserve is going well, but the yield is lighter than they had expected, and therefore the Conservation Commission would like the Selectmen's permission to cross a stone wall and pull about 20-25 trees from another part of the property, which would yield about another \$1000. He said that the thinning project is beautiful, and encouraged the Selectmen and public to walk through once the loggers have left. He said that if there were a snowfall to

cover the debris in the forest, one would not even be able to tell that the timber harvest had occurred. The initial timber harvest covered about 15 acres; eventually, these 15 acres will yield large pine that will bring some revenue to the town.

Mr. Lyon asked if anyone had figured out how the telephone line on Goosehole Road fell down, and Mr. Stanley said that no one had owned up to it. He said that he had notified Verizon about the low line the day before the line came down, and both he and Leo Maslan had asked the truck drivers to be careful. He said that it is possible that a truck brushed the line, causing it to bounce and vibrate, which eventually brought down the telephone pole, which shattered into about four pieces. Chair Clough said that Ms. Levine will send the residents a letter of apology. Mr. Stanley said that the electricity was out for about 5.5 hours, and the telephones were out for about 24 hours.

Mr. Lyon moved to approve the Conservation Commission's request, seconded by Mr. Kaplan and unanimously approved.

Zoning Enforcement: Switching hats, Mr. Stanley asked to speak to the Selectmen about zoning inspections. Currently, with a typical building permit, he inspects a property at the beginning of a project and then about a year later to close out the permit. He said that recently, two different builders have applied for permits for certain work, and have changed the project on site, both times resulting in zoning violations. When a building permit is issued, Mr. Stanley said, Ms. Levine attaches a letter to the property owner reminding them that if their project changes in any way, they may need to modify their building permit with the town. Nonetheless, he recently discovered zoning violations on two projects in which the builder varied from the approved permit without coming back to the Selectmen for approval.

The first is at the Cantor property on Lakeshore Drive. The Cantors had originally submitted a building permit application that contained an apartment over a detached garage. Since the detached building cannot contain a dwelling unit, the architect redesigned the plans to attach the garage to the main house. When the Cantors submitted a permit to move a pavilion, Mr. Stanley went to the property to make sure the pavilion would meet the setbacks. He discovered that the garage was in a different place than had been approved by the Selectmen and was now detached from the main house and still contained plumbing and electrical work for the upstairs dwelling unit. Mr. Stanley has notified the builders that the dwelling unit will have to be removed from the garage or the garage will have to be moved to attach to the house. Either way, the owners will have to apply for an after-the-fact amendment to their building permit.

The second violation is on Old Main Street, where the Board of Selectmen approved a new four bedroom home with a four bedroom septic system. When Mr. Stanley inspected the property, he discovered that the builder has added a fifth bedroom and bathroom on a third floor that does not appear in the building permit application. Mr. Stanley has contacted that builder, who will submit an after-the-fact amendment and remove a closet from one of the bedrooms on the second floor, making that an office instead. Ms. Levine said that the Town collects building permit fees based on the square footage of the project, and in this case, the Town was shortchanged the fee for the space on the third floor.

Mr. Stanley said that this brings him to the point: that he is concerned about inspections occurring only at the beginning and end of a building project. He asked the Selectmen if they thought that he should inspect periodically during the course of a project to insure that the applicants build what had been approved. He said that if the final inspection is conducted at the end when the paint is dry, the Town would be in the position of having to enforce the zoning ordinance instead of assisting the property owner to comply. He would be inclined to limit these inspections to the larger building projects, such as new homes. Ms. Levine said that when Amy Rankins changes jobs in April and is working more closely with the zoning and assessing departments, perhaps she could make the intermediate inspections to ensure that the project matches the approval. This could take some of the added work off of Mr. Stanley's shoulders.

Chair Clough asked if this is getting into building inspector territory, and Mr. Stanley replied that this is still a zoning issue in that applicants are required to build according to the permit from the Board of Selectmen. He would not be inspecting the building code issues, but would be making sure that a five-bedroom house was not built on a four-bedroom septic system, for example. Chair Clough said that it sounds like we've learned from our experience and need to add a layer of inspections. However, she added that it will continue to be important to make sure that the applicants understand that they will have more than one inspection, and that they should return to the Selectmen before they alter their building project. Ms. Levine said that the Town would not enter an occupied home without permission; these inspections will most likely occur for new construction that has not yet been occupied. Mr. Stanley said that contractors have asked for advance notice of inspections, which seems reasonable to expect.

Mr. Lyon said that he would not be inclined to limit such inspections to larger projects, as smaller ones could be as likely to change. Mr. Kaplan said that he is comfortable with it as long as it is not a building inspection and it is simply to make sure that the project complies with the zoning ordinance and with the Selectmen's approval. Ms. Levine said that it is too bad that the Town has to change its policy for everyone based on the actions of a few people. Chair Clough said that the benefit is that it may change how people go about their construction and will result in fewer violations. Mr. Lyon agreed that it actually offers extra protection to property owners, who may not be aware that they are crossing into a violation situation.

Ms. Levine said that she also talked to the assessor about flagging second dwelling units when they make inspections. The computer system has codes that can show a second kitchen, and then the zoning office can review the property to make sure that the second dwelling is legal.

Mr. Lyon said that he just wants to repeat that the Selectmen are not talking about creating a building inspector role that would inspect wiring, plumbing, etc. Chair Clough agreed that this is purely to make sure that the project is in compliance with zoning. There being no further discussion, the Selectmen approved the request to make more frequent inspections of building projects.

Hitchcock property: Ms. Levine referred to a letter from David Hitchcock to the Board of Selectmen, and to a letter that she had written to Mr. Hitchcock in November, both regarding his parcels of land on Farwell Lane and Burpee Hill Road. The Town's property records show that Mr. Hitchcock owns two pieces of land: an 8.9-acre undeveloped parcel off Farwell Lane, and a 4.7-acre parcel with a house on Burpee Hill Road. Mr. Hitchcock believes that he should have three lots: a 0.9-acre lot on Farwell Lane, an 8-acre lot on Farwell Lane, and the 4.7-acre house lot. However, the Town's records show that the 8.9-acre lot has been one lot since 1975, and Mr. Hitchcock has paid taxes on the one lot since that time. In the 1990s, he inherited the house lot from his mother, and shortly thereafter put 10-acres into current use. He excluded portions of the house lot and the 0.9 acres from current use. Ms. Levine said that Mr. Hitchcock believes that the 8.9-acre lot should be separated into two lots, but both lots would be non-conforming. The 0.9-acre lot would be nonconforming because the Agricultural Rural Residential (ARR) zone has 4-acre minimum lot sizes, and the 8-acre lot would be non-conforming because it would be land locked.

Ms. Levine said that she wrote to Mr. Hitchcock in November, after receiving advice from town counsel, stating that he has benefited from being taxed for one lot since 1975, and never questioned the Town's treatment of the property as one lot. Mr. Hitchcock has written to the Selectmen, asking for their reconsideration. Ms. Levine has since received different opinions from other town administrators and from the legal counsel at the Local Government Center, and she asked the Selectmen if they could postpone discussion of this topic until she can get additional input. The Board of Selectmen agreed to postpone discussion.

Yelton Cease & Desist Order: At 9:00 AM, the Selectmen were joined by Dianne Yelton, owner of a property on Bunker Road, and Susan Hankin-Birke, attorney for the Yeltons. Ms. Hankin-Birke said that she thought this meeting would be an informal discussion solely with the Selectmen. Ms. Levine said that she does not believe that the topic of the meeting qualifies as a non-public meeting. Chair Clough said that she hopes that this can be a civil meeting at which people can be open and honest, especially given that it's required to be public.

Ms. Hankin-Birke gave the Board of Selectmen a copy of a letter from Chris Brison at the New Hampshire Department of Environmental Services, dated January 27, 2005. The letter was addressed to the Board of Selectmen, but Ms. Levine stated that she does not believe that the letter has arrived in the Selectmen's Office yet. The letter states that the Yeltons have begun the process of applying for a waiver for their project on Bunker Road that was the subject of the Cease & Desist Order issued by the Town.

Ms. Hankin-Birke said that this project goes back to 2003, when the Yeltons received DES approval to rebuild the stone retaining wall along the shorefront of Pleasant Lake. That approval was contingent on the Town lowering Pleasant Lake by five feet, as had been planned for the end of that summer. However, the Selectmen decided not to drop the lake until 2008, so the Yeltons had to return to DES to talk about alternative ways to repair the retaining walls. She showed the Selectmen photos of the property and its location on the tax map. She said that the Yeltons had also been thinking about renovations to the cottage itself, and ultimately decided that the best way to repair the shorefront wall would be to access it from the land where the cottage sits. The Yeltons met with Peter Stanley to talk about their request to raze the existing house and rebuilding in the same footprint, adding a third floor and enclosing the porch. Mr. Stanley informed the Yeltons that they would need a variance to replace the cottage, since it is within 50-feet of the lake and is nonconforming. He told them that they had a "snowball's chance in hell" of getting the variance, but that it was worth trying. The Yeltons went before the Zoning Board of Adjustment in May and received the variance. At the ZBA hearing, the neighbors had asked that the variance be approved because the existing cottage was not aesthetic and they would like it to blend more. She said that the only person at the hearing who spoke against the variance was Peter Stanley, representing the Conservation Commission over concerns that the house should not be rebuilt in its current location so close to the shoreline. Ms. Hankin-Birke said that the variance was approved contingent upon a number of items, including approval from DES for their revised plan to repair the retaining wall.

Mr. Stanley said that ZBA member Brian Prescott had also spoken against the variance. Ms. Levine said that she thought that DES had already approved the retaining wall. Ms. Hankin-Birke said that DES's approval of the original plan was dated March 2003, and the approval of the revised plan was July 2004, after the ZBA's approval on May 17, 2004. In September 2004, the Attorney General's Office sent a letter of opinion to towns, advising them to make sure that property owners comply with the Shoreland Protection Act. She said that she spoke with attorney Ben Frost of the Office of State Planning, who described the letter as a new interpretation from the Attorney General's Office. Chair Clough said that the Planning Board has proposed an amendment to the zoning ordinance that would bring the town's zoning into compliance with the state's Shoreland Protection Act, which changed in 2003.

Ms. Hankin-Birke said that all towns have to comply with the Shoreland Protection Act. There is a provision in the statute that towns can seek an exception to the state law, but that can only be granted when the town's zoning is at least as restrictive than the state law. The only town that has received that exception is Sunapee. She said that while other towns have attempted to qualify for this exception, New London has not attempted to have their zoning qualified as exempt from state law.

Ms. Hankin-Birke went on to describe the type of construction of the Yeltons' home. It will include stress-skinned panels for the exterior walls, which are being fabricated off-site. Storage and delivery of the panels was an issue and had to be arranged in advance.

On November 1, 2004, Dianne Yelton received a voicemail message from Peter Stanley indicating that there was a problem with the Yeltons' project and that he had received complaints about the lack of erosion control. Mr. Stanley instructed the Yeltons to contact Darlene Forst at DES. The Yeltons contacted Ms. Forst, who said that she has "no clue" as to what Mr. Stanley is referring to and that she had received no complaints. The Yeltons continued with their project. On November 9, 2004, they received a second voice message from Mr. Stanley, regarding the Shoreland Protection Act. Mr. Stanley said that he would send the Yeltons some paperwork and an application to the state, but never did so. Then, on December 11, 2004, the Yeltons received a letter of deficiency from the state dated November 30, 2004. The state had inspected the property on November 10, 2004. The Yeltons wrote back to Darlene Forst on December 13, 2004, but heard nothing back and continued with their project. Mr. Stanley placed a third phone call at the end of November or early December, alerting the Yeltons to the need to seek a state variance for their project. The Yeltons did not hear anything else until they received the Cease & Desist Order from the Town on January 22, 2005, stating that they were not in compliance with the state's Shoreland Protection Act.

Ms. Levine said that the letter of deficiency from the state indicated that the Yeltons needed to apply for a waiver. Ms. Hankin-Birke said that the Yeltons submitted the information they had to the state on December 13, 2004, and found that the state has not yet created an application for the waiver. Ms. Hankin-Birke said that the Cease & Desist order was even more problematic for her clients because it was transmitted to the bank, which has frozen the construction funds. She said that she is not sure of the authority to notify the bank. Ms. Levine said that service upon the mortgage holder is required by RSA 676:17-a, and the Town had no choice but to serve the bank at the same time that it served the property owner.

Ms. Hankin-Birke said that she talked to Darlene Forst on Friday, inquiring how the project ever got to this level and has now become a problem. She said that if there had been more clear communication on contacting DES, this whole thing could have been avoided. She said that Mr. Stanley had indicated that the Town would send something, and the Yeltons are still waiting. She said that the Yeltons responded to the state's letter of deficiency, but heard nothing until they received the Cease & Desist Order from the town. Darlene Forst had said that it was her understanding that the Yeltons had not applied for the waiver from the state after repeatedly being told. However, the Yeltons had only received a couple of voicemails from the town before receiving the letter of deficiency and had responded to the state when asked. She said that the sense from Darlene Forst was that the Cease & Desist was issued because the Yeltons were avoiding applying for a waiver after repeated contact. In fact, the Yeltons thought that they had every permit needed. In any event, she said that DES has now written to the Town in light of the Cease & Desist Order, indicating that the waiver application was in process. Ms. Levine said that the letter does not advise whether the Yeltons should continue working, but does clearly state that they do not have the waiver.

Ms. Hankin-Birke said that better information could have been given to her clients in November. They are now told that it takes six weeks to get the waiver, although they were advised to seek political assistance from Executive Councilor Peter Spaulding. The practical problem is that the Yeltons have contracted and paid for the storage of the construction material. On February 7, 2005, a crew was supposed to come to the property to cap the basement. The panels are supposed to be delivered on February 21. She understands that the waiver process must proceed, and that if the state denies the waiver, it can tell the Yeltons to rip down what has already been constructed. She understands that this

could mean enormous economic consequences for her clients. She and Mrs. Yelton are hoping to meet with Darlene Forst at 11:00 today and deliver the application and other necessary information. She asked the Board of Selectmen if they would withdraw the Cease & Desist Order and allow the Yeltons to work directly with the state. She understands that no one is guaranteeing the granting of a waiver. Chair Clough asked if her clients were willing to take that risk, and Ms. Hankin-Birke said "of course, of course."

Mr. Lyon said that his understanding is that the Yeltons issue is with the DES, and the Board of Selectmen cannot make the decision on the Yeltons' waiver. However, the Board of Selectmen have the authority to require the Yeltons to comply with state law, which is why the Cease & Desist was issued. He questioned whether the Selectmen have the authority to lift or modify the Cease & Desist Order, since the requirement is for a state permit. He asked Ms. Levine to talk to town counsel about the Selectmen's authority. Mr. Kaplan said that he thinks these property owners are caught in the switches between the ZBA's approval and the requirement for state approval. Ms. Levine said that she does not disagree that they were caught in the switches, because the town was not aware that state law had changed to require further approval. Nonetheless, the Town does not have the option of allowing the Yeltons to continue to work without state approval. Ms. Hankin-Birke said that she has the feeling that there was undue scrutiny at her clients' job site. Ms. Levine said that the project is on the edge of one of New London's lakes, and that the town should carefully monitor projects in these sensitive areas.

Mr. Stanley said that Ms. Hankin-Birke's chronology leaves out some relevant information. First, the project was a moving target. The Town did not exercise undue scrutiny, but responded to complaints from citizens. Ms. Hankin-Birke asked him who had complained, and Mr. Stanley said that the first phone call came from Richard Clayton, who noticed that the building had been razed. Mr. Stanley inspected the property following that telephone call, and noted that the turbidity curtain had not been installed in the water, as required by the DES permit to repair the wall. Mr. Stanley said that he then attended the Local Government Center's Law Lecture series, which included a course on the change in the state's Shoreland Protection Act. He noted that the state law changed in 2003; it was not simply a change in interpretation of the law. Ms. Hankin-Birke disagreed, stating that Ben Frost had told her that the Attorney General's Office changed its interpretation of the law. Mr. Stanley said that when he found this out, he called Dianne Yelton. He apologized for not sending anything after the telephone call, but that following that call, there was an oil spill at the work site and due to the insufficient curtain, an oil sheen spread on Pleasant Lake. He contacted the state following the oil spill, and the state inspected the property and sent the letter of deficiency later that month. Mr. Stanley said that he did not do anything because the target was still moving. He called Mrs. Yelton in early December to follow through; he agrees that he had given her nothing in writing at that point, assuming that the state would follow-up now that they were aware of the deficiency. He added that Mrs. Yelton contacted him many times during the process of applying for the building permit and variance, and easily could have called him in response to his phone calls. He said that he became concerned that the foundation was being poured in a way that may not be approved by the state. He conceded that obviously the state does not even seem to know how to handle its own regulations, and the left hand and right hands at the state are not talking to each other.

Chair Clough said that there is no question that clearer communications could have taken place on many levels. Ms. Hankin-Birke said that hindsight is 20/20. Chair Clough said that the Selectmen have an obligation to take good care of our lakes, and wants to also go forward preserving a good and decent relationship with the Yeltons.

Ms. Levine asked the Board of Selectmen if they would want to lift the Cease & Desist Order, if it is determined that they have the authority to do so. Chair Clough said that she is comfortable with it if the Yeltons agree that they are continuing at their own risk and would remove any buildings that are built in

violation of state law. Mr. Kaplan said that the ZBA's variance was conditioned on backfilling a portion of the basement, and asked why that had not been completed. Ms. Yelton explained that it was part of the sequencing of work, and would be performed when the cap was put into place. Ms. Hankin-Birke said that the Yeltons have proceeded based on the ZBA's approval and now understand that they are obligated to get a waiver from the state. She said that the state will now review what the Yeltons have submitted, and the risk is on the Yeltons for going forward without state approval. Mr. Kaplan asked what would happen if the state denies the waiver, and Chair Clough said that she imagines that the Yeltons could build the first floor but could not expand higher. Mr. Stanley cautioned that DES may look at the enclosure of the deck as well, since the state Shoreland Protection Act does not allow the expansion of living space. Ms. Hankin-Birke renewed her request to have the Cease & Desist Order lifted so that her clients could work directly with the state. She believes that the Yeltons meet the requirements for a state variance, so she thinks that the waiver, which has lower standards, would be easily obtained.

Chair Clough said that she has two thoughts: 1) if the Selectmen were to grant the Yeltons permission to deal directly with the state, she would ask that all communications be copied to the Board of Selectmen for the record. Ms. Hankin-Birke said that it is likely that most communications will take place via phone calls, and people's recollections of phone calls can vary widely. Mr. Lyon said that he would think that letters would be more appropriate in this situation, and Ms. Hankin-Birke replied that if people took the time to write letters, the discussion could go on forever. Chair Clough said that it sounds as though Ms. Hankin-Birke thinks that the Town should not be included, and she has a problem with that. Ms. Hankin-Birke said that it is the informal stuff that she would have a problem with, but would ask that communication in writing with DES be copied to the Town.

Chair Clough said that her other concern is that Mr. Stanley should have a complete set of current building plans. Peter Stanley said that he has a copy of what was approved by the ZBA. It is not as complete as what he would typically require, but as long as the size and configuration and number of bedrooms does not change, he has adequate information. He said that he has inspected the property and the site is okay, the foundation is okay, the erosion and sedimentation have been addressed, and the wall has been repaired along the lake (he added that it was a very well done job).

Mr. Lyon said that he is uncomfortable with the notion that the Town would give up the right of oversight. He said that it sounds as though the Yeltons are asking for only state oversight, but he has a lot more faith in the Town's compliance work than with the state's. Ms. Hankin-Birke said that the Town of Andover Selectmen vacated a Cease & Desist for one of her clients, and would ask the same to be done here, based on a waiver from DES. She said that her clients understand the risks, but that there is also a tremendous amount of work to be done. Mr. Lyon said that he does not like the idea of lifting the Cease & Desist to allow work to be performed, because then the selectmen could be faced with a fait accompli. Chair Clough asked if the concept would be to vacate the Cease & Desist to the point of capping the basement, which is scheduled for February 7. Ms. Yelton said that if the Cease & Desist is not vacated, then the money would not be freed up to perform any work. This led to a discussion about the bank's funding of the project in light of the Cease & Desist.

Mr. Lyon asked if the Yeltons intended to build the entire home regardless of the waiver. Ms. Yelton said that her intention is to try to expedite the request through DES. Ms. Levine said that she thought the Yeltons' request had been modified to ask for the Cease & Desist to be lifted to allowing the capping of the basement. Mr. Lyon said that he has no problem with allowing the basement to be capped, but is uncomfortable about allowing the Yeltons to go further without state approval. Ms. Hankin-Birke said that the capping of the basement would cover the next few weeks and hopefully by then the state will give them an understanding as to whether they can go forward. Mr. Lyon said that the Selectmen are not

trying to create undue hardship, but do need to maintain some control of the project. He said that he understands that the Yeltons got caught between ZBA approval and state requirements.

Ms. Levine asked if the Board of Selectmen wanted to approve the lifting of the Cease & Desist Order to cap the basement, pending her conversation with town counsel and with Chris Brison of DES regarding his letter of January 27, 2005. The Selectmen were in favor of that approach. Ms. Levine said that she would try to reach both Bart Mayer and Chris Brison that afternoon and let the Yeltons know what she found out. Ms. Yelton asked Mr. Stanley to notify her when he received complaints about her project, and he agreed to do so.

Ms. Yelton and Ms. Hankin-Birke departed the meeting at about 11:00 AM.

Meeting Minutes: The Board of Selectmen approved the minutes of January 22 and 24, 2005.

Singer/Herrick Cove: Ms. Levine referred to a letter that John Singer, a resident on Herrick Cove Lane, had sent to the Attorney General regarding the Town's revaluation. She said that no response is required, but she wanted the Selectmen to be aware of his concerns.

Wilmot perambulation: The Board of Selectmen reviewed the perambulation report of the Wilmot and New London town boundaries, prepared by Laura Alexander of the New London Conservation Commission and Brian Faughnan of the Wilmot Conservation Commission. Mr. Kaplan said that they did a great job, and the report is wonderful. Chair Clough said that she loved looking at the report. Mr. Lyon said that the work is typical of Laura Alexander, and that she always does a great job. The Selectmen accepted the Wilmot perambulation.

Ms. Levine asked the Board of Selectmen if they would re-authorize the New London Conservation Commission to perambulate the Newbury town line. She explained that this boundary should have been perambulated two year ago, but there have been various problems in communication with Newbury. The Selectmen voted to authorize the Conservation Commission and the Cranes to perform the perambulation with a representative from Newbury.

Town Report dedication: Ms. Levine asked the Board of Selectmen to review the draft dedication page of the Town Report. The Selectmen approved the layout. Mr. Lyon suggested reviewing the Town Administrator and Board of Selectmen reports, which seemed redundant. Ms. Levine will take another look.

Special Town Meeting: Ms. Levine said that she had looked into the possibility of a special town meeting. While it is fairly simple to call a special town meeting for an appropriation issue, half of the registered voters have to attend the meeting in order for it to be valid. The only way around that requirement is to petition the court for emergency approval. She said that there are three options with respect to the Mesa property: 1) wait a year and see if it is still on the market; 2) ask Town Meeting to bond the funds up to a certain amount and hold a public hearing later, when the terms have been decided; or 3) have a special town meeting. Chair Clough said that she likes the two step option of seeking Town Meeting approval to bond and holding a public hearing before a final decision is made. Mr. Kaplan said that he does not like the idea of going forward without a plan for the property, and so far, there have been two plans proposed. Mr. Lyon agrees that it does not follow the way the Selectmen have approached big projects in the past, and he does not want to rush into anything or make voters rush into a decision. Mr. Lyon said that he was surprised at the diversity of opinion on this project; some people say don't buy it unless it is made into a park, others say that it's a great location for the Elkins Post Office. Ms. Levine said that others suggest that New London should not be in the real estate business at all.

Ms. Levine asked Peter Stanley to rejoin the meeting to clarify the zoning regulations affecting the Mesa property. Mr. Stanley said that a property owner who wants to tear down and rebuild the mesa building would need a variance, since the town zoning does not allow structures within 100 feet of the river or 30 feet of the road. The site is very limited and would be difficult to develop.

Trustees of the Trust Funds: Ms. Levine said that no one has signed up to run for the open Trustees of the Trust Funds seat, which was filled by Pat Sheehan for one-year. The Selectmen will brainstorm for people who could be appointed or run a write-in campaign. Ms. Levine said that Pat Sheehan had meticulously maintained the books, and that the person who filled her position should be comfortable with Excel or another spreadsheet program and know how to keep good records.

SIGNATURES:

Building Permits:

- NONE

Sign Permits:

- Counseling Associates, 370 Main Street (Map 84, Lot 4), permit for permanent sign 58" x 20" – Approved

Other Items for Signature:

- Disbursement Voucher for the week of January 31, 2005
- Settlement Agreement with Samuel Rowse for 2002 property tax appeal (signed by Ruth I. Clough on behalf of the Board of Selectmen)
- Certificate of Occupancy for Colby-Sawyer College, Homestead property (Map 85, Lot 33) – Approved 2-0 (Douglas W. Lyon recused).
- Abatement for April Whittaker, 253 Barrett Road (Map 84, Lot 17), due to sketch discrepancies – Approved
- Abatement for James and Carol Messenger, 870 Lakeshore Drive (Map 51, Lot 1) – Denied

There being no further business, the Board of Selectmen voted to adjourn the meeting at 12:25 PM.

Respectfully submitted,

Jessie Levine
Town Administrator