

**New Durham Board of Selectmen
Minutes of Meeting ~ January 31, 2011
Town Hall**

Members Present: Theresa Jarvis, David Bickford, Frederic March

Others Present: Administrative Consultant (AC) Alison Rendinaro, Police Chief Shawn Bernier, Road Agent (RA) Mike Clarke, Emergency Management Director Ken Quigley, Arthur Hoover, Barbara Hunter, Cathy Orlowicz, Dot Martin Veisel, Mary McHale, Stuart Rinschler

1. Call to Order –Chairperson Terry Jarvis resumed the meeting at 7:00 p.m., explaining that it was called to order at 2:30 p.m., and went immediately into non-public session until a break at 5:30 p.m., with no decisions reached.

2. Citizens' Forum – Cathy Allyn announced that the New Durham Public Library will hold a Game Night for families on February 11 at 7:00 p.m.

Chair Jarvis read a letter of appreciation from resident John Goyette to the New Durham Police Department for its work arresting four burglary suspects.

3. Department, Board, Commission and Committee Reports

Milfoil Committee – Milfoil Committee Chairperson Art Hoover updated the Board on the committee's activities. He said the committee has been in existence for five years. He said milfoil infestation is confined now to the Merrymeeting River by the bridge, Jones' Pond, and Downings' Pond. He said boaters carry the invasive weed on their boats, and it is not yet in the lake.

He told the Board the committee adopted the Management and Control Plan recommended by the state, and that the chemical treatment recommended by the Department of Environmental Services (DES) was carried out in July of 2010. A second treatment was applied in September of that year. Mr. Hoover cited the \$20,000 in the CRF for that purpose. He said the plant is aggressive, and explained a follow-up treatment upstream and including Jones' Pond should be done in 2011. Estimates for that treatment were \$13,000 and \$10,000 from Aquatic Control, the company that did the 2010 treatments. He said Aquatic Control lowered their price to \$7,800 after he contacted them.

Mr. Hoover advised that funding is critical, as New Durham is continually rejected for state money that comes from boat registrations because there are no commercial properties on the lake. He said the plant would come back in three years if nothing were done. He explained that the wild fowl division of New Hampshire Fish and Game is still opposed to drawing down the water level to expose the plant and deter its growth. He said the next step is to educate boaters, as they now remove the ropes put up to confine the infestation and continue to go into areas where milfoil grows.

Selectman David Bickford asked what it would cost to stay on top of the problem and Mr. Hoover cited the cost of the treatment, \$7,800. He said once the plant is under control, it costs about \$2,500 a year. He said Downings' Pond would not be treated with

the \$7,800 application. He explained milfoil would have dramatic results on property values if it gets into Merrymeeting Lake.

Chair Jarvis said, because of the economy, the Board allocated \$7,500 in the milfoil control CRF, rather than the traditional \$10,000. Mr. Hoover said the committee could make that work.

Police – Police Chief Shawn Bernier said the department received a 50 per cent grant from Highway Safety for a laptop in the cruiser for 2011. Chair Jarvis said the grant is accepted in a warrant article.

Motion by Selectman Bickford authorizing Chairperson Jarvis to sign for the Highway Safety grant; second by Selectman Fred March. 3-0.

Chief Bernier mentioned other grants he has applied for, including a 100 per cent grant for 90 hours of patrol, another 100 per cent grant for 25 bicycle helmets, and a 50 per cent grant for tire spike strips. He said the department has three sets of spike strips now, which deflate tires that pass over them.

Regarding construction at the police station, he said everything is roughed in. He said the Local Government Center (LGC) reviewed what the plans call for and recommended punch pads to exit the booking room, a camera in the evidence room, and a railing on the stairs from the booking room. He said the cost would be under \$1,000.

Emergency Management – Emergency Management Director Ken Quigley spoke on the Town's Multi-Hazard Mitigation Plan. He said the brunt of it falls on the highway department. He explained that hazard mitigation is based on past events, and the Town gets money from FEMA for the events. In order to back up the Town's claims and demonstrate that the Town is working toward mitigating problems, the plan must be reviewed every five years. He said the current plan has been conditionally approved by FEMA, but the Board must adopt it for FEMA's final approval.

Road Agent (RA) Mike Clarke said money is up in the air for the completed Valley Road project, but the Town can't receive the \$25,000 until the Board approves the plan. Selectman Bickford had several questions, including the use of 1999 information, protecting graveyards, and a Timber Management Plan. Chair Jarvis said the plan will be worked on over the next five years. Mr. Quigley said county agencies advise on issues, also.

Motion by Chair Jarvis that the Board of Selectmen adopt the New Durham Multi-Hazard Mitigation Plan dated January 28, 2011; second by Selectman Bickford. 3-0.

The Board signed the document.

4. Status Reports

Tower Clock – Chair Jarvis said Administrative Consultant (AC) Alison Rendinaro is investigating the cost to service the tower clock and maintain it. The figure is \$300. AC Rendinaro said a volunteer will be present to learn how to wind it when the company comes. She said there was the possibility of two volunteers doing it, until Lawrence Corson is able to return.

Transfer Station Employee Hire – Chair Jarvis said a part-time employee at the Transfer Station has resigned, so there is an opening. Since applicants just applied for a

recent job, she proposed that the Town not post in-house and advertise, but just keep the list of applicants on file.

Motion by Chair Jarvis to waive the personnel policy in regards to hiring additional help at the Transfer Station and, instead, utilize the list of applicants the Town has, through September 30, 2011; second by Selectman Bickford. 3-0.

5. Old Business

2011 Warrant Final Review – Chair Jarvis said that, as a result of discussions at last Friday’s meeting, current draft articles 16-22 will be moved to the beginning of the warrant, following Article 3, so most of the money articles will be discussed first at Town Meeting. She said the Board would vote on the operating budget, Article 3, next Monday. The Board voted in the order the articles appeared on the draft Warrant, to place the articles officially on the Warrant.

Motion by Chair Jarvis to place: To see if the Town will vote to change the third bullet in the Ethics Ordinance PURPOSE that currently reads: We expect town officials, board members and employees to remove themselves from decision making if they have a conflict of interest or even the appearance of one. to: We expect town officials, board members and employees to remove themselves from decision making if they have a conflict of interest, on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Selectman Bickford to place: To see if the Town will vote to change the Ethics Ordinance SECTION I. CODE PROVISIONS B. that currently reads:

B. A Duty to Recuse in Quasi-Judicial Actions

A “quasi-judicial action” is any action where the board or committee you are a member of is acting like a judge or a jury. For example, when your board or committee has a duty to notify the potential parties, hear the parties, and can only decide on the matter after weighing and considering such evidence and arguments as the parties choose to lie before you, you are involved in a quasi-judicial action. The work of the planning and zoning boards is largely quasi-judicial. Not only do officials, board members and employees of the Town of New Durham have a duty to recuse themselves as outlined in the section above, you must recuse yourself in a quasi-judicial action if you would not be qualified to sit as a juror in that case. For example, jurors are not qualified to sit in a case if they have advised or assisted either party in a matter being decided, are prejudiced to any degree regarding the pending matter, or believe they cannot for any reason be totally fair and impartial. Information gained through general knowledge as a citizen of the Town, or solely as a result of the individual’s service in an official capacity, does not disqualify the member unless it has biased the member to such a degree that he or she cannot be impartial. As a representative of the Town of New Durham, you are expected to hold yourself to this same standard.

to:

B. A Duty to Recuse

Conflicts of interest apply to both quasi-judicial/judicial and legislative situations and may warrant the disqualification of a board or committee member in deciding the matter. Ultimately, the decision to recuse or not to recuse is up to the

individual with the alleged conflict. Information gained through general knowledge as a citizen of the Town, or solely as the result of the individual's service in an official capacity, does not disqualify the member unless it has biased the member to such a degree that he or she cannot be impartial. The type of decision (quasi-judicial/judicial vs. legislative), not the type of board, is the primary factor for possible disqualification.

(i) A quasi-judicial action is any action where the board or committee acts like a judge or jury to decide a matter affecting specific individuals. For example, members are involved in a quasi-judicial action when the board or committee has a duty to notify the potential parties, hear the parties, and decide the matter only after considering and weighing such evidence and arguments as the parties choose to present. Not only do the officials, board members, and employees of the Town of New Durham have a duty to recuse themselves as outlined in Section A, but they also must recuse themselves in a quasi-judicial action if they would not be qualified to sit as a juror on a case (RSA 673:14 and 46:6). Stricter standards of fairness tend to be applied by the courts in cases where a board is acting judicial and must demonstrate impartiality.

(ii) A legislative action is administrative in nature and involves a matter affecting all citizens equally. For example, members are acting in a legislative capacity when they set goals, create policies, develop rules and regulations, research and write amendments, and tend to other procedural matters. Here, the need to recuse often is more the exception than the rule, on the Warrant, as read; second by Selectman March. 3-0.

Motion by Chair Jarvis to place: To see if the Town will vote to change paragraph 6 in the Ethics Ordinance SECTION IV. COMPLAINTS that currently reads: The Board of Ethics may require, with sufficient written notice, any official, board member or employee of town government to appear before it to provide testimony regarding pending complaints. The board may for this purpose administer oaths and require the production of evidence such as documents. to: The Board of Ethics may request, with sufficient written notice, any official, board member or employee of town government to appear before it to provide testimony regarding pending complaints. The board may for this purpose request production of evidence such as documents. The Board only can make findings based on evidence provided, on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to place: To see if the Town will vote to move the first paragraph in the Ethics Ordinance SECTION IV. COMPLAINTS that currently reads: The Board of Selectmen shall appoint a board of no more than 5 nor less than 3 persons, with staggered terms, such board to be named Board of Ethics. to: a new section called SECTION IV: BOARD OF ETHICS, with subsequent numbering becoming SECTION V. COMPLAINTS and SECTION VI. EFFECTIVE DATE, on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Selectman Bickford to place: To see if the Town will vote to add the following terms and their definitions to SECTION II. DEFINITIONS:

Appearance: The outward impression of how something seems; the way something or somebody looks or seems to other people.

Misuse: The incorrect or improper use or misapplication of information, position, authority, or influence, as well as Town resources, property, or time by a public servant.

Official Authority: The power delegated to an individual by nature of the position that he or she holds, on the Warrant, as read; second by Selectman March. 3-0.

Selectman Bickford said he thought Chair Jarvis had a problem with "appearance." Chair Jarvis said she did, but it could be handled from the floor.

Motion by Selectman Bickford to place changes to the Ethics Ordinance involving changing certain capital letters to lower case letters, and referencing the body as the Board of Ethics on the Warrant, as read; second by Chair Jarvis. 3-0.

Motion by Chair Jarvis to place an article regarding reordering the first two sections in the Ethics Ordinance on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Selectman Bickford to place: To see if the Town will vote to change the Ethics Ordinance Section 1 Code provisions that currently reads:

A. No conflicts of interest – Specific prohibition.

(i) Public servants shall avoid conflicts of interest. or when possible, the appearance of a conflict of interest. to: (i) Public servants shall avoid conflicts of interest, on the Warrant, as read; second by Chair Jarvis. 3-0.

Motion by Selectman Bickford to place: To see if the Town will vote to change the Ethics Ordinance Section 1 Code Provisions that currently reads: A No Conflicts of Interest – Specific Prohibitions

(ii) Public servants shall not appear on behalf of a client, close, personal friend, or family member the governmental body of which the public servant is a member.

to: (ii) Any person who is elected or appointed to a Town Board as a regular or an alternate member who owns or is employed by a business that represents clients before the same Town Board may continue to hold his or her position on the Board, and, from time to time, represent his or her clients before the Board providing the following conditions are met:

a) A written public disclosure of the member's ownership and/employment with an explanation of the possible representation is provided to the Board and the Board of Selectmen, which disclosure is made a part of the record; and

b) The member, when actually representing the client before the Board, shall step down from the Board after first publically declaring the reason for his or her stepping down, on the Warrant, as read; second by Selectman March. Selectman Bickford said this wording was similar to Alton's. 3-0.

Motion by Chair Jarvis to place: To see if the Town will change the following statement from the Ethics Ordinance Section 1 Code Provisions that currently reads:

(viii) No public servant shall misuse his / her authority or influence for the purpose of interfering with or affecting the results of an election. to: (viii) No public employee, official or board member shall electioneer while in the performance of his/her duties or use government property, on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Selectman Bickford to place an article discontinuing the Sidewalk Capital Reserve Fund on the Warrant, as read; second by Selectman March. 3-0.

Motion by Selectman Bickford to place an article discontinuing the Addition To the New Durham Fire Station Capital Reserve Fund on the Warrant, as read; second by Selectman March. 3-0.

Regarding the lease/purchase of a grader, AC Rendinaro presented information from two sources, stating the interest rate from Volvo financing was slightly higher than the 3.35 per cent offered by TD Equipment Finance, Inc. resulting in a savings of \$2,614.80. She said Peoples' Bank did not respond. She said both Volvo and TD have non-appropriation clauses, which is essentially an escape clause if the article is defeated at Town Meeting. Brief discussion ensued.

Motion by Chair Jarvis to accept the tax exempt municipal lease proposal from TD Equipment Finance, Inc in the amount of \$189,000 for the purchase of a Volvo grader with wing and with an interest rate of 3.35 per cent; second by Selectman March. 3-0.

Motion by Selectman Bickford to approve the new wording of the grader article and place: To see if the Town will vote to (i) authorize the Selectmen to, enter into a five-year (5) lease/purchase agreement for \$189,000.00 for the purpose of leasing a grader with wing gear for the Highway Department and (ii) raise and appropriate the sum of \$40,331.22 for the first year's principal payment for the lease purchase of the grader, on the Warrant, as read; second by Selectman March. 3-0.

Motion by Chair Jarvis to place: To see if the town will vote (i) to raise and appropriate the amount of \$138,000.00 for the purchase of a highway truck with plow and wing, (ii) to approve withdrawal of \$100,000.00 from the Highway Truck Capital Reserve Fund created for this purpose and (iii) to take the remaining \$38,000 from the unreserved fund balance, on the Warrant, as read; second by Selectman March. 3-0.

Motion by Chair Jarvis to place: To see if the town will vote (i) to raise and appropriate the sum of \$ 36,955 for the purchase of a police cruiser and laptop computer, (ii) to approve withdrawal of \$34,740 from the Police Cruiser Capital Reserve Fund created for this purpose and (iii) to accept a grant of \$2,215 from Highway Safety for the installation of a laptop computer for the cruiser, on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Selectman Bickford to place: To see if the town will vote to raise and appropriate the sum of \$ 15,000.00 for a historic assessment of Town Hall with such sum to be offset by a \$7,500.00 grant from the NH Land and Community Heritage Investment Program. This is a non-lapsing article and will not lapse until December 31st, 2016, or until the project is completed, whichever is sooner, on the Warrant, as read; second by Chair Jarvis. 3-0.

Motion by Chair Jarvis to place: To see if the town will vote to raise and appropriate the sum of \$117,038 for the purpose of the Road Surface Management System for 2011. This sum is to be offset by the New Hampshire State Highway Block Grant Aid, on the Warrant, as read; second by Selectman Bickford. 3-0.

Regarding the drive-on scale article, AC Rendinaro pointed out that monies will be held over several years. Chair Jarvis said appropriations would be held from 2011 through 2016.

Motion by Selectman Bickford to place: To see if the town will vote to raise and appropriate the sum of \$10,000.00 for the purpose of purchasing and maintaining a drive on scale system at the Transfer Station. This is a non-lapsing article and will not lapse until December 31st, 2016, or until the project is completed, whichever is sooner on the Warrant, as read; second by Selectman March. 3-0.

Motion by Selectman Bickford to place: To see if the Town will vote (i) to raise and appropriate the sum of \$ 10,000.00 for the purpose of purchasing, upgrading, maintaining, cleaning and monitoring of a new fuel depot system. This is a non-lapsing article and will not lapse until December 31st, 2016, or until the project is completed, whichever is sooner on the Warrant, as read; second by Selectman March. Selectman Bickford asked if the article should cite the RSA governing non-lapsing appropriations. AC Rendinaro said the examples she saw did not, but it could be added. Selectman Bickford said he would like to see it added. **3-0.**

Motion by Selectman Bickford to reference the RSA in any article dealing with non-lapsing appropriations; second by Chair Jarvis. 3-0. AC Rendinaro is to add the language where appropriate.

Motion by Chair Jarvis to place: To see if the town will vote (i) to change the purpose of the Town Hall Computer Systems and Office Equipment Expendable Trust Fund created in Article 11 of the March 13, 1996 Town Meeting and amended in Article 20 of the March 15, 2000 Town Meeting to include all town department computer systems and office equipment, (ii) to raise and appropriate the sum of \$5,000 (iii) to change the name of the fund to the Computer Systems and Office Equipment Expendable Trust Fund, and (iv) to name the Board of Selectmen as agents to expend, on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to place an article regarding establishing a New Durham Special Revenue Ambulance Fund, separate from the general fund on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Selectman Bickford to place an article establishing a revolving fund pursuant to RSA 31:95-h for the purpose of providing ambulance services on the Warrant, as read; second by Selectman March. 3-0.

The Board removed the draft special warrant article regarding establishing a revolving fund to maintain and update equipment and service at the Transfer Station.

Motion by Chair Jarvis to place an article regarding adding to the following previously established Capital Reserve Funds: Expansion of the Highway Garage, Highway Truck, Road Reconstruction and Highway Equipment on the Warrant, as read; second by Selectman March. 3-0.

Motion by Selectman Bickford to place an article regarding adding to the following previously established Capital Reserve Funds: Solid Waste Equipment and Solid Waste Facilities Improvement on the Warrant, as read; second by Chair Jarvis. 3-0.

Motion by Selectman Bickford to place an article regarding adding to the following previously established Capital Reserve Funds: Public Safety, Dry Hydrant, Fire Truck, and Police Cruiser on the Warrant, as read; second by Chair Jarvis. 3-0.

Motion by Chair Jarvis to place an article regarding adding to the following previously established Capital Reserve Funds: Library Facilities and Library Technologies on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to place an article regarding adding to the following previously established Capital Reserve Funds: Milfoil, Revaluation, J.C. Shirley Site Improvement on the Warrant, as read; second by Selectman Bickford. 3-0.

Motion by Selectman Bickford to place an article regarding adding to the following previously established Capital Reserve Funds: Accrued Employees Benefit, Forest Fire Control Fund, and Record Management on the Warrant, as read; second by Chair Jarvis. 3-0.

Cemetery Trustees Article – AC Rendinaro said the Cemetery Trustees were not warned as to when an article needed to come before the Board in order to be considered for placement on the Warrant. She said monies are in the fund for uncared for graveyards and are not being utilized. She said the Trustees felt the money could be better spent elsewhere and that the RSAs are clear as to what the Town's obligations are in the matter. She said they proposed an article and felt strongly about it. She said she would like to advocate on the Trustees' behalf. Chair Jarvis said the issue was discussed several times.

Selectman's Vacancy – Selectman Bickford said, since no one put in for the vacant position for selectman, he was concerned the Ethics Ordinance was a deterrent, and asked if the Board should look into repealing the ordinance.

AC Rendinaro asked if he knew for a fact that the ordinance was a deterrent. Ms. Allyn said there have been races for that office in the past while the ordinance was in effect, and said the Board should look for another cause. Barbara Hunter, chairperson of the Board of Ethics, said she would like to emphasize that there have been three active and involved elections since the ordinance was voted in. She said she could not see a direct relationship between the ordinance and no one running for selectman this year, and felt that such a statement suggesting a relationship could not be made without more information.

Mary McHale said she ran for selectman last year and has spoken to people about running this year. She said many refused to run due to the highly negative and nasty campaign of last year. She said she would never run for selectman again because of the horrible things posted on YouTube and the internet. She said if residents want to be a part of government, they want it to be a positive experience whether they win or not.

Motion by Selectman Bickford to place an article on the Warrant repealing the Ethics Ordinance; second by Selectman March. Chair Jarvis said the decision should be left to the people. She said people she spoke with said they did not want to run because they would be pulled into a mess regarding the ordinance. She said the townspeople voted in the ordinance, and they could vote it out if they wanted to. She said she was unsure whether a vote to repeal could be done.

Selectman Bickford said this new article should appear first, so if the ordinance were repealed, the articles related to it would not have to be gone through. **3-0.**

Chair Jarvis said now it would be placed on the Warrant so the townspeople could decide. She said she was told a petition warrant article was coming in on this issue, but she had not seen it yet. Selectman Bickford asked for Dot Martin Veisel's take on the matter. Ms. Veisel said she spoke with about 50 people, many of them young, and only

one person cited nastiness. She said some people raised the issue of cliques in town, but that the feedback she received indicated people were happy with the Board and saw no need to run. She said they were happy with the direction the Board was going, and cited time constraints prevented running for office. She said she was pleased with the Ethics Committee and that they addressed a flawed document. She said a state regulation is in place regarding ethics.

Finalize Budget – The Board discussed corrections to the budget.

Motion by Chair Jarvis to rescind the previous approval of Principle Long-term Bonds and Notes account 4711 and approve it in the amount of \$135,214 to reflect the addition of the principle for the grader (\$40,331.22); second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to rescind the previous approval of Capital Reserve Fund 4915 to reflect removal of \$10,000 for the fuel pumps from this line and approve it in the amount of \$399,500; second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to rescind the previous approval of Capital Outlay 4902 and approve the revised figure of \$194,955, reflecting the removal of \$188,000 for the grader and the addition of \$10,000 for a drive-on scale system and maintenance and \$10,000 for fuel pumps; second by Selectman March. 3-0.

6. New Business

Town Investment Policy – Chair Jarvis said the Town’s investment policy must be reviewed each year and asked Selectmen Bickford and March to read it. She said AC Rendinero will confer with Financial Assistant Vickie Blackden to get some questions answered. She suggested removing the section on the duties of the Trustees of the Trust Funds, as the Board has no authority to tell the Trustees what their investment policy should be. She said the policy needs to be approved before the audit.

Tax Refund – Chair Jarvis said the LGC advised the Town must refund any partial payment of taxes on property gone to deed.

Motion by Chair Jarvis to refund \$1,730.58 to Richard Best in accordance with RSA 80:71; second by Selectman Bickford. 3-0.

7. Schedule Next Meeting

The Board scheduled its next meeting for Monday, February 7, 2011 at Town Hall at 7:00 p.m.

8. Approval of Minutes

Motion by Chair Jarvis to approve the minutes of January 28, 2011, as amended; second by Selectman March. 3-0.

9. Any Other Business

Boodey House Chairperson Cathy Orlowicz told the Board a member of the committee will be resigning. She asked if the Board had discussed the committee’s presentation of future use of the Boodey House. Chair Jarvis said the Board had not planned on discussing it until after the budget was completed. Ms. Orlowicz said the committee needed to know if the Board is in agreement with the concept of its reconstruction plan.

If so, the committee would request a cost from Arron Sturgis. Chair Jarvis placed the matter on the agenda for February 14, 2011.

10. Adjournment

Motion by Chair Jarvis to adjourn at 9:22 p.m.; second by Selectman March. 3-0.

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.