

**Town of New Durham  
Board of Selectmen  
Warrant Call-In Minutes of Wednesday, February 24, 2011**

This meeting was broadcast live on Channel 25- Wolfeboro Community Television. For a copy of this meeting, please contact the Town Clerk's Office.

**Present:** Chair Terry Jarvis, Selectmen David Bickford, Selectmen Fred March

**Also Present:** Tom Goss-Budget Committee Vice-Chair, Mike Clarke-Road Agent, Shawn Bernier- Police Chief, Barbara Hunter- Board of Ethics Chair, Mike Davenport- Deputy Chief, Jon Roy- Lieutenant, Jan Bell, Skip Fadden, Dennis Martin, Joan Martin, Mary McHale, Peter Pijon, Alison Rendinaro

The meeting was called to order at 7PM by Chair Jarvis.

The Board reviewed each warrant article and answered questions that came before them.

Voting this year is on **Tuesday, March 8<sup>th</sup>**; the **polls open at 8:00AM** and will **close at 7:00PM**. Town Meeting will be held on Wednesday at 7:00PM. Both events will be in the New Durham School Gymnasium.

**Article 1 - Elections**

Chair Jarvis announced that there are two Library Trustee positions for 3 years terms open, and NANCY RHOADES and FRED QUIMBY are running for those positions. There are also two Planning Board positions open, both three years terms, and PAUL RASLAVICUS and ROBERT CRAYCRAFT are running for those positions. There is one three-year Cemetery Trustee term, Trustee of the Trust Fund term, and Board of Selectmen term on the ballot for which write-ins are required. It was also noted that Jeffrey Kratovil will run for the write-in Board of Selectmen position.

**Article 2** is composed of three amendments to the New Durham Zoning and Land Use Ordinance and the New Durham Building Regulations proposed by the Planning Board.

**Article 3** is the Budget Committee and Board of Selectmen's recommended operating budget of **\$2,994,140.00**. Tom Goss spoke to this article, and stated that the overall budget, which includes operating and capital expenditures is \$3,801,633- approximately \$8,212 less than last year or a 2.1% reduction from last year. Chair Jarvis noted that Town Departments worked extremely hard to keep their budgets level funded, a few of them came in below last year, and a few under the 3% maximum provided prior to budget season.

**Article 4** relates to the purchase of a new Grader for the Highway Department. It is a 5-year lease purchase agreement, with the first year principal payments of \$40,332. Road Agent Clarke spoke to the present 1996 grader, which is under significant repairs for the motor and transmission. We will receive more than anticipated for the trade-in value, \$38,000 from Volvo. Volvo was the lowest bidder. The impact on taxes this year is .10 per \$1,000.

**Call-In Question: What if all of the sudden, gas prices go up from \$3 to \$6? Are there funds put aside to cover this? Any contingency fund?**

Answer: Tom Goss answered that the price of fuel was a topic of discussion during the budget season that was revisited several times. If gas prices were to rise significantly, we would do what we can to keep costs within the bottom line of each department's budget, and make adjustments to spending within the budget. As a last resort, it is possible to use funds from the unreserved fund balance for an emergency situation.

**Article 5** is for the purchase of a new dump truck. \$100,000 will come from the Highway Truck Capital Reserve Fund and the remaining \$38,000 will come from the unreserved fund balance- from funds that were turned in at the end of the year by the Highway Department. This article will not impact the tax rate. If anyone has any questions on this, or any other article relating to the Highway Department, Road Agent Clarke asked that you please call him at 859-8000.

**Call-In Question: Can you lease a grader one day at a time?**

Answer: Road Agent Clarke explained that the shortest period of time that a grader can be leased is 30 days. He also looked into borrowing a grader from other communities. The problem is that the grader is a piece of equipment that is used year round, almost 365 days a year. Borrowing from another community would mean that we would generally need it at the same time, and renting one would be a huge cost to the town. The grader is used on dirt and tar roads, it is used to push back snow at intersections, which is why snow is currently so high, it is used for ditching, and many other necessary projects.

**Article 6** is to raise and appropriate money to offset the Highway Block Grant from the state. This will not be raised through taxation. The money goes to the Road Surface Management program, which is used to update all roads in Town. The Highway Block Grant comes from the state and is raised through the state gas tax. We just have to accept the grant, and that is what the article is requesting.

**Article 7** is for the purchase of a police cruiser and a laptop computer, which the Police Department will purchase through a Highway Safety grant for \$2,215. The cost of the cruiser is \$34,740 and will replace the 2003 cruiser. This will also not have an effect on the tax rate.

All capital equipment is part of the Capital Improvement Plan, which is an ongoing replacement schedule for equipment over \$10,000.

**Call-In Question: What percent (%) of the town budget goes into public safety- police specifically? Why does New Durham need such a large police presence?**

Answer: Chief Bernier explained that in 2006 he requested another officer at Town Meeting. The FBI recommends that there be 1 police officer for every 500 people in town, a ratio which we are currently under. Chief Bernier feels that our current force is adequate to help the needs of the Town of New Durham.

Tom Goss offered that the police budget is approximately 9.5% of the overall operating budget.

**Article 8** is to authorize an historic building assessment for the Town Hall. The Town has received an LCHIP grant to offset half of this cost up to \$7,500. The remaining \$7,500 will cost

.02 per \$1,000 on the tax rate. There are many health and safety issues that need to be addressed in the Town Hall, but the Board is mindful that it is part of the Town's history and on the National Register, and are choosing to have this assessment performed to evaluate what are the best steps to take going forward.

**Call-In Question: What is an historic assessment?**

Answer: Professionals will come in and review the building. We have the original blueprints. They will analyze what can and cannot be done to keep the historic integrity of the building intact, while dealing with the immediate and long term needs of the building. We would like to respect the building as we continue to use it.

**Call-In Question: Has any study been done to explore renting office space vs. renovating Town Hall?**

Answer: no study has been done at this point to see how much it would cost to rent office space, nor do we know what the cost will be to renovate Town Hall. The Board is currently not aware of any office space in Town that is large enough to meet the needs of the Town.

**Article 9** is to raise and appropriate \$10,000 for drive on scales at the Transfer Station. Drive-on scales are useful at the Transfer Station because currently everything that goes out of the dump we paid on a per ton basis, but when construction debris comes in, we are estimating. We are currently assessing things by volume but are being charged by weight. We are estimating the cost to be \$30 to \$40 thousand, and that is if we purchase them new. We also currently charge for electronic waste by piece, and are charged to dispose of them by pound. In 2010 we paid out approximately \$15,000 more than we took in. Cost savings could be realized within a couple of years by moving to the scales.

**Article 10** is to raise and appropriate \$10,000 for the fuel depot system. Road Agent Clarke explained that there are approximately 32 vehicles in New Durham that use the fuel depot, which was moved from the Town Hall to Tash Rd. in the 70's. Right now, every person writes down the gas they use on a monthly log sheet, and once a month those sheets as well as the gallons used are turned into the Finance Officer. There have been times when fuel has been unaccounted for, and a plan was put together to replace the pumps and install a card or computer system to better account for where the fuel is going. We recently had the pumps break down during a storm, and had to use a Town credit card to gas up the plows at Wayside. The current pumps can be used, and added to with a more accountable system. There are a few areas of the pump system that need to be upgraded as suggested by DES, and the pumps have recently been calibrated.

**Article 11** is to raise and appropriate money to pay the Preservation Timber Framing Inc. to pay an outstanding bill for the dismantling of the Boodey House. This will come from unreserved fund balance and will not have an impact on the tax rate. In 2006 an agreement was made by the then Selectmen with the Ferguson Family Trust, that when they agreed to accept the house they indicated that money to take down the house would be funded by a number of means including appropriations from the Town.

**Call-In Question: Why is there money owed for dismantling the house in the first place?**

Answer the cost of taking the house down was more than was anticipated. It is a debt that the Town owes and the Board is legally obligated to pay the debt. The unexpected problem was that the volunteer base that was supposed to be utilized did not come to fruition. There has not been enough volunteers for these projects than is needed. Mr. Sturgis ended up using more of his help than was counted on. There are no other bills, which the Board is aware of.

**Call-In Question: What is the condition of the dismantled materials? Is there any rot damage?**

Answer: Cathy Orlowicz, chair of the Boodey House Committee, has indicated that she has checked on the materials, at least those materials that she could get to, and has not found any rot damage. As far as the house being reassembled, the Boodey House committee and the Board of Selectmen are looking into how much it will cost to reassemble the building.

**Article 12** is to see if the Town will appropriate money to spend on the Milfoil treatment this year. The expected annual cost to treat the Merrymeeting River is about \$7,500. By killing the milfoil upstream, and continually moving downstream, it helps move along the process. If you don't keep after it, it will continue to spread. The river has been treated from the Lake down to the dam near Art Hoover's house. Next year they will be treating from the bridge down to Jones Dam. DES oversees this process.

**Article 13** is to rescind the Ethics Ordinance.

The Board felt for a variety of different reasons that they should bring all options of the Ethics Ordinance to the table for the legislative body, the people of the Town of New Durham, to decide what is to be done.

**Call-In Question: Why are you trying to eliminate the ordinance? How will this affect the town?**

Selectmen David Bickford spoke to rescinding the ordinance. He indicated that there are many state statues that govern the ethical behavior of Town employees, so if the ordinance was rescinded, the Town would not be without legal obligation. (see attached document read by Selectmen Bickford)

Selectmen March said that the Town did fine without the ethics ordinance in the past. He feels it is detrimental to volunteerism in the town and unnecessary.

Barbara Hunter, Chair of Board of Ethics sat in on this question and answered for articles 14-20.

**Call-In Question: Did the ethics board not save the town money?**

Chair Jarvis answered this question: Yes, they did save the town from a multi-million dollar lawsuit. Was the \$2,000 spent, good? To save the town millions, yes, it was wise money spent. But she wishes that the money had never had to be spent to begin with. It is her option that there was a misunderstanding of the ordinance, and that is why

One Article was not done for all of the Code of Ethics changes, because not all articles are contingent upon the others, which is why they were separated.

Barbara Hunter spoke to the value of the Code of Ethics. It establishes guidelines for the ethical behavior of town officials, employees and board members, it ensures the integrity of town government and instills public confidence in governance, and it protects the reputation of public officials, board members and employees, and provides a process to obtain guidance when people do have ethical issues. The BOE have developed rules of procedure, and those can be found on the town website. It also established a course of action for resolving disputes. State statutes come into play within all of the different aspects of the Code and the process.

The seven articles are in the warrant because the Board decided after two and half years since the town voted for the ordinance, to review it for any problematic language or need to clarify. The BOE spent many months, and received public input for ways to clarify. The intent was not to change the meaning of what the voters accepted, but to provide clarification to some problematic areas. They are not as overwhelming as they might look. There are three that are housekeeping, there are three that are proposed to eliminate confusion, and there is one because there is no legal authority to take legal action on behalf of the board.

You can find all of the documents that are referred to in this meeting at the Town's website. [www.newdurhamnh.us](http://www.newdurhamnh.us)

Each of the seven articles were read, and explained for clarification.

**Call-In Question: Articles 14-23 address the ethics ordinance; article 13 wants to appeal it. Please explain the contradiction.**

**Call-In Question: It appears that the ethics board really has no power. The Town had no candidates for an open Selectmen position, cemetery trustee position, and trustee of trust fund position. Why is the town using its resources (people willing to serve) on this committee?**

Barbara Hunter spoke to this question, and said that the Board of Ethics is comprised of committed and caring people, and might not want to serve in a different capacity than what they have volunteered for.

Mike Gelinas sat in on the question and answers for articles 21-23.

Mike Gelinas and the Board read each article and discussed the changes. Mike Gelinas is in favor of the town passing all of the Ethics Ordinance changes; those that he has proposed, as well as those proposed by the Board of Ethics. He said that everything is an improvement, and he would like to see everyone support all of the articles to change the ordinance

**Call-In Question: What happens when a majority of a Board is comprised of those who would profit from the kind of things that Board oversees?**

If a majority of the Board would profit, then they would have to step down. The Board is not aware of any time when a majority of the Planning Board, for example, had to step down. Mike Gelinas explained that the Planning Board is elected, so it is the Town's choice to decide who will be put on, and if there is a conflict they have a duty to step down.

**Call-In: Caller would like to commend Barbara Hunter for her commitment, integrity, and intelligence.**

**Article 24** is to discontinue the sidewalk capital reserve fund. The funds will be transferred to the Town's general fund. One of the members of the Budget Committee brought this article forth. The total amount in this fund is \$10,198. The total cost in 2010 dollars was \$408,730 to put the sidewalks in. The past Town Meeting did not vote to add money into this account.

**Article 25** is to discontinue the addition to the New Durham Fire Station Fund. The funds will be transferred to the Town's general fund. This fund currently has \$1,972.88. The project of putting an addition on the fire station has been completed. This is not the fund for an anticipated satellite station.

**Article 26** is to change the purpose of the current Town Hall Computer Systems and Office Equipment Expendable Trust Fund, to allow all town departments computer system needs to come from this fund. The article also requests that we change the name of the fund to the Computer Systems and Office Equipment Expendable Trust Fund and add \$5,000 to the fund this year, and name the Board of Selectmen as agents to expend. This article requires a 2/3rds vote at Town Meeting to pass.

When this fund was created, all departments were located in Town Hall. Since then, many of the departments have spread to other areas of the Town. The Trustees of the Trust Funds have advocated for this change, as the purpose of the trust fund should be able to catch up with the needs of the Town.

**Article 27 and 28** were addressed together. **Deputy Mike Davenport came up to speak to Fire Department questions.** Article 27 proposes to discontinue the current Ambulance Special Revenue Fund, which allows money to be spent out of the fund only with the permission of Town Meeting. Article 28 proposes to create an Ambulance Revolving Fund, for which the Board of Selectmen would be agents to expend, and add the money from the previously rescinded Ambulance Special Revenue Fund. This would allow for more flexibility in the event that funds from this account would need to be utilized at some point in the year. This fund will be used primarily for the purchase of a new ambulance, and ambulance capital equipment (equipment which costs more than \$10,000).

Deputy Chief Mike Davenport spoke to last year's need to buy a new stretcher for the ambulance for which the fire department received a grant, and that cost was over \$10,000. A new ambulance will cost approximately \$150-175,000.

New advanced life support equipment such as a new heart monitor will be needed in the future which will be over \$10,000, and telemetry units run about \$35 to 45,000. By adding money to the Revolving Fund, the Fire Department would not have to wait until March when grant opportunities or other needs for this equipment arise, and as the money comes from the ambulance billing service, there will be no need to raise funds through taxation.

The \$10,000 amount is a direct correlation with the Capital Improvement Program, where by only equipment greater than \$10,000 is included in the plan.

In 2008, this article was approved, but DRA disallowed the language at the time. We have ensured that DRA is satisfied with this language.

The ambulance brings in approximately enough money to pay for itself in five years. In 2009 they took in a little over \$38,000 and 2010 over \$31,000.

**Call-In Question: Have you considered putting money into any other fund, for example, satellite for fire station?**

There was no money recommended by the CIP committee this year for that Capital Reserve Fund, as the committee was aware of the upcoming budget needs.

**Call-In Question: Can you speak to the amount of money put into the Capital Reserve and Expendable Trust Funds? Why are they not being funded at the recommended amounts by the CIP committee? More money should be added so as not to increase our taxes down the road.**

Answer: this year we are funding the CRF about \$92,000 less than was proposed, in order to keep the same tax rate. Tom Goss mentioned that if we had followed the plan as written, we would be close to seeing the impact on the tax rate go down. The CIP is more of a wish list, according to David Bickford. Tom Goss said that the plan is to replace the equipment over time, and if you do not fund it in a given year, you are pushing costs out to a different time. He said that it is a matter of opinion of whether there is a need. If it is on the plan there is a need, but when we can afford to fund it is the question.

Chair Jarvis commented that there have been many foreclosures in town, and many people who have not been able to pay their taxes. The county budget is estimated to go up 2.9% and New Durham is expected to have a 12% increase in the tax school rate, numbers which she read in the paper.

**Call-In Question: Someone mentioned "billing." If I use the town ambulance service, do I get a bill?**

Answer: Yes, the insurance company or Medicare/Medicaid gets the bill. If you do not have insurance, you will get the bill. If you cannot afford to pay the bill, you can contact the town to work out an agreement or arrangement, or ask to have the bill waived.

**Article 29** is to raise \$291,000 to be put into the Highway Capital Reserve Funds, which includes the Expansion of the Highway Garage CRF, Highway Equipment CRF, Highway Truck CRF, and Road Reconstruction CRF. The Highway Garage is running low on space; the intention is to add an addition to house the expensive equipment, move the furnace (located in the middle of the shop floor), replace the roof, and make an area for the mechanic to work. This is a long range plan. The Highway Equipment is the grader, backhoe, and bulldozer. The Backhoe will be replaced in 2020, and the loader in 2013. Next year, there will be a request to separate out this fund. No money is being taken out of this fund for the Grader this year. The Highway Truck fund will have \$100,000 taken out for the dump truck. The Road Reconstruction money will be added to the Highway Block Grant to fund the shim and overlay of South Shore Rd, Copple Crown Rd, Birch Hill Rd, Ham Rd., Kings Highway, Valley Rd, Tash Rd, and Quaker- approximately a mile to two miles a piece. Ragged Mountain Rd and Wentworth were due to be done this year, but there are 11 culverts that need to be replaced first, which will be done this year. The money that was put aside will be put to reclaim Bracket Rd from Merrymeeting Rd to the Greymont residence, which will be hot topped and Penny Lane will be overlaid. This CRF was cut from the original amount in an effort to keep costs down, without cutting services.

**Article 30** is to raise \$22,000 to be put into the Solid Waste Capital Reserve Funds, which include Solid Waste Equipment and Facilities Improvement. \$13,000 is set aside to rebuild the compactors that are down there. The facilities improvements money is set aside for improvements to where disposables are kept, and where things are laid out.

**Article 31** is to add \$52,500 for Public Safety Capital Reserve Funds, which includes the Public Safety Facilities CRF, Dry Hydrants, Fire Truck and Police Cruiser CRFs. The Public Safety Facilities CRF was created last year, and currently holds \$94,600 and there are still outstanding bills for the PD renovations. The dry hydrant account is at zero, as several dry hydrants were put in last year. The dry hydrants run approximately \$5-7,000. The Police Cruiser fund has \$10,947, which is not enough to purchase the cruiser that we are purchasing this year. In order to fund this purchase, these funds must be added.

**Article 32** is to add \$5,500 to Library Facilities, Library Technologies, Smith Ballfield & Equipment, and 1772 Meeting House Restoration.

**Article 33** is to raise \$28,500 for milfoil, future revaluations, and Shirley site improvements. Every five or ten years the town must go through a full revaluation and that is expected to cost up to approximately \$250,000.



**Article 34** is to add \$57,500 to the Expendable Trust Funds for Accrued Employee Benefits, Forest Fire Control, Record Management, and Town Building Improvements.

**Article 35** is to set aside \$2,000 for researching the future acquisition of state owned land within the Shirley Pit. This is a piece of land that was misunderstood for many years, as being owned by the Town. Last summer we received a letter from the state informing us that it was theirs, and that they are offering to us the right of first refusal. We have used this land since 1941 and they are willing to sell it to us. It is off of Berry Rd. The cemetery is right there and backs up to it. It is probably important that we purchase it, if the price is right. It is used for a variety of purposes. This is the area that people park and enter through as well. The state would probably want whatever the property is appraised for. It is a 3 acres lot, and is the kind of land that you could do something with.

**Call-In Question: Every year money goes to Milfoil. Why is there no program to prevent the milfoil from getting here? Boats brought here from other water bodies are not inspected for Milfoil. Why not??**

There is a voluntary inspection program for boats heading into Merrymeeting Lake, but there is no inspection program anywhere along the river. This is a state issue as well, and we have set up a committee to try to assist the state. Funding has been an issue, some comes from the town and the rest comes from the fees paid by fisherman. So be nice to the fisherman.

Thanks to Barbara Hunter, Mike Clarke, Shawn Bernier, Mike Davenport, and Tom Goss.  
Thank you to folks at channel 25 and thank you for watching.

**Motion to adjourn the meeting, made by Selectmen March, seconded by Chair Jarvis. 3-0**

**Meeting adjourned at 9:16PM.**

*Respectfully Submitted,  
Alison Rendinaro  
Administrative Consultant*

## **Attachment: Selectmen Bickford's Statement, Read for Article 13 (opinion)**

Ethics Ordinance Narration, 2011

If the Ethics Ordinance is repealed it will not mean the town is without ethical standards. In place are NH statutes and Case law that define codes of conduct.

RSA 640 prohibits engaging in bribery, improper influence, acceptance of gifts and improper compensation, and the purchase of public office, 673:13 land use member removal, 42:1 selectman removal, 95:1 contracts with municipality, 669:7 Incompatible offices, 669:7 full time employee not be selectman, 32:2 Other full time employee restrictions, Atherton v. Concord 1968 defining conflict of interest as being immediate and direct, not speculative.

The ethics ordinance has been misused, misunderstood, and is poorly crafted.

One individual has instigated both cases that have been before the BOE.

An inquiry of an individual, and a complaint. The complaint was against 18 volunteers and employees for exercising their free speech rights and voicing no confidence in that individual's election.

RSA 98-E PUBLIC EMPLOYEE FREEDOM OF EXPRESSION, Constitution guarantees it.

The town had to spend \$2,000 in attorney fees when it shouldn't have needed to spend anything. The BOE voted the complaint was valid before our attorney was notified. The attorney was able to convince the BOE they were on the wrong track and would cause a multi million \$ suit against the town if they pursued the matter any further.

Board is made up of lay people with only task to investigate and report to Selectmen... after all other avenues are exhausted. None are investigators and the BOE has refused funding to educate them in investigating. .

The liability exposure is significant by having this additional layer of government.

\*Local Regulation of Ethical Behavior, NH Town and City, January 2009

By C. Christine Fillmore, Esq. and David R. Connell, Esq.

It is also common to find a local ethics committee charged with investigating ethical complaints about employees or officials. However, although a committee of this nature may be very helpful in addressing thorny conflicts of interest questions, the referral of certain matters to the committee could result in even greater exposure to liability for the municipality. For example, referral of an employment harassment claim to an ethics committee may result in a breach of confidentiality because the employer likely owes the employee certain confidentiality measures. Likewise, the referral of a matter regarding fraud or misappropriation of funds may result in a charge that the municipality has interfered with a criminal investigation.

\* Letter from LGC attorney Paul Sanderson, Feb . 16, 2011

\*Considering an Ethics Ordinance? Stick to Simple Values and Principles.... NH Town and City, June 2006

By Susan Slack, Esq. Legal Services Counsel with Local Government Center's Legal Services and Government Affairs Department.

...adopting a local ethics or conflict of interest ordinance that is cumbersome to enforce may make matters more difficult and, ultimately, result in fewer people volunteering for public service.

...under several town ordinances, the mere perception of conflict also requires disqualification. This broad definition can cast a wide net, particularly in small towns where working relationships and friendships (or feuds) are widely known or simply assumed, and can lead to unfair results.

All the attorneys I've talked to at Local Government Center give this ordinance a "thumbs down".

The BOE is an unnecessary expansion of the selectman's job. Whatever findings the BOE makes they report back to the Selectmen and the selectmen decide what to do.

I'd prefer to hire an investigator that has liability insurance up front and save the town the liability exposure.

There are 10 articles in the warrant for repairing the ethics ordinance. All of them are positive changes but don't go far enough.