

West Windsor Selectboard
Draft Minutes
April 25, 2015

Present: Dick Beatty, Tom Kenyon, Glenn Seward, Matthew Birmingham (Town Attorney), Martha Harrison (Town Administrator), Nate Stearns (Mountainside Condo Association Attorney), Kate Wanner (Trust for Public Land), Karl Zaehring (Mountainside property owner), David Leavitt (Mountainside property owner), Dan Leavitt (Mountainside property owner)

1. Call to Order – Selectboard Chair Dick Beatty called the meeting to order at 9:00 AM.
2. Changes or additions to the agenda – None
3. Public Comment – None
4. Anticipated Executive Session to discuss real estate purchase options (1 V.S.A. §313(a)(2)) – The Selectboard agreed to continue in open session to see if the issues associated with the acquisition of the mountain parcel and the water system can be resolved. Dick noted the town has discovered that there is a Covenant of Road Maintenance of record which indicates that, if the town were to acquire the property that includes the lower portion of Deer Run Road, the covenant would go with it and would require the town to maintain the road, including the portion on Mountainside property. The other issue has to do with the Mountainside booster pump and well. The town's engineers can get around the booster pump but the pump and well need to be decommissioned. Dick said there is a petition for the Public Service Board (PSB) to approve the acquisition of the water system by the town, and a petition to intervene and hold a hearing by counsel for Mountainside. Dick said the town is looking to resolve these issues. If the issues cannot be resolved, Dick said, then perhaps the Selectboard should withdraw as receiver and not move forward with the acquisition of the water system. Dick said the town would prefer to acquire the property, including the portion that contains the lower part of Deer Run Road, but would want a release of the covenant. Dick said the town would provide an easement for the roadway as it currently exists but would not be obligated to maintain it. Dick said if the town were to accept Deer Run as a town road, work would have to be done to bring it up to town road standards. Nate said the original permits have been carried forward through several court cases and a bankruptcy and have been renovated as the covenant Steve Plausteiner recorded on the land. Nate said the permit that authorized John Giles to build the Mountainside Condos said the road would be built to town specs and until the town takes it over, the developer would maintain it. Nate said Mountainside is not anxious to take on the costs of maintaining or upgrading the road, even if it means that the town's deal with MFW doesn't happen. Nate said the obligation right now rests with MFW but Mountainside feels that the burden is falling on them. Dick asked who is paying for the maintenance now. Nate said Mountainside has been paying for the maintenance and, for a couple of years, they got small claims judgements against Snowdance. They have not yet pursued that remedy with MFW but are considering it and any judgements resulting would get recorded in the land records as a lien against all of MFW's property. Glenn asked what the annual road maintenance costs are. David Leavitt said for the first two years, the costs were \$4,000 each year, and over the last few years, costs have ranged from \$5,600 to \$8,000 per year, including grading as needed. David clarified that those costs do not include the cost of maintaining the two parking areas, just the road from Ski Tow to the end, where the fire hydrant is located. Nate said there were two liens recorded against Snowdance, which may have been wiped out as a result of the foreclosure, and additional liens have not been pursued against MFW yet. Dick asked if Mountainside has recovered anything as a result of the suits. Nate said no. Glenn said there is merit in the town continuing as receiver of the water system and continuing its efforts to acquire the water system, both in terms of domestic water supply and fire protection, and it would be extremely unfortunate for this whole deal – the water system acquisition and the mountain parcel acquisition - to implode because of this road issue. Glenn noted that the cost per unit to maintain

the road would be between \$300 and \$400 per year, which is not unusual for any residence in this area. Nate said the existing obligation is an obligation of MFW and it's being put back on Mountainside because no one wants to deal with MFW, which isn't fair. Glenn said he understands the situation but, because they don't want to deal with MFW, Mountainside is pushing the issue onto the town. David disagreed. David said he had a conversation with Glenn during which he informed Glenn that the road was included on the property proposed for acquisition. According to David, Glenn said he was going to call MFW and have the road removed from the land proposed for acquisition, and now MFW is not agreeing to do that. David said Mountainside is not doing anything; they're just minding their own business. If the town doesn't want the road, David said, then the town should not acquire it. Glenn said the town could take that position but it would drag everything else down. Glenn said all Mountainside has to do is release the covenant. David said this agreement has been in place for 35 years, based on assurances made by the developer. David said Mountainside is not asking the town for anything different than the previous owners of the property. Dick said the town could say we don't want the property with the road on it because we don't want to be responsible for current, past or future maintenance expenses, but whether MFW would be willing to sell the rest of the mountain parcel without the road – that's the issue that needs to be resolved in order to go forward with the acquisition. Dick said it's his understanding that, without acquiring the road, we're not going to be able to acquire the mountain. Kate said the map associated with the option agreement between TPL and MFW does not show that road segment as being acquired, but the road can't be subdivided off by itself; it needs to be included with a parcel of land. Kate said she has not heard directly from MFW on the Deer Run Road issue but there is no benefit to just owning the road or the road and one acre because it comes with the maintenance liability. David said it is his understanding that MFW is keeping the property that is of value such as Mile Long Field. Kate asked if Mountainside would be willing to accept the parcel of land between their eastern boundary and Deer Run Road, with the road, adding an acre to their holdings. David said MFW owes Mountainside a lot of money and, if they took over that parcel along with the road, they would have more expenses and higher taxes. Kate asked how the Mountainside property owners would be affected if MFW keeps the land and does other things with it. David asked for examples. Kate suggested wind towers or a solar field as possibilities. Kate said if the road is included in the parcel, then TPL can object to it but MFW can either cure it or walk away from the deal. David asked if MFW was invited to this meeting. Kate said no. David asked why not. Glenn said the town was hoping to have a conversation with Mountainside to see if they would help the town out of this situation so we can move the process forward. David suggested that MFW should be present. Glenn said the town is pretty clear on MFW's position. Brian Quirk said if the road becomes a public road, the potential for people to use it for parking is pretty substantial. David said the parking lots would be private, for the use of the condo owners, and parking is not allowed on the side of town roads. David asked about the POA's position on this. Brian said he is just here to observe. Tom said if the road were a town road, it would be three rods wide and the parking lot would have to go away. David said we need a place to park. Tom said that's not the town's problem. Nate said if the town were to do that, Mountainside would fight that condemnation and make the town pay for the value of the parking lot. Nate said the town is essentially asking Mountainside to pay \$5,000 per year so MFW can get \$500,000 and walk away. Nate said, as Mountainside's attorney, he would advise them not to take that deal. Nate speculated about the present value of \$5,000 per year in perpetuity. Glenn asked if there is not the expectation by property owners to have certain maintenance expenses associated with their property. Glenn said he pays \$300 to \$400 per year to access his home. Glenn said TPL's funding is at risk; who knows if the opportunity will still be there after Mountainside's dealings with MFW. Glenn suggested that the town could relinquish its receivership of the water system, leaving Mountainside to deal with MFW and Snowdance in the future operation of the water system. Glenn said the town is trying to make something out of nothing and has gone above and

beyond to try to help Mountainside and the POA. David said Mountainside pays for everything except road maintenance because the road was supposed to be a town road. David said the developer was supposed to build it to town specifications. Nate said there was a provision in the original permit that said until the road was brought up to town specs and taken over by the town, the developer would maintain it. Tom said the road is not to town specs. Dick asked if the town and Mountainside can agree on anything; if there's no room for compromise, there's no point in continuing the discussion. David asked about the town's position on the water system. Dick said the town is considering withdrawing as receiver for the water system if the town and Mountainside cannot reach agreement on the water and road issues. David said the town is asking Mountainside to compromise but the town is not willing to compromise. Dick said the town's main concern is the issues with the road and everything that would be put on the town's plate to resolve. Dick pointed out that the PSB's approval of the sale of the water system may be delayed by Mountainside's petition to intervene, but before the town takes on the water system, we want to resolve the issue with the roadway. Nate asked for confirmation that the town does not want to take over a road that does not meet town specs, and they don't want to maintain a road that is not a town road. Dick said he does not think the town should take over and maintain a road that is not on town property. Nate asked if there are other roads in town that do not meet town specs. Glenn said yes. If that's accurate, Nate said, then the town has the ability to maintain roads that do not meet specs. Nate asked if the town could offer to maintain the road. Glenn explained that there is a special town meeting coming up on May 5th and one of the articles asks voters to authorize the Selectboard to consider taking over Deer Run Road. Glenn said voters authorized the Selectboard to acquire Hotel Road so they felt it appropriate to ask for that same authorization for Deer Run Road. Glenn said if this issue continues to be messy, the voters may answer this question for us by voting no; if they say "no," it's over. Tom said the Selectboard would like to be able to tell voters that it's in the best interest of the town to vote "yes." Nate asked if the town is asking Mountainside to give up the covenant. Dick said yes. Kate asked if Mountainside is interested in owning more land between the road and their existing property. David said they haven't thought about it. David said the town is asking Mountainside to give up all their rights. Kate noted that the town is also trying to conserve all the land around Mountainside; no one knows what MFW might do with it if the town doesn't acquire it. David asked if there is any indication as to MFW's intentions if the deal doesn't go through. Kate said she assumes MFW would want to make as much money as it can. Glenn said timber harvesting has been mentioned. David asked if timber harvesting is allowed if TPL goes through with the deal. Kate said the draft conservation easement allows timber harvesting but the major goals are recreation, wildlife habitat, water quality and large saw timber. Kate said one of the grants being applied for requires that the land, which is currently 75% forested, remain 75% forested. David asked if MFW could harvest timber without intervention by the town or the state. Kate said yes; they would need an Act 250 permit to harvest above 2500' in elevation and there are regulations on the size of clear cuts but as long as they follow regulations on water quality and erosion, they could harvest timber. Kate said MFW has also looked into wind turbines. David asked if wind power would be profitable. Kate said MFW would have to have some engineering done to determine that. Kate said a timber cruise was done as part of the appraisal and there is approximately \$200,000 of marketable timber on the property. Glenn said the town has put in a lot of time and effort straightening out the wastewater system at the resort and is interested in helping out with the water system as well, including the firefighting aspect. Glenn noted that Mountainside currently has no fire protection and the town is prepared to help out with that by acquiring the water system. David said he respects the work that the Selectboard does. David requested a short break to allow the Mountainside representatives to talk with each other and their attorney. **Dick moved to recess the meeting. Glenn seconded the motion, which passed unanimously.** After a 20 minute recess, the meeting reconvened. Nate said David and Karl would have to get approval from the rest of the condo owners before releasing the covenant. Nate asked if there is a compromise short of asking Mountainside to give

up everything with no consideration. For example, Nate asked if the town could maintain the road without it being brought up to town specs, or if some consideration could be given to Mountainside. Glenn asked if Mountainside would consider it a benefit to have the town continue as receiver of the water system and provide fire protection. Nate said he is not sure the benefit Mountainside would be receiving is equal to the benefit the town would be receiving. Nate asked if there is anything else on the table, other than the benefits associated with the conservation land and the water system. Dick said the town could consider maintaining the road from Ski Tow Road to a turnaround just before the first building on Mountainside property. David said the map is only accurate with regard to the boundaries; the location of the buildings is incorrect and the location of the road is a gross representation so we don't know where the property line is in relation to the road. David said if Dan Lesnick is plowing the upper part of the road for Mountainside and the town is plowing the lower part, that's a logistical nightmare. Dick said it could be if they don't talk to each other. David asked who would maintain the turn in the road. Dick said he believes that the turn is on property that the town would own. David asked if the land with the road on it would be split off from the conservation land and if the road would be considered a public road or a private road. Glenn said the town-owned portion of the road would be a public road. Tom suggested that the town maintain the road up to the first parking lot. David asked how the town would turn its trucks around. Tom said the town would use the one-ton to plow. Glenn said the town would require Mountainside to construct a turnaround at their expense. Dick said his intention would be to keep the town's maintenance obligations on town land; if it goes over a little onto Mountainside land and there's a turnaround there, that's fine but we'd have to get an easement for the turnaround. Glenn said we would need to find a geographically appropriate location for the construction of a turnaround at Mountainside's expense, as close to the boundary as possible, and if it were on Mountainside property, an easement would have to be granted to the town. Karl said he doesn't think that's a practical option. Matt pointed out that Mountainside requested a compromise and the Selectboard is offering to take over Deer Run Road to an appropriate turnaround spot, which may be on TPL/town land or Mountainside land, or a little of both. Matt said we need someone to determine an appropriate location for the turnaround. Matt also noted that the town is not asking Mountainside to bring the road up to town standards, which is a significant compromise. Karl said we're not going to construct a turnaround. Matt asked how the town is going to turn its truck around. Karl said the truck that plows the road now turns around. Matt said these are big town trucks. Karl said he thought the town used DLX for plowing. Glenn said no. Glenn repeated the proposal that a turnaround needs to be constructed at Mountainside expense, in a geographically appropriate location in the vicinity of the boundary to allow a town truck to turn around in order to maintain the lower portion of the road, which the town is prepared to take over. David asked if the town would also grade the lower portion of the road. Glenn said yes. David asked about the culvert at the intersection of Deer Run and Ski Tow. Tom said the culvert would be the town's responsibility. In exchange, David said, the town wants a formal extinguishment of the covenant. Karl said unless the plowing is coordinated, the road is going to be impassable and dangerous. Glenn said the plowing of private driveways is not coordinated with the plowing of public roads. Karl said this is a hill; if you get partway up and the rest is not plowed, you're stuck. Karl said maybe the town could grade the whole road and the condo association could plow the whole road. Karl said he doesn't think the town's proposal to maintain the lower portion of the road is practical or safe. Nate suggested that the town do the plowing with a cost sharing arrangement based on linear feet. Glenn was concerned about setting a precedent. Dick said he thinks the turnaround proposal is a do-able compromise. Nate asked what happens if there's no agreement by May 5th. Matt predicted that article 3 would be voted down in that case. Nate said at that point, the conservation land deal doesn't go through. Matt said at that point, you've just dynamited the whole deal. Nate asked if the town would also not go through with the water system acquisition. Matt said they are entertaining that thought. Karl said Mountainside wants a safe road that they can travel up in the winter; you can't have it half-

plowed and you can't have a turnaround in the middle of it. Karl suggested splitting the plowing, the grading, or the costs. Dick asked if Mountainside would be willing to reimburse the town if the town plows and maintains the road to its terminus. Glenn said he is concerned about plowing private property and being reimbursed for it. Kate asked if Mountainside would be willing to plow the entire road, both the town portion and the private portion, at Mountainside's expense understanding the benefit of being surrounded by conservation land. David said Mountainside sent a letter of support regarding the conservation land. Kate said the town needs Mountainside's help to make it happen because this issue could tank the whole deal. David said it's unfair to make Mountainside the bad guy. Kate said the situation is unfortunate and it's not Mountainside's fault but the town is asking for Mountainside's help; in turn, the town is willing to take on the water system and conserve all the land around Mountainside. David said someone should be talking with MFW about participating in the compromise by reimbursing Mountainside for their maintenance costs. David said MFW is about to get \$600,000. Nate said he would appreciate any ideas that don't involve the entire burden falling on Mountainside. Glenn said the town has offered to take over the lower portion of the road. Brian noted that Mountainside has been litigating this issue for a long time and asked David how far they have gotten with it. David said they have gotten very far. David asked if the POA's position is that they want Mountainside to give in on this. Brian said he's just an observer. David asked about the water issues. Dick said the town's engineer has suggested bypassing the booster pumps so there is no connection between the pumps and the water supply. Dick said the issues have to do with the cost of bypassing the pumps and decommissioning the well and the pumps, which haven't been in use for a long time. Dick noted that it's not clear whose land the well is on. Nate asked if the bypass would be an expense of the water system and the decommissioning would be an expense of Mountainside. Dick said yes. Dick said the work on the water system would also provide Mountainside with a working fire hydrant. Nate asked about the location of the well. Glenn described the location. Glenn suggested that the town take responsibility for decommissioning the well and Mountainside take responsibility for removing the booster pumps and associated equipment. David asked what's involved in that. Glenn said he thinks the engineers and the state have recommended that the booster pump station be taken out. Alternatively, Glenn said, Mountainside could work out a plan with the state. Tom said the idea is to remove the potential for contamination. David asked about the engineers plans to improve the water pressure at Building A. Dick said the engineers have indicated that the proposed work on the water system would improve the pressure. Glenn repeated his proposal that the town takes responsibility for the well and Mountainside takes responsibility for the booster station. Dick said if the water issues are resolved, the town would ask Mountainside to withdraw its petition to intervene with the PSB. David asked when the re-piping would happen. Martha said the town can't contract for the work until the town owns the system but the plan would be to do the work this year. David asked what would happen if the water issue were resolved but the road issue was not. Glenn said he is only one member of the Selectboard, but he would suggest that the town withdraw as receiver for the water system if both issues cannot be resolved. Dick said if these two issues can be resolved, there don't appear to be any other impediments to going forward with the acquisition of the mountain. Tom said if the town's turnaround proposal doesn't work, the Selectboard would be open to other suggestions but we need to fix this problem now. Nate asked for clarification about what the town is asking the voters for on May 5. Dick said the town vote would be to allow the Selectboard to acquire the road. Kate asked if a turnaround would still be needed if Mountainside agreed to take responsibility for plowing the entire road. Glenn said a turnaround would still be needed for other maintenance activities. David said Mountainside doesn't want to plow a town road, just as the town doesn't want to plow a private road. Nate asked about the magnitude of the turnaround. Dick said Mike Spackman estimated a turnaround would cost between \$15,000 and \$20,000. Nate asked about the dimensions of the turnaround. Glenn said it has to be suitable for the road grader so it would have to be at least 50' x 50'. David was concerned about people driving to the end of

the road and parking there. Kate said the road and the small piece of land between the road and Mountainside property could be transferred to Mountainside and the road could be completely private. David said someone needs to talk to MFW about paying what they owe; they're going to be getting \$600,000 from TPL, so TPL is in a position to do that. Kate agreed that TPL can ask and MFW can say no. Kate asked for the amount that MFW owes Mountainside. Nate said he can probably get that to her. Nate asked if the town would carve off that piece and sell it to Mountainside for \$1. Kate said MFW would subdivide the property and, at the closing, that portion would go to Mountainside, the mountain parcel would go to TPL, TPL would put a conservation easement on the mountain parcel and then transfer it to the town. David said he understands the town's position but he and Karl have to consult with the other owners. Nate restated the proposal. In addition, Glenn noted that Mountainside would not have to bring the road up to town specs. David asked if he can get a copy of the recording. Martha said yes. Glenn asked if Mountainside can respond to the town's proposal within 72 hours. David said he needs at least until Wednesday. Karl said we need to know how much the turnaround is going to cost. The Selectboard agreed to ask Mike Spackman and Dan Lesnick to figure out the best location for a turnaround and provide an estimate of the cost. David said he will get input from the other owners as soon as possible. Nate said he will at least provide a status update on Wednesday. As an alternative, Kate said Mountainside could do a boundary line adjustment with MFW and take over the entire road and the small piece of adjacent land.

5. Other Business – None
6. Adjourn – **Glenn moved to adjourn at 11:08 AM. Tom seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison