

Town Posting Requirements

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**Town of Brookfield
267 Wentworth Road
Brookfield, NH 03872**

**SELECTMEN'S MEETING MINUTES
September 22, 2009**

Attendance: Chairman Clifton Camp, Craig Evans and Ernie Brown
Staff: Ed Nason CEO, Pam Frazier Assessor Clerk, Marilou Maclean Treasurer, Janet Murfey Planning Board Chair, Diana Peckham Tax Collector, Dick Peckham Moderator, Doug Vanderpool Forest Fire Warden & Jennifer Sonricker Admin. Assistant
Public in attendance: 28
Legal Counsel: Attorney Laura Spector, Town Council and Attorney Paul Monziona representing Geary Ciccarone
Reporter: Heather Terragni

The meeting was called to order by Clifton Camp at 6:35 p.m. Doug Vanderpool led us in the pledge of allegiance.

Approval of Minutes: Review of minutes from September 8, 2009 meeting. **MOTION: Ernie moved to accept the minutes from September 8, 2009 as written, seconded by Craig. A vote was taken, all in favor. Motion carries.**

Public Comments:

Dick Peckham asked for update on Route 109 paving. Clifton reported shimming has been done in preparation for paving but he has not been given a specific date for when paving will occur. Ed will be speaking with the DOT this week and try to get a proposed start date.

Diana Peckham addressed her concern over a statement made by Chairman Camp comparing the Gravel Monitor monitoring his own gravel pit to the same as the Tax Collector collecting her own taxes and the Assessor Clerk assessing her own property. Diana wanted to clarify that she is given a warrant signed by the Selectmen and collects the taxes as stated in the warrant and the Assessor Clerk does not assess her own property it is assessed by Assessors from Avitar. There are checks and balances in place. She feels this comment puts a thought in peoples mind that the Tax Collector may not pay taxes, this is not the case. Clifton explained this was not his intent; he was paraphrasing a statement made to him by a State official.

Ron Jenkins Property & Agreement from Town Attorney:

Ron Jenkins provided the Selectmen with a check for all back taxes thru today's date and all recording fees. He signed an agreement with the Selectmen regarding payment arrangements for the 15% state fee assessed after deeding. The remaining balance will be paid in 3 installments. Ernie explained the property will remain deeded to the town until the outstanding balance in paid in full but Mr. Jenkins is free to use the land as long as he is making payments according to the agreement signed tonight.

Letter from Frank & Pamela Frazier and Ron and Mary Ann Fountain – Firewood:

Clifton recused himself, Craig took over as Chairman. Craig read a section of the Zoning Ordinance (ZO) that allows the Selectmen to take or not take action regarding this matter. Craig explained that this is not a public hearing; it is an opportunity for the Selectmen to discuss this issue with the parties involved. The Selectmen are addressing this issue as it pertains to the Zoning Ordinance. Craig and Ernie discussed opening the meeting up to public input, the Selectmen agreed to limit discussions to involved parties only. Frank Frazier addressed the position taken by Pam and himself and Mr. & Mrs. Fountain regarding

Happy's Firewood. They feel the firewood operation is not permitted under our current zoning, explaining they have no issue with the business they just feel it is in the wrong spot. Frank addressed two letters he provided from local Real Estate agents that indicate this operation has devalued their property values. He commented that if Happy's Firewood was harvesting wood from his own property there would be no issue, the issue arises from the importing of wood and scale of the operation. The operation is referenced to as a large industrial operation. Frank addressed noise concerns explaining the noise from the wood processor is not bad but given the constant nature of the noise it is industrial like. He also addressed concerns over noise produced from loading wood into trucks and the constant movement of vehicles; he referred to as industrial like in nature. He said the operation makes you feel like you live in an industrial zone.

Geary Ciccarone of Happy's Firewood introduced his Attorney, Paul Monziona and turned the floor over to him. Attorney Monziona addressed the request for a cease and desist by Mr. & Mrs. Frazier and Mr. & Mrs. Fountain in their letter dated September 2, 2009. In his opinion the current activity is permitted under our Zoning Ordinance and explained it is illegal to issue a cease and desist order on a permitted use. Regarding the issue of manufacturing he explained that the operation is not a manufacturing operation. Mr. Monziona addressed Article II of our ZO that permits farming and addressed the issue as to whether this operation was a farming operation. He referred to state RSA adopted by the town with regards to farming, which include all operations of a farm incidental to or in conjunction with a farm. He explained that forestry and lumbering is incidental to the farming operation. Attorney Monziona addressed transportation - explaining the RSA adopted by the ZO allows for transportation of items to the farm. He feels it would be hard to find a judge that would find otherwise that lumbering is not incidental to farming and if litigated feels a court would find this a permitted use. Regarding devaluation of property he feels this should not be considered with regards to the cease and desist order adding that pigs or cows, each of which are permitted, could devalue property as well. Attorney Monziona asked the Selectmen to enforce the Zoning Ordinance as requested and allow this permitted use.

Craig commented that an issue similar to this was discussed by the Selectmen last year and former Town Council Susan Slack found firewood not being grown on the property not to be a farming operation. Attorney Monziona explained he respects other council but understands they can have different opinions. If taken to court, a judge is tasked with looking at the clear and simple language. There is nothing in "clear" language that says a product must be grown on the property, he gave an example of a greenhouse operation selling plants that were not grown from seedlings at the property but sold from the property.

Attorney Spector asked Mr. Ciccarone to expand on other farming done on the property. Mr. Ciccarone explained he currently boards horses and has chickens. He reviewed his long term plans which are to remove hardwood from the back-lot and return it to pasture. From there he plans to expand his farming operation to the pasture. He explained that he has between 1000-2000 cords of wood on the back-lot. The current firewood operation is funding the road to and clearing of the pasture in the back-lot. His long term goal is to make a self sustaining farm. Mr. Ciccarone provided a brief history of the operation to date explaining that ½ of the wood processed to-date has been delivered. Over the past 78 days approximately 30 deliveries have been made. He admits that this is a business but explained that any farming operation is classified as a business. Mr. Ciccarone asked the Selectmen to consider hearing from a few abutters besides those who wrote the letter, if they wished to speak.

Ernie explained that when dealing with the last firewood operation complaint he did a significant amount of research; he continued this research after the current complaint. Ernie reviewed his research and wanted to clarify a few points raised in the letter regarding this issue. He disagrees with this being considered an industrial operation. The letter references a cordwood operation importing wood and mixing it with a few birch trees from the property. He explained that the County Forester has indicated there are 1000's of cords of hardwood on the property and feels this is substantial not just a few. With regards to letter referencing "residential" area he corrected this explaining this is a residential/agricultural area. He feels the farm was there before the neighboring properties. Ernie gave an example of building a house next to an airport and then after the fact complaining about the noise. Ernie reviewed a lengthy list of RSA's dealing with logging, timbering and wood harvesting; all of which refer back to the state RSA dealing with agriculture. He referred to the town of Jaffrey's Zoning Ordinance which considers temporary logging operations as agriculture and the State of Maine which includes timbering in their RSA regarding agriculture. Ernie referenced a NH Office of State planning article regarding harvesting wood to help offset farm expenses. The 2020 master plan was referenced in which farming is supported and added he feels this is a farming

operation. He explained that mixed uses are part of NH history and in keeping with preserving of rural character. There are numerous firewood operations in town and feels issuance of a cease and desist is unfounded. The town of Brookfield has been a residential/agricultural community since its inception. Currently the people support keeping the Town Residential/Agricultural. Within the last few years they supported the establishment of the Agricultural Commission. We like the way the Town is and just established a Heritage Commission. There are numerous firewood operations in town today. There have been no complaints about these operations. Therefore I reject the requested cease and desist request as unfounded.

1. Happy's truck has been requested to not use the Town portion of Lyford Road.
2. The issue of "hum" is minor. Most neighbors do not have a problem with this. Your allegation is that the cordwood processing machine runs 6 hours + most days. A review of the operation thru today reveals that on only two days of 28 days of actual operation was it operated for six hours. This in the 77 days since he bought the equipment.
3. Devalue property values. This is questionable. The economy is doing the damage to property values. Three years ago there was nothing for sale in Town. Today there are 21 properties for sale, and sales are slow.
4. Cordwood production is a part of farming and farming is an agricultural activity and as such is permitted in Brookfield.
5. For the above reasons I will take this request under advisement.

Mr. Ciccarone clarified a few points; regarding hours of operation he explained that only 2 days in a 28 day period of operation did the machine run 6+ hours. Regarding devalued property values he feels this is questionable and feels the economy is the factor causing this, not this use.

Craig asked Frank if he wanted to speak, he added that the State of New Jersey does not include firewood operations as part of farming operations. He explained that this an industrial scale machine and there is a lot of wood involved and it is the scale of the operation and the importing of wood that they have an issue with. Regarding devalued property values he explained that this claim is based on the opinion of two local Real Estate agents.

Attorney Monziona spoke; he explained that after hearing all the facts raised he feels it is clear that NH includes firewood, forestry and lumbering as farming. He reiterated that pigs (livestock) can devalue property values and these are allowed per our Zoning Ordinance.

The issue of abutters speaking was discussed, the Selectmen decided not to allow the abutters to speak on the issue.

Craig summarized that this all boils down to the Zoning Ordinance, specifically Brookfield's Zoning Ordinance. He stated it is clear that Brookfield is changing and our ZO is going to need to change to catch up to the changes. After a brief discussion amongst the Selectmen Craig reported that neither Selectman was prepared to make a motion regarding this issue, the Selectmen would take under advisement.

A brief recess was called at 7:42 PM. The meeting was called back to order at 7:50 PM.

During the recess Craig was asked to explain what "take under advisement" means. There is concern over the parties involved being left with no decision. Craig and Ernie discussed whether a vote should be made; Ernie explained that he is not willing to put a decision in the form of a motion, things remain as is.

Clifton resumed his position as Chairman.

Report of Town Officials:

Treasurer Marilou presented checks to be signed. Marilou reviewed issue revolving Moose Plate Grant check; the final check for remaining 10% was received and then taken back by the State. This was caused by a glitch in the State system, things have been fixed and we now have the check. Planning Board billing issue discussed, a request was made to apply a check received against the Planning Board expenses. Marilou explained that things can not be done this way; the check will come in as income and expense line being reimbursed will remain as an expense. Marilou and

Ernie met regarding outstanding budget issues; all outstanding issues have been addressed. Marilou explained the budgets reports from January – August have been corrected to the best of her ability. The Selectmen will set a date for budget workshops at the next meeting. October 15th was set as deadline for department budgets to be submitted.

CEO: Ed provided two intent-to-cuts requiring Selectmen signature. The intents are for Map 40/Lot 2 and Map 18/Lot 21. Ed also provided the Selectmen with a stack of timber warrants and two gravel warrants requiring their signature.

Combining of positions discussed; Craig explained he spoke with LGC and reviewed the Zoning Ordinance (ZO) regarding gravel permits, he does not feel it is appropriate to include issuance of excavation permits under the CEO position. The ZO refers to excavation permits being issued by the Planning Board. Wetlands monitoring discussed, Craig suggested the wetlands monitor position goes away. Brief discussion continued regarding wetlands, excavation and timber monitoring positions.

MOTION: Craig made motion to dissolve unknown position of Wetlands Monitor, seconded by Ernie. A vote was taken, all in favor. Motion carries.

MOTION: Craig made a motion for Timber Monitoring duties to be assigned to the CEO, seconded by Craig. A vote was taken, all in favor. Motion carries.

MOTION: Craig made a motion to, in compliance with Article III section C of Brookfield Zoning Ordinance that monitoring of all excavation be handled by the Planning Board, enforcement will be handled by the CEO, seconded by Ernie. A vote was taken, all in favor. Motion carries.

Cell phone usage reimbursement discussed. Suggestion for independent business cell phone to be operated during set hours discussed. Ed explained that in the winter this presents an issue. Ed suggested a stipend; he feels it is beneficial to the Town to have only one phone from a cost standpoint. A suggestion was made to upgrade his plan from to an unlimited plan, with the Town covering the difference to increase to unlimited plan. Ed will look into cost to upgrade and other calling plan options. He will provide this information at the next Selectmen's meeting. *Clifton will put this on the agenda for next meeting.*

Road Agent Ed reported Pleasant Valley Road is waiting for pavement, it should have been paved today but the paver delayed, it should be paved next week. The road is in great shape. Ernie asked if there were any plans to grade Tumbledown Dick Road before winter. Ed explained that besides the hill the road is in good shape, he will grade and apply dust control to the hill before winter as his schedule allows.

Jeness Road discussed, Ed explained it is a class 6 road and he does not touch it. Clifton explained that the road needs to be passable for fire, ambulance and police. Ed will look at road to ensure it meet this criteria, he will add it to his agenda for yearly fall review.

Forest Fire Warden Replacement for retiring Forest Fire Warden discussed. Doug announced at an earlier meeting his plans to retire at the end of this year. Doug suggested Michael Moore or Brad Williamson as possible replacements. The qualifications of both discussed, it was determined that both were qualified. Brad was present and explained he was interested in the position. It was unknown if Michael was interested. Clifton will speak with Mr. Moore to see if he is interested. *This will be put on the agenda for further discussion at the next meeting.*

Old Business **Budget Time – Requiring all monies being requested by organizations be done by petition warrant:** The pro's and con's of this approach discussed, several members of the public expressed their concerns. Town meeting length being increased was a concern. Several suggested those organizations that directly impact the Town should be supported like VNA, Food Pantry, Library, etc... After receiving feedback from the public Clifton feels what he is hearing is the people want to keep this the way it has always been done - having the Selectmen decide what and

how much to fund organization requests. He further added that line item budget values can always be amended at Town Meeting to be increased or decreased.

Timber Cutting Ordinance – Selectmen’s Ordinance (2/15/1992) set a date for workshop: The Selectmen set workshop date for Thursday, October 1st at 8:00 AM with the CEO to review Timber Cutting Ordinance. Clifton explained that this workshop is open to the public.

Noise Ordinance – Update: Clifton is requesting the current Planning Board Noise Ordinance Sub-committee continue with their work and present their findings to the Selectmen instead of the Planning Board. Clifton will speak to all subcommittee members and relay this request.

New Business **Eagle Scout project for Ryan Hughes:** Suggestion for Town project for Ryan Hughes to complete as part of his Eagle Scout requested. Clifton feels we should support this endeavor and reviewed several Eagle Scout projects that were completed in other towns. He explained that in Wakefield one Eagle Scout project was to build picnic tables for ball fields. Leadership is a strong requirement of this project. Something related to the playground was suggested, possibly clearing paths and building benches. Clifton explained that land would need to be set aside and designated as a park/playground area before this could occur. The process for setting land aside discussed briefly, the same process that was used to set land aside for the Salt Shed would be followed. Clifton will have Ryan come back to present a few of his preferred plans and a timeline for the project.

Brad was asked if he could have a defibulator donated for one of the two buildings.

Clifton added one item to the agenda, all Selectmen agreed. **Report from Jay Badger regarding Town House:** Jay Badger has completed repairs to the Town House including plumbing, louvers and bathroom heat. He provided a report of his findings. The rot was not as bad as anticipated. Craig documented each stage of the repairs with a picture. The repairs went well. The repairs were done inline with estimate with no overages.

Craig announced the UNH Cooperative Extension is holding a series of workshops on caring for your forest.

Mail Reviewed.

No new business before the board meeting adjourned at 9:30 pm.

Respectfully submitted,

Jennifer Sonricker
Administrative Assistant

