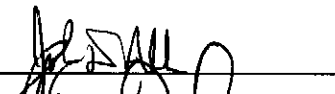




John Allen   
Bob Thompson   
Bill Lockard 

**Selectmen's Board Meeting**  
January 14, 2016

Present: John Allen, Chairman; Bob Thompson and Bill Lockard, Selectmen

Visitors: Town Office Administrator Julie Atwell, Town Administrative Assistant Julie Hoyt, Police Chief Doug Jette, Fire Chief Jay Henry, EMD/HO Tom Grieg, Building Inspector Kevin Bennett, ZBA Chair Frank Benesh, Treasurer Kathleen Dougherty, Town Engineer Burr Phillips, Videographer Hank Benesh, Bea Davis, Bob Davis, Stan Weiss, Huntley Allen, Dave Mason, David Matesky, Jerry Dougherty, Larry Seibert, Jerry Dougherty IV, James Gleason, Nancy Davis

Chairman John Allen called the meeting to order at 4:33 p.m.

**1. Amend & approve minutes**

- a. Selectmen's Meeting – December 21, 2015 The minutes were approved as written.
- b. Budget Hearing #2 – December 21, 2015 The minutes were approved as written.
- c. Non-Public – RSA 91-A:3, II(a) – Signatures Required **Selectman Thompson, seconded by Selectman Lockard, made a motion to seal the minutes. The motion passed unanimously.**

**2. Update on December 21, 2015 Action Items**

- a. Upcoming Selectmen's Meeting dates The upcoming meeting dates are January 28<sup>th</sup>; Wednesday February 3<sup>rd</sup> with the Warrant Article Hearing to follow; February 25<sup>th</sup>, and March 10<sup>th</sup> will be the Town Meeting at 7 p.m.

3. **ZBA – Caldwell Discussion** ZBA Chair Frank Benesh noted that most of the ZBA is in attendance for a discussion regarding this decision. ZBA Chair Benesh has spoken with Selectman Thompson about this but would like to publically make this commentary. If this Board is going to offer a forum for somebody to talk about somebody else in town and to make claims about that person breaking the law or spending money it's simply unfair to allow that to happen without that person being in attendance to defend against those statements. All sorts of things were said about ZBA Chair Benesh and the ZBA that were wrong. The Board

was asked to postpone that discussion until ZBA members could be there. If the Board is going to provide this kind of forum to speak and someone is critical of someone in town then give them the opportunity to speak at the same time.

Turning to what was said, ZBA Chair Benesh noted that mention was made a couple of times that the ZBA was implying it was about to appeal the case to the supreme court of New Hampshire. Certainly anyone leaving that meeting thought that was imminent but the ZBA had no conversation at all about it until last month when Jerry brought it up. Two people on the ZBA said no, Jerry needlessly inflamed the conversation last month. The second thing Jerry said at the December 21<sup>st</sup> meeting was that the clock was still running on the bill. At the ZBA meeting the week before several emphatic statements were made that the case is over and the ZBA is waiting on the decision; Jerry was told that on multiple times. Selectman Thompson noted he called Attorney Malia to confirm that the bill isn't accruing. Most of the money was spent in September and October; there was nothing after October 2<sup>nd</sup> which was the date of the hearing everyone was invited to attend.

Getting to the heart of the matter, it is important to understand there were two separate decisions. One was the denial of the variance to keep the porch they built illegally. The second decision was about, "If I can't have a porch, can I take the porch I built illegally and turn it into a ramp?" The ZBA denied that as the Board felt the Caldwells could build the ramp and stay in compliance. There were two sets of analysis. In looking at everything that was said there were three big themes; first that the ZBA should not spend the money at all to defend its decision; secondly there was too much money spent and thirdly that this was a minor violation and the ZBA should have allowed it anyway as was minor. Nobody made any motion that the ZBA should not defend itself when the ZBA was sued so for Jerry to say after the fact that the ZBA shouldn't have defended itself is gratuitous; he's speaking in hind sight. Quite frankly, nobody ever made that suggestion. As far as spending too much money that was based, in part, on a comment that Attorney Malia made prior to the case as to how much a defense would cost. He said a case like this would typically run five to seven thousand dollars. That was a general estimate; this case is far more complex. There have been four hearings and the applicant had a very creative attorney who had a dozen reasons for granting the variance. The ZBA worked with Attorney Malia to set the record straight; there was a binder of stuff; the town had to pay for it as the ZBA was the defendant; before even getting started with the defense; Attorney Malia had to read it and then prepare a defense; that is where all the money was spent. Again, there was no suggestion for the ZBA not to defend itself; did Jerry expect the attorney to put the record together then not show up to court? The case has cost thirteen thousand dollars due to the complexity. The ZBA denied the variance and that was upheld by the court. Jerry's second concern is that the town has spent far too much money on the case; ZBA Chair Benesh wondered how the town would stop once the case was brought. Jerry's third point is that this was a minor violation and the ZBA should have let them have it as it was only a six foot

intrusion into the setback. In terms of what actually happened; the ZBA denied the variance because the applicant didn't meet the requirements. That was upheld so that is done. The second part of the case, which was a variance to build a ramp, deals with a relatively new law that allows for access for a disabled person that lives there or visits. Part of the money was spent before the ZBA was sued in trying to explain to the ZBA what analysis the ZBA had to do to grant or deny the request for handicap access. The ZBA applied the facts to the case and denied the handicap access. The judge disagreed with Attorney Malia's analysis and remanded it back to the ZBA. There are five elements that the ZBA has to look at; the ZBA got through three points and denied the request. There are two more things to be considered before the ZBA can deny the request and next week at the ZBA meeting the ZBA will either grant or deny the ramp. Jerry's made a lot of comments about this being a small intrusion; it's minor; the ZBA should have granted the variance to begin with. Nowhere in the steps the ZBA goes through can the ZBA look at something and say it's just a small intrusion so it's okay. The amount of intrusion is one factor the ZBA can look at but the ZBA has to consider it as a violation of the fifty foot setback. Jerry's whole discussion about it being a minor intrusion is a misrepresentation of what the ZBA has to go through. There are several other members in attendance tonight who have things to offer.

David Matesky made copies of some of the pages from the state manual for planning boards; it states that the Board of Adjustment must act on what is presented. The Board can't just say "it doesn't hurt anybody". David is concerned about Jerry's idea of the Board not defending its position; if that's the way the Board acts then as soon as the Board denies a permit the guy will come in with an attorney at appeal and we say they're appealing, we're done. The Board can't fold up its tent and go home!

Dave Mason provided the Board with about ten pages of documentation he feels has to do with not just this case but Jerry's complaints. He asked the Selectmen to read it when they have an opportunity. Dave's unhappy with the way the judge's decision has been presented by Jerry. The judge found that the ZBA didn't finish talking about the handicap access situation. Jerry doesn't note that the judge didn't find an unnecessary hardship. The ZBA denied the variance and the judge agreed; there is no unnecessary hardship so the ZBA's decision was correct. As far as the handicap access goes, the judge didn't agree with Attorney Malia but the ZBA acted on Jackson's attorney's advice. The accommodation must be reasonable and necessary; if the Caldwells could get a handicap ramp that does what is necessary without a variance than how could the variance be reasonable and necessary? The ZBA is going to hear that part again. Jerry seems to have had difficulty with the criteria the ZBA had to meet. Jerry did the same thing in 2013 when he came to the Selectmen to demand that the town appeal the 2013 decision to superior court. Jerry castigated ZBA Chair Benesh and Dave stating they were unfair and uneven handed. All the information from the 2013 case is in the packet Dave provided. Dave doesn't see why Jerry can't get an

understanding of the criteria the ZBA has to meet to grant a variance. The ZBA couldn't find there was an unnecessary hardship. Dave noted Jerry also made a big point about there being a Right to Know (RTK) violation. In Dave's view it's a red herring; there was no RTK issue here; Attorney Malia was doing what the ZBA asked him to do; part of that service was to file a Motion for Reconsideration. The ZBA Chair was not exercising any authority; it was a continuation. When the ZBA grants or does not grant a variance the applicant is always told there is a thirty day period for appeal. It's the same situation with the court case. The ZBA had thirty days to look at the decision and say to the judge, "We think you made a mistake"; no one should think the case is final until that period has passed. ZBA Chair Benesh mentioned the complexity of the case. The complaint was made even longer because Jerry, without notifying the ZBA, would not attend the meeting because he was embarrassed by the ZBA's action. Because Jerry didn't come, an alternate was appointed and voted; the circumstances of the alternate coming in became part of the complaint from the Caldwell's attorney. There's money that wouldn't have had to be spent had Jerry done his duty and come to the meeting.

Chairman Allen is worried about the big hole of money. He'd like to know if there are elements in place so the town won't have this be a big money hit. Before this goes back to court at the next level; is there any way for the Selectmen to say this is it. He's concerned that the Selectmen didn't get any notice that the town would be spending that money. There should be a way to put a cap on it.

Jerry didn't ask Attorney Malia how much it would cost to defend a like case, Jerry asked specifically how much it would cost to defend this case to which Attorney Malia said it would be five to seven thousand dollars. Then Jerry asked what would happen if the town were to just file the response and let the record defend itself; Attorney Malia thought the town would probably lose. As far as the characterization of there being a negligible intrusion; when Jerry spoke to the Selectmen he told them those were the words of the court and made it clear the judge felt the intrusion was so minimal as to be negligible. Jerry knew his was a lone voice and he made that clear. As to the question of his not showing up for the vote; it was very clear to Jerry that this was going to be denied and that he would be the lone voice. Attorney Malia had said that certainly Jerry's concept was something the ZBA could hang its hat on but it didn't look like that was the way the ZBA was going to go. Jerry believes going to the meeting and voting against the board was inappropriate. As far as the clock still ticking on the bill, there were two motions filed; Jerry assumed that was not done for free; he can't imagine an attorney preparing motions and not charging for it. If that was the case then shame on him for saying the clock was ticking. Regarding the RTK, Attorney Malia's motion refers to the Zoning Board coming to the court and the Zoning Board making the request and that's not true. When the ZBA reconsiders what the judge says it's done at a public meeting. Jerry felt that ZBA Chair Benesh's action directing Attorney Malia to file another motion rather than do what the judge instructed the ZBA to do was not right. The ZBA was never given

the opportunity to vote. That is a violation of RTK and that's entirely his opinion. Jerry does think the ZBA should do what the judge said and sit down at a public meeting on the 20<sup>th</sup> of this month and determine its action. That is what should have been done regarding filing the MTR.

Selectman Thompson doesn't think he needs to know any more; everybody has done a great job; nobody needs to feel they have to come in here and defend their actions. He appreciates that the ZBA members took the time to defend their position but they didn't need to.

ZBA Chair Benesh noted the next step will occur at the ZBA's next meeting on January 20<sup>th</sup>. There are five parts to consider when discussing the handicap access piece. The ZBA got through three points; now they have to look at the two last points without truly understanding how to provide that interpretation. Granting of the variance is supposed to be in harmony with the spirit and intent of the Zoning Ordinance and then once the person no longer utilizes the property does the disabled ramp have to be removed. The whole handicap access piece is something the ZBA is struggling with.

Larry Seibert, speaking as a taxpayer, doesn't like that the town spent this kind of money. He also has a real problem with a ZBA that has the same chairman for nine years and who was chair of another board for four. Folks feel they can make those decisions by themselves. He would urge the ZBA to reconsider and urge the Selectmen to reconsider. This person, at the last Planning Board meeting, argued vehemently for forty five minutes against the Planning Board's proposed zoning ordinances. It is not healthy for the town.

Treasurer Dougherty feels denying the variance when someone wants to put a handicapped ramp into their house is awful in her opinion. ZBA Chair Benesh noted the ZBA didn't deny it; the Caldwells could build it elsewhere. The ZBA is having a meeting on Wednesday. It is the first of the year so officers will be elected; folks are welcome to come and watch that and to watch the ZBA's discussion whether it should grant a variance for the ramp or not. Treasurer Dougherty went up to the house when they had the Open House; the handicap ramp is necessary in that house for one thing. There are a lot of things in Jackson that have been approved that should not be approved and go right through; this is a handicap ramp.

ZBA Chair Benesh reiterated that the ZBA denied the ramp the Caldwells wanted to build; the Caldwells had the opportunity to put it where it met the variance. Huntley Allen believes a handicap ramp should be going into a house that is handicap accessible and this one is not.

Selectman Lockard asked if the ZBA will let the Selectmen know once a decision is reached and ZBA Chair Benesh noted the Selectmen are all cc'd every time the ZBA makes a decision.

4. **Valley Cross Road Bridge – Burr Phillips** Engineer Phillips and Fire Chief Henry have been working on this; they had a contractor look at the bridge as well. The decision has to be made whether to make a big project out of this or keep it simple and fix the bridge without going through the state. An estimate can be done to maintain its character. If the town goes through the Bridge Aid Program there is a selection process. The state would look at replacing the entire bridge. The sidewalk connections have failed and that is closed off but the bridge is structurally fine. For three thousand dollars the town can get an inspection and a cost estimate to repair the bridge. That would be six to eight hundred thousand dollars while the fix would be one hundred fifty thousand to one hundred seventy five thousand dollars. After much discussion it was determined that the Bridge Aid Fund is the way to go for a full repair but the engineering study is separate. It's possible the three thousand dollar inspection could show that the town can fix the bridge itself. There is a timeline for the Bridge Aid so the town will notify the state that it will be applying then they will have a place in line. The town can back out if the three thousand dollar survey shows this is something the town can do on its own. **Selectman Thompson, seconded by Selectman Lockard, made a motion to pursue the architect recommended by Piper Services to access the needs of the bridge up to a maximum of four thousand dollars for those services. The motion passed unanimously.**
  
5. **Police Report** Chief Jette reviewed Department activities since the last meeting; some items discussed included: two motor vehicle accidents, one dog complaint and a report of stolen firewood. He attended a meeting at Kennett High School regarding the Cop Sync program; it's in the hands of the Administrators; it was well received. Chief Jette just found out today that Jackson's acting post mistress was not appointed to be post master. He feels this woman has become a part of this community and feels an effort should be made to ask the Post Master General to reconsider his decision. The Selectmen have already written a letter and this will be put out on Enews.
  
6. **Public Comment** There were no Public Comments at this time.
  
7. **Building Inspector**
  - a. Weekly Report – Kevin Bennett Inspector Bennett reviewed the permits below.
  
  - b. Building Permit 2015-84 Map R12 Lot 35 – (Owner – Weitzel – 114 Eagle Mountain Road) – Extend Building Permit – 2014-72
  
  - c. Building Permit 2016-01 Map V02 Lot 10S1 Sub C10 – (Owner – Johnston – 16 New Madbury Lane) – Remodel Bathroom

- d. Building Permit 2016-02 Map V02 Lot 10L Sub B 1-2 – (Owner – Chesley – 28U2 Falls Lane) – Update Existing Master Bathroom
- e. Building Permit 2016-04 Map V06 Lot 28 Sub A – (Owner – Crowther – 266 Black Mountain Road) – Install 14KX Generator
- f. Building Permit 2016-05 Map V10 Lot 137 – (Owner – Picardi – 61 Presidential Road) – Extend Building Permit 2014-69
- g. FYI – Complaints EMD Tom Grieg noted there have been two complaints about different septic systems. It's possible these are failing systems; the owners will be asked to have them pumped to see if that will forestall the issue. This may become a contentious situation and he may need to bring Engineer Phillips in to determine if they are failing. Fire Chief Henry wants to know why NHDES isn't handling this. EMD Grieg was informed it was kicked back to Jackson as NHDES is undermanned. Chief Henry noted that is absolutely wrong; this is DES's problem. Selectman Lockard was aware of this; he'd like to try to get compliance first; this is not an oddball thing for DES to do. Selectman Thompson wondered if the Board should respond to DES acknowledging they were informed regarding failing septic systems and mention there may be a point when the town is not able to resolve this locally and the Selectmen want to establish this is DES's responsibility. At some point DES should understand they should be involved at the state level. If it becomes contentious then it will be a problem. A letter will be crafted by the Selectman and the Public Health Officer. Recent weather brought these to a head; it may have been going on for a while. Selectman Thompson also thinks this may be something the Selectmen may want Jackson's Building Inspector's signature on. This is a case of "effluentza".

## 8. New Business

- a. Intent to Cut – Signatures Required **Selectman Lockard, seconded by Selectman Thompson, made a motion to sign the Intent to Cut. The motion passed unanimously.**
- b. Amended MS-46 – FYI
- c. Create New Equity Account This account will reserve cemetery income for future projects. The accountant is asking to set up this account; they don't have to go to the trustees. **Selectman Thompson, seconded by Selectman Lockard, made a motion to create an Equity Account for the Cemetery. The motion passed unanimously.**

- d. Annual Update – Investment Policy This is the annual update of the Investment Policy; the Board was asked to review this for discussion at the next meeting.
- e. Town Insurance **Selectman Lockard, seconded by Selectman Thompson, made a motion to sign the contract with Primex with an effective date of July 1, 2016. The motion passed unanimously.**
- f. Warren Schomaker Donation (added) Warren has made a donation to the town of the *History of Jackson* by Alice Pepper. He was thanked for his generosity and the Board congratulated Alice on her book.
- g. Approve Firing Range at the Transfer Station (added) **Selectman Lockard, seconded by Selectman Thompson, made a motion to approve and support the use of the Transfer Station for the training and qualifying range for Jackson. The motion passed unanimously.**

9. **Old Business** There was no Old Business.

10. **Public Comment** Bea would like to know if the Town Report is going to include salary and benefits. This is public information. Bea also noted there was a concern brought up about the ZBA having the same chairman for eight years; the Selectmen should look at the Planning Board; there are folks who have been on that for more years than eight.

11. **Non-Public Session** **Selectman Thompson, seconded by Selectman Lockard, made a motion to go into Non-Public Session in accordance with RSA 91-A:3, II(c) at 5:55 p.m. The motion passed unanimously.**

The Board returned to Public Session at \*:\* p.m.

There being no further business, the meeting was adjourned at \*\*\*\*

Respectfully submitted by:

*Martha D. Tobin*

Recording Secretary