



TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
**SELECT BOARD
MINUTES**

REGULAR MEETING – MONDAY, JUNE 14, 2010 –7PM
NORTH HAMPTON SCHOOL MUSIC ROOM

1. Call to Order & Call of the Roll

Chair Wollmar called the meeting to order at 7:00 PM.

Those present were Chair Wollmar, Selectman Rineman, Selectman Maggiore and Town Administrator Fournier.

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

Chair Wollmar verified with the Town Administrator that the meeting was properly posted.

Motion by Selectman Maggiore to seal the minutes of the 1:00 PM non-public meeting. Seconded by Selectman Rineman. Motion carries 3-0.

2. Consent Calendar¹

Motion by Selectman Rineman to approve items 1-7 on the Consent Calendar. Seconded by Selectman Maggiore. Motion carries 3-0.

3. New Business

3.1 Approval of Collective Bargaining Agreement between the Town of North Hampton and the North Hampton Professional Firefighters Local 3211, and the Select Board needs to sign the agreement.

Town Administrator Fournier explained to the Board that the voters at town meeting voted to approve the one year Collective Bargaining Agreement.

Motion by Selectman Rineman to approve the Collective Bargaining Agreement between the Town of North Hampton and the North Hampton

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

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.

Professional Firefighters Local 3211. Seconded by Selectman Maggiore. Motion carries 3-0.

3.2 Appointment of Patty O'Connor, Brian Chevalier and Philip Thayer to the Conservation Commission

Motion by Chair Wollmar to approve the appointment of Patty O'Connor, Brian Chevalier and Philip Thayer to the Conservation Commission with their terms to end in May of 2013. Seconded by Selectman Maggiore. Motion carries 3-0.

3.3 North Hampton School & Town Sander Agreement – Public Works Director, John Hubbard

Town Administrator Fournier explained to the Board that the Town was approached by the School District to provide winter treatment services to the parking areas around the North Hampton School. The School is trying to lower their maintenance costs, and in return the Town would be receiving a brand new second sander that can be used to treat the school facilities as well as other roads in the Town. Town Administrator Fournier stated that the School will be paying for its own sand, but they would be buying through the Town's contract, which is at a lower cost.

Motion by Selectman Rineman to accept the terms of the memorandum of understanding with the North Hampton School District and to direct the Select Board chairman to execute the agreement. Seconded by Selectman Maggiore. Motion carries 3-0.

3.4 Motorcycle Noise Ordinance Discussion – Police Chief Brian Page

Chief Page discussed the history he has going back to 2001 with the motorcycle noise ordinance. He further stated that the town has had a number of requests to limit the noise level of motorcycles throughout the community since 2008. The town received a petitioned warrant article to enact an ordinance regulating the noise of motorcycles at the 2010 Town Meeting. The article was reviewed by counsel prior to the town meeting and was determined to be unenforceable. However, state law prevents the Select Board from not placing a petitioned article on the warrant, and the article passed at Town Meeting.

Chief Page stated that with the research he has done on this ordinance, the state statutes, state constitution and federal laws, he feels that this will be dealt with for a little while longer.

Chief Page stated that early on the Town Administrator had asked for his opinion on this proposed ordinance and he felt that it was unenforceable as it was circumventing state law, but that because it was a petitioned warrant article, it had to go on the town warrant.

Chief Page talked about the EPA “label.” He further explained that it is not a label, it is a stamp, and under federal law it is supposed to be immediately discernable on the motorcycle pipe. He further stated that he has looked at a lot of motorcycle pipes over the last month, and that they are not immediately discernable; sometimes it takes a special LED to find them, sometimes you have to disassemble the motorcycle to find them.

Chief Page stated that Town Counsel as well as the Town’s Liability Carrier, advised that this ordinance is not legal as written and is not enforceable. The Rockingham County Attorney also shared their opinion that it was unenforceable as written.

Chief Page asked that the Select Board not require the police department to enforce the approved ordinance due to questions in legality, and to not make the police department the responsible party for enforcement.

Chair Wollmar stated that problems have solutions, but that this is not a problem it is a dilemma; dilemmas don’t have solutions, so ways must be found to in order to compromise.

Chair Wollmar stated that in his opinion the Chief has an irrefutable case, however he feels that the Board has to determine what was the public’s intention when writing the warrant article.

Chair Wollmar asked how to reconcile the problem the Chief has with enforcing a non enforceable ordinance of the town, and the will of the citizens of the town.

Chair Wollmar asked Chief Page if there would be any problem with seizing those whom he suspects have a decibel reading over 106.

Chief Page stated that legally, no, but this is a matter where practicality, budget, priorities and a lot of things come into play as far as the management of not only his organization, but the whole town.

Chief Page further stated that the police department budget has only 6.5% remaining and this procedure would take a minimum of two police officers to look at the “tac”, and to measure the decibels down at the pipe using the state and federal standard. Every effort will be made to do this, but there is a challenge when it comes to the budget and the need to expend from the overtime account.

Selectman Maggiore asked the Chief questions regarding probable cause.

Selectman Rineman stated that he cannot understand why anyone would want to ride on a motorcycle that is 106 decibels knowing that they are affecting their hearing.

Kim Ciborowski from Post Road stated that she has lived around the corner from Seacoast Harley Davidson for nine years. Ms. Ciborowski stated that she had with her a folder with articles and editorials as well as an article from the *Boston Globe* from July of 2009 explaining the motorcycle noise ordinance that was passed in Boston that has been successfully upheld. She further stated that it would be a shame if the ordinance was repealed and doesn't feel that it should be repealed, and finds it a blatant violation when she is sitting in her own home with the windows closed and cannot hear her television set when a motorcycle goes by. Ms. Ciborowski stated that the slogan "loud pipes save lives" is totally ridiculous. Ms. Ciborowski stated that she was unaware that North Hampton had a noise ordinance and wondered why there wasn't a sign posted stating this like there is in Portsmouth and Rye.

Dr. Joe Arena, Dancer's Image, stated that the Board is trying to make the ordinance a little bit too scientific, and this is nothing but dancing around a problem.

Dr. Arena stated that the motorcycle shops should be told that they cannot alter or sell parts that alter the amount of noise that can come out of any muffler system that they have within their inventory.

Dr. Arena stated that he would like to see a sign when someone enters the town that states there is a noise ordinance in the town, and that should be enough to intimidate them. He further stated that you don't need a decibel meter, that common sense can be used to determine whether a motorcycle is too loud.

Sandy Dewing, 64 Walnut Ave stated that he is confused about why so much time is being spent on something that is unenforceable, and the Chief has officers in court fighting something that the town can't enforce at the taxpayers' expense. Mr. Dewing agreed that the motorcycle noise is too loud, but can't understand why everyone is arguing about something that is unenforceable.

Phil Wilson, 9 Runnymede Drive stated that he has a lot of respect for Chief Page and that he has clearly done a lot of background on this.

Mr. Wilson stated that having dealt with lawyers in a lot of situations over the course of 64 years of his life, he has learned that the answer you get from a lawyer depends on the question you ask. Mr. Wilson stated that the question that should have been asked is that the people of this town have voted overwhelmingly in favor of this ordinance, these are the parameters, what do we have to do to enforce it and protect the town; not, is this enforceable. That is not the question that you ask a lawyer.

Mr. Wilson said he has done research and has found places that have passed a motorcycle ordinance that has been upheld in court, and therefore cannot accept what Mr. Dewing stated as being absurd for people to be at the meeting talking about it. Mr. Wilson stated that it is not absurd and that he lives 2,000 feet from any road in town and the motorcycles at night wake him up, and he should not have to suffer through that and neither should the people that live right on the roadway.

Mr. Wilson stated that it is incumbent upon the leadership of the town to do something about this.

Mr. Wilson stated that he has a lot of experience with land use law and it has always been a principle of land use law that town's may be more restrictive than state law, they may not be less restrictive.

Sally Marcotte stated to the Board that she lives on the corner of Atlantic and Ocean and is unable to sit on her porch at night and have a conversation or be outside gardening because of the loud motorcycles. It is constant during the morning, during the night and in the middle of the day, and they sit and "rev" their engines to ear splitting levels and then look over and give Ms. Marcotte the "Italian salute." Ms. Marcotte believes that there is an answer somewhere, and hopes that everyone can come together and find an answer, as there is a solution somewhere.

David Colt, 86 South Road, stated that this problem has been festering for a long time and something has to be done.

Judy Day, 141 Mill Road, stated that she had done research and found that Boston has a motorcycle noise ordinance, it was challenged, but it was upheld.

Ms. Day stated she did not understand that any state can override federal law because it is known that can't happen.

Ms. Day stated that she would like to have someone contact places besides Denver and Boston, as well as criminal code 62 that talks about disorderly conduct, and it seems to her that what is being talked about is unnecessary noise. Ms. Day believes someone should be calling Boston and seeing why and how this worked for them.

Town Administrator Fournier explained the differences in the law between New Hampshire, Colorado and Massachusetts.

Chair Wollmar stated that he felt it would be a good idea to have signs erected at the town lines indicating that the town has a noise ordinance.

Town Administrator Fournier stated that he would look into the cost of having signs made.

Rick Fucci owner of Route One Self Storage and member of the North Hampton Business Association, stated that a lot of good ideas have been talked about. Mr. Fucci stated that any ordinance can have a chilling effect. What he sees happening with this ordinance is that it could have a chilling effect on some of the businesses in town; particularly the three motorcycle dealerships, as well as other businesses and restaurants in town.

Mr. Fucci stated that the North Hampton Business Association would be willing to sit down with the Select Board and the Chief and help to come up with a solution for everyone.

Jane Rockwell, Atlantic Avenue stated to the Select Board that the original motorcycle petition was signed by 1,000 people and that the petition was then forwarded to Judy Day.

Ms. Rockwell stated that basically the streets that the bikes go down are residential, and as residents they are at their wit's end listening to the loud motorcycles, and it is unpleasant a lot of the summer time.

Larry Miller, 141 Mill Road stated that with all the respect to the Chief, he agrees with almost nothing that he said.

Mr. Miller stated that in spending his and other people's money addressing this issue, and the ordinance that was passed by the voters, the train of thought was that the federal law is irresistible, it's just that the state law exists. That doesn't make it lawful, it just exists. It's never been challenged and the thought was certainly in looking at it, it is more restrictive than the state law and you're assuming that it is lawful and it is not in their eyes. Therefore, if you forget about the state law than you're using the label method as matching up the chassis to the muffler on the bike when it was bought, which is required to have the EPA label on the muffler.

Mr. Miller stated that he felt the Chief was under the impression that the State can have an exhaust system that doesn't meet EPA labeling. That's false. The state doesn't know that and that is why it was repealed because of the political pressure in 2003.

Mr. Miller stated that he read all three of the legal opinions. He further stated that the first one isn't worth paying for, the second one by the County Attorney is ridiculous, all due respect to him, it's crap and the third one by the LGC, is that there is a conflict of interest and they should not have been asked for an opinion because they are the town's service provider, therefore you throw that immediately in the rubbish.

Mr. Miller stated that he wondered what question is being answered. The Jim Reams question he feels is that the question by the Chief was that he had a problem and he asked Mr. Reams to give him help to get rid of this stupid thing that he had to enforce. Mr. Miller stated that the proper question that should have been asked was that the voters of our town have passed at its meeting, to protect themselves, their homes and their livelihood, and the right to a peaceful existence; show me the ways I can use this to my benefit to protect my electorate. Mr. Miller stated that he didn't think that question was asked to any of the three people.

Mr. Miller stated that now the Board is making a decision based on pretty bad law. He further stated that the question should be asked to Denver, Green Bay and Boston how they are enforcing their law.

Mr. Miller stated his third point was to the Business Association and to "bring them on" as it isn't a good idea for them to come out against the residents and that the residents "are the dog and the Business Association is the tail."

Mr. Miller stated that another train of thought is to use the federal law to your advantage and assume that the state law is wrong.

Mr. Miller read the disorderly conduct law and stated that he felt that a police officer is a person of average sensibilities.

Mr. Miller stated that the town's legal opinions are bogus, and that the Board should get better legal advice, as none of those opinions address motorcycle noise.

Chief Page spoke to the Board and stated that as usual, statements become accusations. Chief Page stated that he challenged anyone to speak to the County Attorney, as well as having the Attorney General's office speak to the County Attorney as to how the question was asked.

Chief Page stated that he wanted to state very clearly that statements that were just made are a lie.

Chief Page stated that under RSA 644:2, motorcycles are allowed to operate up to 106 decibels.

Chief Page stated that Mr. Miller made him uncomfortable with his statement regarding assuming that the state law does not exist.

Chief Page stated that he normally does not respond to the public in this manner, but accusations and asking him to assume and put the Town, his officer's and himself at a highly liability will not be tolerated because it is illegal. He further

stated that he purposefully didn't ask the question to the attorneys because he knew accusations such as these would come up. Chief Page stated that Steve Fournier forwarded the ordinance via email, and they decided, based on the wording of the ordinance, whether it was or was not enforceable.

Chief Page stated that he would polygraph and give a statement to the Attorney General's office.

Chair Wollmar asked the Chief to comment on the disorderly conduct ordinance.

Chief Page stated that the ordinance is trumped by the fact that you can't have a law that allows a person to make 106 decibels of noise and then turn around and arrest someone for disorderly conduct. It is defined in the motorcycle statutes.

Chief Page stated that you cannot take away one person's rights to give another person rights.

Larry Miller stated that he still didn't agree with the way the question was worded, because the answers that came back were ridiculous.

Selectman Maggiore stated that when he did his investigation on this he kept the question to how can we enforce this. All of the opinions that he received stated that the ordinance cannot be enforced.

Chair Wollmar thanked everyone for their input.

Selectman Maggiore confirmed with Town Administrator Fournier that this ordinance did pass, is on the books, and that it could be brought back to town meeting as a new amended warrant.

Phil Wilson stated that as far as he was concerned there is nothing better than a good vigorous debate about an issue that is of concern to people, and this is an issue of real concern, to real people in this town.

Mr. Wilson stated that when you have opinions from lawyers, they mean that. They are just opinions and they mean nothing. He further stated that to walk away from what the people in this town voted for is a big mistake.

Chair Wollmar stated that the Board is not walking away, and they have agreed that they are going to work on this issue, and doesn't like to be told that they are ignoring the public.

Selectman Rineman stated that the Board does not have the tools or perhaps the authority to actually go after this ordinance.

Mr. Wilson stated that it wasn't his intention to sound truculent. He further stated that all he is saying is to let this ordinance be tested and see what happens.

Town Administrator Fournier stated that perhaps the Board should go before the court for a declaratory judgment.

4. Items Laid on the Table²

None

5. Report of the Town Administrator

Town Administrator Fournier stated that the New Hampshire House and Senate came to an agreement to make a three million dollar deduction to the state budget. The good news being if the Governor signs off on the budget, cities and towns will not see any direct impact.

Town Hall renovations are coming along, and the framing has been completed on the hallway and bathrooms.

An initial kick off meeting was held with Warrenstreet Architects

The May 2010 expense report shows that there is 6% remaining in the operating budget. All departments have been asked to halt all non essential expenditures until the end of the year. General Assistance is over expended by 120%, as the town is receiving a lot more requests. Fire department overtime is over due to injuries in the department, and the lack of the Deputy Chief that was being used to offset that. Insurances are over 5% due to the fact that we had to estimate the cost when preparing the budget. Cemeteries are over slightly due to the windstorm in February, and the debris removal that they had to get out. Property appraisal is over due to the large number of abatements after the revaluation. Expenditures are lower than last year at this time.

6. Minutes

6.1. Regular Meeting May 24, 2010

Motion by Selectman Rineman to accept the minutes of the regular meeting of May 24, 2010. Seconded by Selectman Maggiore. Motion carries 3-0.

6.2. Meeting May 27, 2010

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.

Motion by Selectman Rineman to accept the minutes of the meeting on May 27, 2010. Seconded by Selectman Maggiore. Motion carries 3-0.

7. Adjournment

Motion by Selectman Rineman to adjourn the meeting. Seconded by Selectman Maggiore. Motion carries 3-0.

Respectfully submitted,

Janet L. Facella
Administrative Assistant