Unapproved
Candia's Selectmen's Public Meeting Minutes
January 23rd, 2017

Attendance: Chairman Boyd Chivers, Vice-Chair Susan Young, Selectman Russ Dann, Selectman Mark Laliberte, and Administrative Assistant Andria Hansen. **Absent:** Selectman Komisarek.

7:00 p.m. Chairman Chivers called the Public Meeting to order and immediately followed with the Pledge of Allegiance.

Chairman Chivers to discuss the Danais BTLA settlement with the Board. Chairman Chivers explained the Danais BTLA settlement. When they did the revaluation of the Town of Candia in 2014 CNP valued the property at Exit 3 at $1,207,000. Mr. Danais protested that assessment and took the case to the Bureau of Tax and Land Appeal (BTLA) where it is scheduled for trial of March of this year. This agency requires litigates to attempt to negotiate a settlement before trial. So Mr. Hatfield (of CNP) came back to this Board with a proposed settlement of $1,050,000. Selectman Komisarek and he met with the representative from Cummerford Neider Perkins and they recommended that they settle this for $1,200,000 based on the increasing value of the property. They have to remember they are limited to what the property was worth in 2014. You can't take the equalization ratio into account from 2014 to 2017 and work it back up to the fair market value as of today. You have to address what the fair market value would have been in 2014. Selectman Komisarek and he presented their argument to Mr. Hatfield and he said they would recommend the settlement of $1,200,000. He took it back to Romeo Danais and Mr. Danais accepted that. What he needs from this Board is authorization to sign the document. It will go back to the BTLA indicating that Candia has come to an agreement as to the value of this property and were withdrawing our litigation. Selectman Dann clarified this is for 2014. There was some discussion about an abatement. Chairman Chivers said there is a reserve for this and it's called an overlay. This file is available to the Select Board if they would like to take a look at it. His recommendation is they settle for $1,200,000. Selectman Young said they are talking about a difference of $7,000 versus litigation. Selectman Laliberte moved to authorize Chairman Chivers to sign the BTLA settlement paperwork. Seconded by Selectman Young. All were in favor. Motion carried. Chairman Chivers said he would sign the form once CNP has completed the paperwork. He noted they have to withdraw the litigation before March 14th.

The Heritage Commission to discuss with the Selectmen town-wide roadside cleanup. Selectman Dann read a statement from the Heritage Committee "I would appreciate if you would speak for me tonight as I'm unable to attend because of a previously scheduled meeting. The Heritage Commission appreciated the support and involvement of the Selectmen last year that resulted in an effective Town wide clean up. The Commission had organized this project for several years but it had become less effective and needs a boost. With your help we are hoping for more Town wide participation this year. The suggestions have been made to put blue roadside trash bags in each Town Report package delivered by the Boy Scouts with an explanation of the project encouraging wider participation. The Board should evaluate the effectiveness of having an extra dumpster available for Townspeople unrestricted by Recycling Center hours. The Commission would appreciate the suggestions from the Board. Thank you for your consideration, Diane Philbrick". Selectman Dann said the Board talked about this last year

and they wanted to get started early to get people aware of it. The more people they have the easier it is for everybody. They could get groups to help and he thought they could get the Boy Scouts. He mentioned school children participated. He wondered if they could get bags for each household. He would like to suggest two bags, so they could get glass, bottles, and cans in one bag and trash in the other. If it goes to the Recycling Center they can separate the glass and the cans. Everything that goes into the green monster (dumpster) costs us $68 a ton to move it. So anything they keep out of it they make money on. He would like to see in the minutes that they are recycling in Town. He would like to be the cleanest town in the state. When you go into Hooksett you see lots of trash. Let's keep Candia proud of what they are. Moving forward he thought this should be on the website and have people call and say they will pick up a certain road. He would like to see everyone clean up in front of their own home. Selectman Laliberte said one of the things that is difficult is if you are giving a bag or two bags you have to deal with the Boy Scouts and they have to deliver. Second of all if you have a household with six people two bags is nothing. You don't distribute it evenly. He thought the Heritage Commission could set up a table at the Elections in March. This might be a good way to promote what they are trying to do. He still thought a letter in the Boy Scout packet might be good, but he thought they would get a more captive and receptive audience at the Town Election in March. Selectman Dann agreed and thought the Deliberative Session as well. Anytime we can be in front of the Townspeople and mentioning it as often as they can. He was at the Recycling Center the other day talking to people about the Town clean up. Just getting the word out to more and more people and he thought the Recycling/Energy Committee was going to be involved with this also. It's just getting more and more people involved and getting it in the minutes for the people that read the minutes. He didn't want to have just one day, he would like a period of time. Chairman Chivers mentioned that last year Waste Management donated a dumpster and they didn't charge us to dispose of it. He didn't think they should force people to carry two bags and sort it as they pick it up. If Waste Management is willing to haul all of that stuff off, it is a real inconvenience for people to carry two bags around to pick it up and sort it. It's good enough that they are picking it up. He thought they should cover the cost of disposing it. Selectman Dann agreed and they can't please everybody, but they are a mandatory recycling town. If they get people thinking that it is more positive they'll want to do it. He mentioned that his wife takes the Shaw's bags, fills them up and leaves them on the side of the road and he'll go and pick them up. There are different ways of doing this. Right now they just need to let people know they want to clean their Town and they want a clean Town. Chairman Chivers asked if they were going to get something in the Boy Scout packet indicating this. Selectman Young agreed with Selectman Dann as far as enclosing the bags, because there are some people that vote absentee. They are civic minded but they might not attend a meeting. You might want to enclose one and it might be something to talk with the Boy Scouts about. It is a way to a least get one delivered to every residence. She noted that the bags are free. Selectman Dann said they are free but there is a limitation and he would like to find out how they can work around that. Selectman Laliberte said one is good because it is like a promotional item. He thought it was kind of cool and as for the website it is easy enough. He asked if this was up to the Heritage Commission. This is their initiative. He is more than happy that this Board is willing to help them out and be a part of it, but in the end this is the Heritage Commissions initiative. Selectman Dann said this is a Town initiative. They have spearheaded it in the past. They are using this as a sounding board that this is going to be done. Chairman Chivers said last year they had the bags here and at the library. Selectman Young thought they should have them at several places and insert one in the Town Report packet. She also though it they can make money as far as separating she didn't think that was a horrible thing. Maybe they send everyone one bag and maybe they can make

separating optional. Selectman Dann said the literature they put with it will talk about recycling. Chairman Chivers asked Selectman Dann if they should get in touch with the Heritage Commission and tell them they are in support of this. Selectman Dann said he would let them know. Chairman Chivers said this will go out with the Boy Scout packet with one bag. Selectman Dann said the Heritage Commission suggested one bag. He appreciated the Boards positive thoughts.

Realtor Paul McCoy to discuss Aunt Mary Brook Road with the Board. Chairman Chivers stated that he sat on the Zoning Board when this case was considered and to give Mr. McCoy a fair hearing tonight it would be appropriate to recuse himself and join the audience. He will direct any questions or comments he may have to this Board as an individual or a member of the Zoning Board. He asked Vice Chair Young to chair this part of the meeting. Realtor Paul McCoy, Attorney Tom Gage and owner of the property Richard Matthews were present. Mr. McCoy said the Board is probably aware that Aunt Mary Brook Road is a discontinued road and the actual road is in pretty good shape up through to where Mr. Matthews land is. There are a number of things that are happening. First they are asking for a building permit and the Selectmen are the only people that have the jurisdiction on that. This is his understanding. He explained that Aunt Mary Brook is accepted by the state for entrance. They've allowed people to build and use it as a road and there are two houses on there now and there is a gravel pit that has been used for the road. The Leplant's have an agreement through court order to maintain the road up to a certain distance. Mr. Matthews is the third property up, it is a 30 acre parcel of land and they also have the right of encroachment. He didn't know if the Board realized it but they put a power line through there for the whole road. They have allowed us to use an encroachment to go to the land that we have. Right now the road is in pretty decent shape. He presented the Board with a letter from the Police Chief. The Fire Chief has been out to see the road. The unique thing about this property was that there was a building permit issued to Mr. Matthews to build on the property in 1987. He wanted to make sure before he bought the land that he could get a building permit. The person he had bought it from already had a building permit. He also presented the Board with documentation which said a previous Board of Selectmen told Mr. Matthews he could get a building permit on this property at anytime. There was another building permit from the person Mr. Matthews bought the property from before and there is a letter from the Town Attorney saying he could get a building permit for this property at any time. There is an approved septic design on the property at the present time. They already know the Selectmen have the jurisdiction of the road. Selectman Dann asked if it was a private road. Selectman Laliberte said it is a discontinued road. Mr. McCoy said it is a discontinued road but where it is confusing it is a discontinued road to the center of the road. In 1903 they reclassified the roads and they called it discontinued – gates and bars so the animals couldn't go through. Then they started classifying and they came up with Class 6, 5, 4, 3, and 2. Discontinued roads go under Class 6. If you go gates and bars it goes to the center of the lane the only thing is you have a right to put a gate up. This is the only difference because they weren't doing that before 1903. There is a letter explaining this that Atty. Gage filled out. We could call it a private road but honestly they don't care what they call it. Private road, Class 6 Road or whatever especially with this property he's not sure about anything else. The only people that have guidance here are the Selectmen whether they can do it on a private road, easement road, but whatever we have the right to go to that road and they have the right to maintain it. There was a log cabin on this property many, many years ago and people used it up until the 1980's. There was a structure there before we even had zoning and usually you can rebuild on those. We are asking for the right to build on a 30 acre lot and we know we have to sign the release of liability. You don't

have to worry about the fire or police if they can't get out there you are not responsible for it which is through the RSA's. Selectman Young clarified you received a building permit that expired and it was good for one year in 1987. Another one was given to a previous owner and that expired. She noted they are missing a Board member and he is due back in February. She asked why they were refused from the Zoning Board. Mr. McCoy explained it was supposed to go to the Selectmen not to the Zoning Board. They went to the wrong Board. Selectman Laliberte thought they should here from a member of the Zoning Board to discuss how this process went through. ZBA member Boyd Chivers explained Mr. McCoy doesn't dispute the fact that this is a discontinued road. It was discontinued by town vote in 1872. RSA 674:41 prohibits the town from issuing a building permit on a discontinued road. When this matter was heard by the Zoning Board we were obligated under 16:07 of the Candia Zoning Ordinance to recognize the state law in this case. He read from the Zoning Ordinance Section 16:07: Conflict with Other Laws "Whenever the requirements of this Ordinance conflict with the requirements of any other lawfully adopted rules, regulations, or ordinance, the most restrictive or higher standards shall apply." Then they referred to RSA 674:41 which prohibit the issuance of a building permit on a closed road, so they had to dismiss the case. Mr. McCoy is sighting an RSA which gives the Selectmen the authority to lay out a road. No Board has the authority to convert a closed to road to a Class 6 road which Mr. McCoy has erroneously indicated. He has a legal opinion from Atty. Mayer that says "He is unaware of any statute that reclassifies discontinued roads as Class 6 highways." The only remedy to Mr. McCoy is to have the Selectmen lay out a road, a Class 5 road and assess damages taken by eminent domain for his benefit so he can build his house back there. Or claim as a private road which they have no authority to do. There is just about nothing that can be done here, other than the Board of Selectmen lay out a Class 5 road for the benefit of this 30 acre parcel. Selectman Dann asked if there were other homes on that road. Mr. McCoy said there were two homes on the road. He felt they misread the RSA's because it is specifically in there that you can do a private road, discontinued roads, and Class 6 roads. A discontinued road is a Class 6 road. When you look back at the RSA's and you look at the opinion he submitted. The Board has the authority, but they can't take the right of way away from the property owner. They have the right to maintain the right of way. He could have a right of way running through the middle of town and they can't stop him from using it. This is just the law. They can't tell someone that he can't use the road. He has been using the road to access his property. There are 15 to 20 houses you have just recently within the last 10 or 12 years you have given Class 6 roads or closed roads. Baker Road for example is a closed road. It was closed about the same time as this other one. There are houses in there that are in almost 7/10th of a mile that are on a private road. The Board has a right to give ea building permit with a limited liability which is in the RSA's and that is for Class 6 roads and private roads. ZBA member Boyd Chivers wanted to clarify one point that Mr. McCoy seems to be confused over. He read from A Hard Road To Travel "RSA 231:45 allows any Class IV, V, or VI highway to be discontinued as an open highway and made subject to gates and bars, by the vote of the town. The ability to do this became effective in 1903, even before the classification system used today became effective in 1945. Today, the word "discontinued" in this context is really a misnomer. When a highway is discontinued and made subject to gates and bars, the only thing that is actually "discontinued" is the town's obligation to maintain the highway. RSA 231:50. It is otherwise a Class VI highway subject to public use." So there is a big difference between what he is saying a closed road is. This road is closed and doesn't exist for all intensive purposes after 1872. It can't be considered a Class 6 or a Class 5 road and because it is a Class 6 road the town lacks the authority to issue a building permit. Selectman Young asked if they heard of a case from 2011 Russell Forest Products vs. Town of Henniker. Mr. McCoy said he was very familiar

with it. Selectman Young said they were denied at the town level and they were denied in court also. Mr. McCoy mentioned Berry Road near the golf course and it was a case that went to Supreme Court. What the gentleman is talking about is if he wants to take this land and subdivide it, he would come to the Board and reopen the road. In your case that you took to the Supreme Court the developer wanted to put a big housing development off of Berry Road, he was denied but he was allowed to put two houses in. They told him if he didn't subdivide he could put houses up there. This was right in your own town and it was a closed road. They have 10 to 15 permits you have given on closed roads. Baker Road is a closed road. The first thing he doesn't want to do is have an open road. Mr. Matthews wants one house on 30 acres, they want their privacy. For example, off of High Street on Baker Road they have 14 houses on Class 6 roads that have drive ways and some of them are 7/10^{ths} of a mile. They are way over 1,000 feet on the drive ways. This is a situation where the Selectmen have a right to go forward. This is why he has Atty. Gage here, because he is an expert on closed roads. He can explain his terminology on why they should get the permit. In addition, to receiving two permits nothing has changed since those permits have been issued. Selectman Dann clarified those permits were used. Mr. McCoy said they were used. The only reason he bought that land is because he came to the town and the man he bought it from had a permit. He went to the town and the Selectmen said any time you want to build on that lot you can. Selectman Laliberte clarified this was in 1987. Mr. McCoy said that was correct. He noted there is a structure already out there, that was built God knows when. Mr. Matthews is going to sign a waiver of liability. You have houses all over Class 6 roads and closed roads it doesn't make any difference as long as you sign that waiver of liability. Selectman Dann said Mr. Matthews was told any time he wanted to build he could do that. Mr. McCoy replied if you read the letter that is what the lawyer said. Selectman Young said she didn't see that letter. Mr. McCoy said it should be right with the permits. Selectman Young said she saw a letter from an attorney, but she didn't see where he could build any time he wanted. Mr. McCoy said if the Board wanted to call it a private road they were fine with that too. They could use the encroachment on the power line because they have to maintain it anyway. Selectman Laliberte said one thing he really picked up on was the permit was issued in 1987 and he was looking at different laws from RSA 674 and according to the sources it has been changed numerous times since 1987. In some cases up to 10 times, so a lot has changed since those building permits have been issued. The building permits were issued in the mid 80's and a lot has changed in the law. He is not an attorney but it would suggest to him the law then may have been different then the law is right now in terms of what has changed in those RSA's. He doesn't think what happened in 1987 is applicable tonight. Mr. McCoy said they understood that. He had a list of all of the Candia properties that have been built. Selectman Dann asked under what revision of that law that were talking about were those built on those roads we are talking about. This could be a question. Selectman Young thought the question would be that there might be other houses but Selectman Laliberte has also stated that the statutes change all of the time. Years ago you could build a house for your mother and grandmother on a two acre property and that certainly has changed. Mr. McCoy said you used to have to go to the Zoning Board before. Now they have simplified it and you go to the Selectmen. Mr. Matthews said when he bought it in 1987 he believed it was a buildable lot. He put his life savings down on that property. It was a long term investment and now he is 67 years old and he is thinking of retiring. You can destroy a person doing this stuff, there is no reason the permit is not good anymore. Selectman Laliberte said the wasn't good anymore. Selectman Young added it's expired. Mr. Matthews said it was buildable at one time. They are going to ruin him if he can't do anything with it. This is his life savings. Road Agent Lewis said as far as the road by the golf course, it is Libbee Road (not Berry Road) and it is a Class 6 road. Most of

Baker Road is a Class 6 road; however the far end right before the 90 degree turn coming in from South Road our records show it is closed. He didn't know the exact footage of that section, but he thought 900 feet of it was closed. Any permits he has been aware of are on Class 6 roads not closed roads other than the house that is on Aunt Mary Brook Road. It was there from a long, long time ago. Other than that they don't give permits out on anything that our records show as closed. Class 6 yes and they sign a waiver, but not on closed roads. Atty. Gage said at Mr. McCoy's request he wrote the letter that is in the last part of the packet. What you are hearing is what you hear everywhere about this stuff, whether it is closed or discontinued and whether you can issue a permit on it. The case with this road is that it was made so it was no longer a town maintained road by a vote in 1872. It has never been subjected to gates and bars. When they started this discussion Mr. Dann asked if it was turned into a private road or discontinued. What a vote in 1872 did, if we interpreted it today would be to say that it turned into a private road that the town had no liability for. This is what it is. Remember this vote was taken in 1872 that does effect whether RSA 674 applies to it or not. It has never been determined, what we do know when it was open it was laid out over the private property of the abutters and when the town closed it in his words "advisedly" because the Road Agent says closed means something different than Class 6. Another person may say a closed road is a Class 6 road. What a Class 6 road actually is, it's a road that is not included in the other five classes which go from interstate highways to public streets. There are a couple of things that Paul has pointed out; other people have been allowed to bring driveways off of this road. There is a court order agreement to keep it up to a standard of passage and there is also an easement laid over it for Public Service. They believe the legal status of it is that having been closed or discontinued in 1872 the Town of Candia didn't have to maintain it after that, but it has been essentially what we would now call a private road. In that it is privately maintained up to this property. It has also been used as a Public Service easement. Therefore what really is in effect at this time is that Mr. Matthews has the right to go over it to his property. Whether or not a building permit can be established, the important part there is that at the time he bought the property it could be. He doesn't think anything has happened in the status of it since then that has changed that. He would also say they have to look at the time in which it was discontinued and what happened to the property under the road to consider it discontinued. His understanding is the section that Mr. Chivers sited is that it applies to roads under which the town continued to own the actually road bed. This is not what happened here. Back in 1872 when the town took the action it did, it simply said whoever you are that owns that Candia is not going to be responsible for it anymore. The ownership if it had ever been taken away reverted to the middle of the road to the abutting properties with them having the right to pass over it. He understood this is not a court of a law and God help us if it ever went that far, but he thought there are constitutional rights. The property rights of individuals under the New Hampshire Constitution are greater than they are under the United States Constitution. When this gentleman talks about how he sunk his life savings into it you can't just disregard that by saying there is a statute. This road was closed, discontinued, whatever other word you want to use for it at the time he bought it. The time he bought it he very reasonably had the right he thought to build a house on it with a town building permit. He even has a 2016 septic design. If he no longer has that right, has that been taken away from him with due process? He thought this was a very lively issue also. Selectman Dann asked how long ago Mr. Matthews bought that property. Mr. Matthews said he bought it in 1987. Selectman Dann said he was just wondering how long after the building permit expired. Mr. Matthews explained he spent $15,000 fixing the right of way and getting a septic system design. He thought he had a right to his property. Selectman Laliberte said but you didn't have final approval before you did all of that. So until you had full approval you were doing this work

without full approval from the town. Mr. Matthews was sure they got approval for the work they've done. Selectman Laliberte clarified what he was saying was that he still had to go to the Zoning Board. You were doing work before but you still had to go to the Zoning Board. Atty. Gage said looking at this his understanding and Mr. Chivers can say differently, Mr. Matthews is not asking to subdivide the property. This is where the question comes in as to whether he ever needed to go to the Zoning Board. You could say you need to have so much footage on a public street, but given the fact that there have been and had been other houses built in a similar condition it would be reasonable for him to say if they allowed them on other discontinued, closed, obliterated roads. Selectman Laliberte said except our Road Agent has said differently. Atty. Gage said he is not criticizing what he is saying, but apparently he believes there's a difference between a Class 6 and a closed road. Now he's not saying he is right or wrong but the Road Agent in the next town might feel differently. If you asked him he would say a closed road is a sort of brand of Class 6 road. Basically a Class 6 is anything that isn't a 1 through 5. Selectman Young said she was not sure if she agreed with that but she would like to hear from the Road Agent. Road Agent Lewis said quite a few years back they went through the records of the town and never in any of those town meeting votes did it say a vote to make a road Class 6, it was always to discontinue or close. Any of our roads that were label Class 6 were always made that way due to lack of maintenance. No one lived on them, there was a bridge that needed to be fixed and the town just walked away from it and after five years of non-maintenance it becomes a Class 6 road. So this is how they determined some of the difference here. The town never voted to make a road Class 6 it was always to do away with it. Selectman Young said the thing that she is seeing as being a problem is time being of the essence. He got a building permit in 1987 and she didn't know if it was prudent to assume that you could get the same thing in 2017. Atty. Gage said that was an interesting question because what a lawyer would say in situation like that is if he can't get a building permit he ought to be able to go back to whoever represented to him that he could build. What Mr. Matthews has told him is that he never understood that a building permit could expire. He questioned what physically has changed there as far as being able to approve one if they have been approved in other places and he supposed the effectiveness of RSA 674 which he questions whether that actually does affect this exact situation. He is not in the position of determining but he can give his understanding. Selectman Dann said Mr. Matthews purchased it in good faith understanding it was permitted. He felt sorry that he was in this situation. ZBA member Boyd Chivers said Mr. McCoy suggested that the town was uncertain as to its intent when it closed that road in 1872 or there was some doubt to what the intent was. He would like to point out in 1977 the Town Meeting Article 27 "To see if the Town prior to 1946, which discontinued, or discontinued subject to gates and bars, Town roads and highways are hereby ratified, confirmed and approved and such roads and highways are hereby declared to be discontinued, or discontinued subject to gates and bars if so voted, irrespective of whether they were laid out by selectmen or became public highways by prescription or otherwise." So in 1977 this town voted to affirm the decision made in 1872 to close that road. There can be no doubt today in 2017 whether that is a closed or a Class 6 road. It is a closed road. Mr. McCoy said that would even make it stronger that it is a Class 6 road. If you did this in 1977 the RSA's at that time say anything you close is a Class 6 road, a Class 6 road subject to gates and bars. He asked Road Agent Lewis if he as saying a closed road subject to gates and bars? Is that a Class 6 road? Road Agent Lewis said he wasn't saying that. He is saying that a discontinued road is a discontinued road. Mr. McCoy asked what the difference was with discontinued with gates and bars. Road Agent Lewis told Mr. McCoy he would have to ask a lawyer. Mr. McCoy said he has dealt with this many times and the road never goes away. Anyone that lives on that road whether it is discontinued or whatever this is why they have the

waiver of liability. It's not going to be a public right of way the only people that have the right there are the people that own the land. If you give Mr. Matthews a building permit it doesn't mean that anyone can drive up through that road. This road is still a private road subject to gates and bars. Gates and bars go to the center of the road also. This is what they have been giving the permits on, subject to gates and bars road which are Class 6 roads. When they closed the road in 1872 they didn't have gates and bars or Class 6. If you look at the RSA's and in 1945 when they started classifying, gates and bars and closed roads became Class 6 or private roads. Atty. Gage said the biggest problem in this area is that there is this schizophrenia about it, because some people are thinking when they vote to close a road that the road is gone forever. It is just not what the case was. With the 1977 vote he can opine what they were trying to do with this whole situation is try to deal with a lot of different language and what they meant to do is ratify these roads. Really this is an issue in the closing and not closing the road is about whether or not the town is going to plow or maintain it. This doesn't necessarily apply to whether or not people are going to be allowed to build structures off of them. If they maintain them themselves and what Paul has presented, you can say the law was this back then in spite of the vote in 1977, but somebody in Candia was issuing building permits off these roads that the town had abrogated its responsibility over. He not saying it's even a Candia problem because the fact that there are waivers of liability out there indicate that towns all over the place have said yes a road is no longer a town road but we will still under these conditions allow building permits to be issued on them. Selectman Young said it also appears that other communities have not and they've taken it all of the way to the Supreme Court. Building Inspector Murray clarified in 1872 the road was discontinued. It was voted on by the town and registered by the Town Clerk. It is not a Class 6 road and it is not subject to gates and bars. No one is trying to argue the fact that they do have a right to an easement up through there to go to their property there is an implied private easement over the road. He reference A Hard Road To Travel, Chapter 6 "These private easements preclude full use and possession by the underlying fee interest owner." It precludes full use to him that's a structure, a house, full use of the property. You can go to your property and enjoy it however that may be without building a house, but full use no. Once it is discontinued that right is gone. Selectman Young asked if there was anyone else that would like to speak to this. Selectman Dann said they would have to open it to make it some type of road to issue a building permit, that's what it all boils down to and they are not going to change the classification that Candia has on it. Building Inspector Murray said it would really have to be a Class 6 road. Road Agent Lewis said it would be a taking of someone's property at that point. Once we discontinue a road we relinquish the rights and the town has no interest in it whatsoever. To lay it out again they would have a taking of the property up to his lot. Selectman Dann clarified it would be a legal situation and they would have to approach each land owner. He questions if they would take the land by eminent domain. Selectman Young said it wouldn't be eminent domain. Road Agent Lewis said he would have to consult the Town Attorney on that. Atty. Gage disagreed and didn't think there would be a taking at all. In fact most of the roads in the State of New Hampshire are actually laid out over private property. He thought saying it was a taking for which there would be compensation and so forth. How do you compensate somebody for making their property a higher value? He mentioned this happened years ago on a road in Newfield because they were trying to move this ladies stonewall. He represented the lady and she didn't want her stonewall moved. The Attorney General's office got involved and they said they could move it because New Hampshire owns the right of way over it. Also he was sure they would find when you adopted your Zoning Ordinance the reason why you now require the developers to deed the road to the town when it is accepted is to get out of this situation. Basically for centuries in this state it was just the government said we're putting a road through

here. The road was just sort of an overlay, a public easement over private land. He didn't they were about to nor did they ask them to lay out a road on Aunt Mary Brook Road and they wouldn't be taking anyone's property if they did that. Road Agent Lewis explained that on most of their town roads the abutters own to the middle. For instance South Road, the abutters own to the middle of the road. The stonewall is the edge of our easement. The way he has interpreted and it has been explained to him is once they close that road they relinquish our right to our easement, so it is the landowner's property with no easement. They can't go back in there and use it as a public way. Mr. McCoy said no one is disagreeing with that. The question is under constitutional law when you have a property where they closed the road which had a structure on it, whether they closed it or it is Class 5, Class 6, private road, or even if it's a cow path they aren't going to tell a person they can't use their land. The Building Inspector has something he pulled out of a certain thing, but the RSA's are very clear. He happened to be involved with this quite often and they have some that are two or three miles down that are discontinued, gates and bars, and it goes to the center of the road. The only one that has access to that property is the property owners. All they are asking is they have 30 acres of land, they are on Aunt Mary Brook Road, the town issued a building permit in 1987 and nothing has really changed up there. It is a fairly decent road and you used to be able to drive right through. Why they have it in the RSA's is because you have a right to a private road. He has prescription rights and easement rights with the power company. The only people that have the right to give us a permit are the Selectmen. They are not asking for anything in particular and they are not asking them to open up the road because it will cost the town money. They will sign a waiver of liability and it only makes sense that the guy can put a house out on 30 acres of land. He just went down High Street and there are over fourteen houses with longer driveways than what they are looking for on Aunt Mary Brook Road. This is something that can be done very simply and the Board doesn't have anything to worry about because Mr. Matthews is going to sign a waiver of liability. You already have two houses out there and the first part of the road is already taken care of by court order. He doesn't know what the big issue is. Selectman Young said if the Board is agreeable she would like to speak with Town Counsel about this. They are not attorneys and they are missing a Selectman who is very familiar with planning and zoning. She personally feels uncomfortable making a decision. Selectman Laliberte said he was ready to make a decision this evening. He is ready because he is hearing from a member of our Zoning Board, our Road Agent and our Building Inspector. He is also hearing that if they were going to be making a decision that it would have to be something blockbuster that would suggest to him that they erred and he has not heard anything that would suggest to him that the Zoning Board erred. Our town experts both the Road and the Building have suggested to us a certain direction to go with this. So he is comfortable making a decision. If the acting Chair would like to make a decision to bring this to counsel he'll accept that, but he is ready to make a decision. Resident Becky Sarra said she is listening about all of this stuff about the road, but she does not understand the why. She is hearing all of the "you can't", but she doesn't understand why he can't. If it is a private road then private means to her Mr. Matthews will be responsible for it. Selectman Laliberte said the why to him is all of the RSA's and there are laws and rules to adhere to. He would like to think that he has taken the information from the people who have come to speak to us plus the information from the people in our town. Resident Becky Sarra said she was not hearing that clearly. Mr. McCoy thought there was a misconception here. The reason they were sent here was because it wasn't a Zoning Board issue it's a Selectmen's issue. The other thing is that he didn't hear that Mr. Matthews couldn't have a building permit; he's trying to tell you what kind of road it is. This has nothing to do with the Road Agent this is the Selectmen's issue. The Road Agent has to go out and look at the road and he understands that. He tried calling the Road

Agent and he didn't get back to him. He asked Road Agent Lewis if he has been out to the road to look at it. He noted the Police Chief was out there and the Fire Chief has been out there. This is why it has been referred back to the Selectmen. They didn't need to go to the Zoning Board. All he is saying is they've got 10 or 15 properties with rights and liability. It's for private roads, Class 6 roads whatever they want to call it they have the right to do that. It could be a cow path you as Selectmen have the right to issue a building permit on those situations. There were two building permits for Mr. Matthews's property, but that road hasn't changed. If you go back to 1872 and you look at the way they closed the road and the way the opened the road, they never deeded it back. Did the town take it or get an easement on it at the time? The truth of the matter is the people that town the road whether it is closed or Class 6 which it is when they discontinue it subject to gates and bars. You have all kinds of these that you have limited liabilities on. When it is closed gates and bars it goes to the center of the road. Anyone who owns property down there has the right to into it and maintains it. This is a very simple issue. He didn't know why people are trying to say it's a private road or this or that road. All they are asking for is a building permit for 30 acres of land. They don't want to open the road up, and then you could get 10 – 15 houses out there. Mr. Matthews doesn't want that he wants his privacy. Selectman Dann asked if one of the property owners wanted to close the road in front of his house, this wouldn't allow Mr. Matthews to get to his property. Mr. McCoy replied if it is subject to gates and bars he has the right to put a gate up but he can't lock that gate if I own the land next store. Selectman Dann said he was concerned if they do a permit what their liability is that Candia has. This is what he is concerned about at this point. Mr. McCoy said it is common language throughout the state. Selectman Dann said he understood. Mr. McCoy said this will relieve the town of the responsibility for plowing and school bus liability. He noted the Building Inspector told them to go to the Zoning Board. They went out and got a building permit and a septic design. Selectman Young thought that might have been a little premature. Mr. McCoy said they were told to get that before they went to the Zoning Board. ZBA member Boyd Chivers clarified before they dismissed this case they talked with Atty. Mayer and explained they had an applicant before their Board that wanted to do a variance. In order to get a building permit on something other than a Class 5 road it was a closed road Atty. Mayer was clear the town cannot issue a building permit on a closed road. He referenced RSA 674:41 there is no way you have the authority to issue a building permit on that road. He is asking you for something you are prohibited by law from doing. The ZBA took that into consideration when they dismissed that case. Mr. McCoy said so all of the ones I just gave you are illegal. They are all closed roads. Selectman Laliberte said this is what is frustrating him. He is here Mr. McCoy and Atty. Gage saying that Class 6 and closed roads are the same. Where he is hearing from the Road Agent that Class 6 and closed roads are different and the town voted to discontinue this road and make it a closed road. Mr. McCoy said this are subject to gate and bars. Selectman Laliberte said that is Class 6 not discontinued. Mr. McCoy reiterated it is a closed road subject to gates and bars. They are the same thing the only difference is they had the gates for the animals in 1903. They didn't put a classification until 1943 and closed roads and subject to gates and bars went under the guideline. Atty. Gage thought if they were going to have any further consultation with your counsel then one of the things you should ask him to explain to you is his interpretation of the classification system. As he has read it Class 6 is any road that is not in the other five classes. This would include closed, closed subject to gates and bars, and discontinued. He would say the reason legislature did that was because when they decided to create a class system they were dealing with a situation where there were different words used all over the state of New Hampshire. Mr. McCoy said it was interesting because when you read the RSA and all of the books from the NHMA they keep talking about closed roads up until 1903 then they talk about

subject to gates and bars roads. If you read the RSA it kind of goes away. Then all of a sudden they have the classifications. Selectman Young said it seems like the town was clear in 1977. Mr. McCoy said it wasn't clear on what they are though. Atty. Gage said the reason they decided to do that was because it wasn't' clear. It really hasn't gotten that much clearer. Selectman Young said she would like to clarify this with the attorney. Mr. McCoy said the main thing is they have these all over town with waivers of liability. Selectman Young asked other discontinued, closed roads in town. Mr. McCoy said yes and Class 6 roads subject to gates and bars. Selectman Young said a discontinued closed road is not the same as a Class 6 road in her opinion. Mr. McCoy said if it is subject to gates and bars it is. It is the same thing. Selectman Young said she doesn't want to open a can of worms with our speaking to Town Counsel. Selectman Laliberte moved to send this to Town Counsel for his review. He knows that Atty. Mayer has already said to the Zoning Board certain things, maybe he just needs to ratify that or with this information we are going to provide him, maybe he'll have a different opinion. It sounds like this is the way to go here and then we'll make a final decision. Selectman Young asked if they were agreeable if we take some time to do this and we'll have you back to the next meeting. She asked if they thought this was fair. Atty. Gage said this was the Board's decision to make and if you don't want to make a decision now to get counsels opinion. Selectman Dann agreed with that and he felt sorry for Mr. Matthews, but they want to make sure they handle this properly. Selectman Laliberte said while he does feel a certain way about this he will be very open to what the attorney has to say. If the attorney agrees with what you were saying, he is certainly open to reconsidering what he is thinking right now. It was noted the next meeting is the 13th of February. Selectman Young asked if that would be okay for Mr. McCoy, Mr. Matthews, and Mr. Gage. Atty. Gage said a lot of it has to do with when they get the attorney's opinion. He suggested that if the Board doesn't get their opinion by then they can get in touch them.

Chairman Chivers rejoined the Board.

Hannah Lewis to meet with the Board about Old Home Day 2017. Chairman Chivers asked Hannah how they could help her. Hannah said she would like the support of Board and asked if they had any questions. Chairman Chivers asked if there was anything she would do different this year that she did last year. Hannah replied no and she thought it went well, but maybe she would delegate a little more to people. It's hard to delegate when you don't have that many people that are willing to help. Selectman Laliberte said he would help her with the parade again. Chairman Chivers said he could give her the contact information for Wells Fargo and they could get Tyke Frost here with his team of horses. They came pretty close last year. Hannah said as long as the price isn't as expense as last year, if they are willing to donate the time that's fine. Chairman Chivers explained the charge is paid for by the local Wells Fargo office they don't charge the community. They charge the advertising budget for the local office. Last year the local office didn't want to come up with the money. Selectman Young asked if she had a date. Hannah said she would like to do it the same weekend as last year. It would be August 12th, 2017. Selectman Laliberte asked when the first organizing meeting would be. Hannah said she hasn't gotten that far with it. She just wanted to make sure it was supported by the Board before she went any further. She already has her sponsors from last year. Chairman Chivers said she had the Board's support. Hannah said she raised $4,000 last year and she has $2,700 left. The Board thanked Hannah.

Selectman Young to discuss Town technical needs. Selectman Young said she has someone who is going to look at the list she put together. They are going to come in and look to see where it should be placed. This is a community member and she is on the Fire and Rescue squad. He name is Arllene Acevedo and she works for IBM. Selectman Young noted that she did talk with Christine Dupere the other day and there is nothing they can do at the moment about opening up the second window. On Presidents Day the State is doing all of the Clerks systems over. She won't be able to register cars for a couple of days. They have to wait until they get that all straightened out. The second window won't be open all of the time, but at the end of the month and the beginning of the month.

Selectmen's meeting audio posted to web. Selectman Young said she would really like the audio posted to the web. The Budget Committee has done it already which is invaluable. People are raving about it. Selectman Laliberte thought she was going to get new recorders. Selectman Young said Administrative Assistant Hansen can still post it to the web. Selectman Laliberte said he was totally on Board with putting them on line. Selectman Young motioned to post the Selectmen's audio minutes to the web. Seconded by Chairman Chivers. All were in favor. Motion carried.

Approval of Previous Minutes: Public meeting minutes of 12/28/16 and 01/09/17. Selectman Young moved to approve the December 28th, 2016 Selectmen's Meeting minutes as presented. Seconded by Selectman Laliberte. Chairman Chivers, Selectman Young, Selectman Laliberte were in favor and Selectman Dann abstained. Selectman Dann moved to approve the January 9th, 2017 Selectmen's Meeting minutes as presented. Seconded by Selectman Young. All were in favor. Motion carried.

The Board to approve payroll and accounts payable manifest. Selectman Laliberte announced the grand total for accounts payable and payroll checks for December 22nd, December 29th, January 5th, and January 12th was $778,226.01. Selectman Dann moved to approve the accounts payable and payroll checks for December 22nd, December 29th, January 5th, and January 12th in the amount $778,226.01. Seconded by Selectman Young. All were in favor. Motion carried.

The Board to approve payroll and accounts payable manifest. Selectman Laliberte announced the grand total for accounts payable and payroll checks for January 19th and January 26th was $110,791.37. Selectman Dann moved to approve the accounts payable and payroll checks for January 19th and January 26th in the amount $110,791.37. Seconded by Selectman Young. All were in favor. Motion carried.

Any Other Business:

Aunt Mary Brook Road: Selectman Young said that Richard Matthews will be on the agenda for February 13th meeting. Selectman Laliberte asked if Vice Chair Young should be reaching out to Atty. Mayer since Chairman Chivers had to step down. Selectman Young said she would take care of it.

Helpful Hints from the Highway Department. Chairman Chivers asked Road Agent Lewis if this should go on the town website. Road Agent Lewis said yes if everyone was in agreement with what it says. Its information on how to make the snow plowing operation go a little

smoother. There was some discussion about the list of hints. Road Agent Lewis said these are basic commonsense items they need to remind people of. There is nothing in there that is outrageous.

Old Home Day revisited: Selectman Laliberte asked Hannah Lewis if she would like him to put the 2017 Old Home Day date on the Facebook page and that she is looking for help. Hannah said she has already typed it and she put it on her Facebook. Selectman Laliberte said he could put it on the town Facebook. Hannah said if he wanted to that's fine.

Filing period: Selectman Laliberte noted that January 25th is the first day of filing period. From what he has heard there are all sorts of positions open on the town and the school side. It was noted the last day of the filing period is February 3rd and the Town Clerk will be open from 3:00 p.m. to 5:00 p.m.

Cancellation of meetings: Becky Sarra asked if any of the meetings are called due to weather how people will know that. Will it be posted to the website? Chairman Chivers said it was the first time it was ever noted on the agenda. Selectman Young said they could post it on WMUR.

Announce Next Regularly Scheduled Meeting Date: February 13, 2017 @ 7:00 p.m.

Selectman Laliberte said he is working on the communication piece and he will be at the Communication Committee meeting next Monday.

Selectman Dann motioned to adjourn at 8:30 p.m. Seconded by Selectman Young. All were in favor. Motion carried.