

**New Durham Board of Selectmen
Minutes of Meeting ~ September 27, 2010
Town Hall**

Members Present: Theresa Jarvis, David Bickford, Frederic March

Others Present: Administrative Consultant Alison Rendinaro, Road Agent Mark Fuller, Police Chief Shawn Bernier, Building Inspector/Code Enforcement Officer Arthur Capello, Mike Clarke, Peter Farrell, Cathy Orlowicz, Mary McHale, Stuart Rinschler

1. Call to Order – Chair Terry Jarvis called the meeting to order at 7:01 p.m. and led the Pledge of Allegiance.

2. Agenda Review – Chair Jarvis said she wanted to check on the status of some items under Old Business.

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

4. Appointments

Motion by Selectman David Bickford to appoint Sherri Brulotte to the Parks and Recreation Commission; second by Selectman Fred March. 3-0.

Administrative Consultant Alison Rendinaro is to notify Ms. Brulotte and Commissioner Kristyn Bernier.

5. Board, Commission and Department Reports, Guests

The Board met with Peter Farrell, forester. He said the next step with the Shirley Forest would depend on what the Board wanted. He said his proposal called for a forest management plan, which would look at the forest based on the Board's objectives. He said the information becomes a blueprint for what to do with the forest for the next 15 years. The question of the necessity of a plan if just a harvest was to be done was raised.

Selectman Bickford said John Shirley's will, which granted the land to the Town, is specific about harvesting mature trees, and the Board needed to follow that. Mr. Farrell said that would be in keeping with what his company promotes with long-term management. He said the plan costs money, but it gives everyone a good picture of what is on the property, and would help him do the best job. He said it would also be helpful for the Town as the long-term owner of the forest, and in keeping with the will. He said everyone could then make good decisions. He used the metaphor of having a physical before an operation, so you can make the right choices.

Mr. Farrell mentioned some of the concerns the Conservation Commission had, such as buffers around wetlands and wildlife conservation. He said a management plan would help with that. He said it would help with the overall health of the forest.

Chair Jarvis said Debbie Goard of the UNH cooperative extension and Dennis Thorell, Town Forester, walked the site and brought forward recommendations indicating the forest was in need of harvesting. Selectman March said the last harvest was done in the early to mid-1990s. Chair Jarvis told Mr. Farrell that the Town has information on the different types of wood in the forest that could be made available to him. She asked if the cost of the management plan could be lessened, if the cost was the concern. Mr. Farrell said the probability was low. He said he would like any historical information the Board could provide.

Chair Jarvis asked what the timeline would be. Mr. Farrell said that would be a function of what the Board wanted done. He said the plan could be completed by the end of the year, and the harvest would occur after that. He said considering the markets would also play a role in the timeline. He explained that there was some land there that has no mud problems, so it would be possible to harvest those areas and sell the wood at peak price.

Selectman Bickford cited meeting with Ms. Goard and Mr. Thorell, where Ms. Goard said harvest could occur without considering the market. Mr. Farrell pointed out that the Board is taking a long-term approach regarding management, so cutting would occur to maximize a long-term return from the timber, as well as providing for wildlife. He spoke of cutting the poorest quality wood first to keep the best quality trees growing, so when the market returns, the Town can sell over time. He said the project would not be a one-time harvest, as the Town is in this for the long term. He suggested focusing on removing the lowest quality material, noting there is some good pine that sells well in a bad market, assuring getting good prices.

Selectman Bickford said low quality wood was taken out in the 1990s, and that the Board was told this is a mature stand with high quality timber. Mr. Farrell said there was still low quality wood in there. He said this kind of information would be brought out in the management plan. He said the Town wants pine management, not hard wood. He said there were also low vigor trees in the forest, and the best practice would be to bring better stock onto the sites that now have low quality.

Chair Jarvis said the will says it is to remain a permanent forest. She asked if the plan would address all issues to meet the needs of the forest for the next one to two hundred years. Mr. Farrell said it would, which is its value. He said a plan addresses all concerns and helps with making decisions. Selectman Bickford stated Mr. Farrell could do all of that without selling the Town a plan. Mr. Farrell said it would be a more challenging project without a plan. He said the information in a plan was the Town's picture. He said it would be more advantageous for him to be able to say the Town had an overall picture and therefore, that was why a certain strategy was used. Selectman Bickford said he would expect a forester to have a strategy. Mr. Farrell said he needed a complete picture of the entire forest, and the plan is an assessment. Chair Jarvis pointed out the plan is a roadmap for the future, and Mr. Farrell added that it is also an historical document.

Selectman Bickford noted that the Town would have the slips to show what was cut. Mr. Farrell said there would be no inventory of what is in there now, though. He said estimating the fees for the cut doesn't tell you the total volume and

what you'll take out to make it sustainable. He said you would never be sure of that. He also anticipated questions from the public, asking why certain things were done. He said the Board would want documentation when dealing with an asset with the public involved.

Chair Jarvis asked where Mr. Farrell got input in other towns on what is done. He said that was up to the Board's judgment. He said public input may be good, but recommended definitely speaking with the Conservation Commission. He said the Forest Society has plans on all of their properties.

Chair Jarvis said the Board must first decide if a plan should be done, then it could discuss the timeline; otherwise, it would discuss the harvest. Selectman Bickford said if the Board followed the will, then the mature trees would be cut. Mr. Farrell said he could do that. Selectman March said he was not opposed to the plan, as the forest should be kept in mind for the future as an ongoing source of revenue.

Mike Clarke asked if the Town could harvest the forest now, and then use some of that money to pay for the plan. Chair Jarvis said she felt the plan should come first and the harvest, second. Cathy Allyn, chair of the Conservation Commission, noted that Mr. Farrell said he could cut the mature trees now, per one phrase within the will, but asked if that was wise. She said she was sure the Town could satisfy the conditions of the will in an intelligent way. She said she understood the selectmen's desire to save money, which was her desire also, but did not agree with saving a little money upfront when it meant not making as much in the long run. She said with a plan, and subsequent intelligent decisions, the Town could realize a greater profit, which she believed was Mr. Shirley's intent. She said the Town needed documentation, as no one was even sure of when the last cut was done. Ms. Allyn pointed out that Don Jutton of MRI told the Board "Do it once, and do it right," and they had seemed to agree with that philosophy when they hired AC Rendinaro. She urged them to do the same in this situation.

Selectman Bickford said an inventory could be taken at any time. Chair Jarvis pointed out there is a difference between an inventory and a management plan. Mr. Farrell said if someone challenged the Board, asking what was there before the 1990s, and if there were more trees now, the Board would be unable to answer the question. He said the plan provides a guide to what the land will yield. He said broader information is helpful when you have to account to the public. Selectman Bickford said he found the price of the plan high. Chair Jarvis advised looking at it as 2,000 owners of the forest. She said the plan is an investment in preserving it for 100 years. Selectman Bickford said Mr. Farrell would do proper practices, regardless of a plan. Chair Jarvis said the plan would be around a long time and be there when the Board does not have members with forestry backgrounds on it.

Selectman March said he has seen lumber companies manage forests well, and now they are stripping them and selling the land to the Sierra Club. Chair Jarvis said she wanted to preserve the forest. She said she did not know how to plan for the best use of the forest. Selectman Bickford said Mr. Farrell could go forward and follow the will.

Chair Jarvis told Mr. Farrell the suggestion for a management plan first came from Ms. Goard and Mr. Thorell. She said the will mentioned using the assistance of a forestry agency that no longer exists. Selectman Bickford asked if a stewardship plan needed to be updated every five years or so. Mr. Farrell said it was not a requirement with current use stewardship, but the Town could request an update. He said if the Town would like to pay for the plan after the harvest, his company would hold the invoice. The cost of the plan is \$2,695. Mr. Farrell said he could do the plan first, and Selectman March said the money for it would come from the sale. Mr. Farrell said he anticipated the cost of the plan would be extremely minor compared to the sale.

Motion by Chair Jarvis to go forward with the forest management plan for Shirley Forest, which will be paid for from the harvest, and to move forward with preparing for the harvest; second by Selectman March. 3-0.

Highway – Road Agent Mark Fuller reported the receipt of a 75 per cent Hazard Mitigation Grant on the Valley Road culvert replacement. He said Mike Clarke and Cathy Orlowicz attended a FEMA training to aid in receiving grants.

Transfer Station – RA Fuller reported that, following negotiations, Waste Management has agreed to pay \$150/ton for tin cans, up from \$0.

Police – Police Chief Shawn Bernier announced official Halloween trick or treating hours will be Saturday, October 30, 2010 from 5:00 – 7:00 p.m. The school parade will be held the afternoon of Friday, October 29, 2010, and the Recreation Department will be holding a trick or treating and dance event at the school in the evening.

Building/Code Enforcement - Building Inspector/Code Enforcement Officer Arthur Capello advised the letter regarding the non-public matter of last week is going out, and that he was monitoring the Dudley property. He suggested the Town could make the GPS mapping costs a user fee, rather than having the taxpayers pick up the cost, as is the situation now. Chair Jarvis asked him to put together a package for the Board to consider.

6. Status Reports

AC Rendinaro reported that the memo regarding the soon to be open position of Road Agent has been sent out to all departments. She provided the Board with prices on physical exams from Seacoast RediCare. She said the company could provide breakdowns for separate departments and set up sub-accounts. Chair Jarvis said the Board decided to implement physical exams for employees, but did not set a start date. She said the Board needed to determine which physicals it wants done. She announced an employee is interested in the Road Agent position, and will meet with the Board in non-public session this evening.

7. Old Business

State Land in Shirley Forest – The Board reviewed the current assessment of state property in the Shirley Forest. Selectman March asked if the state has provided any information. AC Rendinano said the state did the title search and asked what the Town wanted to do; purchase it, or purchase an easement. Selectman March said to ask how much they wanted. Selectman Bickford pointed out the state must give fair market value, and Selectman March said the Board needed to know the amount before it decided.

Not using that land to access the shooting range was discussed. RA Fuller said a building for the cold patch and stockpiles of riprap were on that land, but they could be moved. Selectman Bickford asked if it would be helpful to own the property, and RA Fuller said it would, but the land was not worth the price on the tax cards to the town. He said the Town could remove the boulders at the Stockbridge Corner Road entrance for access to the shooting range.

Alcoholic Beverages in Public Places Ordinance – Chief Bernier said he did not understand why the Board was encouraging people to walk on public ways with open containers. He said he did not have a problem with removal of open containers on water from the ordinance, but this particular change in the ordinance encourages people to walk around with open containers. He said there are rumors that the police will issue summons to those at the lake who walk across the road with an open container to their beach areas. He explained that if an officer sees a person with an open cup, the officer couldn't ask what is in it without articular suspicion.

Selectman March said the intent of the change was not to encourage such behavior. He said the change was considered because on a hot day you can see five or six open containers as lake residents cross the street, and they pay two-thirds of the taxes in town. Selectman Bickford said he agreed that lake residents would be affected. He said Chief Bernier told the Board he didn't need it in the ordinance. Chief Bernier explained that he said the Board makes the decisions. He said if open containers were to be allowed on the roads, then why not say it's okay to drink all around town.

Selectman Bickford said the Board could not find within the statutes where a Board has the right to control alcoholic beverages on roads. He said at the public hearing, two people said they didn't want the streets regulated. He said he was unconvinced there was a problem or a need for it to be covered in the ordinance. Chair Jarvis said she believed RSA 49 B, 49C and possibly RSA 21 authorize a Board to regulate drinking on public ways. She asked what the police officers needed to issue a summons and Chief Bernier gave examples of someone who is obviously intoxicated, or carrying an open beer bottle. He reiterated his concern that if the Town says it's okay to drink on the roads, why not drink at the ball fields or the Town Beach. He said the roads are Town property. Selectman Bickford said some roads are state owned and some are private. He said there are laws to deal with that. Chief Bernier said he saw it as a safety problem. He said Town Counsel can't understand why we're discussing this point. He said he tried to change two words in the ordinance, and now people can drink on boats and walk in the road with open containers.

Chair Jarvis said a definition of public way had been needed. Selectman Bickford said he felt this new ordinance on alcoholic beverages in public places, and which did not apply to pedestrians in public highways or streets, was sound. He said the Board had the authority to restrict in public places. Chief Bernier said highways were public places. Selectman Bickford said it was questionable that the Board could regulate roads in that particular manner. He said the Board could always revisit the ordinance.

Chair Jarvis said it was a step backward. She said you're saying it's okay to drink on Main Street. Selectman Bickford said, under law, if the person was staggering, the person could be picked up. Cathy Orlowicz asked if the language had been adopted as presented earlier, how would it have affected her. She said she still did not understand the outcome Chief Bernier needs or wants. Chair Jarvis summarized the situation that catalyzed the change. She said Chief Bernier had a case thrown out of court because the Town's ordinance did not define "public way," so he asked the Board if it could be added. She said the Board accepted the revised ordinance, and two selectmen signed it. There was a typographical error in the document, however, so it needed to be resigned after the error was corrected. She was the only member of the Board who signed it then.

Chief Bernier said an arrestee was drinking on the road and was in possession of drugs while casing houses. He said the case was thrown out of court because the Town's ordinance did not define a "public way," and the police department's initial contact with the subject was for having an open container. Ms. Orlowicz asked if there was any guidance from Town Counsel. Chair Jarvis said there was not, but that she took the definition from state regulations. Ms. Orlowicz said there were different definitions from different agencies.

AC Rendinaro said the Board sent the ordinance to Town Counsel and received a written statement. She said she would look it up in the minutes. She said there was a discrepancy between Town Counsel and the Local Government Center (LGC), spurring Selectman Bickford to do his own research on the RSAs. She said this second version of the ordinance then came about.

Selectman March asked Chief Bernier if his major concern was drinking at the ball fields and the Town Beach. Chief Bernier said he was just using those areas as an example, saying why do it in one place and not in another. Selectman March said a simple sign would answer the question, thereby allowing the police to enforce it. Selectman Bickford said the person with an open container might not be drunk. Chief Bernier said he was unaware of any time someone was issued a summons for crossing the road to the lake's beach with an open container. He said that would be the commonsense avenue of the law, because a judge would throw it out.

Chair Jarvis said the minutes of August 2, 2010 reflect that Town Counsel believed the Board has the authority to have an ordinance that regulates open containers on a public way. Discussion continued on different definitions of public way. Selectman Bickford said the ordinance on the table tonight covers alcohol in public places. He said the attorney is citing the wrong statute.

Motion by Selectman Bickford to rescind the current Ordinance TO.03.011 and replace it with the proposal he brought forward tonight; second by Selectman March. Chair Jarvis said it was going backward. She said the Town

had an ordinance in effect with a simple typo. She said if the Board was questioning the validity of that ordinance, it should confer with Town Counsel. She said we must give public safety officials credit for commonsense. **Jarvis – nay, Bickford – aye, March – aye. The motion carried.**

Road Agent Job Description – Chair Jarvis asked if the Board wanted to keep the current job description for Road Agent or combine it as Road Agent/Transfer Station Manager. The description from the LGC does not combine the positions. Selectman Bickford recommended waiting to see what direction the Transfer Station takes regarding recycling. He said he wanted a feel for that, and was therefore not ready yet to decide about the job description. Chair Jarvis said she wanted it finalized by October 30, 2010. Selectman March said the Board needed to decide how to handle the dump situation. Selectman Bickford said he wanted to see how the bids come in. Chair Jarvis said the Board could decide at the October 4, 2010 meeting if the Transfer Station would go to single stream recycling.

Department Head Evaluations – Chair Jarvis said the Board was to have met with department heads regarding evaluations on October 7, 2010. She said the Board's evaluations of department heads need to be turned in to AC Rendinaro by Thursday. She said a non-public session could then be held on October 7, 2010 and a subsequent meeting with department heads could be scheduled.

8. New Business

Police Association Raffle – The Board discussed an application by the Police Association to hold a raffle, drawing to be at the Board's November 15 meeting, for a delivered cord of wood.

Motion by Chair Jarvis to approve the application for a raffle permit from the Police Association; second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to approve the application for a raffle permit from the Historical Society on October 3, 2010; second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to approve the application for a special event license on October 2 and 3, 2010 for the Historical Society's Civil War Encampment; second by Selectman March. 3-0.

The Board signed all the permits.

9. Schedule Next Meetings

The Board scheduled its next business meeting for October 4, 2010 at 7:00 p.m. at Town Hall.

The Board scheduled a non-public session on October 7, 2010 at 7:00 p.m. at Town Hall.

The Board scheduled a business meeting for October 18, 2010 and its budget hearing for October 21, 2010.

10. Approval of Minutes

Motion by Chair Jarvis to accept the minutes of the September 9, 2010 work session, as amended; second by Selectman March. 3-0.

The following changes were made to the minutes of September 13, 2010: page 1, under 3, last sentence, change "Boy" to "Cub." Page 3, under Solid Waste Transfer Station, add "plastics" before "compactor" and replace "material" with "plastics."

Motion by Chair Jarvis to accept the minutes of September 13, 2010, as amended; second by Selectman March. Jarvis – aye, Bickford – nay, March – aye. The motion carried.

Motion by Chair Jarvis to accept the minutes of the September 20, 2010 work session, as amended; second by Selectman Bickford. 3-0.

Motion by Chair Jarvis to accept the minutes of the non-public session of September 20, 2010, as amended; second by Selectman Bickford. 3-0.

11. Non-public Session

Motion by Chair Jarvis to enter into non-public session at 9:07 p.m. under RSA 91-A:3 II (a) and (c); second by Selectman Bickford. A roll call was taken. Jarvis – aye, Bickford – aye, March – aye.

Motion by Chair Jarvis in non-public session to approve the minutes of September 13, 2010, as amended. 3-0.

Motion by Chair Jarvis to come out of non-public session at 11:36 p.m.; second by Selectman March. 3-0.

12. Adjournment

Motion by Chair Jarvis to adjourn at 11:36 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.