

New Durham Board of Selectmen

Minutes of Meeting ~ January 7, 2008

Town Hall

Members present: Ronald Gehl, Peter Rhoades, David Bickford

Also present: Town Administrator April Whittaker, Police Chief Shawn Bernier, Building Inspector David Lindberg, Corey Colwell, Gigi Giambanco, Dennis Gagne, James O'Reilly

1. Call to Order – Chairperson Ron Gehl called the meeting to order at 7:08 p.m. He wished everyone a Happy New Year and led the Pledge of Allegiance.

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

3. Department Reports

Police – Police Chief Shawn Bernier provided the Board with the break down of police activity for December. He noted an increase in accidents, 78 calls for service, and 10 arrests. He reminded residents that cars must be off the roadway when the Highway crew is plowing, and that snow may not be pushed into the road.

Chief Bernier said a new state law allows the Board to double fines for dog violations. Town Administrator April Whittaker asked to see a copy, to determine if a change in the local ordinance's fines needed to appear on the Warrant. Selectman David Bickford asked about animal complaints. Chief Bernier replied that loose dogs constitute the majority of complaints, with about 10 vicious dog complaints a year.

Chair Gehl asked Chief Bernier if he had priced out a Crown Victoria. Chief Bernier said the cost was between \$21,000 and \$23,000. Chair Gehl asked him to advise the Board of the grand total. Chief Bernier said the digital radio system and siren box would be the only equipment usable from the 1999 cruiser. He said he issued a cruiser per officer, finding that the vehicles are better maintained when they are the responsibility of one person. Chief Bernier said cruisers last only seven to nine years. He confirmed that he was submitting the monthly activity sheet to the new website.

4. Administrative Review

TA Whittaker reported she has been concentrating on the Town Report, the budget, and the new website.

Selectman Bickford asked Building Inspector David Lindberg if he was going to continue in that position. Mr. Lindberg replied that he would, as he was on a new treatment and had improved considerably in the past month. He reported he entered

all the 2007 permits into the computer, and that the inspections now had to be entered. He thanked his assistants for doing a fine job and said he would be taking care of the office end of things.

The Board scheduled its next meeting for ***January 21, 2008 at 7:00 p.m. at Town Hall.***

5. Old Business

Request to reclassify Class VI portion of Copple Crown Road to Class V – Chair Gehl reviewed the situation, saying a conceptual consultation regarding a 27 lot subdivision had been brought before the Planning Board and applicant James O'Reilly had been sent on to the Board. The conceptual plan includes construction of a new road of approximately 1,200 feet that would link to a Class VI road to provide a return to a Class V. The Board held a site walk last Saturday to review the lay-out of the road.

Surveyor Corey Colwell said he had taken the Board's suggestion to look at a conservation lay-out, compared to a conventional lay-out. He stated the site walk was beneficial. Chair Gehl said the Board looked at the current alignment of the Class VI portion and what modifications it would need to be a Class V. He said much of that would be under Planning Board review. He explained that the Board would be concerned ultimately with the road as a safe passageway if the Town took it on. He cited several sections of the road that exceed the 12% grade regulations, width considerations (the right of way could be expanded on the applicant's property), and drainage and sight line concerns. He added that an engineering review would be necessary.

Chair Gehl said, although there is not yet a formal application, there could be a time constraint on the project if the applicant needed to go before Town Meeting. The problem is that there is no clear final plan so the focus can only be on the new roadway construction along a Class VI road. Mr. Colwell said if the lay-out was either conservation or conventional, they were looking to upgrade the road to Class V for environmental purposes. He said a favorable recommendation from the Board was necessary, as they did not want to design it and spend \$10,000 on engineering and \$100,000 in site costs only to be turned down. He said they needed to know if they could upgrade. Selectman Bickford said an upgrade to Class V standards was possible without classification for a subdivision. Selectman Rhoades coined the situation as essentially pre-approval. Chair Gehl added that with a Planning Board approved plan, any road within the project is Class V by default. He said the fact that the Board was looking at reclassification made the situation more difficult. He wanted to ensure the Town was properly represented.

Mr. Lindberg suggested looking at the permit issued to the property owner farther up the road, Scott Lehner, to see what he had to do with his section of the road. Chair Gehl said that had been discussed and the road was not reclassified. Mr. Lindberg

asked if the road could be brought up to Class V standards. Chair Gehl said not without additional construction. Selectman Bickford said he did not have a problem with the project going forward. Chair Gehl pointed out the procedural difficulties. He said it would have to be a conditional approval if the Board laid out the road as Class V, but he was uncertain if the Board could make a conditional lay-out. Generally the Town reclassifies to Class V with Planning Board approval for a subdivision and with proper improvements. Chair Gehl wondered what would happen if the Board laid-out the road as Class V, but it was not accepted and the Planning Board did not approve the subdivision. Owner James O'Reilly asked about drawing up a plan on the assumption of approval. Selectman Rhoades said he did not want Mr. O'Reilly to spend money, since he still did not have Planning Board approval. Mr. O'Reilly said he would have to give the Planning Board a plan. Chair Gehl added that Mr. O'Reilly would want some assurance that the road would be reclassified to Class V and the Board couldn't do that. He brought up the Canney Road situation from several years back, and said it was a different situation. He suggested the Board might proceed with the lay-out, if it would lapse if the plan did not continue through Planning Board approval. He said to change the classification, the legal process of lay-out must be gone through. He brought up the consideration of frontage the reclassification would open for additional development; noting that Class VI roads afford no "frontage" for building permit purposes. He reiterated that the stumbling block is procedural, but that the Board did not want to get into the position where Mr. O'Reilly would be unable to petition at Town Meeting.

Both TA Whittaker and Selectman Rhoades said this issue is different from any found in A Hard Road to Travel from the Local Government Center. Chair Gehl mentioned that any proposal brought forth would require road frontage to legitimize lots for building purposes. Mr. Colwell said they could loop inside the parcel, or build directly alongside the Class VI road, but he believed it to be environmentally advantageous to merely widen an existing, paved road. He noted the steep and narrow portions would be fixed.

Chief Bernier asked the Board to consider the intersection of the Golf Course, with its one-way roads. He said he'd prefer seeing all vehicles on that road.

Chair Gehl said there could be unexpected consequences policy-wise to creating a reclassification of a Class VI road to a Class V road. Selectman Rhoades commented on the possibilities for new houses 600 feet from the new road. Chair Gehl said he did not want to lose sight of related issues, such as the option of development for abutters. He said it would be cleaner if packaged just as part of the O'Reilly proposal. Mr. Colwell said two lots would be available on the golf course side, and a few 600 feet from the end of the road. Selectman Rhoades asked if precedent would be set. He wondered if there was some aspect the Board was missing, and how its decision would affect future projects. TA Whittaker agreed that the decision must be packaged specifically to the O'Reilly parcel, so others along Class VI roads would not come

forward for reclassification based on a particular precedent. The Board decided to seek input from Town Counsel. Mr. Colwell stated he appreciated the Board's cooperation and Mr. O'Reilly said he was prepared to do what the Town requires.

March's Pond Dam Reconstruction – TA Whittaker reported the pre-bid meeting was held last Thursday, with 13 attendees and 20 potential vendors. The bids are to be opened at Town Hall on January 16, 2008 at 2:00 PM. Chair Gehl said with the construction pricing, the Board will have figures for the project to provide at Town Meeting. He said the sealed bids are opened and read aloud in public. Engineer reviews will take place to ensure the bids are fully responsive to the needs of the bid specifications.

Town Website – Chair Gehl said information is being sent to the website managing company and the site should be live soon. The interim address is <http://newdurhamnh.virtualtownhall.net>.

Town Report – The deadline for report purposes is January 21, 2008. Chair Gehl said he would draft the Board's statement.

Zoning Ordinance Draft regarding outdoor storage of used or dismantled items and materials – Selectman Bickford said it was unclear as to what this zoning ordinance does that the state junkyard statutes do not. TA Whittaker said a local ordinance allows the Town to pursue the public nuisance end of a situation, as opposed to junkyards. Chair Gehl said the Town has had the experience, and found that it is difficult to get something done under only state laws. He said local ordinances make it possible to avoid court. TA Whittaker said going to court would happen only if the person involved brought it as they did not agree with the town's determination of a "junk" yard. She said when such an issue is brought before a judge, the judge asks if the situation is addressed in the Town's zoning ordinance. She said it would be better for the Town in a court situation if it was covered in an ordinance. She said a junky yard without a license is unfair to those junkyard owners who get a license. She explained the ordinance came about because so many residents asked her what could be done about junky yards. She said the state statute covers situations with owners who have licenses, but the problems in town are with people who do not have licenses.

Chair Gehl noted it is difficult to get anything done without local, easily enforceable ordinances in place in the event the case goes to court. He stated there is a recognized need for such an ordinance. Selectman Bickford said there were two situations in town and that the junkyard statutes applied to them. TA Whittaker said she was unsure that one of them is a junkyard. She said the two, state and local, must be used in tandem, as the more the better. She said the Town's current ordinance does not mention the issue and that it should be declared that these are the standards the Town wants to adhere to. Chair Gehl reiterated that the state statute is not enough. He said the Town attempted to apply it and had little success. Selectman Bickford said

the statute was not fully applied in the Route 11 case as the Town had not actually taken the case before the court, but rather was negotiated. TA Whittaker suggested he call Peterborough and discuss it, as it took them 11 years to obtain junkyard violation status with one particular property. Chair Gehl said the state concepts are great, but in execution things cannot be accomplished. He said a local ordinance would provide back-up if a case goes to court. He added that the Town would want to eliminate the problem before having to go to court. Selectman Bickford said the ordinance is more stringent than the statute, as the statute says get the junk out of view and the ordinance says get the junk out. Chair Gehl said Selectman Bickford's points could be brought up at the Planning Board meeting when the members review the ordinance on Tuesday.

6. Approval of Minutes

Motion by Selectman Rhoades to approve the minutes of December 17, 2008 as amended; second by Chair Gehl. Gehl – aye, Rhoades – aye, Bickford – nay. The motion carried.

Motion by Selectman Bickford to approve the minutes of the Budget Work Session of December 19, 2007 as amended; second by Selectman Rhoades. The motion carried unanimously.

7. Any Other Business

Following a request from the Assistant Town Clerk to resolve a dog licensing question, the Board discussed if the Police Department dog should be registered in Alton or New Durham. The dog lives with Officer Karl Koch, who resides in Alton, but works in New Durham. It was brought up that, when dealing with humans, taxes are paid to the community where one lays one's head at night. Selectman Bickford recommended licensing the dog in New Durham since the dog was owned by the town.

Motion by Selectman Rhoades to register the dog in Alton; second by Chair Gehl. Gehl – aye, Rhoades – aye, Bickford – nay. The motion carried.

Selectman Bickford advised of a public hearing to be held January 15, 2008 in Concord regarding a proposed bill that the state bear the costs of data entry necessary to use a voting machine at state elections, rather than the towns. TA Whittaker

advised Selectman Bickford that the Town Clerks' Association is concerned that the bill stipulates the money to cover the cost of programming come from the election fund. Further, they preferred the wording to state "programming", rather than "data entry", and to stipulate the money come from the state General Fund. Selectman Bickford noted the amendments and requested a letter from the Board stating the amendments and indicating its support of the bill. He asked if Moderator James Fenske could send a communication to Representative Vachon and the Finance Committee. TA Whittaker said Town Clerk Carole Ingham would inform the Town Clerks' Association that the amendments are proposed and she would prepare the letters to the Finance Committee members and Strafford County representatives.

The Board scheduled a ***Budget Workshop for January 14, 2008 at 3:00 p.m.***

8. Adjournment

Motion by Selectman Rhoades to adjourn at 9:29 p.m.; second by Chair Gehl. The motion carried unanimously.

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.