

New Durham Board of Selectmen

Minutes of Meeting ~ December 29, 2008

New Durham Library

Members present: Peter Rhoades, Ronald Gehl, David Bickford

Also present: Town Administrator (TA) April Whittaker, Road Agent (RA) Mark Fuller, Building Inspector/Code Enforcement Officer (BI/CEO) Arthur Capello, Marcia Berry, Charles Berube, Dennis Gagne, Bill Malay, Paddy and Mary McHale, Clay Mitchell, Cathy Orlowicz, Katie Tohill, other members of the public

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

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

3. Department Reports

Highway – Road Agent Mark Fuller said much clean-up of the ice storm has been accomplished, although about two more weeks worth of work will not be completed until the spring. He reported a highway department truck was involved in a minor traffic accident last Wednesday. The driver was not at fault, there were no injuries, and there was no damage to the truck or plow. RA Fuller said he has spent \$18,000 in salt in the past two weeks.

Building - Building Inspector/Code Enforcement Officer Arthur Capello told the Board he was working on end-of-the-year matters and code enforcement issues.

Fire Station– Chair Rhoades proposed voting on the quotes for wiring the fire station generator this evening to get it taken care of in light of the past emergency ice storm. Town Administrator April Whittaker said two quotes had come before the Board, but were lacking a third per the town's financial policy. Chair Rhoades said both were higher than anticipated, citing the placement of the generator, and other factors, affected the cost. He said both vendors who had quoted were known for quality work.

Selectman Gehl asked how it would be paid for. TA Whittaker suggested it could be put in the 2009 budget. RA Fuller said there should be monies left from the Generator Grant funds, and TA Whittaker said there should be enough. RA Fuller said Fire Chief Peter Varney has all the paperwork with respect to generator hook-up. TA Whittaker said the implementation of the project came to a halt when it was decided the one generator could not be run in sync for both police and fire buildings. Chair Rhoades said electrician Dana Doyon stated he could run a shut-off box and install a manual switch for the police station to run off this generator. He said the situation was urgent as it is now the season when electricity often goes off, and one of the vendors is able to do the job next week.

Selectman Bickford said that reasoning did not give him enough comfort to waive the financial policy when other in-town electricians had not submitted quotes. He said questioning the quality of work was not the issue. Chair Rhoades said Emergency Management Director Dwight Jones secured one bid and he got the other per the last Board meeting. He said the situation has been frustrating. Selectman Gehl suggested inquiring of two additional electricians with the caveat of when the job must be completed. He said he was looking for peace of mind by getting another bid, but agreed with moving ahead as quickly as possible. He pointed out that there was an existing older generator at the fire station. Chair Rhoades said the Town is not providing specifications on the job, so the electricians would have to engineer it themselves. He said he wanted to spend no further time on the issue, and questioned why the past emergency did not make “time of the essence”, when there are budget matters to address.

Selectman Bickford said a policy exists that requires three bids. He said it can be waived for certain reasons, but he did not feel enough cause existed. Chair Rhoades cited another electrical job at the fire station for which few bids came in. TA Whittaker confirmed that electricians did not want to do that job. Selectman Bickford said the Town must give them the opportunity. Chair Rhoades remarked that no one has done anything on the issue for three months and Mr. Rhoades suggested to Selectman Bickford that he therefore, take responsibility to push it through. Selectman Bickford said the generator has not been wired for a long time, so he did not see the urgency. TA Whittaker remarked only three bids were needed under the policy. Selectman Gehl asked BI/CEO Capello to review the proposals to see if the quotes are in the correct ballpark. BI/CEO did so and Chair Rhoades asked if he thought a savings would be possible. BI/CEO said it would depend on how eager an electrician was for the job, and the savings might amount to \$1,000 to \$1,500 at best, since the expensive things are already done.

Motion by Chair Rhoades to waive the Financial policy and move forward with the two received quotes, due to a chance of an ice storm and power outage; second by Selectman Gehl. Chair Rhoades said the low bidder indicated he would do the job next week. Selectman Gehl said time was of the essence, but he was leery of waiving the policy. Based on recent history, however, he said the Town couldn't afford to go much longer without the job done. **Rhoades – aye, Gehl – aye, Bickford – nay. The motion carried.**

Motion by Chair Rhoades to wire the generator at the fire station and to accept the lower price of Doyon Electric, considering the quotes of \$7,536.60 by Ridings Electric of Wolfeboro and \$7,296.51 by Doyon Electric of New Durham and the fact that Mr. Doyon indicated he would began work the week of January 7, 2009 and will be on-site when the generator is started up, as well as the fact that the Board agreed to waive the purchasing policy; second by Selectman Gehl. Rhoades – aye, Gehl – aye, Bickford – abstained. **The motion carried.**

Regarding work to be done by Bob Santoro re heating and plumbing at the Firehouse addition, Chair Rhoades said Mr. Santoro had presented his quote

when the drop ceiling at the fire station addition was not yet in. It has now been installed and it is too low for the piping Mr. Santoro was going to use. Chair Rhoades asked who determined the height of the ceiling. He said there were two options: to tear down the drop ceiling and re-install it at a lower height, or to pay Mr. Santoro's increased labor costs. Mr. Santoro's engineer has re-designed the project so that two 12 inch feed lines could be used, rather than the originally planned 20-inch. Selectman Gehl said the addition contractor was paid in three installments, and would have needed to install the ceiling to receive the final payment. Chair Rhoades said Mr. Santoro would supply the Board with his new quote.

4. Schedule Meetings

The Board scheduled its next business meetings for January 5, 2009 and January 12, 2009 at 7:00 p.m. at Town Hall.

The Board scheduled its next budget work session for January 5, 2009 at 1:00 p.m. at Town Hall.

5. Public Hearings

Motion by Selectman Gehl at 7:48 p.m. to open a public hearing, pursuant to RSA 91-A, for the purpose of receiving public comment concerning withdrawals from the following Capital Reserve Fund: \$5,000 from the Smith Ball Field Capital Reserve Fund established for this purpose under Article 9 of the 2008 Town Warrant for the rebuilding of the retaining wall at the field; and, pursuant to RSA 91-A, for withdrawals from the following Capital Reserve Funds and Expendable Trusts: \$31,268 from the Police Cruiser CRF under Article 10 of the 2008 town warrant, \$109,690 from the Highway Truck CRF under Article 11 of the 2008 town warrant; and pursuant to RSA 31:19 and the passage of Article 20 of the 2000 Town Meeting for the purpose of receiving public comment concerning the withdrawal and expenditure of: \$11,431.76 from the Computer & Office Maintenance Expendable Trust Fund to cover the expenses associated with the maintenance of the computer systems and acquisition of office equipment in 2008; and pursuant to RSA 31:19 and the passage of Article 15 of the 2000 Town Meeting for the purpose of receiving public comment concerning the withdrawal and expenditure of: \$86,124.25 from the Town Buildings Improvements Expendable Trust Fund for the Fire Station Addition; and pursuant to RSA 31:19 for the purpose of receiving public comment concerning the withdrawal and expenditure of: \$450.58 from the Records Management Expendable Trust for archival boxes; second by Selectman Bickford. The motion carried unanimously.

Selectman Gehl noted all the withdrawals to be considered are anticipated costs, prepared for in the 2008 budget for expenditures previously approved by the Board. There was no public input.

Motion by Selectman Gehl to approve the withdrawals from the following Capital Reserve Fund: \$5,000 from the Smith Ball Field Capital Reserve Fund established for this purpose under Article 9 of the 2008 Town

Warrant for the rebuilding of the retaining wall at the field; second by Selectman Bickford. The motion carried unanimously.

Motion by Selectman Gehl to approve the withdrawal of \$31,268 from the Police Cruiser CRF under Article 10 of the 2008 town warrant; second by Selectman Bickford. The motion carried unanimously.

Motion by Selectman Gehl to approve the withdrawal of \$109,690 from the Highway Truck CRF under Article 11 of the 2008 town warrant; second by Selectman Bickford. The motion carried unanimously.

Motion by Selectman Gehl to approve the withdrawal of \$11,431.76 from the Computer & Office Maintenance Expendable Trust Fund to cover the expenses associated with the maintenance of the computer systems and acquisition of office equipment in 2008; second by Selectman Bickford. The motion carried unanimously.

Motion by Selectman Gehl to approve the withdrawal of \$86,124.25 from the Town Buildings Improvements Expendable Trust Fund for expenses associated with the Fire Station Addition; second by Selectman Bickford. The motion carried unanimously.

Motion by Selectman Gehl to approve the withdrawal of \$450.58 from the Records Management Expendable Trust for archival boxes; second by Selectman Bickford. The motion carried unanimously.

6. Administrative Review

TA Whittaker reviewed the Board's responses to the audit report questionnaire concerning knowledge of the Town's financial policies, and procedures , including formation of an Ethics Ordinance and financial policies in place.

Motion by Selectman Gehl to authorize Chairperson Peter Rhoades to sign the audit report questionnaire following public review at the posted business meeting, on behalf of the Board; second by Selectman Bickford. The motion carried unanimously. Chair Rhoades signed the report.

Chair Rhoades noted the website is falling behind. TA Whittaker advised that she had expressed this fear when the new site was effected as there is no central webmaster. It had been hoped that the change to the Web Site company would have cured this problem, but updates still have to be completed by staff that do the best they can.

In casual conversation, Mr. Rhoades discussed that former select board member Fred March had advised him that selectmen in the past stayed connected with certain Town departments ~ i.e. given assigned departments.

7. Public Hearing

Motion by Selectman Gehl at 8:00 p.m. to open a public hearing regarding the approval of a conservation easement on property known as Property

Map 25A Lots 4 and 5, said lots being a donation; second by Selectman Bickford. The motion carried unanimously.

Selectman Gehl summarized the situation by saying the Board previously established the Land Conservation Committee to review and encourage conservation parcels around town and to assist the Conservation Commission. He said members Bill Malay, Dennis Gagne, and Charles Berube have made great strides in this regard. He said a goal of the committee has come to fruition with the generous donation of land by Don and Gail Holm, which entails the donation of development rights of the approximately 30+-acre parcel off King's Highway by Shaw's Pond. He said the Conservation Commission could accept this arrangement for the benefit of the Town under RSA 36A:4, subject to Board of Selectmen approval. He noted the Conservation Commission has approved this transaction, which was researched carefully with assistance from Moose Mountain Greenways. He called it a positive step for the Town, with it being hopefully the first of many such arrangements.

Clay Mitchell of Moose Mountain Greenways explained that his organization is a regional body designed to facilitate conservation transactions. He indicated a great amount of time has been spent on the easement. He defined an easement as an agreement to eliminate certain rights. He said the land has value in its conserved right. The only fiscal benefit to the Holms is a federal tax deduction. He said the Town benefits from it by having 1300' frontage on Shaw's Pond and the property will be a keystone between two other conserved parcels.

Chair Rhoades asked the Holms why they would donate such a generous gift. Mr. Holm replied that he heard about conservation easements 15 months ago. He added that one of his concerns has been development on King's Highway getting close to his home. He said he and his wife bought an additional triangular piece of land by their house to prevent building on it. He said that fits in with the conservation of the whole area. He described the easement property as part wetlands, with Beaver Creek running through it, and shoreline. Mr. Holm said they were appreciative of what they have and want to preserve it forever.

Chair Rhoades asked why the lot saved for a relative was not on the water. Mrs. Holm said it was unlikely that another house would be built, but that they wanted to leave that as an option. She said their desire was to keep the waterfront pristine. Mr. Holm said, at some point, a five-acre piece could be taken out of the easement. Mr. Mitchell said his group would record the conservation easement survey map and give it to the Town. He explained that the baseline data report would be given to the IRS.

Chair Rhoades asked him about any repercussions in the future concerning the easement. Mr. Mitchell said insufficient research on a parcel could result in the Town inheriting a liability, monitoring could be difficult, or the agreement could be poorly worded, but he anticipated none of those problems with this transaction. He said the Town benefits from the stringent checking by the IRS, and he created an easement monitoring form for a yearly check. Land Use Administrative Assistant David Allen said the Conservation Commission looked

at an earlier easement, which generated a great deal of discussion regarding enforcement. He said the Commission incorporated that experience in this transaction. Mr. and Mrs. Holm said they hope the property will look the same in 50 years.

Selectman Bickford said some conservation easements come with a donation of funds (endowment) from the landowner for enforcement, and wondered why that was not the case here. William Malay said this was the first conservation easement for the committee and that the Holms hired professionals, as well as spending time and energy on the transaction. He said the committee therefore did not think it should ask them for an endowment given the already considerable expenditures pursued by the Holms'. Mr. Malay further mentioned the committee's executory interest to fulfill its duties, and that it was seeking approval of the easement. He said no side agreement with the Town exists with this transaction. Selectman Bickford clarified that the committee did not seek an endowment because the Holms' had already donated a substantial amount of money into the conservation effort. Mr. Allen said conservation agreements run the gamut in cost sharing. He said the Town is currently in the middle of another situation where the property owners are asking for money. It could also be that the owners pay all the costs. He said this transaction falls in the middle. Selectman Gehl said it was important to recognize that the Town is the primary easement holder, and endowments are asked for when paid staff is undertaking inspections. He said that is not the case here, as the inspections are to be done by volunteers. He said inherent with this concept is that the Conservation Commission undertakes the monitoring and the training of members for monitoring. TA Whittaker added that Mr. Mitchell has the monitoring assessment form to be used for the annual documentation.

Selectman Bickford opined he thought there was overkill on the forestry aspect of the agreement. Mr. Holm said it was for commercial cutting. Selectman Gehl pointed out it was not requested by the Town. Selectman Bickford said the Town would have to enforce it. Mr. Holm said it stipulates cutting cannot happen within view of the road or pond. Mr. Allen said Town Counsel reviewed the easement agreement and said the transaction's introductory "Purpose" frames the entire agreement. Selectman Bickford said he could not find where the agreement indicates the trees will be there. Mr. Mitchell clarified that the sections refer to the purpose of the easement. Selectman Bickford said he saw conflicts in the agriculture and forestry section. Mr. Holm said conservation easements are used a lot for farms. Selectman Gehl said the "Purpose" as outlined follows the desires of the property owners. Selectman Bickford said it did not guarantee a view shed of trees. He said the trees would have to be cut to have agriculture there. Mr. Holm said 50 per cent of the property is wetlands. He said they thought it would be forest, but attorneys indicated they had the right to agriculture, and no one knows what the world might need in the future. Selectman Bickford said the Town would have to enforce. Selectman Gehl said the Holms have put forth a vision of property activity in the future following best management practices. Mr. Mitchell said they would not get their tax deduction if they could clear-cut the property, so the drafters of the easement must curtail activities. He said the rights are carefully constrained so that the

purposes survive but the uses continue. Mr. Mitchell further advised that the language was standard as far as conservation easements are worded.

Selectman Bickford said the current language for him appears to put obstacles in place for farming, citing, for example, that rocks could not be moved. Selectman Gehl said the agreement says the use would be consistent. He pointed out that a gravel pit would be in conflict. He said this construct opens up a dialogue between the easement owner and property owner, and places the burden on the property owner to the Town to approve any activity that would affect appearance. Mr. Mitchell said many towns have passed bonds to acquire conservation easements.

Chair Rhoades asked if the Board was approving a recommendation or recommending an approval. Selectman Gehl said that under statute, the Board is blessing a decision by the Conservation Commission as cited earlier in the public hearing. Chair Rhoades asked if the Board could walk the property in the spring. Mrs. Holm said she would welcome the Board. Mr. Holm said they were interested in having any educational use of the property.

Motion by Selectman Bickford to approve and accept the conservation easement on property identified as Property Map 25A lots 4 and 5; emphatic second by Selectman Gehl. The motion carried unanimously.

Chair Rhoades asked the Conservation Commission to update the Board on a regular basis regarding these sorts of situations for the future, and that it was wonderful of the Commission and committee to work on this. The Board thanked the Holms. Chair Rhoades invited the Holms to the table to sign the agreement. Chair Rhoades invited Mary McHale to the table to notarize the signatures. The Board signed the agreement. The Holms signed the baseline.

8. Old Business

Appointments to the Recreation Committee - TA Whittaker said the Recreation Commission lacked a quorum at its last meeting so no recommendations for appointments have come forward. Selectman Bickford queried the selectmen's duty to appoint, but said the Commission has a charter concerning appointments, and wondered how the board could resolve the appointment situation. TA Whittaker said she would like to see the language that Mr. Bickford referred to as it is the Selectmen's duty to appoint. The Board would like to move forward with this, as it has been going on for six months.

9. Approval of Minutes

Motion by Selectman Gehl to approve the non-public minutes of December 1, 2008 as written; second by Chair Rhoades. The motion carried unanimously.

Motion by Selectman Bickford to approve the minutes of December 1, 2008 as amended; second by Chair Rhoades. The motion carried unanimously.

Approved: New Durham Board of Selectmen minutes 12/29/08

Motion by Selectman Bickford to approve the minutes of December 8, 2008 as amended; second by Chair Rhoades. Rhoades – aye, Bickford – aye, Gehl – abstained. The motion carried.

Motion by Selectman Bickford to approve the minutes of December 15, 2008 as amended; second by Chair Rhoades. The motion carried unanimously.

10. New Business

Chair Rhoades asked RA Fuller to coordinate getting the propane tank for the generator.

11. Non-public Session

Motion by Selectman Gehl at 9:29 p.m. to enter into non-public session under the terms and conditions of RSA 91-A:3 II (a) and (c); second by Chair Rhoades. A roll call was taken. Rhoades – aye, Gehl – aye, Bickford – aye.

The Board discussed departmental issues as related to employee performance, and agreed to invite staff to the January 5, 2009 meeting to place reorganization on the agenda.

Motion Gehl, second Bickford to return to regular session at 11:00 PM for the purposes of adjournment, vote 3 – 0.

12. Adjournment

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

The meeting adjourned at 11:01 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.