

## **New Durham Board of Selectmen Minutes of Meeting ~ January 8, 2007 Town Hall**

**Members present:** Chairperson Dwight Jones, Ronald Gehl, Peter Rhoades

**Also present:** Town Administrator April Whittaker, Police Chief Shawn Bernier, Road Agent Mark Fuller, Town Clerk Carole Ingham, Town Historian Catherine Orlowicz, Planning Board Chairperson Robert Craycraft, Copple Crown Village District Commissioner Christopher LaPierre, CCVD Commissioner Virginia Skinner, Thomas Beeler, Skip Fadden, George Gale, Sam Hardy, David Kesler, Paul Mangione, Anne-Marie McKenna, John McKenna, George Sherback, Maureen Sherback, Stephen Smith, Katherine Woods, other members of the public.

**1. Call to Order:** Chairperson Dwight Jones held the meeting until Town Administrator April Whittaker arrived from the Budget Committee meeting. The Meeting was called to order at 7:10 p.m.

**2. Citizens' Forum** – Sam Hardy, speaking on behalf of the Fire Station Committee, presenting three capital requests for the 2007 budget. The first was for cash or a bond in the amount of \$150,000 to purchase a four-acre site for a Public Safety Complex to house a new central fire station and police station. Mr. Hardy read from the request, saying preliminary plans for the fire station are to be available at the 2007 Town Meeting. The building is designed to accommodate expansion, including addition of a police station. He went on to say the need for a public safety complex is anticipated due to rapid growth of the Town, growing obsolescence of the existing fire and police facilities, and lack of space to accommodate renewal and growth at the present site.

The Committee's second request reflects the Committee's recommended funding for the new fire station. Mr. Hardy told the Board \$50,000 is available in the capital reserve fund now. With a \$50,000 contribution in 2007, yearly reserve contributions of \$125,000 in 2008 – 2011, and a cash contribution of \$150,000 and a bond of \$250,000 in 2012, the Committee foresees the \$1,000,000 fire station paid for.

Mr. Hardy stated the Committee's third request of \$25,000 for 2007, and continued contributions through 2010, is to provide for a satellite fire station to serve the Second Division. Mr. Hardy said there is not currently an identified site. Chair Jones said he looked at a property under consideration, and thought it would suffice, especially since an abutter may be willing to sell, also.

Selectman Ronald Gehl said he missed the last Fire Station Committee meeting when these requests were delineated, and asked what transpired for the change. Mr. Hardy said the Committee wanted to move ahead with the reserves. Selectman Gehl said the Board was currently in the midst of discussing capital expenditures, so the timing was good.

The board thanked Mr. Hardy for his presentation.

**3. Public Hearing** – Chair Jones opened a public hearing, pursuant to RSA 674:41, regarding issuance of a building permit to John and Anne-Marie McKenna on a private road for property known as Map 34 Lot 17 Lions Camp Pride Way. Selectman Gehl summarized the charge of selectmen to review building permits along private roads, with consideration of safety issues and

conditions that may need to be applied to approved building permits. He said the necessary information for review had been provided.

Mr. McKenna said his purchase of the property was contingent upon the permit approval. He and his wife plan to build a three-bedroom home with an attached garage. Selectman Gehl said the Board dealt with lots differently according to their creation date. David Kesler, representing the seller, indicated that a substandard lot on the east end of Merrymeeting Lake was expanded to become this conforming lot. Abutter Fred Savage said he and another abutter had no objection to the proposal. The Board scheduled a site walk for 7:30 a.m. on January 15, 2007.

**Motion by Selectman Gehl to continue the public hearing on the building permit application of John and Anne-Marie McKenna for building on a private road to the Board's meeting of January 22, 2007; second by Chair Jones. The motion carried unanimously.**

The Board tabled the public hearing on increasing fees until 8:00 p.m.

#### **4. Public Appointment**

CCVD Commissioner Chris LaPierre indicated the Commissioners suggested warrant articles could be approved for the warrant by the Board, or be included by petition. Chair Jones read the articles, which deal with conveying all lots within the CCVD taken by the Town for back taxes to be maintained as open space, and for the CCVD Commissioners to accept those conveyed lots.

TA Whittaker enquired, given the water problems in the District, if this would be a mechanism to control the rampant growth. Commissioner LaPierre said, due to the uranium problem, the state wants the District to put spring wells back on line. TA Whittaker advised the board that the downside for the Town is that there would be a loss back taxes owed and future sale of the conveyed lots, but the advantage to the District would be to steady the growth rate. Town Clerk Carole Ingham suggested the articles be presented to Town Counsel for his advises. She said action would have to be taken at Town Meeting, since the lots would be taken off the tax rolls. Selectman Gehl said he would like to see the exact lot numbers and section numbers of the properties involved. Commissioner LaPierre said there were approximately 17 lots, scattered all over. The pros and cons of selling the land, or keeping it open, were briefly discussed. Chair Jones said conservation land must be public, and Police Chief Shawn Bernier said it would then be considered a public way, and therefore under state statutes for speeding etc. The Board agreed to have the town administration seek legal counsel.

#### **5. Department Reports**

*Highway* – Road Agent Mark Fuller said a generator had been purchased from Home Depot, and will soon be hooked up. A free transfer switch and spare air filter came with the purchase.

*Police* – Chief Bernier provided the Board with a breakdown of 2006 activity. He mentioned increased activity in certain areas, including criminal mischief; simple assaults; crimes against a person; and juvenile, domestic, animal, and suspicious motor vehicle complaints. There were over 3,000 calls for service. Chief Bernier explained that the Town adheres to an “under owners’ control at all times” law for dogs, and that his department handles most bad checks, without a minimum.

Chief Bernier told the Board that while Officer Reggie Meatey attended an evidence class, it was discovered that evidence rooms must be vented, as carcinogens leak from stored confiscated drugs. The police station’s evidence room is not vented. Chief Bernier said there was \$2,000 in the building

account. The Board asked him to check with Building Inspector David Lindberg about venting the room to the outside, and to come back with an estimate.

## **6. Acceptance of Minutes**

**Motion by Selectman Gehl to accept the minutes of December 6, 2006 as amended; second by Chair Jones. The motion carried unanimously.**

**Motion by Selectman Peter Rhoades to accept the minutes of December 20, 2006 as amended; second by Chair Jones. The motion carried unanimously.**

## **7. Route 11 Junkyard**

Chief Bernier said cars had been removed at Erven Duncan's property. He added that Mr. Duncan's lawyer wished to be present during the site walk. The case is scheduled for February 22, 2007 at Rochester District Court. TA Whittaker said she was willing to take the photographs, since the selectmen have taken so much time away from their personal work during the budget process, if this would help with time issues.

The Board scheduled a site walk for the Duncan property for *January 12, 2007, meeting at 3:00 p.m. at Town Hall.*

## **8. Public Hearings**

Chair Jones opened a public hearing pursuant to RSA 41:9-a to amend and increase building permit fees, and provide for an administrative fee for a future mail-in motor vehicle registration program. The Board reviewed Building Inspector Lindberg's recommendations to increase:

- ❑ Inspection fees from \$5.00 to \$25.00;
- ❑ Plumbing permit \$3.00 per thousand and inspections \$25.00 per; and
- ❑ Electrical permit \$3.00 per thousand and inspections \$25.00,

Effective ***January 1, 2007.***

Town Clerk Ingham suggested a 50-cent administrative fee for mail-in registrations. There was no public input.

The Chairman closed the Public Hearing at 8:20 PM.

**Motion by Selectman Gehl to adopt the changes in Building Inspection fees and mail-in motor vehicle registration fees as proposed; second by Chair Jones. The motion carried unanimously.**

## **Public Hearing**

Chair Jones opened a public hearing pursuant to RSA 674:41, regarding issuance of a building permit request as presented by Stephen Smith for property identified as Map 27A lot 23 section I, Mountain Road. Selectman Gehl said a site walk was conducted on December 9, 2006 at the request of the applicant in anticipation of proceeding with the public hearing. He said the septic plan has been received, but there is a dispute concerning ownership of the property. Mr. Smith said he wanted to develop the half-acre as a single family, two-story structure. He stated he has a state approved septic plan, along with a private well. He has submitted the title history, but does not have the survey plan yet.

Commissioner LaPierre said the District's Counsel referred the issue to a land attorney, who, after research, feels the property belongs to the District. He will send written confirmation of this, and recommended the Commissioners send the letter to the tax assessor. Paul Manzione, representing Mr. Smith, said Mr. Smith has the deed and has provided title history. He said anyone objecting should come forward tonight. He said the deed defines the property, and it is not part of the land north and west of Mountain Drive conveyed to the District, but rather south and east of Mountain Drive. Mr. Smith said he bought the property in 2006 and the previous owner, Mr. McKenzie, was not being charged taxes on that parcel, but that the issue of charging taxes had nothing to do with ownership.

Selectman Gehl said the Board's process requires it to open a hearing, but not to reach a decision after one meeting. He said there was an outstanding request for the survey plan, and the Board was not to arbitrate the dispute.

Abutter George Sherback owns the lot downhill of the disputed lot and said the assessor, at the time of his purchase, told him that A3, District land, wrapped around his land, and the map indicated so. He said officials assured him of that and his research supported it. Since the dispute arose, Mr. Sherback has spoken with an attorney, who wrote the deed was vague and it was clear that the lot was never intended to be part of A3. Mr. Sherback left a copy of his attorney's letter with the Board.

Commissioner Virginia Skinner said she was told there would be no more building because the land was all common and conservation land. She said that was a reason she chose to live there.

Mr. Manzione said Mr. Smith grew up in the area and wants his dream home there. He stated the property was owned by conveyance, and that the deed describes the property rights. He said legal ownership was not divested when the lot was removed from the map, but that a deed search needed to be conducted. He indicated the ski hill lying north and west of Mountain Drive was conveyed to the District, but that lot 23 is south and east of Mountain Drive and is not the ski slope. He said A6 was excluded.

Selectman Gehl repeated the Board could not act in a judicial capacity. Commissioner LaPierre commented that the part of the road that turns uphill is not Mountain Drive, but Mountain View. Mr. Sherback said his attorney pointed out that same fact. Mr. Manzione said the deed specifically delineates the road as Mountain Drive. He said the Board had sufficient information to make a decision and grant Mr. Smith a permit. He said there was not enough information before the Board to deny the application based on the ownership dispute. Selectman Gehl said receipt of the survey plan is holding up the application.

Maureen Sherback asked if Mr. Smith owned other properties in Copple Crown. Mr. Smith replied his ownership of other properties had nothing to do with this issue. TA Whittaker said the Board needed a clear chain of title to make a determination. Selectman Gehl said the Board could consider if there is a clear chain of title. Mr. Smith said he submitted copies of Selectmen and Planning Board minutes in 1977 that show none of the omitted lots merged. He said the Board only had a letter of dispute from the other side. He asked for approval, conditional upon receipt of the survey plan. Selectman Gehl said he did not recommend moving ahead conditionally, as all evidence needed to be before the Board. He said from the standpoint of property features, only the survey plan was missing. Selectman Rhoades said a site walk was conducted without a valid survey plan, and the property may need to be walked again. Mr. Manzione said the dispute should be civilly litigated, and was not a reason to deny the application.

**Motion by Selectman Gehl to continue the public hearing regarding Stephen Smith's building permit application to the meeting of January 22, 2007; second by Chair Jones. The motion carried unanimously.**

The Board took a short break and reconvened at 9:00 p.m.

**9. Administrative Review**

TA Whittaker reported she had been busy with the Town Report, warrant and the budget process.

**Motion by Selectman Gehl to approve the budget work session minutes of December 19, 2006 as written; second by Selectman Rhoades. The motion carried unanimously.**

**10. Non-public Session**

**Motion by Selectman Gehl at 9:02 p.m. to enter non-public session under RSA 91A:3 II (a) and (c); second by Chair Jones. A roll call was taken. Jones – aye, Gehl – aye, Rhoades – aye.**

The Board met with Chief Bernier and Katie Woods regarding a personnel issue and interaction with the fire department.

There were no decisions made and no follow up recommendations.

**Motion Jones, second Gehl to return to regular session for the purposes of adjournment, vote 3 – 0.**

The board returned to regular session at 9:44 PM.

**Motion Gehl, second Rhoades, to adjourn, vote 3 – 0. The Meeting adjourned at 9:45 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.