

Selectmen's Meeting
12 January 1998
7:00pm

The regularly scheduled Selectmen's meeting was called to order by the Chair, Dick Wollmar, at 7:00pm. Those present included Allen Hines, George Lagassa (Selectmen), and Russell McAllister (Town Administrator).

The Selectmen reviewed the previous meeting minutes and Mr. Lagassa voted to accept the minutes as published. Mr. Hines seconded the motion. The vote was unanimous and so moved.

The selectmen reviewed correspondence and/or signed:

- Payroll
- Manifest
- Legislative Bulletin
- Public Hearing Notice - NH Pesticide Control Board, 02/10/98 7-9pm Rockingham
- Coastal Communities Transportation Committee meeting notice 01/21 8-10am RPC
- North Hampton Old Home Day - 1998
- Current Use Application - Roland & Mary Gagnon

Topics of Discussion

The first order of business addressed by the Board concerned a request by Bettiann Donahue to name the subdivision off from New Road "Sheperds Lane". Ms. Donahue's letter explained the semantical underpinnings of the word "lane". The word 'lane' is descriptive of a road that has no other outlet or connection to another road. Therefore, entrance and egress from the 'lane' are the same. The designation of Shepherds Lane would, to drivers, suggest that there were no other road connections from Shepherds Lane and subsequently limit traffic over the lane. Light hearted discussion ensued with Mr. Wollmar making the motion to adopt Ms. Donahue's suggestion. Mr. Hines seconded the motion. All were in favor and the motion was so moved.

The next order of business addressed by the Board concerned a request by Parker Snowden to have his 1997 interest waived. A letter from Mr. Snowden indicated that his request was based on his not receiving a tax bill nor receiving notice of intent to lien. Mr. Hines made the motion to abate the 1997 interest from Mr. Snowden's bill. Mr. Lagassa seconded. The vote was unanimous and was so moved.

The Board took up the issue of a letter from Elaine Yeaton protesting the recent Media One rate increase. Mr. Wollmar provided a brief history of the Town's franchise agreement with Media One. He explained that the Town had a non-exclusive 15 year contract with Media One. Mr. Lagassa inquired into the feasibility of having a representative from Media One address the Board's concerns over the recent rate increase as well as brief the Board about the cable services available to the Town under the franchise agreement. Mr. Hines asked whether there was a subcommittee from the Planning Board that had addressed the issue previously. Mr. Griffin (PB Chair) replied that there was not. Mr. Wollamr suggested that the issue needed to be revisited and research into the present contract be conducted. The TA agreed to get the ball rolling.

The Board next revisited street lighting concerns raised by Jeanne Lincoln and Barbara Kierstead. Ms. Lincoln wanted the lights by her house removed while Ms. Kierstead would like to have the street light by her house replaced. The TA explained that Ms. Lincoln had called to check on the status of street light removals by her home. The TA explained to Ms. Lincoln that it may be a while longer due to the severe ice storm that had line crews from four states trying to restore power to customers in the tri-state area. Mr.

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Wollmar suggested that a copy of a letter drafted by the Highway Safety Committee be sent to Ms. Kierstead regarding replacement of her street light.

Mr. Lagassa briefed the Board concerning the TA's request to adopt a new application form for General Assistance. Mr. Lagassa characterized his initial reaction to the TA's request to adopt a new application for general assistance as guarded because of the more stringent reporting and documentation requirements it contained. However, after further discussions with Steve Geller, Executive Director of the Rockingham Community Action Plan, he now felt that the new application might not be sufficient enough. Mr. Lagassa thought the suggestion by the TA to partner with RCAP to provide general assistance services made sense from an administrative and potentially a fiscal perspective as well. Mr. Lagassa suggested that further discussions with RCAP on this issue be arranged. During the interim Mr. Lagassa made the motion to accept the new general assistance application. Mr. Hines seconded the motion. All were in favor and the motion was so moved.

A discussion ensued over the new contract agreement with the Teamsters Local 633. All the members of the Board had reviewed the revised collective bargaining agreement and thought the terms were fair to all parties. Mr. Hines made the motion to accept the contract terms and conditions as proposed during the negotiations. Mr. Lagassa seconded the motion. All were in favor and the motion was so moved. Mr. Hines explained that the negotiating skills of Renny Perry proved to be instrumental in crafting an acceptable agreement. His services were characterized as cost effective. The original proposal as presented by the union called for increases of 8% the first year and 6% per year during the next two years. The Town had negotiated the terms down to three percent for each of the three years. It was felt that these terms would keep the Town competitive as an employer and avoid costly turnover among police personnel.

A brief discussion of the OUII agreement regarding the Coakley Landfill ensued. The Department of Justice (the attorneys for the EPA) have recommended that properties within the Groundwater Management Zone (GMZ) surrounding the Coakley Landfill accept deed restrictions on their property. These restrictions would prohibit any development of the property within the GMZ. The Town's attorney, in conjunction with attorneys representing other Town's affected by OUII, has suggested that the State (DES) handle this issue. That is, that the State assume the monitoring process concerning the properties within the GMZ. The State would enforce compliance on the issue by requiring less restrictive covenants on private property within the GMZ. The State would place deed restrictions only on the subsurface development rights of the properties within the GMZ. In effect this would prohibit the placement of wells and gravel pits on the properties, but not the surface development or subdivision of the property within the GMZ.

The Board next turned their attention to warrant articles. A brief discussion ensued regarding the Recreation Department's request that warrant articles for the construction of an open aired covered pavilion and capital reserve fund be funded through undesignated fund balance. Brief discussion ensued with the result that a decision was made not to fund the recreation warrant articles from undesignated fund balance. However, Mr. Wollmar suggested that a sub-surface soils analysis be funded from undesignated fund balance because the Board had recommended that the Recreation Department conduct the study before investing money into the construction of tennis courts. Mr. Hines made the motion to fund the soils analysis from undesignated fund balance. Mr. Wollmar seconded the motion. All were in favor and the motion was so moved.

Non-money warrant articles were next discussed. The warrant article **"to see if the Town will vote to change the method of choosing the Tax Collector from election of the Tax Collector to appointing the Tax Collector,"** was discussed. Mr. Wollmar spoke about the changes taking place in technology and

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software and the Town's need for more technical savvy to run the programs in the Tax Collector's office. Mr. Lagassa inquired about the possibility of a non-elected position becoming part of the collective bargaining unit. Mr. Wollmar explained that the number of hours, the position description, and the nature of the responsibilities would determine the issue. Mr. Hines made a motion to recommend that the article be placed on the warrant. Mr. Lagassa seconded the motion. All were in favor and the motion was so moved.

The next warrant article considered for inclusion on the Town Warrant was the acquisition (RSA 38) by the Town of the Hampton Water Works.

"Shall the Town of North Hampton authorize the Board of Selectmen pursuant to RSA Chapter 38 to acquire that portion of Hampton Water Works Company's plant and property which the Selectmen judge to be suitable for establishing a municipal Water utility, with the further understanding that any agreement to acquire or determination of acquisition price shall be presented to a future North Hampton Town Meeting for approval and ratification prior to final acquisition of such Water Company property?"

Mr. Hines made the motion to include the item on the warrant. Mr. Lagassa seconded the motion. All were in favor and the motion was so moved.

The warrant article authorizing the Selectmen to lease Town owned land for the construction of a telecommunications facility

"Pursuant to RSA 41:11a, are you in favor of authorizing the Board of Selectmen to negotiate and execute a lease for more than one year for Town owned land for the use by a private company to construct a wireless telecommunications facilities in accordance with section 415 (Wireless Telecommunications Facilities) of the North Hampton Zoning Ordinance? The lease would include a portion of land, approximately 2,500 square feet in size and easements thereto, located at the northernmost portion of the following described parcel:

A parcel of land, containing 77.4 acres more or less, and shown on the Town of North Hampton Assessor's Map 13, Lot 007-161. The property presently contains the North Hampton Elementary School, at the southernmost portion, and recreational land."

Mr. Hines made the motion to place the article on the Town Warrant for the voter's consideration. Mr. Lagassa seconded the motion. All were in favor and the motion was so moved.

The next article considered for inclusion on the Town Warrant was the citizens' petition for the adoption by the Town of an Interim Growth Ordinance (IGO).

Authority: This ordinance is enacted under the authority granted the Local Legislative Body pursuant to RSA 674:23, Growth Management Interim Regulation.

Purpose: This ordinance is enacted in general to guide and ensure the orderly development of land within the Town of North Hampton, NH; prohibit premature growth which may be incompatible with the Master Plan and growth management process. It is intended to regulate the timing of residential development while allowing the Town of North Hampton to review and revise the Master Plan, adopted December 1989. It also enables a Capital Improvement Program to be written and adopted by the Local Legislative Body.

Regulation: Building Permit Limitation

Annual Limitation: The number of building permits for new dwelling units that are issued in a calendar year by the Town of North Hampton shall be limited to an amount that is 1.18 percent of the total dwelling units existent in North Hampton as of December 31 of the prior year. For purposes of this ordinance the December 31, 1996 base of dwelling units shall be determined from the 1989 North Hampton Master Plan (Table CP-7), updated with building permit data reported in the Annual Town Report. For the year 1997, the December 31, 1996 base of dwelling units is 1690, (hence the total number of building permits issued for 1997 would be 20).

1. Building permits shall be issued by the Building Inspector in order of receipt of applications, subject to limitations set forth herein.
2. One permit shall be issued for each dwelling unit, with a duplex requiring two permits, etc.

3. A person may apply for a building permit at any time. If the Building Inspector is unable to issue building permit because of the limitations of this ordinance, the person making application shall be placed on a waiting list for that year.
4. In order to ensure equitable distribution of available building permits, no individual, partnership, or other entity or its related or affiliated entities, or in the case of individuals, their relatives or persons associated with them in business, may receive more than 4 Building Permits or 20% of the Building Permits for dwelling units available in any given calendar year.
5. In the event of demolition and reconstruction of a dwelling unit, said unit is specifically excluded from the provisions of this ordinance, as long as the new dwelling unit is confined to the footprint of the prior dwelling unit, including porches, enclosed porches and decks.
6. Any building permit which is withdrawn shall be reassigned in accordance with the provisions of this ordinance.
7. No building permit issued by this ordinance may be transferred to another individual, partnership, corporation or other entity.

Conflicts:	In matters governed by this ordinance, this ordinance shall supersede conflicting local ordinances and regulations.
Severability:	Should any part of this ordinance be held invalid by a court, such holdings shall not affect, impair or invalidate any other part of this ordinance, and to such end, all articles, sections and provisions of this ordinance are declared to be severable.
Expiration:	This ordinance shall expire with the adoption of an updated Master Plan by the Planning Board and the adoption of a Capital Improvement Program by the Local Legislative Body and upon the effective date of a Growth Management Ordinance adopted under RSA 674:22.

Lengthy discussion ensued regarding the legality and enforceability of this article. Mr. Lagassa made the motion to include the article on the warrant. Mr. Hines seconded the motion. Mr. Wollmar asked for discussion on the issue. Mr. Wollmar began the discussion by explaining that he had no position on the issue. Indeed, RSA 39:3 compelled the Selectmen to place the petitioned article on the warrant and therefore the Selectmen were duty bound to do so. He further explained that the legality of the petition and its enforceability were important issues that would be best decided by a court of law in a declaratory judgement. The court would not, however, be inclined to hand down a declaratory judgement prior to a vote by the Town as there was nothing to decide until such time as the IGO was adopted by a vote of the citizenry. Mr. Wollmar said that he felt good about the process. Mr. Hines expressed his comfort with the process as well. He indicated that there were many legal opinions that conflicted with each other regarding this issue and that he was not particularly comfortable enforcing the ordinance given the potential for a lawsuit by an aggrieved party. Mr. McAllister explained that the issue embodied a democratic conundrum for the Selectmen. On the one hand they are duty bound to place petitioned articles presented by the citizenry, whom the Board represents, on the warrant. On the other hand, the Board has a fiduciary responsibility to protect the municipal corporation from liability and pecuniary risk. When and if petitioned articles expose the Municipal Corporation to liability and risk the Selectmen are then caught between their duty to represent the citizenry and their fiduciary responsibility to protect the Municipal Corporation from risk and liability.

Mr. Wollmar opened the discussion for comment from the floor. Ms. Simmons questioned the procedure of adoption of the IGO. Mr. Wollmar explained that it was in effect on the date it was first 'noticed' by the Planning Board. Mr. Porter asked if the Board intended to get a declaratory judgement if the IGO was approved at Town Meeting. The Board agreed that building permits would continue to be given until the limit proscribed by the IGO is reached. Mr. Porter asked what would happen if someone was denied. It was explained that the aggrieved party could then go to superior court for a declaratory judgement. It was further explained that once the master plan and capital improvement plan were done and approved the IGO would no longer be in force. Other opinions were heard. Mr. Wollmar asked for a vote on the motion to include the IGO on the warrant. All were in favor and the motion was so moved.

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The Board next discussed the article "**to see if the Town will vote to change the Municipal Budget Law?**" Mr. Wollmar explained that the Town's adoption of Senate Bill 2 the public hearing on the budget could be more efficiently handled by the Board of Selectmen. Without the Budget Committee citizens could directly question department heads and Selectmen about budget issues. Mr. Hines concurred and suggested that the budget committee should be making recommendations to and informing the citizens about the budget. The budget committee should not wait for citizens to inform the committee members about the budget. Mr. Lagassa echoed Mr. McAllister's previous comments about the conundrum of democracy and suggested that the MBA revealed the tension between administrative efficiency and democratic participation. However, he argued that it was important to err on the side of democracy and to look to the positive side of the MBA. The budget committee process may not be implemented efficiently, but it has the advantage of increasing the number of elected representatives, informing the citizenry, and offering a training ground for other municipal posts. Mr. Wollmar made the motion to place the article on the warrant. Mr. Hines seconded the motion. Mr. Lagassa abstained from voting citing a lack of knowledge and experience with the issue. The motion passed with two votes in favor and one abstention.

Selectmen's Concerns

Mr. Lagassa expressed reservations about the legality of the IGO and the issuance and status of building permits under the IGO by citing RSA 676:11

Building Permits Required

"After a municipality has adopted a building code, any person who intends to erect or remodel any building in the municipality shall submit plans to the building inspector for his examination and approval prior to commencement of the planned construction."

and RSA 676:12

Building Permits to be Withheld in Certain Cases

I. The building inspector shall not issue any building permit if application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 if the proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such a permit."

It was explained that while the two above referenced RSA's seem contradictory it appears that the intent is to insure that no one is able to retroactively circumvent proposed local land use changes. Therefore, it becomes an issue of which classes of building permits are enforced.

There being no further business to come before the Board the meeting adjourned at 9:13pm.

Respectfully,

Russell McAllister
Town Administrator