

**OFFICE OF SELECTMEN  
6 HOLLAND STREET  
PO BOX 139  
MOULTONBOROUGH, NH 03254**

Selectmen's Meeting

September 5, 2013

**MINUTES**

Selectmen: Joel R. Mudgett, Jonathan W. Tolman, Edward J. Charest, Christopher P. Shipp, Russell C. Wakefield; Carter Terenzini, Town Administrator; Hope K. Kokas, Administrative Assistant.

**I. CALL TO ORDER:** Joel called the meeting to Order at 7:00 P.M.

**II. PLEDGE OF ALLEGIANCE**

**III. PUBLIC HEARING:**

1. Proposed Ordinance Amendment, #10 Unnecessary Noise: Joel opened the Public Hearing and asked Carter to explain the amended ordinance. Carter reported that he and Police Chief Leonard Wetherbee worked to amend the Noise Ordinance per the written request that was received two months ago, under the direction of the Board to do so under the Noise Ordinance. The first amendment added the definition of fireworks per RSA 160-C:1. The second added under Noises Prohibited – Unnecessary Noise Standard #8, which states that any use of fireworks between the hours of 10 p.m. and 7 a.m., Sundays through Thursdays, or between the hours of 12 a.m. and 7 a.m., Fridays and Saturdays, will be prima facie that the user has violated this ordinance. Law enforcement officers may confiscate any and all remaining fireworks on-site. Carter noted an omission and asked that the word evidence be added after prima facie. Chief Wetherbee explained that the state statute provides the definition of fireworks under 27 C.F.R section 555.11 and also RSA 160-C:1. The federal code has two types of fireworks, those that produce a noise and those without noise. He added that they addressed those that make noise. The Chief said that anything sold at a fireworks store is legal in NH. The recent increase in complaints is due to the state's reduction in restrictions. The law states that a person setting off fireworks must be at least 21 years of age and be on their own land, or, if on the land of another, have written permission from the property owner to set off fireworks. The Chief said that it is their assumption that tenants should have written permission of the property owner to set off fireworks. In 2012 they received 55 complaints about fireworks and the peak month is July. The Police Department has adopted the policy of speaking with people first and most are agreeable. The Chief said that they haven't confiscated any fireworks nor do they want to if they don't have to, adding that noise is subjective for every person and it is a disturbance. Joel opened the hearing to the public.
  - 1) Joseph Cormier thanked the Town Administrator and Police Chief for the changes made, but explained he is still not happy with the hours. Based on his research he found that the federal law has two categories of fireworks: Display which is used for public events, such as seen at Center Harbor on July 4<sup>th</sup>; and consumer, the types of fireworks that are available and sold to the public.
  - 2) Rene Blais told the Selectmen that he sent a letter asking that fireworks be banned on Long Island, and also provided documentation to the damage that results to the environment and especially to the lake. He said that the fireworks are out of control on Long Island during June, July, and August. Mr. Blais said that the high decibel levels of fireworks causes hearing damage. He expressed his

concern for the environment and the toxins that result in the lake and vegetation. Carter confirmed that Mr. Blais' letter and information was received, which expressed his desire that fireworks be banned on Long Island. In addition, correspondence was received from Jim Mullen asking that human noises be included in the ordinance. Also from Jim Smith, expressing that the proposed hours in the ordinance is too late and thought that it should be changed to 10 p.m. to 7 a.m. seven days a week. 3) Bud Heinrich said that he thought 7 a.m. was too early to be setting off fireworks, and thought noon would be a better starting point, giving special consideration to the holidays and providing a couple of days before them and after. Chief Wetherbee commented that anyone using fireworks during the day is doing so for the noise only and most of those are banned federally. He added that typically any complaints received after 11 p.m. usually involve alcohol consumption. Carter told the audience that he was directed by the Selectmen to take small increments within the Noise Ordinance and he is open to changing the hours. 4) Mr. Heinrich expressed his concern if the Police Department is confiscating fireworks. The Chief said that the Police can always take fireworks as evidence. Chris added that the proposed ordinance says "may" and not shall. Chief Wetherbee acknowledged that fireworks do have an adverse effect on many dogs. Carter said that they added the definition of fireworks to the Noise Ordinance to give the Police Department a tool for enforcement. He added that the Police have found that most people are agreeable to their request to quiet down as a complaint has been made, and there isn't any need to press charges. It is those who require a second request that will face charges. 5) Mr. Cormier repeated that he was happy with the amendments, but would like the hours lessened. Chief Wetherbee responded that a disturbance is still a disturbance at any time during the day. Mr. Cormier noted that the ordinance that is on the Town's website was from 1998 and the proposed amendment had many changes. Joel reported that the Noise Ordinance had been amended in 2006 and the current proposal had just the two changes. He apologized for the confusion and asked Carter to review all ordinances on the website to be sure that they were the most recent. Mr. Cormier proceeded to describe federal laws, definitions and state laws at great length. Joel asked him what his purpose was in this. Chris added that the purpose of the public hearing was to address the proposed amended ordinance. 6) Paul Punturieri asked Mr. Cormier what he wants. Mr. Cormier replied that he wants fireworks banned from Long Island, adding that he doesn't like the proposed hours and feels fireworks should be banned. He was happy with the noise definition, but expressed his concern about environment pollution. Carter explained that the hours listed for fireworks are the same time period under 10.2-2, and they wanted the ordinance to be consistent. The purpose was to remove the debate that fireworks aren't mentioned in the ordinance and give the Police Department a better tool for enforcement. Chief Wetherbee added if fireworks are set off during the restricted hours, they won't need to have a complaint to act. Russ commented that based on the input they received tonight, he would be OK with reducing the hours to 10 p.m. and extend the hours before and after July 4<sup>th</sup>. Chris said that the proposed Noise Ordinance incorporates fireworks and the time should be the same for all noise. Ed agreed and asked if firearms are covered under the Noise Ordinance. Chief Wetherbee replied that it depends on the situation, but at night it is a disturbance. Jon said he agreed with Chris, and thought the hours should be the same for all noise. Joel thought it was a good start and that the time should be consistent for all noise. Russ commented that Moultonborough is a tourist town and it is hard to control everybody. 7) Mr. Cormier complained that it is the duration of the fireworks and asked why the time can't be changed just for the fireworks. In addition he asked why the Town doesn't have a fireworks ordinance. 8) John Anderson commented

on the term “normal person” in the ordinance and asked how the Police are supposed to distinguish. Carter stated that the wording was “a reasonable person with normal sensitivities” which was used for court purposes. 9) Alan Ballard commented that the amended ordinance addresses some complaints and thought the Selectmen should adopt it and keep an eye out on the situation and, if needed, changes can be made. Russ asked why the hours for fireworks can’t be changed, stopping at 10 p.m., adding that he would be in favor of a fireworks ordinance. Chris disagreed, stating that the time should be the same for all noise. 10) Mr. Blais said he agreed with Russ and midnight is too late. 11) Clelia McKay felt that stopping at 10 p.m. is a good time. Chris stated that they shouldn’t have different times for different noises. Russ argued that fireworks are not the same kind of noise as other noise disturbances. Russ Made the Motion to amend the Noise Ordinance as written, but changing 10.2-8, reducing the hours of operation to 10 p.m. to 7 a.m. seven days a week, increasing the hours to 12 a.m. to 7 a.m. one week prior and one week after July 4<sup>th</sup>. Joel Seconded the Motion. Chris argued that there is no difference in noise, fireworks may be as irritating to one as loud noise is irritating to another. They are equally irritating and deserve the same protection. Russ said that other noises are not as prevalent as fireworks, especially in the summer months. 12) Mr. Blais suggested changing the time for fireworks and amending it later if necessary. 13) Peter Jensen asked and learned that this is a public hearing for the Noise Ordinance, not a fireworks ordinance. He said he could see both sides to the issue, but then expressed his concern over barking dogs which bothers him the most. He understood that fireworks is a different kind of noise and offends people differently. 14) Jean Beadle suggested changing the time for all noises in the ordinance to 10 p.m. to 7 a.m. Joel cautioned the Selectmen that if this is done, then businesses may be adversely affected. A vote was taken: Russ and Joel voted Aye. Jon, Chris and Ed voted Nay. The Motion did not carry. Jon Made the Motion to adopt the changes in the draft of the proposed amended ordinance as written. Ed Seconded. The Motion carried Unanimously. Ed recommended and the Selectmen agreed that they consider a separate ordinance for fireworks.

The Selectmen took a recess at 8:37 p.m. and reconvened at 8:40 p.m.

2. Proposed Land Acquisition & Sale: Joel reported that this public hearing was to consider the property acquisition at 970 Whittier Highway, Map 052 Lot 014, known as the Adele Taylor property for \$240,900. Ed recused himself. Joel added that the asking price was based on the 2012 assessment. The trustees of the property have offered to donate the proceeds to a college scholarship to Moultonborough Academy students. The land abuts the back of the school and also located in the village. One possibility would be to provide a second egress for the school. Another possibility would be to build a gym for the Recreation Department. Russ commented that it would be a benefit for the Sidewalk Study. 1) Bud Heinrich commented that the school board said that they weren’t interested in having a second egress, but it could provide additional parking. He asked if the school isn’t interested, then why is the Town. Joel said that he hadn’t heard that the school is not interested in a second egress. 2) Paul Punturieri said that the 2013 assessed value of the property is \$234,000 and asked if this changes the price. Joel replied that the price remains at \$240,900. Mr. Punturieri asked and learned that this would be a separate warrant article. 3) John Anderson asked what would be done with the building. Joel replied that they haven’t decided. 4) Jim Morrison asked if an independent appraisal has been done. Joel replied not yet. Mr. Morrison stated that there hadn’t been an

independent appraisal done at the Lions Club and cautioned the Selectmen not to make the same mistakes. 5) Jean Beadle asked if there was a different buyer would the seller still donate the proceeds for the scholarship. Joel replied that this offer was made for the Town only. 6) Hollis Austin expressed his concern about the school having a second egress into the village area, which would make the traffic worse and increase the danger to students walking. 7) Mr. Heinrich said that the results for the Master Plan have been coming in. Although not all the data from the surveys has been entered, the majority of the responses accounted for feel that additional recreational facilities are not needed. 8) Alan Ballard, member of the CIPC reported that on a vote 3 to 2, they do not recommend the purchase. 9) Tom Howard, Chair of the Planning Board reported that the Planning Board voted to recommend to proceed with the purchase with specific plans to be presented. Mr. Howard, speaking as a resident and not a Planning Board member, responded to Mr. Morrison's comment, saying that the Town did in fact get an independent appraisal on the Lions Club property. 10) Nancy Wright asked about the water issue at Murphy's store and how this effects the Taylor property, and if the water problems at the Town buildings would be the same at this property. Carter reported that it would be the responsibility of the offending property owner to remediate any resulting problems to abutting properties. In addition, the water issues at Town facilities are different per building. DES will do additional testing regarding Murphy's problem and the Taylors have allowed access to do the testing. Joel commented and Carter agreed, that what is there now is a dug well, which wouldn't be suitable for Town use. 11) Paul Punturieri asked about the deeded access rights to the spring given to the doctor's office. Carter said that this wasn't entirely clear, but after 30 years can be abandoned. Jon asked and Joel confirmed that the deed states that the access rights were to allow the abutter to water his cattle. 12) Mr. Austin said that he is concerned that the Town doesn't have a plan for the property. Carter reported that as required, the Planning Board and Conservation Commission have reported back their recommendation. Both are in favor. The Heritage Commission asked that the hearing be continued until September 19<sup>th</sup>. He said that these were the only comments received. 13) Bud Heinrich asked the Selectmen to get the school's comment before the next public hearing on September 19<sup>th</sup>. Carter said that Ed will speak about a joint meeting. Mr. Heinrich asked about environmental pollution. Carter replied that he will try to obtain the DES studies and put them on the website. Joel concluded the public hearing for 970 Whittier Highway which will be continued to September 19<sup>th</sup> as required.

Joel opened discussion about the proposed Deep Wood Lodge Road easement from Town land on Map 162 Lot 087-001 to be given to the property owners of 33 Deep Wood Lodge Road, Map 162 Lot 175. Ed returned to the Board. Carter reported that the Town's land effected (MBLU 162-087-001), 250 square feet +/- has been encroached by the owners of 33 Deep Wood Lodge Road with their septic fill extension, approximately 300' from the lake. The abutter asked for the easement, offering to pay \$600 for restitution, and extinguishing the easement when it is necessary to rebuild the septic system. Carter said that at the Planning Board's meeting of August 28<sup>th</sup>, they voted to recommend granting the easement. Conservation Commission recommended requiring the owners of 33 Deep Wood Lodge Road to contract with a septic engineer to inspect the system yearly and to increase the trigger to extinguish the easement. In addition, they declined accepting the donation of \$600. Carter suggested that the funds should then go to the general fund. He added that these were the only comments received and the public

hearing, as required must be continued to September 19<sup>th</sup>. Joel closed the public hearing at 9:10 p.m.

- IV. **REVIEW / APPROVAL MINUTES:** Russ Made the Motion to approve the Selectmen’s Minutes of August 29, 2013 as written. Chris Seconded the Motion. The Motion carried unanimously. Russ stated for the record that Lt. Ringelstein is not a Navy Seal as reported by Mr. Torressen from last week’s meeting.
- V. **CITIZEN INPUT:** 1) Paul Punturieri asked the Selectmen if they had received any more 91-A requests regarding the public hearing on Monday, September 9th. Carter replied that they had. Mr. Punturieri asked if this had any impact. Carter replied not unless the Selectmen vote otherwise.
- VI. **NEW BUSINESS:**

- 1. Review for Approval: Payables/Payroll Manifest & Signature File:

<b>DOCUMENT DATE</b>	<b>DOCUMENT</b>	<b>MAP/LOT#</b>
9/5/13	Outstanding Check Manifest	N/A
9/5/13	Veterans’ Tax Credit – Approved 2014	054-001
9/5/13	Payroll Manifest & Signature File, \$96,618.41	N/A

Joel read the file for September 5, 2013. Russ Made the Motion to approve the Payable/ Payroll Manifest & Signature File for September 5, 2013 as written. Ed Seconded. The Motion carried unanimously.

- 2. Review for Approval: 2013 Road Program – Chip Sealing: Joel reported the DPW Director Scott Kinmond, in his memo to the Selectmen, is requesting to waive the bid process as Allstate Asphalt has the proprietary market on the proposed chip sealing method for New Hampshire and Massachusetts. This vendor is also an approved NH DOT vendor and holds several various product state bids. The cost for the 2013 Road Projects for chip sealing is \$60,500. Russ Made the Motion to approve the 2013 Chip Sealing contract with Allstate Asphalt for \$60,500, waiving the bid process due to there are no other vendors providing this process. Ed Seconded. Jon agreed that the chip sealing was a good process. 1) Hollis Austin expressed his concern that there is only one vendor providing this service and asked if other alternatives were explored. Joel said he was unsure, but felt confident that Scott had done his homework. He added that the old process tended to wash away. Russ added that the MD80 was outlawed by the EPA. The Motion carried Unanimously.
- 3. Review for Approval: Launch Request, NHIAA, States & Lees Mills, 9/26/13: Jon reported that this was the second school tournament out of States Landing and Lee’s Mills, with multiple schools participating. The Academy has 6 anglers participating. Jon Made the Motion to approve the Launch Request for the NHIAA for States Landing & Lee’s Mills on September 26, 2013 and to waive the \$150 Launch Fee. Ed Seconded and the Motion carried Unanimously.

VII. **OLD BUSINESS:** None.

VIII. **OTHER BUSINESS:**

1. Board & Staff Liaison and Update Reports: 1) Ed reported that there will be a joint meeting with the School Board and Selectmen regarding videoing the meetings on Tuesday, September 10th at 7 p.m. at Town Hall. Carter said he will check to see if the Taylor property can be added to the School Board's agenda. 2) Carter asked if any Board members would like to participate in the interview team for the Assessing contract on September 18<sup>th</sup>, from 9 a.m. to 1 p.m. Russ said he'd like to be on the team. 3) Carter informed the Selectmen that he received contact from Town Counsel asking the Selectmen to ratify the letters sent to Josh Bartlett and Judy Ryerson on August 8<sup>th</sup> and also the notice of Public Hearing for September 9<sup>th</sup>. Joel Made the Motion to ratify the letters sent to Josh Bartlett and Judy Ryerson on August 8<sup>th</sup> and the Public Hearing for September 9<sup>th</sup>. Russ Seconded the Motion. Chris asked why this request is being made. Carter replied that it was Town Counsel's suggestion that these actions be ratified. He added that they are being asked to ratify what they have already done. 1) Clelia McKay asked why. 2) Peter Jenson said that if they are unsure about this to not do it until they get more information. 3) Hollis Austin said that based on his concern for the Selectmen and the two individuals involved, that he agrees with Mr. Jensen to hold off until they get more information. Carter replied that there continues to be questions about the process and ratifying their actions would put the issue to rest and allow the hearings to proceed on the merits of the issues to be heard. A vote was taken: Russ and Joel voted Aye. Jon, Chris and Ed voted Nay. The Motion did not carry. 4) Russ commented that the assessing bids had a lot of variables and asked Carter if the Assessor will provide his recommendation. Carter replied that he will have a recommendation after the interviews. They hope to bring this to the Selectmen for approval in October for the upcoming budget.
2. Planning Board Minutes, August 28, 2013: Acknowledged.

**IX. CORRESPONDENCE:**

1. Time Warner Cable, August 21, 2013: Joel reported this is their usual letter reporting possible program changes.

**X. CITIZEN INPUT:** 1) Hollis Austin asked for the names of the three bidders for the assessing contract. Russ replied they are: KTR, Cross Country, and Vision Government Solutions. Mr. Austin asked what state each are from, concerned that Vision is from "taxachusetts". Carter replied that KTR is also from "taxachusetts", and Cross Country is out of Concord, NH. He added that he is not sure that KTR met the minimum requirement of having worked with 5 NH municipal customers for three years.

**XI. NON-PUBLIC SESSION:**

**XII. ADJOURNMENT:** Ed Made the Motion to Adjourn. Chris Seconded the Motion. Motion Carried Unanimously.  
Joel adjourned the meeting at 9:40 p.m.

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Approved

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Date:  
Respectfully Submitted  
Hope K. Kokas, Administrative Assistant