

**New Durham Board of Selectmen**  
**Minutes of Meeting ~ March 16, 2009**  
**Town Hall**

**Members present:** David Bickford, Ronald Gehl, Theresa Jarvis

**Also present:** Town Administrator (TA) April Whittaker, Road Agent (RA) Mark Fuller, Police Chief Shawn Bernier, Building Inspector/Code Enforcement Officer (BI/CEO) Arthur Capello, Solid Waste Facility Foreman Joe Bloskey, Cathy Orlowicz, Katie Tohill, Ryan Noonan, & Peter Rhoades.

**1. Call to Order** – Interim Chairperson David Bickford convened the meeting at 7:01 p.m., led the Pledge of Allegiance, and introduced new member Theresa Jarvis. Selectman Ron Gehl said those in their last term traditionally hold the role of chairperson. Chair Bickford said if Selectman Gehl were interested in the position, he was willing to have him serve. Selectman Gehl recognized that Chair Bickford was deep in his legislative duties.

**Motion by Selectman Jarvis that Selectman Gehl serve as chairperson for 2009; second by Chair Bickford. The motion passed unanimously.**

Chair Gehl thanked the Board for the opportunity, stating it was an exciting year ahead. He indicated a member could be designated as vice-chair. Selectman Bickford said he did not see the need. Chair Gehl agreed that the responsibilities of serving as chair when the chairperson is absent usually fall to the next person in line, but an appointment would make it official.

**Motion by Selectman Bickford to nominate himself as vice-chairperson; second by Chair Gehl. The motion carried unanimously.**

**2. Citizens' Forum** – Peter Rhoades brought up the amendment at Town Meeting that increased the operating budget due to the personnel issue at the Solid Waste Facility. He asked that the Board discuss the situation thoroughly. He said the vote was due to politicking by someone at Town Meeting, and that not all the facts regarding reinstating the employee's pay were revealed, nor could they be. He said many facts not appropriate for the average citizen to be aware of were associated with the Board's decision to move in the direction it did. He said there were times when the public might ask for something for a beloved employee, but that the Town needed to weigh all facts and make hard decisions. He said the general public was unaware of the full situation and asked that the Board look at all the facts and make a good decision, based on the prior discussions with the employee involved, and the previous board.

**3. Department Reports**

***Police*** – Lights Out - Police Chief Shawn Bernier reported nine lights out in the police station, due to ballast issues, and said an electrician was needed. Selectman Gehl asked about folding those outages into the bid request for emergency lighting, and Town

Administrator April Whittaker said she would do so. She asked Chief Bernier how personnel were seeing at the station. He said there is sufficient lighting from the other lights in the building. He announced that Kristyn Bernier was conducting a parents' class at the school on Internet crimes, and that Corporal Reggie Meattley passed the First Line Supervisor class at the Police Academy.

**Highway** – Truck Waiver - Road Agent Mark Fuller said muddy springtime conditions mark the season to post roads, but it was in the best interests of the Town and contractor to allow trucks on Birch Hill to complete the March's Pond Dam project. He said the trucks associated with that project would run only when temperatures were cold and that lighter loads would run later in the day. He said a standing gentlemen's agreement ensured that the company would stand behind any road damage caused by its truck. RA Fuller indicated the company runs between five and six trucks a day weighing approximately 30 ton. He said he would work with Jim McElvoy and mark out bad spots on the road to get through mud season. Selectman Gehl noted the excellent progress being made on the project and said he would hate to see it slowed down. He asked RA Fuller about a formal waiver being posted, so other truckers would realize the company's trucks were allowed to finish the project and that it was not blanket approval for all trucks. RA Fuller said that was possible. Selectman Bickford said the deterioration of the roads was RA Fuller's purview. Selectman Jarvis asked if the company would abide by the agreement if RA Fuller shut down a road, and RA Fuller replied it would. Chief Bernier mentioned the forms allowing travel given his department by RA Fuller. RA Fuller said he could give the forms to the company's truck operators so if the police stopped them they could prove they had a waiver. He said he would restrict those trucks to Birch Hill early morning only. Selectman Gehl said work stoppages due to road and weather conditions were typical action taken on construction projects like this.

**New Truck** - RA Fuller said the new truck has been ordered and will arrive in 60 days, then will be fitted with all its accoutrements.

**Solid Waste Facility** – RA Fuller reported only one applicant for the part-time job at the Solid Waste Facility. He said the roof bids are due in on March 18, 2009. He told the Board the skid steer will go out Wednesday to repair the hydraulics due to leaks, and will be gone a week. He said he and Foreman Joe Bloskey could discuss if one needed to be rented during that time. Mr. Bloskey indicated he could get along without it for a week. TA Whittaker pointed out it could be an item that should be moved up in the CIP during summer discussions.

**Gate on Class VI Road** – RA Fuller said about a month ago, Steve Edwards erected an unlocked gate (marked chain across the road) on a Class VI road off of Birch Hill. Chief Bernier asked if a cable gate was allowed, as the last time it was discussed, it was not. He said residents had spoken to him about the matter, saying the road was a public highway. He said Mr. Edwards told him about snowmobilers using the road, getting stuck and asking him for help at all hours of the night. RA Fuller said he invited Mr. Edwards to attend the meeting tonight. Chief Bernier said Mr. Edwards put up the gate following a theft on his property.

Selectman Gehl pointed out that Class VI roads are subject to gates and bars, but that it was RA Fuller's call. He said when the Board reworked the Class VI Road policy, he would like to see a refined and clear statement on when Class VI roads should be barred. He said many Class VI roads were barred regularly, and doing so in this situation seemed appropriate due to the damage done. TA Whittaker said the practice is becoming less favorable due to liability issues. Selectman Bickford said his issue with the matter is the types of gates possibly used, as people could get hurt, again citing the liability aspect of gates and bars. TA Whittaker said she thought a necessary warning, such as signage indicating "gates and bars ahead" was needed or would be helpful. Chair Gehl asked that TA Whittaker find a regulatory reference on the subject, and that the Board designate RA Fuller to ensure the gate is safe. Chief Bernier wanted confirmation that the gate was Town policy. Selectman Gehl said the Board has the authority to close roads seasonally, and that RA Fuller can make the individual decisions, but the gate must be safe.

Cathy Orlowicz asked if any citizen could put up a gate on any Class VI road. Selectman Gehl said the Board will have to work on the policy, given what has occurred in the past few days. Selectman Jarvis said she was uncomfortable allowing the gate to remain because of liability, unless the Board was aware it was "breakaway" and had signage. RA Fuller said it was a metal cable with orange flags on it. TA Whittaker said it was worrisome. Selectman Jarvis said gates in Devil's Den were painted so people could see them easily. BI/CEO Arthur Capello provided the Board with the statutes on the subject: RSA 231:21-a, which states "homeowners may erect gates and bars provided they maintain them and the gates can be opened and re-closed by the public", and RSA 231:21, which states "the selectmen can remove them if required for the public good". Selectman Gehl said the Board could allow a safer gate. He added that preservation of the way benefits the Town as a whole. He said RA Fuller was designated to work with Mr. Edwards to erect something safer.

**Building** – BI/CEO Capello reported a temporary injunction has been granted barring any more material coming in to the 50 Main Street property, and allowing the Town to conduct an inventory of what is on the premises. He asked that the police department ensure that no other material goes to the property. Regarding the home occupation on Meaderboro Road, parties are attempting to settle the situation out of court. He said more court action on other issues is to come. He reported that a temporary certificate of occupancy has been granted the Food Pantry, all conditions to be met by July 1, 2009.

#### **4. Administrative Review**

- ❑ The Board signed the MS-2, Statement of Appropriations per Town Meeting, and the raffle permit for Lions Camp Pride.
  
- ❑ TA Whittaker announced a \$5,000 grant toward the cost of the "Historic Structures Report" for the 1772 Meetinghouse. She said the Meetinghouse Restoration Committee would meet with Steve Bedard, who developed the HSR, on April 13, 2009 at 6:30 p.m. at the New Durham Library.
  
- ❑ The Board scheduled its next meeting for April 6, 2009 at 7:00 p.m. at Town Hall.

- ❑ She brought to the Board's attention of another grant award; the fire department received an AFG grant for \$17,530. Homeland Security funds it at 95% at \$16,653 and the Town funds 5% at \$876.50 to purchase a skid unit for the back of the forestry firefighting vehicle. The Board scheduled the public hearing to accept the grant money for the April 6, 2009 meeting. Selectman Jarvis asked about the CET bid of \$15,175 for the unit. Chair Gehl explained that the request for \$17,530 was based on an estimate to support the grant request. When the fire department actually went out to bid, the amount for the unit came in lower. The fire department added items that bring the total close to the project budget, including 20 feet of suction hose, lighting, and nine buckets of class A foam. He said the Board accepts the money and awards the bid. Selectman Jarvis asked if the money to install the skid was in the Town Mechanic's budget. Chair Gehl said the Board would confirm that. Mrs. Whittaker advised that the Fire budget would likely be the support mechanism for the 5% match. Selectman Jarvis said the Board needed to know if the unit can be put on. TA Whittaker asked why would you want to lose \$16,000 ~ accept the unit and deal with the mechanical side at the public hearing. Selectman Bickford asked if fire department members Mike Davenport and David Stuart would attend the public hearing and Chair Gehl said they planned to. TA Whittaker stated that Mr. Davenport and Mr. Stuart performed good work to provide the town with this grant opportunity.
- ❑ TA Whittaker provided a letter from Paddy McHale indicating his interest in filling Selectman Jarvis' seat on the Zoning Board of Adjustment.
- ❑ She announced a road management course for town officials on June 6, 2009.
- ❑ She reviewed a letter sent to the Superintendent of Schools by RA Fuller. RA Fuller said New Durham's roads are generally ready at 6:00 a.m. following a storm event, and it would be more practical for the highway department to notify the school district only if New Durham's roads were impassable.
- ❑ TA Whittaker said the Planning Board was working on public school impact fees.

## **5. Old Business**

***Street Name Changes*** – Chair Gehl noted it would be cruel to ask Selectman Jarvis to dive into this subject on her first evening, and therefore, the Board would discuss the matter at the April 6, 2009 meeting. Selectman Jarvis stated that the issue needed to be attended to soon. Chair Gehl said the public hearing on accepting the Homeland Security monies would not be long, so the agenda would not be full, allowing time for the street name changes to be discussed. He said the Board could air some issues and establish where everyone stands. Selectman Bickford asked Selectman Jarvis to find information on the use of directionals in street names. Selectman Jarvis said she'd started to form an opinion. Chair Gehl said it was not a question that the Board do anything about it, but rather that a bureaucratic directive be turned into something unreasonable. He cited the use of directionals – north, south, east, and west - in

conjunction with street names. He said the Board was in agreement that something needs to be done.

*Daycare/Recreation Commission meeting* – Due to other conflicts by a majority of Selectmen, the Board rescheduled the meeting of the Preschool/Daycare program, the Board, and the Parks and Recreation Commission to March 30, 2009 at 7:00 p.m. at Town Hall.

## **6. New Business**

*Board representation* – Chair Gehl explained that delegation of the members to various boards as representatives has typically been done in rotation. He said the person who is serving for the first year is on the Conservation Commission and the CIP; the member serving the second year is on the Planning Board, and the member serving the last year is the representative on the Budget Committee. Selectman Bickford said he wanted to remain on the Planning Board. Selectman Jarvis said she wanted to serve on the CIP and the Budget Committee. Chair Gehl said last year the Board had to twist Selectman Bickford's arm for him to serve on the Planning Board. Chair Gehl said this year was his, Chair Gehl's, year to serve on it, and he had been looking forward to it. He told Selectman Jarvis the reasoning for the member serving the last year of term on the Budget Committee was that then that person would have experienced two budget cycles.

Selectman Bickford said he recommended that Chair Gehl continue on the Conservation Commission. Chair Gehl said he would rather not. He asked why Selectman Bickford had had a change of heart about serving on the Planning Board. Selectman Bickford said he has gotten his feet wet. He said he wrote a letter against Article 1 on the Warrant to The Baysider and Foster's Daily Democrat. Selectman Bickford said he was not against developing a Town Center, but he was against the 75-foot road frontage proposed in the amendment, and that he never received an answer as to why the change had to be to 75 feet. Chair Gehl clarified that Selectman Bickford wished to serve on the Planning Board to amend Article 2: Town Center District Proposal: Amendment 1. Selectman Bickford said someone had to be there to question the proposal. Chair Gehl noted that he and Selectman Bickford did not need to debate that issue here, but said that he would provide reasoning behind the concept of reduced frontage. He said he'd served on the Planning Board for seven years prior to becoming a selectman, and that it has been three years since he has been on it as a selectman's representative. Chair Gehl said he was concerned if that proposal was Selectman Bickford's primary reason to serve again on the Planning Board, especially as Selectman Bickford had family interests regarding that proposal. He said the Town strives to ensure there is no semblance of conflict of interest. Selectman Bickford said he had voted against his interests. Chair Gehl indicated, again, there should be no semblance of conflict.

Selectman Bickford said he was digging his feet in firmer. Chair Gehl pointed out that Selectman Bickford's position upset the apple cart. He said the Board has traditionally cycled through the different board duties. Selectman Jarvis said it can sometimes be good to not always do things the same way. She said you don't want someone serving on a board who doesn't want to be on it.

Mr. Rhoades spoke in favor of the rotation of selectmen through the different boards. Referring to Selectman Jarvis' statement about not serving on a board you don't want to be on, he said serving on the different boards allows selectmen to become more rounded.

- ❑ **Motion by Selectman Bickford to nominate himself as representative to the Planning Board; second by Selectman Jarvis.**
- ❑ **Motion by Chair Gehl to nominate himself as representative to the Planning Board; there was no second.**
- ❑ **The Board voted on Selectman Bickford's motion. Gehl – nay, Bickford – aye, Jarvis – aye. The motion carried.**

Selectman Bickford said he wanted to nominate Chair Gehl to the Conservation Commission. Chair Gehl said he was not sure he wanted to accept. Selectman Bickford said he gave up the chairmanship, so the Board had already broken with tradition.

- ❑ **Motion by Chair Gehl to nominate Selectman Jarvis to the CIP; second by Selectman Bickford. The motion carried unanimously.**

Chair Gehl said he would prefer serving on the Budget Committee. Selectman Jarvis asked in the case of any preservation project that came before the Conservation Committee that, may later come before the Board, was not the Board's representative required not be involved? Chair Gehl answered absolutely not. TA Whittaker explained that if policy decisions are to be made regarding the respective committees and boards, the Board representative should bring the policy decision to be determined back to the board to vote appropriately as a whole for direction to the representative as to how he or she should vote, thereby representing the board's majority view, irrespective of personal views. Selectman Jarvis advised that her forte is budgets. Chair Gehl said selectmen need exposure to everything.

- ❑ **Motion by Chair Gehl to nominate himself to the Budget Committee; second by Selectman Bickford. The motion carried unanimously.**
- ❑ **Motion by Selectman Jarvis to nominate herself to the Conservation Commission; second by Selectman Bickford. The motion carried unanimously.**

Chair Gehl advised that he took issue with Selectman Bickford's letter to the editor against Article 1. He said it appeared the week before voting, and given the outcome of the vote (a tie), he would say it tipped the tide against passage of the village business district ordinance. He said when the letter appeared, people asked him why the selectmen were opposed to the amendment. He said the letter came across as the opinion of the Board of Selectmen. He asked that in the future if an individual selects to be so forthright about an opinion, that they state clearly it is the opinion of an individual and not of the Board's; i.e. place a disclaimer at the beginning of the letter. He said it

came across as the Board's opinion. He said that a selectmen's representative to one of these different boards is a representative of the Board as a whole, especially on policy decisions. Selectman Bickford said he would take that into consideration. He said he did not see that his letter came across as the Board's opinion. Selectman Jarvis said she did not read it that way. Chair Gehl stated that it was clearly taken that way by many in town, so he would ask that members at least be cognizant of it. Selectman Bickford said he would be, but that it was important for the public to know his position (selectman) as well as his position (opinion). Chair Gehl stated again, that he allow people to understand that it is not the opinion of the entire Board and that a disclaimer is appropriate.

*Appointments –*

Selectman Jarvis said her resignations needed to be official. Chair Gehl read them aloud.

- ❑ **Motion by Selectman Bickford to accept Theresa Jarvis' resignations from the Zoning Board of Adjustment and the Trustees of the Trust Funds, with regret; second by Chair Gehl. Gehl - aye, Bickford – aye, Jarvis – abstain.**
- ❑ **Motion by Selectman Bickford to appoint Meghan Welsh as Animal Control Officer for a term to expire March 2010; second by Selectman Jarvis. The motion carried unanimously.**
- ❑ **Motion by Selectman Bickford to appoint Meghan Welsh as a part-time police officer for a term to expire March 2010; second by Selectman Jarvis. The motion carried unanimously.**
- ❑ **Motion by Selectman Jarvis to appoint Toby Perry as a part-time police officer for a term to expire March 2010; second by Selectman Bickford. The motion carried unanimously.**
- ❑ **Motion by Selectman Jarvis to appoint Brett Murray as a part-time police officer for a term to expire March 2010; second by Selectman Bickford. The motion carried unanimously.**
- ❑ **Motion by Selectman Bickford to appoint Andy Hall as a part-time police officer for a term to expire March 2010; second by Selectman Jarvis. The motion carried unanimously.**
- ❑ **Motion by Selectman Jarvis to appoint Arthur Capello as Building Inspector/Code Enforcement Officer for a term to expire March 2010; second by Selectman Bickford. The motion carried unanimously.**

TA Whittaker is to solicit responses from those on the Milfoil Committee to see if they wish to be reappointed.

*Mobile Sign* – Selectman Bickford asked about the mobile sign offered in the surplus equipment sale. TA Whittaker said she has not yet heard back from the Recreation Commission.

**Vocational Building Funding** – Selectman Bickford said he did not accompany Superintendent of Schools John Robertson to meet with Governor Lynch as originally planned. He said Superintendent Robertson told the governor that he wanted kids to stay in school until the age of 18, but he was not supplying them with voc tech. He said the governor replied that there was no money unless the state received stimulus money. TA Whittaker queried if the project for revamping the voc tech is “shovel ready”. Chair Gehl said there may not be specifications. TA Whittaker said an engineer could do the specifications quickly, and then the project could be in line for stimulus money.

**Political signs** – BI/CEO Capello said candidates have seven days following an election to remove their campaign signs. Selectman Jarvis said she was unaware of the locations of some, as she did not post them. TA Whittaker said she would remove the ones on the Ridge and return them to Selectman Jarvis.

### **7. Approval of Minutes**

Regarding the minutes of the business meeting of March 2, 2009, the following changes were made:

- ❑ Page 4, next to last paragraph, Article “13” to be changed to “14”.
- ❑ Page 5, second sentence, change “repair trails” to “grub and level trails,”
- ❑ Page 5, last line, change “treading” to “trading”.

**Motion by Selectman Bickford to approve the minutes of March 2, 2009 as amended; second by Chair Gehl. Gehl – aye, Bickford – aye, Jarvis – abstain.**

**Motion by Selectman Bickford to approve the non-public minutes of March 2, 2009 as written; second by Chair Gehl. Gehl – aye, Bickford – aye, Jarvis – abstain.**

### **8. Non-public Session**

Chair Gehl said the Board would not take up any other business following the non-public session.

**Motion by Chair Gehl at 8:44 p.m. to enter non-public session under RSA 91A:3 II (a) regarding compensation for an employee, and (e) regarding a legal matter; second by Selectman Bickford.**

**A roll call was taken. Gehl – aye, Bickford – aye, Jarvis – aye.**

The Board met with Chief Bernier, RA Fuller, April Whittaker, and Solid Waste Foreman Joe Bloskey.

Given the personnel nature of the non-public session, **motion Bickford, second Jarvis to seal the non-public minutes of March 16<sup>th</sup>, 2009, vote 3 – 0.**

### **9. Adjournment**

Approved: New Durham Board of Selectmen minutes 03/16/09

There being no further business, motion Jarvis, second Bickford, to adjourn, vote 3 – 0.  
The meeting adjourned at 10:25 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.