

Submitted by: TOWN OF PHIPPSBURG Approved by Selectmen:  
SELECTMEN'S MEETING  
John M. Young DRAFT MINUTES  
Administrator December 5, 2007

*Meeting convened at 6:03 p.m. with Selectmen Perkins, Pye, and Douglass in attendance.*

**I. Review and Sign:**

1. Accounts payable and payroll warrants.
  2. Meeting Minutes
- All items reviewed and signed.**

**II. Meetings and Hearings:**

1. Meet with the Board of Directors of the McLanathan-Phippsburg Fire and Rescue Fund, Inc. to discuss scheduling a Special Town Meeting for the acceptance of a donation from the McLanathan estate.

**In attendance were Roger Therriault (McLanathan-Phippsburg Fire and Rescue Fund, Inc. Attorney), Rick Hornbeck (Town Attorney), Roy Clark (McLanathan-Phippsburg Fire and Rescue Fund, Inc.), Fire Chief Totman, Marie Varian (Citizen) and Josh Bate (Citizen).**

**Selectman discussed and voted (3-0) to set the Special Town Meeting for 7:30 p.m. on January 9<sup>th</sup> at the School (following the RSU#1 Candidates Night).**

**Selectman Perkins made a motion to enter Executive Session pursuant to 1 M.R.S.A. 405(6)(E) for a consultation with the Town's Attorney, Richard Hornbeck, concerning their rights and responsibilities for the McLanathan bequest. Mike Young, Town Administrator, was authorized to remain.**

**The motion was seconded and opened for discussion. Josh Bate asked what legal grounds the Selectmen had to discuss the issue in Executive Session and asked, under the FOIA, how discussing this issue in public session places the Town at a substantial disadvantage. He also questioned previous Executive Sessions on this matter.**

**Attorney Hornbeck explained that to fully disclose the content would do the damage they are trying to avoid. The discussion would surround the legal issues concerning acceptance of the gift that the Selectmen need to be advised of. He reiterated that he recommended the Executive Session to discuss these legal issues and the rights and responsibilities of the Selectmen. He added that this was also the case in past Executive Sessions.**

**Mr. Bate continued to argue with the rationale and the Selectmen voted (3-0) to enter Executive Session at 6:10. Mr. Bate refused to leave for the session and Police Chief Skroski, who was off duty, was asked to come to Town Hall and escort Mr. Bate from the meeting. At 6:25, once Mr. Bate was removed, the Selectmen actually went into Executive Session.**

Selectmen voted (3-0) to come out of Executive Session at 6:55.

Selectman Douglass stated that everyone had already agreed that the bequest would have to be accepted by the voters at a Special Town Meeting which was scheduled for January 9<sup>th</sup>. The amount on the warrant article could not be specific because the bequest is for the "residual and remainder of the estate" and an exact amount will not be known until it is actually disbursed. Roy Clark replied that it would be in excess of \$800,000. It was decided to put an estimated amount of \$800,000 in parenthesis below the warrant article for informational purposes.

Selectman Douglass brought up the question of disbursement of the funds and the Selectmen's belief that there was a condition that the gift that it be used for Fire and Rescue purposes. Attorney Therriault replied that the bequest identifies the donor, but does not set any conditions to limit the gift. Selectman Douglass stated that if the bequest was going to the Town and the Selectmen were the trustees, they would have to use it for Fire and Rescue purposes. He added that if you give a donation to a charity it is implied that it would be used for the charitable purpose.

Mr. Clark stated that if the disbursement of funds were conditional it would affect some of the things they want to do for the town and conflict with their mission statement. Some samples he gave of indirect use would be college scholarships, providing matching grants to upgrade town roads that emergency vehicles have trouble accessing and grants to the Library and other non-profit entities in Town. They have given consideration of changing their mission statement if needed for more direct uses such as scholarships just for Fire and Rescue personnel and their families. Selectman Douglass recommended that the Corporation provide a memo that outlines the indirect uses so that everyone can agree on them.

Attorney Hornbeck opined that the bequest would have the same conditions as it would if it went to the Town and the Selectmen were trustees, they would have to use it for Fire and Rescue purposes. He felt that the Corporation Directors were under the same criteria. He added that he and Roger Therriault had contacted an independent counsel who had recommended that Town Meeting be the acceptance authority and that the bequest be used for the purpose which intended (Fire and Rescue).

Attorney Therriault had to depart for another meeting.

Selectman Perkins asked if the Corporation had by-laws. Mr. Clark replied that the Corporation has approved their by-laws but they are still in the amendment process. Between the by-laws and the mission statement it is very clear what the bequest will be used for – some of which the Selectmen agree on and evidently some which they do not. The public can see clearly what their intentions are.

Selectman Douglass reiterated that the decision on the wording of the warrant article would be solely up to the Selectmen. Mr. Clark asked that he be provided with the wording as soon as possible so that he can determine if there would be any restrictions or conditions which would jeopardize the Corporations ability to obtain their 501.c (3) status.

Selectman Douglass requested that the Corporation send a memo to the Town Attorney outlining some examples of the Corporations conditions on using the funds. Mr. Clark stated that it is outlined in their draft of the "Distribution Policies". He added that the policy discusses the use of the funds for indirect uses such as scholarships and grants as well as direct uses such as Fire and Rescue Department training and capital purchases. This would be the same information put into a memo. Selectman Pye added that he had a copy which he would make available to the other Selectmen.

Fire Chief Totman stated that they intend to put aside an amount each year into the Fire and Rescue Capital account to offset monies normally set aside at town meeting. He added that they have been working on this for two years.

Selectman Douglass stated that the Selectmen are acting on their interpretation and counsel advice on how to word the warrant article so that it is legal and proper.

Andy Andrews stated that what is hanging over everyone's head is the poorly written will of Mrs. Mclanathan – "What did she intend?" However based on a letter from Elena Vandervoort (which Selectman Pye has a copy of) and his own interpretation he believes that her intention was that a group independent of the Town be stewards of the bequest to allow for a broad based Phippsburg impact.

Josh Bate asked what the exact language of the bequest was. In response Roy Clark read the will which stated "Phippsburg Fire and Rescue Department" in bold caps.

Attorney Hornbeck stated that that there has been a name change of the departments since the will was written. At a Town meeting the citizens voted to separate the departments.

Mr. Bate asked what happens to donations now. Selectmen Douglass replied that it depends on who the donation is made out to.

Mr. Bate asked if the Association was a 501.c (3) to which Chief Totman and Selectman Lawrence answered yes. Chief Totman continued to explain that education of the children of Phippsburg was a priority with Jane Mclanathan, which was why the emphasis was being placed on scholarships. He added that you really needed to know her in order to get a sense of what she wanted.

Attorney Hornbeck explained that from the beginning there has been a sense of cooperation between the groups. He added that the personal representative for the estate is holding the money and it can't be disbursed unless certain things happen. Many people in town have information of what Jane McLanathan liked, but the fund will be administered long after everyone in this room is gone. It is important we be specific on the use of the funds so that we can be sure that they continue to be used for the purposes established through this process.

Chief Totman stated that the committee has down a heck of a job.

Mr. Bate asked if Mr. Clark could read their mission statement. Mr. Clark responded that he hadn't come prepared to do that – he had

understood that we were going to discuss the warrant article.

Selectman Douglass stated that a lot of the questions asked tonight will probably be asked at the Town Meeting and don't need to be discussed now. However, everyone needs to be prepared to answer them at the Town meeting. Right now we are working on the warrant article which has to be done within the next two weeks. Selectman Pye responded that it would be ready for review and signature at the next meeting. Selectman Douglass added that after the Corporation gives the Selectmen the recommended wording it will be forwarded to Attorney Hornbeck for his review.

Chief Totman stated that the Corporation has been working on this for a long time and they have got the investments all set up – no one is hiding anything.

Mr. Clark had retrieved his copy of the mission statement and stated that he wasn't going to read the whole thing and provided a copy to Selectman Pye who offered to make a copy for Mr. Bate.

Selectman Douglass stated that there was a need for a little more exchange and he was not ready to approve an article right now. Chief Totman asked if that would delay the Special Town Meeting to which Selectman Douglass replied that it would not because the date has already been set. Administrator Young reviewed the scheduling events for the night of Town Meeting.

Mr. Bate asked if the wording of the warrant article would be to accept the bequest and pass it on to the Corporation. Selectman Douglass responded that it would depend on input over the next week.

Mr. Bate asked if the Selectman would consider a stipulation in the article requiring that the Corporation has approved 501.c (3) status prior to the transfer of funds. Mr. Clark replied that they cannot complete the process until they actually have funds or projected funds. They have completed all the paperwork and he has no doubt that the non-profit status will be approved unless the warrant article is written so restrictive that it causes a contradiction with the non-profit criteria. He added that the establishment date of the 501 c. (3) would be the application date.

Selectman Douglass explained that the article would have to pass town meeting vote before the Probate Court can release funds. He added that the warrant article must satisfy the probate court and all parties involved.

Marie Varian (Planning Board Chair) asked if there was going to be a public hearing. Administrator Young replied that he had not planned one because it is not required and the issue would be discussed on the floor of Town Meeting. Selectman Pye agreed that since there was only one warrant article there would be plenty of time to discuss it.

Ms. Varian asked if she could put a couple of article on for the Planning Board. They would be minor ordinance amendments that they were hoping to have considered if there was a Special Town Meeting. Administrator Young replied that there would have to be a public hearing beforehand because they are Land Use Ordinance changes.

Mr. Clark was not in favor of adding another article –he thought it

might complicate matters.

Selectman Douglass stated that the Selectmen would take her request under advisement if and when the Planning Board articles are received.

Mr. Bate asked what would happen to the money if the Town accepts it and don't want to transfer it to the Corporation – would it go to the Fire and Rescue Department. Selectman Pye replied that was the intent. Mr. Bate thanked him for the reply. Attorney Hornbeck clarified this answer by adding that it would not be guaranteed that the probate court would release the funds to the to the Town's Department.

Mr. Bate asked what the difference would be between having the bequest go to the Fire and Rescue Department or the Corporation. He further stated that in his opinion the Fire Department, Roads and Libraries have never wanted for anything. Mr. Clark replied that the funds would be used for equipment and training. Selectman Douglass added that what equipment the Fire and Rescue has is a moot point because the outcome will be based on the intent of Mrs. Mclanathan's will.

Mr. Bate stated that he thought that the Fire Department was volunteer. He considered Marie Varian the A-1 volunteer in Town. He asked if the Planning Board received a donation of \$800,000 if the Town would be setting up an organization and giving out scholarships. Chief Totman replied that it is up to the people of the Town. Mr. Bate made the comment "you're pissing on her grave." Selectman Perkins ended the discussion on this topic due to the inappropriate comments made by Mr. Bate and his practice of interrupting the discussions of the Selectmen.

### **III. Correspondence**

1. E-mail on single stream recycling

Selectman Douglass stated that a reporter named Adrian from the Coastal Journal had emailed the Town requesting information on single stream recycling for an article. He had sent her some comments in addition to the ones the Administrator had. He also recommended that she contact the Town of Brunswick for information.

### **IV. Selectmen/Administrator Comments and Announcements**

1. Administrator Young: Announced that RSU School Board nomination papers were still available through the School Union.
2. Selectman Douglass: Announced that flu shots were still available through Sue Jones.

### **V. Public Forum**

1. Donations from Josh Bate

Josh Bate asked the Selectmen to accept donations (\$26.00 each) to offset taxes, for the Police Account and for the Fire and Rescue Account. Selectmen voted (3-0) to accept these donations.

### **VI. Adjournment - Selectmen voted (3-0) to adjourn at 7:35 p.m.**