



TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
SELECT BOARD
DRAFT MINUTES

REGULAR MEETING – MONDAY, FEBRUARY 22, 2010 –7PM
MARY B. HERBERT CONFERENCE ROOM

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

1. Call to Order & Call of the Roll

Chair Salomon called the meeting to order at 7:00 PM. Those present were Chair Salomon, Selectman Coutu, Selectman Rineman and Town Administrator Steve Fournier.

2. Non-Public Session – 6:15 PM in the Executive Conference Room 2nd Floor, pursuant to RSA 91-A:3 II (a, b, c)

Chair Salomon noted for the record that the Select Board had just come out of a Non-Public Session.

Motion by Selectman Coutu to come out of the Non-Public Session. Seconded by Selectman Rineman.

Roll Call: Rineman Aye, Coutu Aye, Salomon Aye. Motion carries 3-0.

Chair Salomon invited those in the audience to join the Select Board in the Pledge of Allegiance.

Chair Salomon confirmed with Town Administrator Fournier that the meeting had been properly posted.

Motion by Selectman Coutu to close the acceptance of resumes for the position of North Hampton Fire Chief for the Town of North Hampton. Seconded by Selectman Rineman. Motion carries 3-0.

Motion by Selectman Coutu to appoint Acting Chief Dennis Cote to the position of Fire Chief and Emergency Management Director at an annual salary of \$77,000 as well as Health Officer at an additional stipend. Motion passes 3-0.

Town Administrator Fournier stated that there would be a formal swearing in and pinning ceremony in the future.

3. Consent Calendar¹

THIS LOCATION IS HANDICAPPED ACCESSIBLE. THOSE WISHING TO ATTEND WHO ARE HEARING OR VISION IMPAIRED MAY MAKE THEIR NEEDS KNOWN BY CONTACTING THE AT TOWN HALL 964-8087

No items

4. New Business

4.1 North Hampton Public Library Trustees

Chair Salomon stated that the reason the Select Board was meeting with the Trustees was because of some concern regarding a proposed Warrant Article to appropriate \$50,000 to the Library Capital Reserve Fund.

He further stated that his concern is that the Town is about to hire a firm to plan a town campus, with the library as a large part of that. Recognizing and acknowledging fully that the Library Trustees are an independent elected body, with their own set of priorities; the concern was that if the taxpayers are contributing money to the Library Capital Reserve Fund and if there is a dispute between the town campus proposal and the library trustees, where does that leave the taxpayers who have appropriated the money.

Library Trustee Emily Creighton thanked the Select Board for allowing the Trustees to come and speak regarding the proposed Warrant Article. Ms. Creighton introduced Mr. Peter Parker, Trustee and Ms. Susan Grant, Director of the North Hampton Public Library. Ms. Creighton stated that she understood the Select Board asking the question from a financial point of view. Ms. Creighton stated that it was important to go back to the history of the library working with the Town towards a new town campus, and that the Select Board understands that the Trustees plan to live up to the obligation of the Library Capital Reserve Fund, and yet at the same time they cannot commit Boards after their terms are up. Ms. Creighton stated that the Library Capital Reserve Fund is clear in terms of stating what the Fund can and cannot be used for. Ms. Creighton read the petitioned Warrant Article from the March 14, 2006 warrant:

“On petition of the three Library Trustees, Linda Hillier, Emily Creighton, Stephen Miller and at least 25 other registered voters of the Town of North Hampton:

Shall the Town vote

to establish a Library Capital Reserve Fund for the planning and construction of a library addition or a new building,

to raise and appropriate the sum of fifty thousand dollars (\$50,000) to be placed in this fund; further to appoint the Board of Library Trustees as agents to expend from this fund.

If appropriated the Board of the Library Trustees will match this amount of \$50,000 from its invested funds resulting in a total of \$100,000 to plan for future accommodations of our library’s present need for space to adequately provide information, technology, programming for adults and children, and community meeting room space.

To serve the common good of our community, it is necessary to have a Library Capital Reserve Fund separate from the Town Capital Reserve Building Fund. This fund will allow us to prudently save for our community’s quality of life needs while ensuring that these needs do not compete with public safety monies. Our Library services give back to us, make all of our lives better, and unify us as a community of informed citizenry.”

¹ These items are routine in nature and are approved without discussion. Should a member of the Board request to have an item removed, it shall be placed on the agenda under new business. The consent format is to expedite the business of the Board when adequate backup material has been provided.

Ms. Creighton stated that common sense would dictate that if the town complex goes forward, and the library was to expand, or a new building constructed, then the money from the Library Capital Reserve Fund would go to offset the cost of the new library, as that is the purpose of the fund, and by law it is all that the Library Trustees can do. Ms. Creighton stated that the library has had their own studies done, and have never once used the Library Capital Reserve fund to pay for this, and that they have used other monies.

Chair Salomon asked Ms. Creighton that if the library was moved into the existing safety complex and rehabbed would the money be able to be used to help pay for that. Ms. Creighton stated that she wouldn't be able to answer that as it was a question for legal counsel.

Selectman Coutu asked Ms. Creighton what the current fund balance is in the Library Capital Reserve Fund. Ms. Creighton stated that the Trustees did not come to the meeting to respond to anything other than the Warrant Article, but that she did have the information and that the balance is somewhere around \$300,000 between the Town Capital Reserve fund and the Trustee's matching account.

Selectman Coutu asked Ms. Creighton that if the campus study proposal results in a new library complex, or a rehabilitation of the current library complex or a combination of the two, would it be the Library Trustees intention that the current Library Capital Reserve Fund would be contributed to that effort.

Ms. Creighton stated that the Trustees would absolutely contribute to the cost of financing the new library.

Selectman Coutu stated that he just wanted to be sure that the view of the Library Trustees is that the Library Capital Reserve Fund's intended purpose is to improve, expand, add on to the current library space so that it would better meet the needs of the community, and since there is a campus study underway, the campus study may in its final form contemplate the building of a new library, Selectman Coutu wanted to confirm that it is the intent of the Library Capital Reserve Fund to in fact use the accumulation of those funds as part of offsetting some of the costs of the future library.

Ms. Creighton stated that yes, it is the intention of the Library Trustees, as that is the purpose of the fund.

Chair Salomon asked Ms. Creighton that if he were a Library Trustee, and saw a town campus study come through that proposes a new library but was at odds with what he and his fellow trustees thought was a more appropriate library, the Library Trustees could in fact vote not to contribute towards the construction of that library that they didn't like. The money couldn't be spent anywhere else, but they would not be required to make that contribution.

Ms. Creighton stated that she felt this was a question for a lawyer. She further stated that she felt that the Town would not go forward on a library that the Select Board and the Trustees could not agree on. She further stated that she hoped that the town campus committee would be communicating with the Select Board, and that everybody would come to a consensus on what's doable, and doesn't see a library going forward without a consensus.

Selectman Coutu stated that as a matter of common sense, more is gained by working together than not.

Susan Grant asked about the discussion of the square footage of a new library that was discussed at the last Select Board meeting. She stated that it should be 12,500 and that there was some confusion between the current square footage and the proposed.

Peter Parker stated that he is delighted that the Select Board recognizes the distinction between the library trust fund and the town trust fund.

Ms. Creighton asked if she could ask a question that her father-in-law had for the Select Board, and Chair Salomon stated that she may.

Ms. Creighton asked about the funds being cut from the budget for the Seacoast Visiting Nurse Association. Town Administrator Fournier stated that the funds weren't actually cut, but that a member on the Municipal Budget Committee who is also on the Board of Directors stated they would not be asking for funding, but it will not affect any of the services they offer to the Town.

4.2 Transfer of Town Owned Land, Map 012-062 into Conservation Land

Chris Ganotis explained to the Select Board that the piece of land that he would like to see transferred into Conservation Land is a piece that is land locked with no access, that is a parcel that was donated about 10 years ago by Ms. Joanne Lamprey at the time primarily for the purpose of citing a cell tower. About four years ago the Town reviewed the site and found that access to the site was problematic with only an old logging road for access from Mill Road and the likelihood of disturbance of a private cemetery. The cell tower companies which evaluated the site determined that it was not suitable because of its location and topography would not provide adequate cell coverage.

Mr. Ganotis stated that since the cell tower concept was abandoned it is still a landlocked parcel with no direct access or apparent practical use or need by the Town. In speaking with Ms. Lamprey, she had stated that she had no objection to converting the land into conservation, and supported the idea.

Mr. Ganotis stated that more recently the Planning Board approved a Conservation subdivision for about 50 acres of contiguous land and another private citizen has expressed an interest in donating an adjacent landlocked parcel for conservation. Placing these combined parcels into conservation would allow for increased protection of the Litter River watershed to mitigate further degradation of the already DES-designated environmentally impaired Little River and would preserve natural open space and wildlife habitat.

Chair Salomon asked Mr. Ganotis if there was a deed restriction placed by Ms. Lamprey and he stated there was a restriction that the land be used for a cell tower. Mr. Ganotis stated that he had spoken with her and she verbally agreed to have it placed in conservation land.

Motion by Selectman Coutu to amend the deed with respect to Map 012, Lot 62 from its current stated purpose to a conservation deed restriction subject to legal review. Seconded by Selectman Rineman. Motion carries 3-0.

4.3 Approval of Warrant Articles

Motion by Selectman Coutu to remove the Library Capital Reserve Warrant Article from the table. Seconded by Selectman Rineman. Motion carries 3-0.

Chair Salomon stated the pending motion on the table is not to recommend the Warrant Article for the Library Capital Reserve Fund.

Chair Salomon stated that after speaking with the Library Trustees that the likelihood of either side trying to force something on the other in this Town is not very great. He further stated that if the pending motion were to be defeated he would support recommending the funding.

Vote on motion to not recommend the Warrant Article: Coutu, Nay, Salomon, Nay, Rineman, Nay. Motion fails.

Motion by Selectman Coutu to recommend the funding for the Library Capital Reserve Fund to raise and appropriate the sum of \$50,000. Seconded by Selectman Rineman. Motion carries 3-0.

Motion by Selectman Coutu to recommend the One Year Collective Bargaining Agreement with the Professional Firefighters of North Hampton, IAFF, Local 3211 as recited. Seconded by Selectman Rineman. Motion carries 3-0.

Motion by Selectman Coutu to recommend the contribution to the Health Benefit Stabilization Capital Reserve Fund. Seconded by Selectman Rineman.

Discussion. Selectman Coutu stated that there has been some discussion by the Budget Committee to trap the excess funds which would arise between that which was budgeted and the guaranteed maximum rates for health care, and what the actual rate will be, which typically follows in time the budget process. The intent of the Budget Committee is to avoid a budget approved by the voters which has a potential of a “windfall.” The notion behind the Capital Reserve Fund which has as its genesis really the school in what was attempted to put in place there, this is seeking to mimic. The target amount would conceptually seek to capture for purposes of this Capital Reserve Fund that delta between the guaranteed cost and what will be the actual cost. No one at this point can estimate what that actual cost could be, the key and critical words are “up to.” The Budget Committee’s view is that there is far more likelihood that the actual costs of healthcare would be significantly lower than the 27.3% that was used for purposes of the 2011 operating budget projections. On that basis, the budget committee has asked the Select Board to consider that this reserve fund be set to a higher level based on that expectation, noting specifically since it is an “up to” concept, it still remains therefore a lesser amount could be contributed to the reserve fund if in the judgment of the Select Board members the amount to be transferred out of fund balance would not be appropriate for a financial or accounting point of view.

Chair Salomon stated that his understanding of the spirit of the Warrant Article is that it doesn’t really effect the fund balance because we appropriate 27.3% then if it is less than that, that is the piece we move.

Town Administrator Fournier stated that it is actually based on last year's rates and that the 27.3% is for FY2012.

Chair Salomon stated that this article should be sent to the DRA for their review.

Selectman Coutu stated that he would propose that he take a cut at redrafting the article that brings into sharp focus the suggestions made, send it to each Board member to be sure that everyone is reading it the same way, in addition to sending it to the DRA to make sure that conceptually everyone is understanding what it is that is trying to be accomplished.

Chair Salomon stated that this item should be laid on the table until the Select Board hears back from the DRA.

Motion by Selectman Coutu to lay this item on the table. Seconded by Selectman Rineman. Motion carries 3-0.

Chair Salomon stated that he was appointing Selectman Coutu to re draft this article and send it to the Town Administrator to get to the DRA for their review.

Motion by Selectman Coutu to recommend the lease purchase agreement for the fire engine as read. Seconded by Selectman Rineman. Motion carries 3-0.

5. Items Laid on the Table²

5.1 Select Board Rules and Procedures

6. Report of the Town Administrator

Town Administrator Fournier reported to the Select Board on an independent report on the Retirement System given by the PEW Center on the fifty states retirement systems. The PEW center has serious concerns over the state of New Hampshire's retirement system. At the end of 2008. The fund was underfunded by \$2.5 billion dollars or only funded at 67.95%. Additionally, the State has a liability of \$3.2 billion for retiree healthcare, but it is only funded by \$175 million or 5%.

Town Administrator Fournier gave the Select Board an update on the consumer price index and at the end of January 2010 the National CPI increased 2.6% over the previous year; the Northeast increased 3% over the previous year and the Boston Area increased 2.8%.

Town Administrator Fournier stated to the Select Board that a letter had been received for Dr. Joe Arena requesting a non-public session with a local resident to serve as a witness during this meeting.

Chair Salomon state that the letter isn't very clear on what Dr. Arena wanted a non-public session on, but that he would guess that he wants to revisit the Code of Ethics issue that was dealt with earlier.

² Items laid on the table shall remain on the table until a member of the Select Board makes a motion to remove such item from the table.

Chair Salomon stated that unless someone wanted to make a motion to grant the request, there is nothing that the Select Board can or should do, and feels that it is an issue that has been dealt with before.

Town Administrator Fournier stated that Dr. Arena had told him in a conversation that the Code of Ethics issue is what he wanted to speak to the Select Board about.

Selectman Coutu stated that he still remained unclear on exactly what the issue was, and asked if this was really an appeal to the decision the Select Board made almost a year ago. He further asked if there was any basis upon which in the Code of Ethics, Statutes or otherwise that would accord Dr. Arena that opportunity versus that it would be at the discretion of the Select Board.

Town Administrator Fournier stated that it is at the discretion of the Select Board.

Chair Salomon stated that this was an unfortunate incident not only for Dr. Arena, but for the people that had to deal with the complaint due to a poorly written Code of Ethics, for which he shares the responsibility for.

Chair Salomon stated that he didn't see any reason to revisit the issue as the facts were pretty clear, and that the Select Board's response was appropriate.

Selectman Rineman stated that if the Select Board were to meet, he would not meet under the conditions that Dr. Arena has stated.

Chair Salomon stated that there was no motion from the Board to hear Dr. Arena's request, and asked that Town Administrator Fournier write him a letter stating this.

7. Minutes

7.1 Regular minutes of November 23, 2009

Will be re circulated with the changes suggested and taken up at the next meeting.

7.2 Workshop January 6, 2010

Will be taken up at the next meeting.

7.3 Workshop January 14, 2010

Will be taken up at the next meeting.

7.4 Regular Meeting February 8, 2010

Motion by Selectman Coutu to approve the minutes of February 8, 2010 as has been amended. Seconded by Selectman Rineman. Motion carries 3-0.

7.5 Non Public Session February 9, 2010

Motion by Selectman Coutu to approve the minutes of February 9, 2010. Seconded by Selectman Rineman. Motion carries 3-0.

7.6 Non Public Session February 16, 2010

Motion by Selectman Rineman to approve the minutes of February 16, 2010. Seconded by Chair Salomon. Motion carries 2-0-1.

7.7 Non Public Session February 17, 2010

Motion by Selectman Coutu to approve the minutes of February 17, 2010 as amended. Seconded by Selectman Rineman. Motion carries 2-0-1.

Selectman Coutu stated that he had one matter that he would like to get some clarification on. He further stated that the Select Board had just received correspondence from Attorney David Barnes regarding a request from the Select Board for an opinion on whether or not the Town had a perfected? Protected? Security interest on those matters that security interest applies and also in respect to letters of credit that they comply with the applicable New Hampshire State Statutes. The letter received concludes, as a point in time opinion, based on transactions and documents reviewed on December 14, 2009. In the letter of credit section, Attorney Barnes opines that in the broad powers of the FDIC in respect to setting aside transactions for the benefit of a failed bank, he concludes that the appropriate case law with the respect to a letter of credit in connection with a failed bank, does not constitute an asset which the FDIC can do or set aside. Selectman Coutu stated that he agreed with his conclusion, but asks that Attorney Barnes however could reexamine that question with the caveat that if the assets of the bank have been pledged as collateral to the banks obligation to reimburse the Federal Home Loan Bank, would his analysis with respect to FDIC avoidance powers change?

Chair Salomon asked that Selectman Coutu write a letter to Attorney Barnes to address those questions.

Selectman Coutu stated that his last comment was he had asked that in order to save attorney costs, he had asked for a template to be drafted by Attorney Barnes, and wondered what the status of that was.

8. Adjournment

Motion by Selectman Coutu to adjourn the meeting at 8:34 PM. Seconded by Selectman Rineman. Motion carries 3-0.

Respectfully submitted,

Janet L. Facella