

DRAFT

New Durham Board of Selectmen

Minutes of Meeting ~ January 22, 2007

Library

Members present: Ronald Gehl, Peter Rhoades

Absent with apologies: Chairman Dwight Jones.

Also present: Town Administrator April Whittaker, Road Agent Mark Fuller, Town Historian Catherine Orlowicz, Town Historian Associate Cheryl Cullimore, Planning Board Chairperson Robert Craycraft, Cople Crown Village District Commissioner Christopher LaPierre, Assessor Robert Estey, Thomas Beeler, Skip Fadden, George Gale, David Kesler, Mary McHale, Anne-Marie McKenna, John McKenna, Paul Monziona, David Munroe, George Sherback, Maureen Sherback, Stephen Smith, John Sokul

1. Call to Order: The meeting was held until Town Administrator April Whittaker and Acting Chairperson Ronald Gehl arrived from the Budget Committee meeting. Chair Gehl called the meeting to order at 7:15 p.m.

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

3. Public Appointment: *Town Historian and Meetinghouse Committee – Dissemination of Duties per the Committee Charge*

Chair Gehl read from the Preamble to the Meetinghouse Committee Charge to clarify, which tasks are to be assigned to the Town Historian and which to the Committee.

Town Historian Catherine Orlowicz said she was unclear as to her responsibilities, as the Meetinghouse had always been under the Town Historian. She asked if the Capital Reserve Fund would now be part of the Committee's charge. Chair Gehl replied he would expect to see recommendations for the CRF come from the Committee given that part of their charge is to formalize a Historic Structures Report. Ms. Orlowicz then asked if the Meetinghouse aspect of the Town Historian's summary for the Town Report would be the responsibility of the Committee and Chair Gehl replied that it would.

Committee member Mary McHale stated she was responsible for the history of the structure for the Historic Structure Report, and asked if all the information on the Meetinghouse was compiled in a central location. Ms. Orlowicz said that although she had been involved with the Meetinghouse for 15 years, she was unaware of an effort to do that, but that historical photos were in the vault, and other information was in binders in the Library. She said she was willing to help Ms. McHale look. Town Historian Associate Cheryl Cullimore said an inventory was being worked on, but that time was always a problem. Ms. Orlowicz noted that some of the information has never been requested before. She said she also had a binder at home, in which she had been summarizing Meetinghouse information since its inception. She also said there had been a push to get information from Historical Society members. She explained the Historical Society is a non-profit organization that served as a fundraising arm. She stated she could not provide contact information, as the Historical

Society is separate from municipal government. She added that she was not being difficult about the situation, indicating again, she has put fifteen years of her life into local history.

Chair Gehl said a good photo of the Meetinghouse was needed for the Town Report. Ms. Cullimore said general procedure did not allow an original photo to go out to be scanned, and she commented that they had not completed high resolution scanning before as the process was expensive. Committee Chair Gale advised that high resolution scans were \$5 per photograph. She said she or Ms. Orlowicz could have it scanned. Town Administrator April Whittaker said a one-time high-resolution print was needed so the original never had to go out again, and would stop constant scanning. Ms. Orlowicz said she could have it scanned in Concord tomorrow. TA Whittaker suggested letting the people who did the investigation into the scanning complete the job, as they were conversant in the processes involved. Committee Chairperson George Gale said the photo would get the best of care despite fears by the town historian. Selectman Peter Rhoades suggested Mr. Gale relay all the pertinent information to Ms. Orlowicz, who would have the photo scanned or they could work together. Chair Gehl noted that Mary McHale is the point-of-contact for history of the Meetinghouse.

Assessor Meeting – Citizen request for warrant articles regarding energy exemptions for wood heating, and exemptions for the disabled

The Board met with Assessor Robert Estey. David Munroe said he came before the Town 25 years ago regarding solar heating exemptions. He explained the state also allows towns to adopt wood heat exemptions, and requested the Board place an article on the warrant regarding that. He said he could present information at Town Meeting.

Chair Gehl read the statutory definition of wood heating energy systems, as a wood burning appliance designed to operate as a central heating system, including distribution of heat by a series of pipes, ducts, or similar distribution system, to heat the interior of a building or group of buildings. Selectman Rhoades asked Mr. Munroe if he thought more people would install such systems, if there were an exemption. He said installation was expensive. Mr. Munroe answered that solar systems are expensive, too, but at some point, the cost of fuel may just get too high. He saw no reason not to encourage people to install these systems. Chair Gehl said he was a major proponent of any alternative energy system, but it appeared it might be difficult to keep tabs on the systems to ensure they were a central heating system.

Mr. Estey said the DRA advises to take a set dollar amount off an assessment for alternative systems. Mr. Munroe said allowing the exemption would not lose the Town a lot of money. Chair Gehl said he would like more information on how other towns have handled the situation. Mr. Estey pointed out the DRA allows only one exemption on heating systems. He said the Board could be proactive and recommend the article, or wait and let a petition for one come in. TA Whittaker said if Mr. Munroe were to petition, he should know the Board's decision by the end of the week given the petition deadline time restraints. Selectman Rhoades said the article might have a better chance of being adopted if it were known that 25 people on a petition supported it. TA Whittaker said she would call DRA about the issue, and also write up a petition for Mr. Munroe.

Regarding an exemption for the disabled, Mr. Estey said towns must adopt the statute and amount. Eligibility was discussed. Mr. Estey said the DRA says the maximum amount for the exemption for the disabled should

equal the exemption for the elderly, so as not to be more attractive. TA Whittaker said the Town currently meets the framework of the law, allowing the minimum amount for exemption for the elderly. Chair Gehl said adopting the exemption would not be a major hit to the bottom line.

Motion by Selectman Rhoades to propose a warrant article to adopt an exemption for the disabled under the terms and conditions of RSA 72:37-b, and to mimic the minimum amount per RSA 72:37-b; second by Chair Gehl. The motion carried unanimously.

The Board briefly discussed the 2006 equalized ratio with Mr. Estey, who said the Town this year was at 93 per cent, median, and that, coming up, it would be close to 100 per cent. TA Whittaker said the weighted mean was at 88.6 per cent, and the median ratio was 92.893 per cent, seven per cent below market. Mr. Estey said the assessment pick-ups would not be as large as last year, but it would be difficult to answer until April 1 what percentage of the newer subdivisions would be picked up.

4. Continued public hearings

Chair Gehl summarized that the Board reviews building permit requests on private roads to ensure safe access to buildings on roads the Town does not maintain. He opened the continued public hearing 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 at 8:10 p.m. A site walk was conducted on January 15, 2007 with Road Agent Mark Fuller. RA Fuller reported the road was in fair condition and wide enough. He indicated a driveway culvert would be necessary. Chair Gehl said the road was one of the best private roads in town. David Kesler said the road was graded twice a year and that members of the Merrymeeting East Shores Association participate in road maintenance in which a deed was enforced. TA Whittaker commented favorably on that, explaining that recently a private road needed to be opened by Town crews for ambulance access.

There was no further comment on the application.

Motion by Chair Gehl to approve the granting of a building permit for property known as Map 34 Lot 17 Lions Camp Pride Way, subject to the following conditions:

- (i) a municipal waiver of liability to be executed by the applicant;**
- (ii) Prior to the granting of an occupancy permit, roadway and drainage improvements be completed to the satisfaction of the Road Agent, such conditions to be: 1. Driveway culvert installed and minor drainage improvements installed along the property frontage, and 2.**
- (iii) Invoice for advertising notice of the public hearing paid in the amount of \$61.00;**

second by Selectman Rhoades. The motion carried unanimously.

Chair Gehl informed the McKennas they would receive the notice of decision and waiver in a few days.

Continued Public Hearing ~ Smith (Copples Crown Village District)

Chair Gehl then opened the second continued public hearing regarding a building permit request as presented by Stephen Smith for property identified as Map 27A lot 23 section I, Mountain Road. Chair Gehl said the

Board had been waiting for the survey plan from Mr. Smith and title history from the Copple Crown Village District. Paul Monziona, representing Mr. Smith, presented the Board with the survey plan. Mr. Smith explained that the lot on the plan is marked lot 23 and lot 24, but that they would be merged voluntarily. He also presented the Board with an updated septic plan from Paul Gelinis, Jr.

Chair Gehl said the survey plan indicates the front boundary is inside the road. He noted the septic plan has state approval. He said different opinions in respect to ownership of the land were presented at the last meeting.

CCVD Commissioner Christopher LaPierre presented the Board with a letter from the Commissioners' attorney. He told the Board the Commissioners object to a building permit as their deed conveys the land to CCVD when the subdivision approval was rescinded by the state. He said the lots in question are not lots of record, so a building permit could not be issued.

John Sokul Esq., representing abutters George and Maureen Sherback, reported he looked at the chain of title and source deed, and stated it is clear CCVD owns the property, not Mr. Smith. He asked how much Mr. Smith paid for the deed, as the deed stamp shows minimal consideration, so the price would be less than \$4,000.

Mr. Monziona said the issue at hand was only whether the application is appropriate and safety measures have been met. He said any other considerations are a civil matter, and that the Board's charge is to determine if the application is complete. He added that the amount of money paid does not determine if a conveyance is legal. He referenced a "see attached map" notation and stated that was not conveyance language. He reiterated that the Board was involved only in determining if the road satisfied the safety requirements, if the application was complete, and that the applicant had the deed.

Chair Gehl raised the issue if the lot was indeed a lot of record? Mr. Smith said the lots in question are on file at the Strafford County Registry of Deeds. He explained that according to minutes from the 1970s, 30 lots were omitted from the tax maps drawn up by Mr. Woodward, as they had not sold at that time. He stated they were not merged into bulk land. He said, therefore, the other lots are not lots of record. Mr. Monziona pointed out that tax maps don't determine existence of legal lots. He said what is filed determines existence and legal ownership.

Concerning the deed to CCVD, Mr. Sokul said the plan was put on the back of the deed because the description was vague. He brought up that discussing the Board's sole duty begged the question of who is entitled to file for a permit. He said ownership would seem to be a prerequisite to file.

Mr. Monziona said Mr. Smith has a lawful deed conveying the lot to him, and that that deed refers to previous deeds according to page number. He said the prima facie evidence before the Board shows Mr. Smith owns the land, and that the Board could not adjudicate ownership.

Chair Gehl agreed the Board was in no position to adjudicate, but said ownership had not been established beyond a reasonable doubt and he did not feel the Board could continue with the process. They were not qualified. He did ask for discussion of improvements to the lot, however. RA Fuller said if a cross culvert

were installed at the pole at the lower end of the property, run-off would then flow into the drainage ditch. Mr. Smith indicated he had an erosion easement. Chair Gehl said the area would require riprap. TA Whittaker noted the Commissioners have not received a driveway permit request.

Mr. Smith said Mr. MacKenzie conveyed the downhill side of the parcel to CCVD, and that the deed referenced different sides of the road, so only the downhill side was affected. Selectman Rhoades said if other attorneys disagree, there is a gray area, and that the Board needed to feel comfortable. Chair Gehl said he did not have a clear idea that it was a lot of record for the Board to consider, or that the chain of title is clear. He suggested Town Counsel look at whether the Board can determine if it is a lot of record. TA Whittaker remarked the Board would get a simple "no" in reply, but nonetheless would place the question before Counsel and ask for a written opinion as to the board's role in this matter.

Motion by Chair Gehl to continue the public hearing for property identified as Map 27A lot 23 section I, Mountain Road to the meeting of February 5, 2007, pending feedback on the issue from Town Counsel; second by Selectman Rhoades. The motion carried unanimously.

5. Department Reports

Highway – RA Fuller reported an emergency sanding request from Interim Fire Chief Rod Nelson to open a private road, Pine Point Road, to allow access by the ambulance. He said two trucks were sent out, and a bill for \$239.93 was submitted. He wondered if the Board should draw up a policy. TA Whittaker advised that we basically had an unwritten policy regarding emergency access to private roads. She said RA Fuller used FEMA rates for vehicular costs, town sand, and town labor rates without benefits, and insurances to compose the cost to make Pine Point Road accessible.

The Board took a break at 8:55 p.m. and reconvened at 9:04 p.m.

6. Old Business

Regarding the CCVD Commissioners' warrant article request, Chair Gehl summarized the situation by saying the article would authorize the Board to convey certain lots to CCVD, taking them off the tax rolls. Town Counsel indicated the article could be worded in an alternative fashion to address the properties. TA Whittaker added that there is a three-year buy-back period for property owners and the Town would need an indemnification form, so if an owner came back, CCVD would take on the legal burden even after the 3-year waiting period.

Chair Gehl said he was supportive of efforts to bring lots into common land and remain undeveloped, due to the strain of growth in CCVD, but in deference to the taxpayers, he thought the Board should seek to derive some income from them. He said many of the lots are in proximity to those already developed, or with potential for development. He suggested pursuing interested parties who might purchase the lots with the condition they not be developed, in essence maintaining a buffer around them. The result would be the same – open space – and the Town could derive some small income. He said since he did not see the sale of the lots any time soon, the Board should take its time to pursue the idea. As to the question of the lots having to be auctioned in that case, TA Whittaker said the article states "as justice may require." She will secure a copy of the article for the board.

Chair Gehl said he had no interest in selling the lots to be developed, so he did not feel it necessary to support the article at this time. Instead, he recommended examining the lots to see if they could be sold with conditions. Selectman Rhoades said that would be a win-win situation. It was agreed the Commissioners would make a list of potential interested abutters and the town would work together with the District.

Motion by Selectman Gehl to not move forward on a warrant article for conveyance of lots to CCVD this year; second by Selectman Rhoades. The motion carried unanimously.

7. Administrative Review

The Board signed a current use penalty.

TA Whittaker announced an increase in grant monies up to \$15,000 from LCHIP for an Historic Structure Report on the 1772 Meetinghouse, and that the new committee would be moving forward to secure this report.

Motion by Selectman Rhoades to authorize Selectman Gehl as acting chairperson to sign the LCHIP project agreement; second by Selectman Gehl. The motion carried unanimously.

Motion by Selectman Rhoades to authorize Selectman Gehl as acting Chairperson to sign the stewardship agreement with LCHIP; second by Selectman Gehl. The motion carried unanimously.

The Board briefly discussed the special detail reports for the New Durham Police Department. TA Whittaker said a schedule that delineates the rates was needed and she will ask the Chief to compose the same. The Board reviewed the Welfare report and Selectman Gehl applauded Welfare Officer Yvette Martin's efforts.

The Board declined to purchase a lot for sale in CCVD on Lucerne Lane that abuts Town land.

TA Whittaker reported that the Town is supplying all information required to the Wetlands Bureau for the March's Pond Dam Rehabilitation project.

The Board indicated full support for Chief Nelson's suggestion of Thomas Swett acting as a public information officer for the Fire Department. He is to handle all contact with the media so that information is disseminated in a professional and competent manner.

Motion by Selectman Gehl to accept the resignation of George Chasse from the Parks and Recreation Commission; second by Selectman Rhoades. The motion carried unanimously. The board will await suggestions from the Recreation Commissioners for a replacement.

The Board signed forest warden and deputy forest warden appointments, setting aside deputy warden appointment of David Stuart, as he was appointed warden.

8. Any Other Business

TA Whittaker noted some changes she made to the Selectmen's report for the Town Report. The Board is to get back to her tomorrow with changes or approval.

The Board was presented with a redrafting of the Ethics Ordinance and provided with an original draft for comparison purposes. Given the problems that Milford were encountering with a non-specific ethics policy, it was felt that the redraft was necessary to strengthen the ordinance proposal.

TA Whittaker complimented Selectman Gehl for his presentation at the Budget Committee. Selectman Rhoades added that the bar graphs clarified the numbers and helped folks to understand the need to raise the capital reserves.

9. Approval of Minutes

Motion by Selectman Gehl to approve the workshop minutes of January 8, 2007 as written; second by Selectman Rhoades. The motion carried unanimously.

Motion by Selectman Gehl to approve the minutes of the January 8, 2007 regular meeting as amended; second by Selectman Rhoades. The motion carried unanimously.

Motion by Selectman Gehl to approve the workshop minutes of January 19, 2007 as amended; second by Selectman Rhoades. The motion carried unanimously.

10. Adjournment

Motion by Selectman Rhoades to adjourn the meeting at 9:45 p.m.; second by Selectman Gehl. The motion carried unanimously.

Next Meeting ~ February 5, 2007.

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.