

WEST WINDSOR SELECTBOARD

Draft Minutes

February 29, 2012

Present: Glenn Seward, Tom Kenyon, Bruce Boedtke, Joe Duncan, Hal Pyke, Joe Robotti, Michelle Brown, Jake & Judy Pierce, Cindy Siegler, Rice Yordy, Rich Conway, Tom Urban, Bob & Janet Weidner, Tammy Conley, Rudy Gross, Dennis Lemire, Jerry & Shirley Ouelette, Ralph & Linda Stone, Joanie Spackman, Shelley Seward, Jim Kenyon, Bob French, Stewart & Sara McCracken, Mark Isenberg, Amy Yates, Arthur Steinberg, Win & Rita Johnson, Laura Stillson, Jay Bodnar, Alan & Louise Hudson, Bill Ley, Elvin Kaplan, Lee Monro, Claudia Sacuk, Glenn Drost, Len & Meg Clough, Ava & Ted Emerson, Ashley Pakenham, Don Robisky, Mike Gannon, Chris Nesbitt, Nancy Gaynor, Martha Harrison

- 1) Call to Order/Introduction – Planning Commission Chair Hal Pyke announced the purpose of the meeting and introduced the members of the Planning Commission, the Wastewater Committee and the Selectboard. Hal also introduced A&E engineer Joe Duncan. Hal noted the Australian ballot vote on March 6th and read the two articles related to the sewer acquisition. Hal said there are additional investigations and negotiations that need to occur before the town and the owner of the sewer system can agree on a purchase price but that work cannot be done without an affirmative vote. Hal said this is one of the most important issues facing West Windsor; it affects the sale of the Ski Area, as well as property values. Purchasing the sewer line would also allow the town to eventually connect the village of Brownsville to the system, which would allow for development in the village. Falling property values will result in higher tax rates. Hal asked those present to hold their questions until after Joe Duncan's presentation.
- 2) PowerPoint presentation – Joe introduced Don Robisky from the state of Vermont who is assisting with this project. Joe said A&E was retained by the town to assess the general condition of the system. Joe described the system and said the town is interested in acquiring those portions of the system that are currently owned by Snowdance. Joe said, according to Snowdance, the upper loop of the system is privately owned. Several members of the audience disagreed with that statement. Joe said the condition and ownership of the system will need further investigation. Joe said the intent of the town is to provide a long-term reliable solution. Jake said the upper loop is connected and the town doesn't want to take ownership because they don't want to pay for repairs. Joe said it is not unusual for portions of a municipal system to be privately owned. Glenn said the town is not excluding any portion of the system but there are ownership concerns with the upper loop that need to be resolved. Joe said A&E looked at the system from the Mountain's Edge Condominiums down, including the manholes and the pump stations. Joe said both pump stations are showing their age and will need some improvements but they are functioning. Joe said further evaluations and upgrades to the system will cost between \$100,000 and \$200,000. Joe said A&E recommends "pigging" the line, which would cost between \$50,000 and \$75,000. Rudy asked if the town would do that if they are planning to sell that portion of the line to Windsor. Joe said that would be part of the negotiations with Snowdance and Windsor. Joe said the pump stations need about \$100,000 worth of work. Joe said pumps have about a 20-year life while sewers and force mains have a 50 to 75-year life. Joe said the town's intent is to lower the sewer rates for current users of the system. Joe said the bond vote is for a maximum expenditure of \$500,000 which would include purchase price, improvements, and legal fees. Joe said no bond would be issued if negotiations fail, if the total cost exceeds \$500,000, or if user rates are projected to be higher than current rates. Joe said the state offers a 2%, 20-year loan through the Clean Water State Revolving Fund, which the town would be eligible for if the bond vote passes. The annual payments on a \$500,000 loan would be about \$31,000. Joe said if the articles pass, the town will begin negotiations with Snowdance, begin the legal research and some of the additional investigations, and coordinate funding from the state. Judy asked how the town came to the conclusion that the property owners own the upper loop. Joe said Snowdance provided that information. Jake said if we're not part of the system, do we have to pay for it? Glenn said the town has conflicting views as to who owns that portion of the system; there is an Act 250 permit that states that the upper loop is owned by the users. Jake said if they're taking our money, then we're part of the system. Glenn said if the town is allowed to do some due diligence and sort this out, the

likelihood is that the upper loop property owners will be in a much better position than they are now. Glenn said the Selectboard needs a positive bond vote to have the authority to talk with Snowdance. Jake asked if purchasing the sewer line is going to entice someone to buy the ski area when the quad lift is leaving in the spring for Crotchett Mountain. Jake said he doesn't think we're ever going to have a profitable ski area again. Jake suggested that the town spend \$500,000 or \$1,000,000 and buy the whole mountain. Glenn disclosed that he is a member of the Ascutney Property Owners Association (POA) and that he has his own water and sewer. Glenn said a year or two ago, the Selectboard had no desire to get involved but, with unhappy property owners, a closed ski area, falling property values, and pollution issues in the village, the Selectboard members felt they had to get involved. Glenn said the Selectboard has been in touch with local businesses and various property owner groups and most of them have been positive about the town acquiring the system, but some have not. The Selectboard recently met with the POA board and they were concerned about the town not purchasing the water system along with the sewer. Glenn said because the water system is under the auspices of the Public Service Board and the sewer system is not, the Selectboard felt that their efforts would be better spent dealing with the sewer issues at this point. Glenn said the town is not ruling out an acquisition of the water system in the future. Glenn said the POA was also concerned that the town would spend too much money on the system and that the acquisition would prevent the POA from seeking redress for actions by Snowdance for overcharges, failing to fund the escrow account, etc. Glenn said there are legal means which the POA should use to address those issues. Glenn said the minutes of the Selectboard's January 28th meeting with the POA are on the town's website or they can be mailed upon request. Glenn said Orange Lake, which represents about 100 users, is very supportive and sent a letter to that effect. The Board of the Mts. Edge Condo Association, which represents 72 users, endorses the town's action as well. Windsor House Condo Association, which represents 20 users, also endorses this action, as does Brownsville General Store owner Amy Yates. Glenn also had a letter from a prospective buyer of the Ski Area, who would like to remain anonymous. The letter reads as follows: "As you know, I represent a group of top ski area industry executives. We collectively have a strong interest in acquiring the Ascutney Mountain Resort for the revitalization of the ski area and for the welfare of the local community. Over time, our pursuit to acquire the ski area has come across several hurdles and there are a number of concerns, the sewer line being one of them. The Town of West Windsor taking over the management and operation of the sewer line would alleviate one of our concerns and could very likely lead to our end goal: a new Mt. Ascutney Ski Area." Jake said the people on the upper loop would appreciate the town taking over the system but now we're being excluded and shut off. Jake said the upper loop property owners have proof that they are part of the system and have been paying for it. Glenn said the town has conflicting documentation. Jake said the upper loop is 40 years old and the town doesn't want to pay for repairs. Glenn said the town needs to find out, from a legal perspective, who owns it and, after that, it is not out of the question for the town to acquire it. Jake asked what the property owners would do if the town doesn't acquire the upper loop. Glenn said it would be the same as the situation with Mts. Edge Condos. Jake said, "So we would pay fees but if something goes wrong, we fix it ourselves." Glenn said that's exactly right. Janet Weidner said when she bought her property, she was told that the utilities were provided to allow for small lots and that the infrastructure came with the property. Janet said a previous Resort owner put in water meters which have never been used. Janet said everyone wants the ski area to reopen and the POA and the town need to work together. Janet said she thinks the town should own the water and the sewer and the users should have meters and be charged for what they use. Glenn said the town wants to help and it will have to be a collaborative effort but we need voter approval to start talking seriously about acquiring the system. Bob Weidner said if the upper loop is left out, nobody is going to want to buy any of those houses so the property values are going to dive and, if that happens, all property values in West Windsor are going to dive. Glenn said the only reason the upper loop is not included is because there is an ownership issue that needs to be addressed. Bob said if it is unclear which portions of the system the town will acquire, voters can't approve it because they don't know what they're voting on. Tom Urban suggested resolving the legal issues first and then trying to acquire it. Glenn asked Tom if he is suggesting that the town spend thousands of dollars on legal fees. Tom said you're going to spend it anyway so are you going to spend it after you have your foot in the septic tank or before. Rudy said if the voters approve a \$500,000 bond issue, and the town finds that it's not feasible to move forward, who will

be responsible for paying back the \$500,000. Glenn said if it falls through, there will be no money expended. Dennis Lemire asked about preliminary talks with Windsor. Dennis also asked if the current fee structure will cover the annual loan payment to the state. Glenn said there have been discussions with Windsor's Town Manager and there is interest in acquiring their section of the line. Glenn said the bond payment will be about \$111 per user per year. Glenn said the users will also pay treatment charges of \$483 per year and operation and maintenance costs of approximately \$300 per year, for a total of about \$900 per year, which is \$200 less than the users are paying now. Dennis said there are no tax dollars from the general population then. Glenn said that is correct but the loan is a liability of the town, not the users. Rudy said it could fall on the taxpayers at some point in time. Glenn said if none of the users pay their fees, the town would have to come up with the money but if the users are receiving services and not paying their bills, Ralph will let them know that there is going to be a tax sale. Joe said a purchase and sales agreement would outline all the things that need to be looked at and verified. If the town can't even get to that point, then the cost exposure is minimal but the town taxpayers would have to cover that. Someone noted that most of the voters are not on the system and asked why they should vote to add another \$500,000 in debt to the users. Glenn said the sewer issue has a real impact on the marketability of the ski area and everyone wants to get the ski area up and running. Joe said assuming that no major infrastructure improvements are needed, user rates can be reduced to about \$900 so the incentives for users of the system are lower rates and a reliable approachable entity running the system. There was a question about the value of the system given the depreciation. Joe said the system does have value but it's not worth \$500,000 because there are improvements that have to be made. Joe suggested an acquisition value between \$300,000 and \$400,000. Joe said two pump stations and 4.6 miles of force main are worth something. Glenn said if we can sell a portion of the line to Windsor, that would provide a chunk of money to lower the debt service costs. Tom Urban asked who is going to pay to hook up the village. Glenn said we haven't got that far and he's not going to speculate about what a future Selectboard might do. Glenn said acquiring the sewer line would give the Selectboard confidence that they have the means to transport waste to Windsor without having to deal with a private entity. Stewart asked when the vote will come up on town meeting day. Glenn said it's an Australian ballot so voters can vote from 10:00 AM until 7:00 PM. Stewart said the discussion at town meeting would most likely be during the day and he doesn't think it's fair to schedule it at a time when voter turnout will be low. Tom Kenyon said the issue cannot be discussed at Town Meeting. Chris said people can also vote by absentee ballot. Bruce said informational meetings are scheduled for tonight and for Saturday morning. Win asked how Tom Kenyon and Bruce Boedtger feel about this issue. Tom said the reason Mile Long Field was not voted on by Australian ballot is because it was not a bond vote. Bruce said a year ago he didn't want to touch this issue with a ten foot pole but we need to take charge of our economic destiny, this extremely critical portion of our economic engine, and the future of our town. If we let this be decided by the courts, we have no control over the outcome and that's not a good situation. Bruce asked the users who they would rather trust – the town or a third party determined by the courts. Someone asked why the town wants to take this on. Bruce said it's one of the most important issues for the viability of the town, the ski area, and local real estate. Someone questioned whether resolving the sewer issue would result in the sale of the ski area. Bruce said with the future of the sewer unknown, it's an impediment to the sale of the ski area and is preventing property values from going up. Glenn said if the deal goes through, you will be dealing with an entity that is far more approachable than the current owner. Joe said if the town acquires the system, the question of long-term reliability will have been addressed at a cost that is lower than current costs and the system will be operated correctly. Tom Kenyon asked why the POA hasn't asked Snowdance if they own the upper loop or not. Referencing *It's a Wonderful Life*, Tom asked if we want to be Pottersville or Bedford Falls. Tom asked if we want Snowdance to decide or if we want the town to control our future. Ashley asked if this opens the town to other interest groups wanting the town to take over their systems. Ashley said the ski area has never made much money and this is another time when we are asked to take responsibility for an entity that is not able to sustain itself. Glenn said the town was not approached by the utility owner; we approached them. Claudia asked who Snowdance is. Glenn said Snowdance owns the sewer system and Dan Purjes is the secured lender who instituted the foreclosure action. Claudia asked if Glenn has talked to Mr. Purjes face to face. Glenn said he talks to him on a regular basis. Claudia said she heard that the price for the entire ski area was \$3 million so, if

the quad lift is being sold for \$3 million, the ski area should be free now. If he's selling off the property in bits and pieces, Claudia said, why aren't we looking to acquire the whole thing. Glenn said he doesn't know how much the quad sold for but he doesn't think it sold for \$3 million. Glenn added that he doesn't know what the asking price is for the whole property. Claudia asked what the price was last fall when the deal fell through. Glenn said it is his understanding that it was in the \$4 million range. Dennis asked if the potential buyer of the ski area is credible and if the sewer is the only stumbling block. Glenn said he doesn't know the details, he only knows that the potential buyer is concerned about the ownership of the utility. Jay Bodnar asked about the current user fees. Rudy said some are \$1100 and some are twice that, depending on the number of bedrooms and bathrooms in the home. Jay asked Joe to rate the system on a scale of 1 to 10. Joe said he would rate it as a 5; the two pump stations on Route 44 are in good shape but the two pump stations at the resort need a lot of work. Joe said if you put \$100,000 worth of work into it, that would bring it up to an 8. Jay asked what is going to happen if we don't buy the system. Glenn said there will continue to be a contentious relationship between the users and the owner and the situation will continue to influence the sale of the resort, property values, and employment opportunities. Jay asked what the owners of the hotel say. Glenn said they say, "Please buy it." Jay asked about the hotel's user fees. Glenn said they went up dramatically. Jay asked who the users are paying. Someone said they are sending their payments to Utah. Glenn said Orange Lake has a difficult relationship with the current owner and, if the town took over the system, Orange Lake would be willing to pay their user fees. Bill Ley said if the users are paying their fees to Snowdance, why is there a question about who owns the upper loop. Glenn said there is an Act 250 permit, dated 1996, that clearly states that the upper loop is owned by the users of that section. Joe said it's common with municipalities that the infrastructure is owned by a private entity however, in order to discharge wastewater, they pay Snowdance a user fee. What that means, Joe said, is that Snowdance will take care of everything from the point at which the upper loop comes in, near Mountain's Edge, all the way to Windsor and the user fee covers that. If a line breaks within the upper loop, Snowdance says, "Fix it yourself." Mike Gannon said his lot was sold to him with Mt. Ascutney water and sewer. Mike said he has paid his maintenance and user fees for 15 years and that money was supposed to go into escrow. Mike said his preventive maintenance schedule includes pumping the manhole twice a year. Mike said Snowdance has been taking his money and that's a contract; Snowdance owns that system. Regarding paragraph B of the 1986 Act 250 permit, Mike said the POA has not gotten Matt Birmingham's explanation as to why the 1986 permit negated the original permit, which says that the sewer line is a not-for-profit entity. Mike said the voters are going to be voting on how he spends his money; he's not telling the voters how to spend their money and he doesn't want them to tell him how to spend his. Mike said he is all for the town's proposal if it includes the upper loop and the water system. Mike said he doesn't agree with paying a maintenance fee for 15 years and not getting any maintenance. Mike asked who he should go after for 15 years of maintenance. Mike asked if he will have to sue the town if the town buys the system. Glenn agreed that there are issues that have not been addressed appropriately and if the property owners want to "go after" someone, they should go after Snowdance. Glenn said the town cannot offer restitution for the past wrongs of Snowdance. Mike asked what happens if it is determined that Snowdance owns the upper loop. Glenn said, in that case, the town would consider taking it as part of the package. Mike asked if the Selectboard would use the money from the sale to Windsor to make any needed upgrades. Mike also asked if the Selectboard anticipates a decision being made about who owns the upper loop before the town makes the purchase. To the second question, Glenn answered yes. Glenn said the Selectboard hopes that the POA will be involved all along the way. Mike said the town is not the enemy; he would rather deal with the town than Snowdance. Chris said if it is determined, legally, that Snowdance owns the upper loop, the town will attempt to buy it; is that correct? Glenn said yes. Someone asked whether the \$500,000 cap would increase if the upper loop were included. Glenn said no. Joe said the town cannot exceed \$500,000 without authorization. Bruce said the Selectboard has already put a lot of effort into this issue and needs assurance that the voters want them to continue because the amount of additional effort is going to be mind-boggling. Hal said the Windsor-Ascutney Sewage Treatment Enterprise (WASTE) has been charged with monitoring the sewer transactions between Snowdance and the users to ensure that maintenance was kept up and that there was a \$100,000 reserve for maintenance. Hal said, as a member of the WASTE board for 14 years, his opinion is that WASTE did not have the ability to monitor the

system and keep it operating the way it should have been operating. Rudy Gross asked Hal how he can stand up and say that he didn't do his job and ask the property owners to spend \$500,000. Rudy said that is a serious situation. Hal agreed. Joe was asked what he would expect regarding the condition of the upper loop, which A&E has not evaluated. Glenn said it's a clay line but some of it was updated in the 1980s. Joe said clay lines don't have the longevity of PVC pipe so he would be concerned about separating joints and cracks. Joe said it may be worthwhile to TV the upper loop line to assess its condition at a cost of approximately \$15,000. Joe said with sewer lines, unless they're blocked, they continue to function even if they have holes in them that are allowing infiltration and seepage. Mike asked if the Selectboard would consider taking over the water system as well. Glenn said the Selectboard has not ruled out the acquisition of the water system but it's complicated by the fact that the electric lines for the pumps that operate the water system are commingled with the meters that operate the rest of the resort and some of the pumps are located within Snowdance property so the pumps would have to be removed and electric lines would have to be rerouted. Joe said the bond article is strictly for the sewer line so, in order to acquire the water system, the town would need an additional bond authorization. Tom said, with regard to WASTE, they were only allowed to step in if it was clearly shown that the sewer line was not being properly operated. Meg Clough said the town is going to spend money to investigate the system and then, if the deal falls through, the town has still spent money. Glenn said the purchase price would cover the cost of the investigation, legal fees, etc. Meg said if it falls through, the town has still spent money. Bruce said what will have been spent is the Selectboard's time. Meg said you have to pay someone to TV the lines. Bruce said that wouldn't happen until a purchase and sales agreement is in place. Joe said the purchase and sales agreement usually spells out what due diligence needs to be done and the effect on the purchase price if deficiencies are found. Meg wanted to know who pays for any money spent. Joe said ultimately the town pays for it. Chris said if the vote passes and the negotiations fail, will the town have spent any money on soft costs, such as consultants and lawyers, during the negotiations. Mike said he thinks that if the deal goes through, the users pay for those costs and if it doesn't go through, the town pays for them. Glenn said the town has already spent about \$5,000 for A&E's initial evaluation but there will be minimal costs before a deal is struck. Bob Weidner compared the purchase of the sewer line to the purchase of a house and said that the seller is not obligated to lower his asking price if the inspection reveals deficiencies. In that case, Bob said, the town would be out the \$75,000 or whatever it costs to do the due diligence. Stewart asked why we should subsidize an operation that is partially defunct and in total disarray; why not wait until the maintenance is done and then acquire the system. Glenn said, as Joe indicated, the system is in reasonable condition and the Selectboard feels that it is in the best interest of the town to acquire it. Len Clough said he spoke with Windsor's Town Manager yesterday and he was pretty noncommittal. According to Len, Tom Marsh would like a municipality to own the system. Len added that Windsor wants to recoup the \$100,000 that they are owed. Glenn said when he talked to Tom Marsh, Tom expressed interest in Windsor acquiring part of the system as well as recouping the treatment charges that are owed to them. Janet said she would rather deal with the town than Snowdance. Jay asked how much Snowdance is taking in every year. Glenn said he believes they are taking in around \$334,000 and treatment charges are around \$134,000. Jay said it sounds like the owner is making a nice amount of money by not doing the maintenance and asked why the owner would be in a rush to sell. Tom said the WASTE fund is supposed to have a balance of \$100,000 and the seller would have to make that fund whole. Alan Hudson said he is concerned that some people are going to show up at town meeting expecting discussion. Alan suggested getting the word out that the meeting on Saturday morning is the last chance for discussion before town meeting. Glenn said we are doing everything we can to make it known that there will be no discussion on March 6th. Bruce said the town will try to clarify that.

- 3) Adjourn – The meeting adjourned by unanimous consent at 9:00 PM.

Respectfully submitted,

Martha Harrison