

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

Members present: Ronald Gehl, Peter Rhoades, David Bickford

Also present: Town Administrator April Whittaker, Police Chief Shawn Bernier, Road Agent Mark Fuller, Thomas Beeler, Dennis Gagne, Gigi Giambanco, James Goodrich, Sam Horton, Catherine Orlowicz

1. Call to Order – Chairperson Ron Gehl called the meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

2. Citizens' Forum – There was no public input.

3. Public Appointment – The Board met with Sam Horton, operations supervisor of the NH Electric Cooperative, regarding moving a pole on Bennett Road from the right-of-way. Selectman Peter Rhoades, as an abutter, stepped down. Mr. Horton said he wanted to discuss the issue with the Board, after receiving a letter from Town Administrator April Whittaker requesting moving the pole from the roadway. The Board reviewed a letter from Member Solutions Manager Clinton Hutchins that indicated the Co-op does not believe the cost associated with moving the pole should be borne by the Co-op's membership. He suggested installing bright orange pole guard to make the pole more visible.

Mr. Horton explained the Co-op is non-profit, and that the rates are based on operating costs so any work done forms the basis of the rates. Mr. Horton argued that the pole was not in the middle of the road and presented pictures to the Board to review. He stated the pole is on the side of the road. Chair Gehl noted the pole is within the traveled way. Mr. Horton replied that many poles are, citing poles on Main Street.

Mr. Horton said the Co-op could and would move the pole. He continued by saying the Co-op wished to retain its good relationship with the Town. He indicated it would cost approximately \$2,000 to move the pole, which would be paid by the membership, although not everyone in the Co-op would benefit from its relocation. He explained that when roadwork is done, such as the widening of Brackett Road, poles were moved and the line was upgraded, which is an overall benefit. He did not consider this pole of the same caliber. He said Bennett Road is a class VI road subject to gates and bars, and there was no liability to the Town or Co-op, according to the Co-op's attorney.

Chair Gehl said it was his understanding that for the Co-op to even consider moving the pole, a letter from the Board was necessary, which is why one was sent. He pointed out that the pole's location is along a steep section of road, and could be perceived as a safety risk, especially since the road gets heavy use by snowmobiles. He asked what policies the Co-op has in place to assess situations of this nature. Mr. Horton said regarding any safety

concerns, the Bakers signed off on the location in 1984. Chair Gehl asked if relocation of the pole would be considered for the Co-op's budget next year. Mr. Horton stated moving the pole was of no value to the Co-op membership, and that no one had ever hit that pole.

Mr. Rhoades presented pictures of the area to the Board. He said he was disappointed with the Co-op's attitude. He said the Bakers signed off on the location, but the pole is not on their property. He stated the pole was seven feet from the center of the road and on Town property. He asked Mr. Horton if the Town had agreed to the pole's location, he would like to see the documentation proving that. He said moving the pole was an opportunity for the Co-op to correct its error of placing the pole in the Town right-of-way without permission. He explained that utilities along a Class VI road should be placed the same as a Class V. Mr. Horton stated the Town did not require pole licenses for every pole at that time.

TA Whittaker asked how many members are in the Co-op and Mr. Horton replied 118,000. Chair Gehl suggested the Co-op seemed disinclined to move the pole. Mr. Horton reiterated that he'd come here for a discussion and wanted to continue the good relationship with the Town. Chair Gehl said he did not see how a decision on a single pole could affect the relationship between the Town and Co-op, and asked Mr. Horton to segregate this issue. Mr. Horton said it was the first time the Co-op had been asked to move a pole on a Class VI road due to unsafe conditions.

Mr. Rhoades said a marker had been placed on the hill by a Co-op representative with Mr. Rhoades' understanding that it was a safer location. He said if someone hits the pole, the Town and Co-op would be liable and a civil lawsuit could prove more expensive than relocating the pole. Mr. Horton said the marker was merely a GPS location and there was no safety aspect regarding its placement. Mr. Rhoades said he had understood Road Agent Mark Fuller as saying it was where the pole would be moved. Mr. Horton said the Co-op looked into the situation, assuming roadwork was to be done, and placed the marker. He said whoever wants the pole moved could pay. He added, again, that the Co-op has no liability, as the road is a Class VI road subject to gates and bars.

Selectman David Bickford agreed that the Co-op probably had no liability, but that it would be safer if the pole were moved. He said he did not think the relocation should wait until more people lived on the road. He asked how often poles were replaced. Mr. Horton said poles on Main Street were there for 56 years. Selectman Bickford said the Co-op took shortcuts in the 1980s and this would be a good time to ask to have the pole moved to a safer position. Mr. Horton said the Co-op wanted the Town to contribute to the cost of moving it. Mr. Rhoades asked that the Town not pay. He said he felt strongly that the pole was placed there in error. He said he would not contribute as the pole is in the passing area in the Town's right-of-way. Selectman Bickford said the Board was in agreement that the pole should be moved and, therefore could authorize NH Electric Co-op to do so. He suggested Mr. Rhoades could go to the Public Utilities Commission. Chair Gehl said he was unaware of any other steps the Board could take, and that the issue would be taken under advisement.

4. Department Reports

Highway – RA Fuller reported the “School Bus Stop Ahead” signs were placed on King’s Highway last week, and that he was still in pursuit of street lighting costs for a single pole light.

He said he met with the Dam Bureau to review the plans of reconstruction of March’s Pond Dam. He said the state suggested options. Design changes for CMA Engineers are not major, and include a wider spillway. He felt the cost of the project was in the same ballpark as before.

Brief discussion ensued regarding fuel pump containment upgrades.

TA Whittaker said Steve Edwards of the Chamberlin Way development wants the road bond released to him. She said the agreement was signed in 2004, stipulating that \$41,400 of the \$320,000 bond would be retained for payment of the topcoat of the road. RA Fuller said that the price now would be closer to \$60,000. The Town currently has \$43,000(interest included) of the bond for paving. TA Whittaker said RA Fuller wanted to hold off on the top coat until the remaining two lots are built out, to reduce wear. She said the spirit of the agreement was that the developer incurs all costs of paving. She suggested Town Counsel review the situation, and that Mr. Edwards be contacted and asked if he would come up to current paving market value. She said the remainder of the bond needs to be released to him as all other contingencies have now been completed to Road Agent Fuller’s satisfaction. The Board concurred that a definitive answer from Town Counsel was necessary. Selectman Rhoades said waiting two weeks for an answer was fair, since the bond is accruing interest.

RA Fuller said he would check into Homeland Security’s request that hazard mitigation grant applications be in email and CD format to ensure it was being done.

Police – Police Chief Shawn Bernier provided the Board with his department’s activity for October. There were: 106 total calls for service and 27 arrests; 173 motor vehicle warnings, 28 summons, and three accidents; and 354 property checks. He noted arrests were made in the two ball field concession stand break ins, and criminal mischief regarding a Copple Crown sign that was vandalized twice. He also noted the excellent turnout for Halloween events.

TA Whittaker asked about the street light issue in Copple Crown, brought up previously. Selectman Bickford said he spoke with the Superintendent of Schools, who indicated the district, did not want to start putting lights up for bus stops.

Chair Gehl took the opportunity to make a public appeal and reiterated at the meeting that the Concession Stand at the Ball field does not maintain any money on the premises and most of the goods (food) is also taken away ~ noting at best, there may be the odd candy bar. It was very expensive for the Recreation Commission to have to keep repairing the doors, and locks due to willful break-ins, which bear the perpetrators no financial gain.

Conservation Commission – Dennis Gagne asked the Board for approval on a proposal for services to assist with conservation efforts using CC funds. Chair Gehl said the issue had been discussed at the budget workshop, and that expenditure would be at the discretion of the CC. He said the Board was there only to execute the agreement.

Motion by Selectman Rhoades to authorize the chair to sign the agreement on behalf of the Town for Moose Mountains Regional Greenways to provide land agent services to New Durham at a rate of \$25 per hour, invoiced by Cynthia Belowski in \$500 increments; second by Selectman Bickford. Mr. Gagne said a public hearing had been held and everyone on the CC was in favor. Chair Gehl indicated the rate was low for this type of expertise. **The motion carried unanimously.**

Mr. Gagne asked if current use money could be used for administrative costs associated with land acquisition or easement acquisition. TA Whittaker said the original wording of the article would need to be checked. Chair Gehl said it was a question going before Town Counsel.

5. Administrative Review

Budget Work session Follow-up – Shirley gravel pit. TA Whittaker said the Deed and prior court decision to extend the working life of the Shirley pit were found in the archives. Chair Gehl said there appeared to be promise to the option of extending again. RA Fuller said the court would need to understand that the Town intends only on using what was originally approved. He phrased it as an extension of time, not the pit. Selectman Bickford suggested delineating what was forest in 1956. Chair Gehl said the boundary was defined and that the Town does not wish to change that. Selectman Bickford said it was an opportunity to demonstrate the Town's good stewardship. Selectman Rhoades said that since the Town would be requesting only an extension of time, he was wary of opening up the issue to a wider discussion. Selectman Bickford said the information could be there if the judge asked. Chair Gehl suggested Town Counsel could offer advice on what information to have.

Mr. Gagne asked if there was enough protection in the Shirley will regarding building on the property, and what would be involved to put a conservation easement on it. TA Whittaker read a section from the will that indicated a probate judge would decide if land were to be sold. Mr. Gagne said the will does not seem to cover all the bases. He said there could be value to an easement in combination with another conservation organization. Chair Gehl said that concept could not have been anticipated at the time the will was drawn up. He said there is no prohibition of transfer, and a conservation easement was worth looking into. He said there was value if one were looking for a conservation deal if there are development rights on another parcel that is part of it. Selectman Rhoades noted the cleared land being discussed is the location where the Boodey House may go.

Motion by Chair Gehl to authorize Town Counsel to pursue obtaining an extension of time for the gravel mining operation on the Shirley property in probate; second by Selectman Rhoades. The motion carried unanimously.

Sand Acquisition 2008 – Motion by Selectman Rhoades to waive the financial policy of competitive bidding due to the price given on sand for next year at \$8/cubic yard; second by Selectman Bickford. The motion carried unanimously.

Police Cruiser pricing – The Board took the new figures for vehicle acquisition under advisement, and asked for the Police Chief's recommendation. Selectman Rhoades stated he would like the Chief's opinion on which vehicle he would prefer.

1772 Meetinghouse Restoration Committee Appointment – The Board reviewed a letter from Skip Fadden, expressing interest in filling the vacancy on the committee, and a strong endorsement from Chairperson George Gale. Selectman Rhoades said Mr. Fadden has been very involved with the Meetinghouse and was a good candidate. According to the appointment policy, the Board took the appointment request under advisement.

Signature Authorization – Motion by Chair Gehl to authorize TA Whittaker to sign contracts on behalf of the Town with respect to Grant contracts with the New Hampshire Department of Environmental Services for building insulation at the Transfer Station; second by Selectman Rhoades. The motion carried unanimously.

TA Whittaker announced the "Holiday Cheer Volunteer Appreciation Party" is set for **December 5, 2007 at 6:30 p.m. at the New Durham Public Library** for all board and commission members and their spouses. Invites to be sent.

Chair Gehl read the "annual general report" of the Fire Department, provided by Interim Fire Chief Rod Nelson. Selectman Rhoades asked about donations. TA Whittaker replied that donations to the New Durham "Fire Company" could be used at the discretion of the fire department officers. Those to the New Durham "Fire Department" were used to defray the general operating budget.

TA Whittaker reported the notice to Chalk Pond residents regarding the draw down of Chalk Pond was sent to 101 abutters. She noted that applications for Hazard Mitigation Grant Funding met deadlines. She presented the Board with a draft ordinance regarding campers and trailers proposed by resident Bob Snow. She also reported New Durham's first "Business After Hours" will take place this Thursday. She said she would be at the Local Government Center conference and would therefore miss the event.

6. Schedule Next Meeting – The Board scheduled its next meeting for November 19, 2007 at 7:00 p.m. at Town Hall.

7. Old Business

TA Whittaker announced that the tax rate has been set at \$18.24 and tax bills sent out to collect over \$7 million. Chair Gehl noted that this tax rate reflects the budgets approved at Town Meeting 2007 and that the tax bills in the spring will have the same rate. He said there was a modest increase in the operating budget, but sizable sums needed to be placed in capital reserves for the future, which were approved in March. He said the CIP committee envisions a couple of more years of catch up, and then annual contributions will decrease.

TA Whittaker said she has not yet received feedback on the investment policy, which is pending.

Motion by Chair Gehl to continue the public hearing on the investment policy to the meeting of November 19, 2007; second by Selectman Bickford. The motion carried unanimously.

Selectman Bickford asked if the purchasing policy recently approved replaces the old policy, which had a Conflict of Interest section. Chair Gehl said the new policy has a Conflict of Interest section. TA Whittaker is to inform Town Clerk Carole Ingham to remove the replaced policy.

8. New Business

Motion by Selectman Bickford to repeal the no food at public hearings or public meetings policy; second by Selectman Rhoades. The motion carried unanimously.

Regarding March's Pond Dam, James Goodrich thanked the Board for getting the spillway built. He asked if the state is doing work there now. Chair Gehl said no, but refinement to the design is being done. He explained the state has reclassified the dam as a high hazard dam, which requires the Town to jump through more hoops and pay a higher annual fee. He said that would not have a significant effect on the process of reconstruction. Selectman Rhoades said the state is working with us and has made strong commitments. Chair Gehl said an accurate timeline could not be offered at this time. He said the next step is design approval by the state. The ultimate objective is getting a firm bid price in hand to provide something concrete at Town Meeting.

Mr. Goodrich asked if the culvert could be blocked again so that Chalk Pond does not continue to drop. Chair Gehl replied that could not be done, as the Town was ordered by the state to open it. Mr. Goodrich said the pond levels are equal. Chair Gehl said the Dam Bureau does not want to see any more water on one side of the road. Mr. Goodrich said the Bureau could be told the levels are equal. He thanked the Board for all its work.

9. Approval of Minutes

Motion by Selectman Bickford to approve the minutes of October 1, 2007 as amended; second by Selectman Rhoades. The motion carried unanimously.

Motion by Selectman Rhoades to approve the minutes of October 15, 2007 as written; second by Selectman Bickford. The motion carried unanimously.

Motion by Selectman Bickford to approve the March's Pond Dam meeting minutes of October 17, 2007, as amended; second by Selectman Rhoades. The motion carried unanimously.

Motion by Selectman Rhoades to approve the budget work session minutes of October 22, 2007 as amended; second by Selectman Bickford. The motion carried unanimously.

10. Adjournment

Motion by Selectman Rhoades to adjourn at 9:18 p.m.; second by Selectman Bickford. The motion carried unanimously.

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.