

New Durham Board of Selectmen
Minutes of Meeting ~ March 5, 2007
Town Hall

Members present: Chairperson Dwight Jones, Ronald Gehl, Peter Rhoades

Also present: Town Administrator April Whittaker, Road Agent Mark Fuller, Police Chief Shawn Bernier, Town Historian Cathy Orlowicz, Copple Crown Commissioner Christopher LaPierre, Moderator James Fenske, Michael Clarke, Katherine Woods, Thomas Beeler, Skip Fadden, Carleton Woods

Call to Order: Chairperson Dwight Jones called the meeting to order at 7:03 p.m.

2. Citizens' Forum:

Michael Clarke of the Personnel Committee stated the Committee had 10 questions regarding Article 23, which deals with implementing a Code of Ethics. He said the Committee was unaware of meetings the Board had had on the matter. Chair Jones said the meetings had been posted, and appeared on numerous agendas' throughout 2006. Mr. Clarke said he could not find the exact RSA cited in the Article, and Town Administrator April Whittaker said it might be a typo and that she would get the specifics to him.

Mr. Clarke's main concern focused on the lack of an independent "Ethics Committee" and he pointed out many towns have an elected Ethics Committee and wondered why the same was not set up for New Durham. He said under this Code, if the Board had a complaint against one member, the remaining Selectmen would hear it. Selectman Ronald Gehl said the issue of an elected committee was discussed and was something that he personally would like to see, but it was felt that it would be difficult to get an elected committee right away. He suggested getting the Code implemented; then modifying it. Mr. Clarke said it could not be changed until Town Meeting 2008.

Katie Woods of the Personnel Committee described the Code as allowing the Board to be judge and jury against employees. She wondered why the Code should be put into practice. Chair Jones said the Board has wanted one for a long time together with many residents who have also pressed for such a code. Selectman Gehl said many towns do not state which board is responsible for hearing complaints. He said the goal is to never have any need to go through an enforcement procedure. He reiterated that it might be difficult to recruit members for an Ethics Committee.

Ms. Woods cited a case in Epsom where the Board of Selectmen were not well trusted. She commented that it appeared the Code was being pushed through without all aspects complete. Selectman Peter Rhoades while disagreeing that the Code was being pushed through, accepted that her concerns were valid especially if they had not been aware of the discussions on the topic throughout 2 years. He said if a case came up this year, the Board would have to work through a procedural format, but he saw no potential for such a problem to arise. He added it would be great if interest in serving on a committee were expressed.

Mr. Clarke asked if there was a reason there was no appeal process. He said someone would have to appeal to Superior Court and have to hire a lawyer for an appeal. Selectman Gehl said statutory requirements dictate another body, one step up, would hear an appeal and that would be Superior Court.

Carleton Woods suggested Moderator James Fenske could appoint a committee. Mr. Fenske said he was sympathetic to the concerns of the Town employees, and opined there should be an independent source for complaints. TA Whittaker pointed out that if a ruling, even by an Ethics Committee, went against someone, that person would still have to go to Superior Court for appeal per statute. Chair Jones clarified that the Personnel Committee was requesting a secondary appeal process.

TA Whittaker said problems other communities found with Codes of Ethics derived from a policy being left open to communication and interpretation and cited, Milford as a recent example of not having a well worded policy. To avoid such problems, she said the language in this Code was tight. She explained there was nothing untoward or sinister about sidestepping a second agency such as an appeals committee. Both Mr. Clarke and Mrs. Woods advised that they supported such a code, but felt it important for an independent decision making body for all.

Mr. Fenske cautioned if employees raised questions about the Code, its passage at Town Meeting could be jeopardized. He suggested an amendment accommodating employees' concerns that would serve as a compromise and garner support for the Article. Police Chief Shawn Bernier said he was aware of some towns that had appointed committees. Mr. Woods said it would have been nice to bring all employees in to discuss the issue with the Board.

Chair Jones stated Town Counsel reviewed the Code. TA Whittaker said a fear of another layer of bureaucracy and the difficulty getting people to put their names on a ballot led to the board's decision not to have an elected committee. Mr. Clarke remarked on the idea of an amendment and Selectman Gehl said the Board would be happy to assist in developing an amendment for Town Meeting that could be brought forth.

The Board asked Mr. Clarke for his other concerns and he advised that there were no others.

Copple Crown Village District Commissioner Chris LaPierre told the Board of an accident Friday evening that disabled the Village District's 2002 plow vehicle. The adjustor is to decide tomorrow if the vehicle is totaled or not. Commissioner LaPierre said if it is, CCVD can get another, and he was prepared with quotes. If the vehicle were not determined totaled, repairs would be lengthy. He asked the Board if the Town could open CCVD roads in the event of an emergency. He said they were looking for a contractor to do the work, but most were booked. There is also the possibility of renting a vehicle. Road Agent Mark Fuller said he could make some calls to contact a contractor or a rental. TA Whittaker said she would email Commissioner LaPierre information on the emergency appropriation statute and also contact the Budget Committee. Selectman Gehl said the Board was prohibited from providing Town services on private roads.

3. Public Appointments

The Board met with Moderator Fenske and Town Clerk Carole Ingham for Town Warrant review for the upcoming Town Meeting. The Board determined who would move and second the articles. Individuals other than Selectmen who were suggested to move or second will be contacted regarding their willingness. Mr. Fenske inquired if the operating budget warrant article might be questioned. Concerning the budget, TA Whittaker mentioned she had dispelled the rumor that she was to receive a \$10,000 raise and had squirreled money away in the budget, which was a falsehood that the Budget Committee and Board could testify to.

Those moving and seconding: Article 3, Selectman Gehl, Chair Jones; 4, Mark Jarvis, Selectman Rhoades; amendment to 4, Selectman Gehl, Selectman Rhoades, Selectman Gehl to describe the

budget; 5, Selectman Rhoades, Chair Jones; 6, Selectman Gehl, Chair Jones; 7, Mary McHale, Nancy Rhoades; 8, Mary McHale, Nancy Rhoades; 9, Selectman Rhoades, Chair Jones; 10, Selectman Gehl, Chair Jones; 11, Gull Nelson, Sam Hardy; 12, Selectman Rhoades, Selectman Gehl; 13, Selectman Rhoades, Selectman Gehl, 14, Mike Clarke, Chair Jones, RA Fuller to speak to it; 15, Selectman Gehl, Selectman Rhoades, Selectman Gehl to speak to it; 16, Fire Station Committee representative, Chair Jones; 17, Fire Station Committee representative, Fire Station Committee representative, Selectman Gehl to speak as Selectmen's representative to the Committee; 18, Selectman Rhoades, Chair Jones, possibility of an amendment; 19, Sheri Joy, Selectman Gehl; 20, Carole Ingham, Chair Jones, Jim Fenske to speak to it; 21, Mike Clarke, Chair Jones; 22, Bill Malay, Selectman Gehl; 23, Chair Jones, Selectman Rhoades, with an amendment on the Complaints Procedure; 24, Chair Jones, Selectman Gehl; 25, Robert Craycraft, Dave Curry, Selectman Gehl to speak to it; 26, Cathy Orlowicz, Selectman Rhoades; 27, Cathy Allyn, Selectman Gehl, Cathy Allyn to speak to it; 28, David Munroe, David Munroe to secure a second, David Munroe to speak to it.

The Board met with Town Historian Cathy Orlowicz to discuss her research on copyrights on photographs. Ms. Orlowicz said she contacted the Local Government Center and was told that copyright does not have to be sought, but is understood, on photos taken after 1989. She was also told copyrights may be in effect up to 95 years after the death of the photographer. She explained that previous Town Historian Eloise Bickford donated photos to the Town, but she would hold the copyright. She said the attorney suggested generating a form for photocopying material, which Ms. Orlowicz did for various scenarios. She presented the forms to the Board.

Ms. Orlowicz also updated the Board on the Boodey House Committee. She said the bricks from the other building on the Boodey property that were to be donated for fundraising were too damaged from the fire and are useless. She told the Board that under the stewardship agreement with LCHIP, there can be no construction at the Meetinghouse Park for five years, so a location must be secured for the Boodey House. The Committee suggested a section of John Shirley land by the cemetery. As Shirley land, the request would have to go through Probate. TA Whittaker said she would send the Attorney General a copy of the deed and probate decision, describe what the Town wanted to do, and ask how to proceed.

Ms. Orlowicz reported a vacancy on the Boodey House Committee due to a resignation. Mrs. Whittaker requested a copy of the resignation as the Selectmen had to formally accept the same in order to effect a new appointment.

Regarding complying with the law on abandoned cemeteries, she asked the Board what information she needed to provide, as she was about to begin plotting. TA Whittaker said it would be part of the Board's work plan in April.

4. Public Hearing

Chair Jones opened a public hearing at 8:36 p.m. pursuant to RSA 149-M:17 to amend the Solid Waste Facility and Mandatory Recycling Ordinance to reflect inclusion of plastics recycling and amended disposal fees. The revised fee schedule was adopted at a previous Public Hearing.

There being no public input, Chair Jones closed the public hearing at 8:41 PM.

Motion by Selectman Gehl to amend the Solid Waste Facility and Mandatory Recycling Ordinance by the addition of the words "recyclable plastics" under the Definitions of

Recyclable Materials section of the Ordinance, and the adjusted fee schedule; second by Selectman Rhoades. The motion carried unanimously.

5. Department Reports

Fire – TA Whittaker provided the Board with Interim Fire Chief Rod Nelson’s report for the months of January and February, including calls and training; a standard operating procedure for requests for information and records; and a roster and phone list.

Highway – RA Fuller said he had discussed the Chamberlin subdivision with TA Whittaker. TA Whittaker stated she has sent out three reminder notices to developer Steven Edwards. The Town is still lacking the agreed upon subject approvals, which were now beyond deadline i.e. legally signed deed; As-Built drawings expanded to include survey location and elevations of culverts and associated primary drainage features; street signs denoting the correct spelling of Chamberlin, outfitted to eight inch blanks with six inch letters; and speed limit signs replaced by 25 MPH speed limits.

RA Fuller said the conditions of the approval need to be complete, as the Town has gone above and beyond to work with the developer. Mr. Clarke expressed concerns about liability. TA Whittaker agreed, explaining that three months beyond the conditional approval the Town is still not the legal owner of the land under the road. Selectman Gehl said the Board accepted the road conditionally and if the conditions are not met within the specified timeframe, the Town could send a certified notice to Mr. Edwards repeating that the requirements have not yet been met and the Board will revoke acceptance unless the items are completed by the next meeting on March 19, 2007. At that point, the Town would cease maintaining the road and proceed with revocation of its acceptance. Abutters would be copied via regular mail.

RA Fuller brought up the third party review engineers. TA Whittaker said she, RA Fuller, and Land Use Administrator David Allen met with Cynthia Copeland of the Strafford Regional Planning Commission regarding utilizing Rockingham County Conservation District. Although the feedback was excellent, RCCD do not attend a Planning Board meeting to back up their recommendations. TA Whittaker said she, RA Fuller, and Mr. Allen recommend contracting with CMA Engineers so there will be representation at Planning Board meetings. Technical information needs expertise which neither she, Mr. Fuller or Mr. Allen possess. The Board recommended an amendment to the proposal adding CMA staff attendant at critical Planning Board meetings. Selectman Gehl pointed out that engineer support services at such meetings are reimbursed by the developer and are not paid by the Town and he, too, felt it critical to have attending expertise at the meetings so as to not lengthen or belabor the process any further.

Town Clerk – Ms. Ingham presented quotes for new computers for the Town Clerk department. The two come to a combined cost of \$3,500. She said Skip Fadden was assembling them from components. TA Whittaker mentioned the money for the computers was raised in 2006, and sits in the Town Office equipment expendable trust. The Board authorized expenditure up to \$3,500 for the purchase of two computers for the Town Clerk’s office. TA Whittaker thanked TC Ingham and Mr. Fadden for the volunteer work going into the project.

6. Administrative Review

TA Whittaker said under the new “Green Yards” law, effective January 1, 2007, a compliance audit must be conducted on junkyards by DES, the Town and the junkyard owners. The Cameron motor vehicle recycling and salvage yard permit renewal would come under that RSA. TA Whittaker expressed her opinion that the law was an unfunded mandate, but nonetheless, it was now on the

books and somehow the towns need to more fully understand their respective roles in overseeing aspects of the new statute. Selectman Gehl said the intent of the legislation was excellent as it was designed to prevent leakage of dangerous fluids, but the onus is placed on the local municipality to make the determination, which is where the burden. Selectman Gehl commented an inspection by the Board would be fruitless until the Cameron Salvage Yard begins efforts to comply with the Best Management practices set forth. He said he would speak with someone who had more information. TA Whittaker is to attend a seminar on March 19, 2007 regarding the issue, and will check with the Camerons.

TA Whittaker said Ms. Copeland of SRPC said the Davis Crossing project appears to meet the spirit and intent for Special BridgeEmergency Funding. The Board needs to sign a letter of support, which TA Whittaker said she would put together. Access Management on Route 11 and Transportation Enhancement Funding was also discussed. Ms. Copeland advised an article for next year's warrant that would provide for \$5 from registration fees to go toward installation of a sidewalk, to prove serious intent, thereby further qualifying the Town for funding for future Transportation Enhancement Grants. A decision regarding the Davis Crossing project should be rendered by next month.

The Board scheduled a workshop for goal setting and generating a work plan for April 9, 2007 at 1:00 p.m. Department heads are to be called in at a later date.

TA Whittaker told the Board Wendy Anderson is interested in serving on the ZBA, and will call Ms. Anderson to come to the March 19, 2007 meeting to meet the Board.

TA Whittaker advised that draft specifications for cistern installation have been drafted and sent to the Fire Chief for departmental discussion and review. In light of recent subdivision activity and lack of funding for another pumper unit, she felt it was important for construction specification to be in place, stating that the Town eventually maintains a subdivision's cistern so it should have the right to have a say in its construction. Further, Ms. Copeland sent over drafts regulations for general fire protection regulations developed by SRPC. Mrs. Whittaker also advised that the Building Inspector was very supportive of residential sprinkler systems, but also pointed out that such an ordinance would take time for implementation.

Mrs. Whittaker had received a bid request to purchase the 2 vehicles that had been outside the Highway Department for many months with no success to any advertising.

Motion by Chair Jones to authorize selling the surplus vehicles for \$250 for the Crown Victoria and \$400 for the pick-up; second by Selectman Rhoades. The motion carried unanimously.

TA Whittaker said Health Officer Bill Griggs would be out for several weeks while he has a hip replacement, and that David Lindberg would cover the position as the deputy health officer in the interim. The board wished Mr. Griggs a speedy recovery.

The Board scheduled an inspection of the Duncan property on Route 11 for March 19, 2007 at 4:30 p.m. Selectman Gehl said the agreement with Mr. Duncan's attorney states that Mr. Duncan will move ahead to get out of coming under the definition of junkyard, with inspections by the Board to ensure compliance with four days notice to Mr. Duncan and his attorney.

TA Whittaker advised that the Town will be allowed to keep the generator funds per the Office of Emergency Management and written confirmation of that is expected.

7. Old Business

The Board discussed Personnel Handbook changes. Selectman Gehl said items 2, 5, 6, and 7 were to be implemented right away. Item 7 had been amended to bereavement leave of 5 days for the death of a spouse or child. Selectman Rhoades said 7 did not need to be dealt with immediately and that all benefits items should be done at the same time especially in light of the upcoming review.

Motion by Selectman Gehl to modify the personnel plan by amending personnel items 2, 5, and 6 as outlined in the memo; second by Chair Jones. The motion carried unanimously.

Mr. Clarke suggested work on the Personnel Handbook should be done in a workshop with the Personnel Committee for expediency. He said it took eight months to get the changes to the Board. Chair Jones stated that was an excellent idea. TA Whittaker said when the Board finalizes the work plan, it can decide when to meet with the Personnel Committee. She added that the item on vacation stays as is for now.

8. Approval of Minutes

Motion by Selectman Gehl to approve the minutes of January 22, 2007 as amended; second by Chair Jones. The motion carried unanimously.

Motion by Selectman Gehl to approve the minutes of February 5, 2007 as written; second by Chair Jones. Jones – aye, Gehl – aye. Selectman Rhoades was not present at that meeting.

Motion by Selectman Gehl to approve the minutes of the non-public session of February 8, 2007 as written; second by Chair Jones. The motion carried unanimously.

Motion by Selectman Gehl to approve the minutes of February 15, 2007 as amended; second by Chair Jones. The motion carried unanimously.

9. Any Other Business

TA Whittaker mentioned the Direct Link newsletter to be delivered in mailboxes soon.

Selectman Gehl asked residents to vote at elections on March 13, 2007 at New Durham School from 10:00 a.m. until 7:00 p.m., and to attend Town Meeting on March 14, 2007 at New Durham School.

10. Non-public Sessions

Motion by Selectman Gehl at 10:10 p.m. to enter non-public session under RSA 91-A:3 (a) to discuss a personnel matter; second by Chair Jones, vote unanimous.

Roll Call: Jones ~ yes, Gehl ~ yes, and Rhoades ~ yes

The Board met with Town Clerk Carole Ingham and TA Whittaker regarding a vacation request for an employee.

Motion by Selectman Gehl to enter non-public session under RSA 91-A:3 (e) to discuss potential litigation; second by Chair Jones, vote unanimous

APPROVED: New Durham Board of Selectmen 03/05/07

Roll Call: Jones – yes, Gehl – yes, Rhoades – yes.

Discussion ensued regarding request for correspondence and call sheets from an accident in which New Durham ambulance responded in July, 2006. Mrs. Whittaker advised that she was waiting for advice from Town Counsel prior to providing any information to the third party attorney.

Respectfully submitted,

Cathy L. Allyn

A video recording of this meeting is on file with the Office of Town Clerk, is available for public viewing during normal business hours, and will be retained in accordance with the New Hampshire Municipal Records Board rules established under RSA 33-A:4, or for a minimum of 24 months.