

**MINUTES OF THE SELECT BOARD  
MONDAY, JULY 20, 2015 – 7:00 PM**

Present: Chair, Lorn Buxton, David McGuckin, Selectman, William Stewart, Selectman, and Bette Jane Riordan, Secretary.

Also present: Zachary Taylor, Director of Operations, Riverside & Pickering Marine, Teddy Golter, Andy Schulte, Peter Hunt and Beth Barnhorst.

Chair Buxton convened the meeting at 7:00 PM.

**1. Approve Select Board minutes of July 6, 2015.**

Approved as amended.

**2. Public Q&A. – None.**

**3. Items.**

**a. Teddy Golter-Flag Display.**

Ms. Golter stated her request for the Town to display flags from Memorial Day to Labor Day or some portion of that time period, as a gesture of patriotism, similar to surrounding towns and cities. The flags would be affixed to telephone poles. As there is no budget for the Town to pay for this, the Board suggested she check with the Town's 4<sup>th</sup> of July Parade Committee, as there may be funding left in their budget to fund this project. The Board also suggested she contact the Town accountant. Because utility poles would be used, she was directed by the Board to seek appropriate permission from the State DOT, and Eversource. The Board also requested that Ms. Golter talk to the Fire Department to see if they would take responsibility for overseeing the annual installation, maintenance and storage of the flags and mounting equipment. Ms. Golter will report back at the next Select Board Meeting.

**b. Peter Hunt – Letter of 7-7-15 re: traffic concerns.**

Mr. Hunt and Beth Barnhorst residents of 14 Pit Lane, addressed their July 7, 2015 letter to the Select Board expressing their safety concerns about the intersection of Pit Lane and Wentworth Road. They asked the Board to consider remedies,. During the discussion the issue of the two signs "No Thru Traffic" located on either end of Pit Lane was raised. The Board agreed they should be made more visible. Selectman McGuckin has contacted the State DOT and requested the assistance of Rep. David Borden to see what can be done. He stated he will work on getting the signs redone and relocated.

**c. Governmental Land Uses.**

A resident has approached the Select Board challenging the decision of the HDC to review but not vote on the school addition project. The Board obtained legal opinions from the NHMA and the SAU regarding the extent to which governmental entities are subject to land use regulations (see attachment). Discussion was tabled until the next meeting.

**d. 1 Steamboat Lane.**

Zachary Taylor of Riverside Pickering Marine appeared on behalf of the property owner Vincent Taccetta, 1 Steamboat Lane (Tax Map 18 Lot 16) to address the status of the after the fact permit, seeking abutter permission from the town for a docking structure to be located within 20 feet of the wetlands setback to property lines adjacent to the Atkinson Street right of way. The floats which currently are located over the property line extension will be retained and rotated to be relocated within the property line extension of Mr. Taccetta. Mr. Taylor requested the Board to sign the abutter permission form for the work to be done to allow Mr. Taccetta the continued use of his pier. Mr. Taylor stated he has obtained all other necessary approvals. After discussion, Selectman Stewart made the following Motion:

*That the Select Board write a letter of no objection to plans submitted by Riverside Marine on July 16, 2015 regarding the placement of docks within the 20-foot right of way.*

Selectman McGuckin seconded, and the Motion carried. Mr. Taylor stated he needed a notarized letter from the Select Board. Selectman Stewart requested that Mr. Taylor notify the Conservation Commission.

**e. Ritson Street.**

Selectman Stewart met with the owners of 131 Davidson Street regarding the abutting Town right of way. The owners have agreed to complete paperwork clarifying the right of way and preserving the Town's proper ownership based on the existing mapped property lines. The Town agreed to pay for the expenses of drafting and filing said paperwork and agreed to write a letter to the State allowing for the owner's docking structure to encroach upon the ROW buffer zone. Legal counsel will be asked to draft the documents.

**f. Water and Sewer Rates.**

Chair Buxton reported the following rates have been determined:

Water Rate will be \$2.72, a decrease from the previous year of 22 cents.

Sewer Rate will be \$11.24, an increase of 5 cents from the previous year.

Selectman McGuckin will notify the Water and Sewer Commission.

**g. Municipal Records Committee.**

Chair Buxton made the following Motion:

*To establish a Municipal Records Committee pursuant to the provisions of RSA 33-A:3.*

*Members shall be comprised of Assistant to the Select Board, Pam Cullen, Town Clerk, Priscilla Hodgkins, Treasurer Tom Smith, and Town Historian Jim Cerny.*

Selectman McGuckin seconded. Motion carried.

**4. Other Old Business - None.**

**5. Other New Business - None.**

**6. Committee Reports.**

Chair Buxton commended Selectman Stewart and the Fire Department for the format and content of monthly report.

Meeting Adjourned. 8:37 PM

Good afternoon, Mr. Buxton:

First, although RSA 674:54 and the case of *McGrath v. City of Manchester*, 113 N.H. 355, 307 A.2d 830 (1973) stand for the rule that a municipality is exempted from its own zoning, remember that RSA 674:54, II requires public notice of the proposed use and a public process, which includes accepting nonbinding public comments. In addition, to be exempt from zoning, the use, construction, or development must occur on governmentally-owned or occupied land and must be a proper “governmental use”—i.e., one “that is statutorily or traditionally governmental in nature.” 674:54, I.

Second, it is unclear whether a legislative body can, through zoning (or here, through a historic district regulation) *require* the municipality to comply with zoning. There simply has been no case addressing a municipality’s ability to knowingly subject its land to any particular land use regulation. However, it may be wise to follow the will of the voters, particularly since there is nothing stopping a municipality from ensuring that its proposed use conforms with zoning (or here, obtains the certificate), and it is often recommended that municipalities voluntarily submit themselves to zoning, particularly where site plan review or subdivision is involved.

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July 16, 2015

Salvatore Petralia, Superintendent  
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Re: New Castle School District/HDC

Dear Sal:

The New Castle School Board has asked if New Castle's historic district regulations apply to the School District. In my opinion, New Castle's land use regulations, including the historic district regulations, do not apply to the New Castle School District, because New Hampshire school districts are exempt from local land use regulations. Instead, RSA 674:54 applies. The reasons for my conclusion are set forth below.

According to Section 9.3.5 of the New Castle zoning ordinance, the historic district regulations apply to municipal or government entities. However, the New Hampshire Supreme Court has held, in a series of cases, that government entities are not subject to land use regulations adopted by a town or city. These holdings were based upon the fact that New Hampshire's land use enabling statutes do not expressly authorize cities and towns to regulate the use of land by governmental bodies. The Court reasoned that, in the absence of such express authority, the enabling statutes must be construed as applying only to private land or private uses.

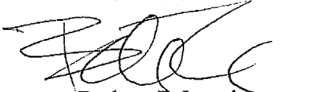
While some of these decisions phrase the exemption in terms of *the state or any of its subdivisions or agencies*, Opinion of the Justices, 113 H 217, 218 (1973) the exemption turns not on the governmental classification of the landowner or possessor, but on the governmental character of the use. Thus, in McGrath v. City of Manchester, 113 NH 356 (1973), the Court held that a city is not bound to comply with its own zoning ordinance, provided that the proposed use serves a governmental function. Land owned by the government and leased to a private person for a public purpose likewise is exempt

from zoning. City of Portsmouth v. John T. Clark & Son, Inc., 117 NH 799 (1977). Although the land use enabling statutes have undergone many amendments since the nineteen seventies, there is still no authorization in either the land use statutes or the section covering historic districts giving municipal land use boards the authority to regulate the use of land by school districts.

I believe that RSA 674:54 was enacted as a result of the above cases to give local land use boards the opportunity to provide input on governmental uses proposed by other governmental entities. It applies to *any proposed governmental use of property...which constitutes a substantial change in use or a substantial new use.* RSA 674:54, II. Governmental use is defined as *a use, construction, or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, the community college system of New Hampshire, or by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.* RSA 674:54,II.

Please let me know if you have any questions.

Very truly yours,



Barbara F. Loughman

BFL/rc

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