

**New Durham Board of Selectmen**  
**Minutes of Meeting ~ September 22, 2008**  
**New Durham Library**

**Members present:** Peter Rhoades, Ronald Gehl, David Bickford

**Also present:** Police Chief Shawn Bernier, Road Agent Mark Fuller, BI/CEO Arthur Capello, Town Historian Cathy Orlowicz, Tom Goss, Anneleen Loughlin, Bernard Loughlin, Arthur Hoover, Raymond Dion, Ann and Keith Biggons, Ron Swasey, Susan Clock Leslie, John Michaud, Bill Veazey, Stan and Liz Kuzia, James McCoory, Paul Gelinas, Jr, Josephine Crickett, Don and Sheryl Bansfield, Elizabeth Castro, Tom McKay, Charles McKay, Don Carlson, Katie Tohill, and other members of the public.

**Absent with Apologies:** Town Administrator April Whittaker absent as she was out of town.

**1. Call to Order** – Chairperson Peter Rhoades called the meeting to order at 7:04 p.m. and led the Pledge of Allegiance.

**2. Public Input** – On behalf of the Milfoil and Invasive Aquatic Weeds Committee, Art Hoover said the treatment of a portion of Merrymeeting River occurred today. He said two divers have been trained to remove plants next spring, and the Committee has applied for a grant.

**3. Department Reports**

*Highway* – Road Agent Mark Fuller reported that Leon Smith is now a Roads Scholar level 1.

He asked the Board for direction budget-wise regarding two options for improved accountability at the Town fuel pumps. A computerized system that logs who fueled, what vehicle was fueled, and how much fuel was used costs approximately \$8,000. A system in which each department has a key costs approximately \$3,000. RA Fuller said the pumps are 25 and 20 years old. New pumps would cost approximately \$6,000, but with hook-up, new pumps, conduit, etc. the total cost would be closer to \$20,000. Another option would be to refurbish the existing pumps. He explained that allocation is not being recorded accurately, as, according to the last financial report, one pump was short 60 gallons, and the other, 20 gallons. Selectman Ron Gehl said better accounting was necessary. RA Fuller said he would get firmer pricing on both systems by the end of the week.

*Police* – Police Chief Shawn Bernier said he supported a pump system that increased accountability. He said the state uses a computerized system.

He announced that his department arrested two individuals for burglary. Both are being held at Strafford County jail. He said the department was trying to tie in other recent burglaries in the area to these suspects.

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

He provided the Board with two special event licenses that he had signed off on. Cathy Orlowicz spoke to the events. The first is the annual Civil War Encampment, hosted by the New Durham Historical Society at the Cullimore residence on Ridge Road Top, on October 4 and 5, 2008. Funds raised are targeted for a scholarship. The second event is a cookout at Johnson's Marketplace on October 11, 2008 from 12:00 p.m. – 2:00 p.m. to benefit the Boodey House Committee's goal to dismantle and store the Boodey house. She said the Committee has been given a sizable donation to help toward that end.

**Motion by Selectman Gehl to approve the two special event license applications for the Civil War Encampment to be held October 4 and 5, 2008, and the Boodey House fundraiser on October 11, 2008; second by Chair Rhoades. The motion carried unanimously.**

*Building* – Building Inspector & Code Enforcement Officer Arthur Capello said the police served a cease and desist notice to the homeowner of Map 9 Lot 56, with a deadline of September 29, 2008. If no action is taken by that time, the situation will proceed to court.

In regards to incomplete paperwork, he said residents are responding to his notices and he is halfway through 2005 for closing building permits.

**4. Old Business – *March's Pond Dam*** – Chair Rhoades reported that the Town's engineer, Bill Straub, met with DBU Construction. The company indicated willingness to proceed with the project, but because there have been design changes required by DES and delays, an increase in cost is anticipated. A non-public meeting will be held on Thursday evening for all parties involved. Chair Rhoades indicated the state is requiring the roadway to be raised between March's Pond and Chalk Pond, creating an emergency overflow, to the tune of \$20,000 to \$30,000. He said an answer must be forthcoming this Thursday if DBU will proceed, or if the Town must re-bid.

Selectman Gehl said he also spoke with Mr. Straub. He said the result of the approval by DES included some eleventh hour design changes to raise the roadway and make modifications to the concrete spillway. He said it is reasonable to adjust the cost when there are design changes after going to bid, but the question is what is reasonable. He explained the insurance concerns involved the construction firm looking for a liability shield. He assured residents the Town was adequately covered, and the subsidiary LLC the contractor sought was that company's own insurance requirement. Chair Rhoades said his concern was who caused the delay of the project.

Tom Goss stated raising the roadway made no sense, and asked if the Town could refuse. The Board explained it was a DES requirement. RA Fuller said that work would do away with the emergency spillway there. Selectman Gehl said the intent was a single control point, rather than multiple spillways. He said the main design changes required by DES are for all flood waters to be routed into March's Pond. He said it remains to be seen if there is enough

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

money. He told Mr. Goss he would ask at the Thursday meeting how DES justifies those required revisions.

**5. Public Hearing - Road Layout Petition, private road to a Class VI.**

**Motion by Chair Rhoades to open a public hearing at 7:30 p.m. to discuss a petition request to layout a road designation from a private road to a Class VI public highway; second by Selectman Gehl. The motion carried unanimously.**

Chair Rhoades explained that dedication and acceptance is the more typical method to create a public highway, and that laying out a road was more common before the enactment of RSA 673:40-a, which allowed Town Meeting to delegate acceptance authority to the Selectmen. New Durham adopted delegating acceptance authority under Article 9 at the 1994 Town Meeting. Chair Rhoades indicated abutter notices were given 30 days prior to the public hearing, public notice was provided in The Baysider on August 13, 2008, and the hearing was also publicly noticed on the Town's notice boards. Chair Rhoades also confirmed that the original subdivision, in which the private road being petitioned for layout is included, was approved on July 17, 1980. That plan indicated that deeds include the covenant that any damage to the road by a landowner shall be repaired at the owner's expense. RSA 674:40 would not therefore apply, as the petitioned highway is part of a recorded plat approved by the Planning Board.

Stan Kuzia, lead petitioner, provided a printed summary of the situation. Mr. Kuzia said, in his attempt to keep Pine Point Connector open by having the Town own the highway, he was trying to solve the problem of Mr. McKay's liability. He said if the homeowners maintained it, then they would be liable, but that they needed a municipality to back them. He said they would accept gates and bars. He mentioned the deed that would allow the Town to take the road. He said as a Class VI road, it would not cost taxpayers anything. Chair Rhoades asked if anyone has given money to Mr. McKay for private road upkeep, and Mr. Kuzia replied that they had not, as everyone uses the road. He pointed out that the residents along Pine Point Connector pay taxes in the amount of \$145,000. He said if the road were closed, Wolfeboro would have to respond to an emergency situation along a hazardous road.

Chair Rhoades noted that the homeowners have been responsible to keep Pine Point Road maintained and that has not happened. He asked how would payment be guaranteed if the road became Class VI. Mr. Kuzia said it would then be a legal process and the homeowners would be bound to pay.

William Veazey thanked Mr. McKay for fixing part of the road. He recounted asking a police officer what he would do if there were gates and bars on the road. He said there was a need for that hill to be opened. Chair Rhoades asked him what he had paid to Mr. McKay. Mr. Veazey said he'd paid him to plow the road and do culvert work on Pine Point Road. He said the emergency aspect of keeping the road open was his concern, and stated he couldn't see why the Board did not take over the road. Selectman Gehl, for the record, reiterated and

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

clarified that mutual aid was standard throughout all the communities who happened to be a part of the mutual aid pact. Whoever was closest to the identified area per emergency dispatch generally took up the tone, hence the rationale as to why it could be a neighboring town that arrives first.

Chair Rhoades invited Elizabeth Kuzia to speak. She spoke in favor of the Town taking over the road. She said there would be no cost to the Town as a quit-claim deed exists and a Class VI road requires no Town maintenance. She said the residents on the road do not use the school and are mostly seasonal, so have no impact on the Town. She stated they would feel like they were getting something for their taxes if the road were taken over.

Chairman Rhoades asked if there was any further public comment for those speaking in favor of the petition. There being no further response from the sitting public, Chairman Rhoades opened the floor for any one who wished to speak against the petition.

Donald Carlson said he was against Town takeover, as he was happy with the existing conditions. He said there could be a cost if the road had to be taken by eminent domain. Chair Rhoades said the deed would have to be checked. Mr. Carlson asked if a private contractor could plow a Town road, and Chair Rhoades said that was not uncommon, after approval. Mr. Carlson said he paid Mr. McKay for an easement and was satisfied. Chair Rhoades said Mr. Carlson probably had some rights, then, and Town Counsel would need to be consulted. Selectman Gehl noted that Town funds cannot be used for maintenance of Class VI roads.

Mr. Hoover stated he represented Tom and Chuck McKay. He said they would deed over the road to the Town as a Class V road, as they do not want to continue maintaining it and want to lose liability. He said if Mr. McKay did maintenance on the road, he would be liable again. He suggested the solution lies in a homeowners' association. He said 10 or 11 residents have easement deeds, which require them to maintain with no liability assumed by Mr. McKay. He said the same problems would exist if the road were Class VI and other people built homes on the road.

Chair Rhoades asked if other easements would be available, and Mr. C. McKay replied in the affirmative. Mr. Hoover said there is a case being heard in the Supreme Court regarding passing responsibility to the users, but that was of no help now in this situation. Selectman Bickford asked if the easement is transferable, and Mr. Hoover said it would be, as it runs to the land.

RA Fuller said he understood the residents concerns, but had concerns for the Town. He explained that converting the road to Class VI would open that section to the public. Travelers would then have to turn around when they came upon the private section, causing maintenance problems. He said laying out the road would cost the Town at some point in time, noting steep grades in excess of 15% in contrast to Mr. Kuzia's assertions. Road Agent Fuller corrected Mr. Kuzia's prior statements regarding emergency lane access

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

provisions by advising that the Board had taken action a few years ago to eliminate any roads that had previously been designated as Emergency Lanes.

In response to Chair Rhoades' question, Chief Bernier said the police department has keys to roads that are gated and barred. He said he had spoken with Tom McKay, who indicated he would give the police, fire, and ambulance keys. He said the fire department carries bolt cutters.

Mr. Veazey asked about emergency response. Selectman Gehl advised that the Town would do whatever it could to get to a residence. He further noted for those present that any road maintenance cannot be provided on a private or Class VI road. There had been legal opinion well documented on this. Mr. Veazey asked why the Town would not accept the road as Class V. Mr. Kuzia commented that a Class V road requires maintenance, which comes from the tax base. He said if the road were Class VI, only the Pine Point Connector residents would be levied for maintenance. He noted that laws can be enforced on a Class VI road, whereas they cannot be when people speed or damage a private road.

Chair Rhoades asked if there were any further comments for those speaking against the petition. Mr. Carlson asked to speak, again, and reiterated that he had paid for an easement across the road in question and that Mr. Kuzia should do the same. Again, Chair Rhoades called the question as to any further comments. There being no further comments, Chair Rhoades closed the public input section of the Public Hearing.

He advised that he had walked the road and had conducted research, and stated that his opinion has not changed about laying out the road. He stated he did not think there was a public benefit to the Town in general to do so, and he suspected it would be maintained to a lesser standard than it is now, as Mr. McKay's section was in better shape and condition than the rest of the road. He said the town's "Master Plan" did not encourage development in that area, and, therefore, no new roads in that area would be needed. As far as safety concerns go, he said the situation is better off the way it is now, and that it would be safe if it was gated and under Mr. McKay's maintenance. He feared a financial burden on taxpayers, as the Class VI could be petitioned to become a Class V road at some point in the future. He said the Town's policy on Class VI roads, currently under review, requires a Class VI road to come to Class V standards if two or more homes are on it. Therefore, allowing Pine Point Connector to become a Class VI road in its condition would be unfair. He said the situation is not in keeping with the Town's Class VI road guidelines that restrict growth and require higher standards.

Selectman Bickford said the Town owns a Class VI road, but is not liable. The liability rests with those who work on it. He said someday having a Town road there might be sensible, but he was hesitant to expand until "Owl's Head" is fixed. He further said he did not want connectors that would encourage traffic.

Selectman Gehl said the request was unusual under the statutes. He was concerned about a precedent set by moving in this direction, as there are other

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

roads in similar situations that “homeowners associations” handle. He stated case law indicates there must be public convenience and necessity, meaning a significant proportion of the populace is benefited. He said this situation does not rise to that height. He expressed concern for those who have already paid for easements, asking if they would lose that value if the road became Class V. He likened it to opening a Pandora’s box over these issue. He explained that property valuations are adjusted downwards for residences along private road. He finished by stating there would be an increased likelihood to petition for Class V roads in an area where the Master Plan discourages growth should class VI status be conferred.

**Motion by Chair Rhoades to close the public hearing at 8:31 p.m.; second by Selectman Gehl. The motion carried unanimously.**

**Motion by Chair Rhoades that, based on the comments heard during the public hearing, the Board of Selectmen sees no occasion to support this proposed layout, and therefore, deny the petition for the reasons discussed at the public hearing; second by Selectman Gehl. The motion carried unanimously.**

The Board took a brief recess at 8:35 p.m. and returned to session at 8:39 p.m.

**Public Hearing – Building Permit Request on a private road ~ Donald Bansfield Map 31 lot 763**

The Board met with Donald and Sheryl Bansfield regarding their request to build on Lake Hill Way, a private road. Chair Rhoades said options to meet drainage problems were discussed at the site walk on Thursday. A swale across the lot to bring water to the top of the T intersection into a culvert was discussed. BI Capello said an abutting lot had approval conditions still to be done. Selectman Gehl said the Board needed to ensure emergency access to the property, but that other lot owners had made improvements, so that was covered. He looked to avoid creating conditions that negatively affect other lots and/or the lake. Paul Gelinas, Jr provided the Board with revised septic plans, as the septic was too close to the culvert. Discussion ensued. Selectman Gehl said the majority of the drainage should be moved off site in a controlled way and routed to the existing drainage ditch northeast of Lake Hill Way. RA Fuller said the 12-inch culvert on South Shore Road needs to be an 18-inch culvert.

Chair Rhoades closed the public hearing at 9:06 p.m.

**Motion by Selectman Gehl to approve the building permit request of Donald Bansfield on a private road known as Lake Hill Way and identified as Map 31 Lot 763 subject to the following conditions:  
Prior to granting the Building Permit –**

- 1.) Signing of municipal waiver of liability per normal, approved language,**
- 2.) Posting of bond for necessary roadwork and drainage improvements, or completion of the specified work to the satisfaction of the Road**

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

**Agent, with the drainage improvements per approval of the Road Agent and with water diverted in a northwesterly (amended from northeasterly) direction to existing drainage;**

**and Prior to granting Occupancy Permit –**

**1.) All those roadway and drainage improvements completed to the satisfaction of the Road Agent; second by Chair Rhoades. The motion carried unanimously.**

### **Public Hearing – Money Donation to the Boodey House Fund**

Chair Rhoades opened a public hearing at 9:13 p.m. regarding accepting funds for the Boodey House Fund. Ms. Orlowicz said the house was donated to the Town, and the Boodey House Committee was raising money to have it dismantled. There has been a donation of \$30,000 in in-kind services, leaving a need of approximately \$8,000. She said she appreciated the Historical Society's generosity, and noted that, as a member of both the Committee and Society, she refrained from taking part in discussions involving the donation.

Chair Rhoades closed the public hearing at 9:16 p.m.

**Motion by Selectman Gehl to accept, with many thanks, the sum of \$3,000 from the New Durham Historical Society for the Boodey House Restoration Fund; second by Selectman Bickford. The motion carried unanimously.**

### **6. Administrative Review**

*War Memorial Committee appointments* – for clarification on how to proceed with future memorials.

**Motion by Chair Rhoades to appoint Tom Goss, Marcia Clark, Anneleen Loughlin, and Cathy Orlowicz to the War Memorial Committee; second by Selectman Bickford. The motion carried unanimously.**

Chair Rhoades swore into office, Ms. Orlowicz.

The Board agreed to meet with the Personnel Committee for half an hour at its budget workshop on October 27<sup>th</sup>, 2008.

*Forestry Services Contract* – Selectman Gehl said a forester represents the Town's interests when intents to cut are filed, and it would be a small investment for improved returns on large cuts. The Town currently uses an honor system. Dennis Thorell would charge \$38/hr. Chair Rhoades read the services to be provided in the one year contract, including creating a timber tax matrix and providing notes on observed conditions for each timber sale reported.

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

**Motion by Chair Rhoades to sign the Forestry Services Contract with Dennis Thorell as forester; second by Selectman Gehl. The motion carried unanimously.**

Selectman Gehl said Financial Assistant Vickie Blackden has received intents to cut pertaining to tornado damage that Mr. Thorell could look at. There has been one request to waive collection of all timber taxes related to the tornado. Selectman Gehl said, according to Mr. Thorell, who reviewed the situation pro bono, post-tornado salvage is 50 per cent of normal stumpage value before damage. Selectman Bickford said timber tax should be 10 % of the sale price. Selectman Gehl said Mr. Thorell advised that the price paid can also be used as a base for the timber tax.

**Motion by Selectman Gehl to deny the request of Roger F. Murray to waive timber tax as applied to salvage operation for intent to cut 08-325-12-T, Map 26 Lots 7, 11, 13, and 14; and to consult with Dennis Thorell for an equitable proportion of this operation; second by Chair Rhoades. The motion carried unanimously.**

*Schedule Next Meeting:* The Board scheduled its next meeting for October 6, 2008 at 7:00 p.m. at Town Hall.

## **7. Old Business continued**

*Streetlights* – Chair Rhoades said that, after site review, nine streetlights suggested by Selectman Bickford could be pulled, allowing that all were paid for by the Town. He said Chief Bernier suggested the addition of six, at the intersection of Valley Road and Ridge Road, at the ball field by the recreation storage building, on Stockbridge Corner by the cemetery, at the intersection of South Shore Road and Merrymeeting Road, and two school bus pick-ups at the Merrymeeting boat launch, and the intersection of Kings Highway and Mountain Drive.

**Motion by Chair Rhoades to inform the New Hampshire Electrical Co-op of the Town's desire to remove the following lights, if paid for by the Town: 31380, 31375, 31404, 31407, 31411, 31414, 31417, 31423, and 31425; second by Selectman Bickford. The motion carried unanimously.**

Chair Rhoades said TA Whittaker could wait to inform the Co-op if there is a benefit of turning some lights off and turning others on simultaneously.

### *Class VI Road Review – Draft Policy – First Reading*

The Board reviewed the policy drafted by TA Whittaker, incorporating the suggestions from the Planning Board. Selectman Gehl noted it is a first draft and cautioned against hasty action. He said the Board would need to double-check any restriction of placing multiple dwellings on Class VI roads and Town building regulations, as the policy could not conflict. He wanted to mull over the 1,000-foot distance limitation to a structure, as opposed to 600 feet from a Class V road to a driveway. Chair Rhoades said woodlot designation must be addressed in this policy. He said that multiple lots on Class VI roads create problems and he would like to address those kinds of road maintenance



Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

problems. Selectman Bickford brought up the Statement of Purpose and remarked the Planning Board should make those decisions regarding development. He said he would like to see included an opportunity to request more than a 50-foot right-of-way. RA Fuller said a minimum could be drawn up, but the Board may want to request improvements with the result that some roads can then be treated differently than others. Ms. Orlowicz clarified the 1,000 foot from a Class V road issue by explaining the Planning Board meant 600 feet down the road, but no more than 400 feet off the road. Chair Rhoades asked that these points be emailed to TA Whittaker and be discussed at the next meeting; then she can revise the policy.

*Town Buildings Improvement Expendable Trust*

Selectman Gehl said he spoke with Fire Chief Peter Varney and the fire station addition requires three primary expenditures to obtain a certificate of occupancy. The cost for plumbing, lighting, and a discounted proposal for heating came to \$11,384. Chair Rhoades indicated that the fund would contain around mid-\$9,000 after the police station door was paid for. He added that he would prefer a heating system that did not involve wall units. Selectman Gehl said there was a high probability that the Town would receive from Homeland Security, Emergency Management Services, reimbursement when the addition is completed. He added that BI/CEO Capello gave a non-committal response regarding the need to replace the roof over the back of the Town Hall.

**Motion by Chair Rhoades to proceed with the fire station addition plumbing work at \$2,000 and the lighting work at \$884.99; second by Selectman Bickford. The motion carried unanimously.**

*Generator* - Selectman Gehl said he discussed the generator with Chief Varney. He said Chief Varney did not have the tabulations of loads. He said the generator is 45 kilowatts, and it is an engine limitation, not a limitation of generating capacity. Overloading the generator will not damage the engine. Chair Rhoades said not all circuits would need to be on when the generator was running. He asked that the generator not be started until the Board heard back from Chief Varney.

*Nomination* - Selectman Bickford nominated Ms. Orlowicz to the 1772 Meetinghouse Restoration Committee for consideration.

**8. Approval of Minutes**

**Motion by Chair Rhoades to approve the minutes as amended, and to confer with TA Whittaker regarding the quote; second by Selectman Bickford. The motion carried unanimously.**

**9. Non-public Session**

**Motion by Chair Rhoades to enter non-public session pursuant to RSA 91-A:3 II (c) to discuss personnel and departmental issues; second by Selectman Bickford.**

**A roll call was taken. Rhoades – aye, Gehl – aye, Bickford – aye.**

Approved: New Durham Board of Selectmen minutes 09/22/08  
Minutes approved at the October 20<sup>th</sup>, 2008 meeting

The Board returned to regular session for the purpose of adjournment. No decisions were determined in non-public session with respect to amalgamation of departments, and any supervisory controls at this time.

**10. Adjournment**

**Motion Gehl, second Bickford to adjourn, vote 3 – 0.**

The Meeting adjourned at 11:30 PM

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.