



TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
SELECT BOARD
APPROVED MINUTES

REGULAR MEETING – JULY 23, 2012 –7PM
NORTH HAMPTON TOWN HALL

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

1. **Non-Public Session Pursuant to RSA 91:A-3 II (a,b,d) 6:00PM– Executive Conference Room**

2. **Call to Order**

Chair Maggiore called the meeting to order at 7:10 PM. Those in attendance were Selectman Wilson, Selectman Miller and Town Administrator Fournier.

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

Chair Maggiore led the Pledge of Allegiance.

Motion by Selectman Wilson to seal the minutes of the Non-Public Session. Seconded by Selectman Miller. Motion carries 3-0.

3. **Approval of Minutes of Previous Meetings**

3.1 Select Board Minutes of July 9, 2012

Motion by Selectman Wilson to approve the minutes of July 9, 2012 as amended. Seconded by Selectman Miller. Motion carries 3-0.

4. **Consent Calendar**

Motion by Selectman Wilson to approve the Consent Calendar as presented. Seconded by Selectman Miller. Motion carries 3-0.

5. **Communications to the Select Board**

5.1 Correspondence from Harold Mailhot

5.2 Correspondence from Rebecca & Robert Hoffmeister

Town Administrator Fournier read two communications that were received. A copy of each is attached to these minutes.

6. **Report of the Town Administrator**

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Town Administrator Fournier reported that the town website is being updated to make the content more user friendly.

All employees who are currently not covered by a collective bargaining agreement are reviewing their current job descriptions in order to update them. Edits will be done with the Select Board and then the final draft will be shared with the employee.

Notice has been received from the State of New Hampshire for the Highway Block Grant aid and a reduction over the previous year of \$14,948.

Town Administrator Fournier stated that he had met with the Little Boar's Head commissioners and there was discussion regarding scheduling a joint meeting with the Select Board at least annually.

The Municipal Budget committee has invited Steve Norton of the Center for Public Policy to speak on "The Budget Landscape for our Seacoast New Hampshire Towns."

The latest figures from the Bureau of Labor Statistics on the Consumer Price Index for the month of June showed an increase from 1.5% to 1.7%. This figure is lower than the same period last year when there were increases of 3.4% and 3.6%.

7. New Business

7.1 Application for Large Assembly Permit – Fuller Gardens

Chair Maggiore explained the genesis for the Large Assembly permit ordinance. A few years ago an organization that wanted to hold a concert came before the Select Board. Questions were raised about public safety, the well being of neighbors and protecting their privacy. In May of 2012, a Large Assembly ordinance went before the voters and was approved by a majority.

Chair Maggiore stated that he emphasized the word "ordinance" and not "policy." An ordinance is a law, where a policy can be "tweaked." He further stated that one of the sticking points is that the application must be submitted to the Select Board 60 days prior to an event.

Chair Maggiore stated that at the July 9, 2012 Select Board meeting there was an application for a Large Assembly permit received from Fuller Gardens, and the Select Board was discussing what could be done in order to allow the event; however, legal counsel advised the Select Board that there were no provisions in the ordinance to allow them to approve the event.

Chair Maggiore stated that he looked to the wisdom of the Select Board for the three applications that were on the agenda at this meeting, and how the Board can move forward with them. He further stated that all three of them were not received within the 60 days prior to the event.

Chair Maggiore stated that one of the applications is for a private birthday party, and that it states in the Large Assembly Permit ordinance, Section 1.1, that a permit is not needed for family activities.

Selectman Miller stated that given Section 4.1 in the ordinance states applications must be received 60 days prior to the planned event, and two of the applications before them do not meet that criterion; there is no lawful way to change that.

Selectman Wilson stated that when the Select Board realized that the 60 day limit was something the Select Board had no control over, they were trying to find a way to approve the application for the Fuller Gardens as it is a worthy cause that has been taking place for over two and one half decades. After speaking with legal counsel, it was determined that there was nothing they could do because it was an ordinance that had been passed by the legislative body.

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Selectman Wilson stated that the three Large Assembly Permit applications before them were three separate types of events. He stated that the Harley-Davidson event is clearly an exhibition as defined in Section 1.2 of the Large Assembly ordinance.

Selectman Wilson stated that the application from Fuller Gardens is for an event that expresses the appreciation of the support they receive from the contributors to Fuller Gardens, and felt that the Select Board could reasonably find that they do not need to apply for a permit.

Selectman Wilson stated that the application from Jeanne Falzone for a 70th birthday party might be a bit of a stretch in saying that they need to have a permit. He stated that although the Select Board is legally required to apply a 60 day requirement, he believes that the Select Board is the body designated to interpret the meaning of the ordinance, therefore felt that with respect to two out of the three applications received the ordinance could be interpreted in such a way that the Board could find that they do not fall under the aegis of the ordinance. He further stated that he is not proposing that the Select Board do that, he was putting the idea out for discussion.

Chair Maggiore stated that he hadn't thought of Selectman Wilson's interpretation in regard to Fuller Gardens and the event expressing their "appreciation" as opposed to the word "entertainment."

Chair Maggiore stated that he agreed that the Harley-Davidson event was an exhibition, and that he cannot find a way that would make it legal to grant a permit because they are outside of the 60 day limit.

Chair Maggiore stated that he saw no reason why a permit couldn't be granted for the Falzone birthday party because it is a family event.

Selectman Miller stated that he would like to treat every applicant the same, and he would encourage Harley-Davidson and the Fuller Foundation to reset their dates in 60 days, so- their permits could be approved for a date certain.

Selectman Wilson stated that one of the consequences of the Large Assembly Permit ordinance is that there has been a disruption of normal activities in the community that was never intended. He stated that the intention of the ordinance was to protect public health and safety.

Selectman Wilson stated that if the proponents of the Fuller Garden event and the birthday party are willing to consult the Police Chief and the Fire Chief to confirm that public health and safety concerns have been met, the Select Board should find that they are not required to have a permit.

Selectman Wilson stated that with respect to the Harley-Davidson application he would say the same thing, but would add that they had to agree not to have a live band and vendors exhibiting at their event.

Chair Maggiore stated that the only apparent issue with the applications before them was the time frame of submission of applications, and if the only problem is the time frame and the Select Board is at risk of upsetting the fabric of the community by preventing these events, which have become "institutions," and then he would be willing to acquiesce a bit.

Selectman Miller stated that he was not willing to acquiesce, and the law says what it says.

Selectman Wilson stated that he agreed that the Select Board could not approve the permits because of the time frame. He stated that he felt what could be approved was the finding that one or more of the three applications does not require a permit.

Town Administrator Fournier reviewed the steps that would be needed to be taken in order to amend the ordinance.

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Selectman Wilson stated that he agreed with Selectman Miller that the Select Board has to apply the law; the only difference that he has with Selectman Miller is that he is taking Section 1.2 and reading it both logically and literally, and with that believes that two of the three applications may reasonably be found not subject to the ordinance.

Motion by Selectman Wilson that the assembly described by Fuller Gardens does not require a Large Assembly permit because in the Select Board's reading of the application, it is not principally for the purpose of entertainment, game, show, exhibition or amusement, rather it is an expression of appreciation for individuals. Seconded by Chair Maggiore. Motion carries 2-1 with Maggiore and Wilson voting in favor of the motion, and Miller opposing the motion.

7.2 Application for Large Assembly Permit – Seacoast Harley-Davidson

Motion by Selectman Wilson that the Select Board finds that if Seacoast Harley-Davidson agrees that in the Large Assembly described they will not have live music or a live disc jockey and that they will contain any sales activities carried on in conjunction with this assembly within the confines of their building, then a permit is not required as provided under Section 1.2 of the Large Assembly ordinance, that would render their assembly neither an entertainment, game, show or exhibition, but as stated in their application it is to give the riders in a charity event an opportunity to rest after their ride. If however Seacoast Harley-Davidson believes that the live music or disc jockey and the outside vendor exhibitions featuring their merchandise are essential to their activity, then the Select Board finds that a permit is required and they should reschedule the event to comply with the application requirements for the permitting process. Seconded by Chair Maggiore for discussion.

Recording Secretary's Note: According to the video recording, this motion was not withdrawn by the Select Board, and no votes or action were taken.

Selectman Miller stated that he felt public safety was being thrown out of the window, and this is making a mockery of what the voters have voted for whether the ordinance is imperfect or not.

Selectman Wilson stated that he is worried about public safety too, but wondered before the Town had the ordinance what did Seacoast-Harley Davidson do at this event.

Chair Maggiore asked the Chief of Police to address how these events were handled in the past.

Chief Page stated that two out of the three applicants at the meeting are worked with on a regular basis, and both Fuller Gardens and Seacoast-Harley Davidson have always been very cooperative, with no safety issues.

Chief Page noted that he was making his comments granted under the authority in the Large Assembly ordinance Section 6.4. He further stated that these are his opinions only, and that they were not approvals.

Chief Page stated that the police department had never worked with Lisa Sammons Events, but had been in conversation with Ms. Sammons several times over the past few days. He further stated that Ms. Sammons is doing her best to make the party safe and legal.

Chief Page stated that all three applicants on the agenda have bent over backwards to make sure that he, the Fire Chief and the Code Enforcement Officer have been in on the process.

Chair Maggiore stated that he is looking for ways to make this event happen, but he agreed with Selectman Miller.

Chair Maggiore asked Selectman Wilson if he could divide the motion.

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Motion by Selectman Wilson that the Select Board find a Large Assembly permit is not needed for the event proposed at Seacoast-Harley Davidson if they agree not to have live music or a disc jockey, and they agree not to have vendors externally featuring merchandise for sale, and therefore this would not be entertainment, game, show or exhibition as defined under Section 1.2 of the ordinance. Seconded by Chair Maggiore. Motion carries 2-1 with Maggiore and Wilson voting in favor of the motion, and Miller voting against the motion.

Motion by Selectman Wilson that if Seacoast-Harley Davidson want to have live music and a disc jockey, or if they want to have external exhibitions of merchandise for sale, than they do require a permit and the Select Board finds that they cannot have this event before September 11, 2012 and if they agree to have the event on or after September 11, 2012 the Select Board approves the permit application. Seconded by Chair Maggiore for discussion.

Selectman Miller stated he did not see any purpose in the motion, because the permit has already been approved under certain conditions.

Selectman Wilson stated that his point in making the second motion the way he did was simply to eliminate the need for them to come back with a second application.

Motion fails 0-3.

Motion by Chair Maggiore to deny the Seacoast Harley-Davidson Large Assembly permit application. Seconded by Selectman Miller. Motion carries 3-0.

7.3 Application for Large Assembly Permit – Lisa Sammons Events

Recording Secretary's Note: Item 7.3 was moved up and discussed first on the agenda under New Business.

Motion by Selectman Wilson that the Select Board find that the Falzone application for a birthday party is not for entertainment, game, show, exhibition or amusement, and therefore a permit under the Town of North Hampton's Large Assembly ordinance is not required. Seconded by Chair Maggiore for discussion.

Chair Maggiore stated that he agrees with Selectman Wilson as stated in Section 1.1 whereby family activities are excluded, and feels that the application does not require a permit.

Selectman Miller stated that he would vote against the motion because he thinks it is a family activity and is regulated.

Motion carries 2-1, with Maggiore and Wilson voting in favor of the motion and Miller opposing the motion.

Chair Maggiore called for a recess at 8:10 PM.

7.4 Permission to Use Bandstand – United Church of Christ

Chair Maggiore called the meeting back to order at 8:16 PM.

Chair Maggiore stated that the United Church of Christ is holding a community barbeque competition and are asking to use the Bandstand and to have the fee of \$75 waived.

Selectman Miller asked if this use would require a Large Assembly permit.

Chair Maggiore stated that it would not, because town owned property is exempt.

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Selectman Wilson stated that they are asking for permission to use the Bandstand for parking, and asked where the rest of the event is taking place.

After much discussion on whether or not the United Church of Christ should also apply for a Large Assembly permit, Selectman Wilson stated that he believed that the Large Assembly Ordinance was demonstratively unenforceable, and that the discussion that the Select Board has had at this meeting demonstrates that it is unenforceable in an evenhanded, reasonable, sensible way, that serves the intention of the ordinance.

Selectman Wilson stated that his conclusion, as a result of the discussion of this “case study” that the Select Board has had, is the ordinance should be read very simply, and given the intent of the current ordinance, the ordinance is unenforceable.

Chair Maggiore stated that the Select Board needed to decide whether or not the United Church of Christ needed a Large Assembly permit, permission under the Town Facilities Use Policy or both.

Selectman Wilson stated that if the Select Board felt that the event would have less than 150 people in attendance, they would not need a Large Assembly permit.

Arthur Nadeau, 34 Pine Road stated that he wrote the draft version of the request from the United Church of Christ that is before the Select Board. Mr. Nadeau stated that the reason they stated there would be between 40 and 150 people was based on prior events that have taken place at the church, and the most people they had at any event was between 110 and 120.

Motion by Chair Maggiore to approve the use of the North Hampton Bandstand by the United Church of Christ. Seconded by Selectman Wilson. Motion carries 2-0-1 with Maggiore and Wilson voting in favor, and Miller abstaining.

Motion by Selectman Wilson to waive the fee of \$75.00 for use of the North Hampton Bandstand by the United Church of Christ. Seconded by Chair Maggiore. Motion carries 2-0-1 with Maggiore and Wilson voting in favor, and Miller abstaining.

Sharon Devries, 126 Atlantic Avenue, asked if a legal opinion has been sought on the constitutionality of the Large Assembly Ordinance.

7.5 Update on Leased Parking Space Signage and Enforcement at North Hampton State Beach – Deputy Chief Maddocks

Deputy Chief Maddocks stated that there has been a lot of confusion at the North Hampton State Beach over the leased parking spaces and the signage. He further stated that the state has acknowledged a need for a change in signage and new signs have been ordered.

Deputy Chief Maddocks stated that the North Hampton Police Department has not been towing vehicles due to the confusion with the Parking Kiosks and the signage, and have been issuing warnings until the new signs are in place.

7.6 Authorization of Radio Recipient and Memorandum of Understanding Certification – Chief Page

Chief Page stated that the Town has the opportunity to receive six portable radios through a grant from the State of New Hampshire for a total of \$19,393.44. The state will also be paying for the cost to program the radios.

Chief Page explained that another Select Board meeting would have to be held to accept the radios under RSA 31:95-b (Unanticipated Grants and Donations) prior to the police department utilizing or programming the equipment. He further stated that in order to reserve the radios, he needed the Select Board chair to sign the

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Radio Recipient and MOU Certification that is required by the New Hampshire Grants Management in order to prepare for possible acceptance of the portable radios and programming.

Motion by Selectman Wilson to authorize the Select Board Chair to sign the Radio Recipient and MOU Certification required by New Hampshire Grants Management, in order to prepare for possible acceptance of portable radios and programming, as described by Chief Page in his discussion above. Seconded by Selectman Miller. Motion carries 3-0.

8. Closing Comments

8.1. Closing Comments by Visitors

Thomas Vincent of 61 Exeter Road proposed that the Select Board consider asking the State of New Hampshire to place bicycle racks at the North Hampton State Beach. Master Vincent stated that there is currently no place to secure a bicycle at the North Hampton State Beach, and that he and others that attend the North Hampton School frequently ride to the beach during the summer.

Motion by Selectman Wilson to authorize the Select Board Chair to write a letter to Director Phillip Bryce of the New Hampshire State Parks and Recreation requesting that they install a bike rack at the North Hampton State Beach as soon as possible. Seconded by Selectman Miller for discussion.

Selectman Miller asked if perhaps there wasn't a better way to get this expedited instead of going to Mr. Bryce.

Town Administrator Fournier stated that he would be having a meeting with a representative from the New Hampshire State Parks and Recreation on Thursday, July 26, 2012 and he would speak to him. He further stated that in reviewing the schematics of the new beach house it indicates that bike racks will be installed, but that he would confirm it at his meeting.

Motion carries 3-0.

8.2. Closing Comments by Select Board Member

9. Adjournment

Chair Maggiore adjourned the meeting at 9:00 PM.

Respectfully submitted,

Janet L. Facella

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