

TOWN OF NEW DURHAM

Board of Selectmen Meeting

February 7, 2024, 10:00 AM

New Durham Community Room, New Durham, NH 03855

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DRAFT: These minutes are strictly a draft copy and are awaiting amendment or approval at a subsequent, duly noticed public meeting. Amendments to these minutes will be noted in the minutes of said meeting. The draft will be posted on the website as a draft copy for public informational use only.

PRESENT

David Swenson, Select Board Chair
Dorothy Veisel, Select Board Member – via Zoom
Marc DeCoff, Select Board Member

ALSO PRESENT

Cecile Chase, Interim Town Administrator
Judy Purrington, Department of Public Works
Ellen Phillips, Resident / Chair 1772 Meetinghouse Committee
Sean and Margaret O'Brien, Residents
Rick Therrien, Building Inspector
Terry Jarvis, Chair of the Zoning Board of Adjustment
Bob Bickford, 1772 Meetinghouse Committee – via Zoom
Maureen Knepp, Co-Chair Water Quality Committee

CALL TO ORDER

Chair Swenson called the meeting to order at 10:03 a.m. The Pledge of Allegiance was said.

PUBLIC INPUT

None.

Town Administrator Report

Interim Town Administrator Chase stated they have been busy the last couple of weeks in preparation for the Deliberative Session; there were about 50 people in attendance for the Deliberative Session with lively discussion about some of the articles. She stated she is continuing the organization and renovations of the Town Hall. The Highway Department has been managing road clean up during the good weather.

Report from Chair

Nothing additional to report other than what will be added under Agenda review.

Agenda Review

Chair Swenson added Required changes for Account 4191 and Account 4192. These are based on actions at the Deliberative Session; TAN Update; Discussion on PCard with NH Public Investment Pool.

NEW BUSINESS

Zachariah Boodey Farmstead

Cathy Orlowicz, Chair of the Zachariah Boodey Farmstead Committee, stated a member of the committee has submitted a letter of resignation and presented this to the Board.

MOTION: To regretfully accept the resignation of Kat Murzyn from the Zachariah Boodey Farmstead Committee and thank Kat for her service on that Committee. Motion by Chair Swenson. Second by Selectman DeCoff. Roll Call Vote: Vice Chair Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

New Durham Water Quality – Maureen Knepp, Co-Chair

Maureen Knepp, New Durham Water Quality Committee, stated in 2023 the milfoil was treated in Marsh, Jones, and Downing Ponds by diver assisted suction pulling (DASH); it cost the Town \$10,000 and a grant was obtained for \$5,000. It was recommended at that time to do seven days of treatment but had to stop after six days due to the weather. Ms. Knepp stated the NH DES recommends they do herbicide treatment in Marsh Pond and DASH in Jones and Downing Ponds. She outlined the costs for the herbicide treatment which is \$29,670 and the DASH will be \$16,500 for a total of \$46,170. They are applying for a grant in the amount of \$23,085. She stated a down payment in the amount of \$1,650 is needed for the treatments and permit fees in the amount of \$1,420 is also needed.

The Board reviewed the contracts presented. Selectman DeCoff noted there will not be the funds available if voters do not approve the operating budget in March 2024. Ms. Knepp noted there are funds in the CRF. Chair Swenson suggested the approval be contingent on approval of the Warrant Article in March 2024.

MOTION: To approve the down payment in the amount of \$1,650 to Aqualogic and authorize the Chair to sign the Aqualogic agreement. Motion by Selectman DeCoff. Second by Vice Chair Veisel. Roll Call Vote: Selectman Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

MOTION: To approve \$1,420 for herbicide treatment to Marsh Pond with Solitude Lake Management for the permit purposes and conditional upon voter approval of the warrant article on milfoil water quality held in the election of March 12, 2024. Motion by Chair Swenson. Second by Selectman DeCoff. Roll Call Vote: Selectman Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

MOTION: To authorize the Chair of the Board of Selectmen to sign the contract for permit application approval with Solitude Lake Management. Motion by Selectman DeCoff. Second by Vice Chair Veisel. Roll Call Vote: Vice Chair Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

89

90 Ms. Knepp gave an update on the report from Town Engineers for what needs to be done to recover
91 Shaws Pond; she stated the water quality has diminished between 2018 and 2022 and they have
92 asked for a Best Management Practices evaluation; the cost for this is quoted at \$13,700. This was
93 paused as the Wolfeboro Watershed is doing a similar project. Chair Swenson asked why they would
94 not use the Wolfeboro study for the watershed study. Ms. Knepp stated she was advised by the
95 Town Administrator (Zoltko) at the time to use another. After discussion, it was the consensus of the
96 Board that additional information is needed.

97

98 ***Land Use - Sean and Margaret O'Brien***

99 Ms. O'Brien stated they have been residents on South Shore Road for 17 years; they went before the
100 ZBA in March 2023 to get approvals to build; a demolition permit was issued on September 26, 2023
101 and a building permit was issued on October 19, 2023. She stated construction was started in
102 December, 2023 for a garage with apartment across the street before reconstruction could start on the
103 property at #323. Ms. O'Brien stated Interim Town Administrator Chase informed them the
104 Planning Board Chair had questions about the permit at #324 and that is when they found out that
105 Varney Engineering did not file the permit application that was needed for the ZBA decision. Chair
106 Swenson clarified there was ZBA approval for a certain plan and the engineer did not file the
107 required notice; the engineer then tried to correct the error but at that point the incorrect plan was
108 filed. Mr. O'Brien stated a big problem was that the Building Inspector at the time was not available
109 for questions and to advise them.

110 Ms. O'Brien stated Jeff Allard spoke directly with their engineer and informed Mr. Varney that the
111 plan would not be accepted and that the O'Brien's needed to go before the Planning Board. She
112 stated that is when they got their attorney involved because they have a valid permit; in the interim,
113 everything was filed and pointed out the only thing that triggers an incidental disturbance is between
114 20% and 25% disturbance on the lot. She noted there is a provision for the Code Enforcement
115 Officer to manage this when less than 25% is disturbed.

116 She stated they feel they are being targeted as they have a valid permit and are clearly within the
117 parameters of the permit application. Selectman DeCoff noted they are within 75 feet of the
118 shoreline. Ms. O'Brien stated their engineer advised them the permit by notification is a conditional
119 use permit (CUP) as there are different levels of CUPs. Selectman DeCoff stated there are not
120 different levels of a CUP and they have to go to the Planning Board for a CUP. Mr. Therrien, New
121 Durham Code Enforcement Officer, stated in the Stormwater Management Regulations there are
122 indications that a minor conditional use permit can be issued. Unfortunately, the zoning ordinance is
123 contrary and indicates they have to go before the Planning Board.

124 Ms. Jarvis, Chair ZBA, gave an outline of the history of this property before the Zoning Board of
125 Adjustment (ZBA); she stated the applications were submitted prior to March 2023; in March 2023
126 the legislative body voted to do away with Article XIV, G, which required a Special Excerption so
127 that was not considered for this case. She stated that means they also did not look at the Stormwater
128 Management Plan because that was only a requirement under the Special Exception. Chair Swenson
129 noted that in some warrant articles, they do not take effect until the following January. Ms. Jarvis
130 stated a warrant article changing a zoning article takes effect at midnight on the day the vote passes.
131 She referenced the variance approval decision and noted it indicates the applicant shall obtain a
132 Conditional Use Permit from the New Durham Planning Board. She stated without the CUP the
133 granting of variances are null and void.

Chair Swenson confirmed that the approval by the ZBA required obtaining the CUP from the Planning Board and it was a condition of approval. There was further discussion about the meetings with the ZBA. Ms. Jarvis stated it was to the O'Brien's advantage that the meetings were postponed and continued for various reasons as the requirements changed during that time.

Ms. O'Brien stated it is not their fault that the building permit was issued when it should not have been and they acted in good faith with an engineer who has worked in the town for many years. She stated they have spent a lot of time and money on materials and contractors and done everything according to the advice they received; she stated they are feeling targeted by the Planning Board at this point.

Interim Town Administrator Chase stated an email was received from Mr. Allard indicating he drove by the property and noticed the building had been demolished but the property had not come before the Planning Board and asked her to look into it. She stated she talked to the Land Use Administrative Assistant and DPW Manager at that time and it was confirmed the building was demolished.

Ms. O'Brien stated she is aware of other properties in the area who also used Varney Engineering and their applications were approved by notification for permits. Vice Chair Veisel suggested the Planning Board expedite the case due to the inconvenience caused. There was discussion about notification timelines which are required by law. Mr. Therrien stated he will refer an application to the ZBA if he sees something requiring a variance. Ms. O'Brien reiterated a building permit was issued and it was not until after construction was started that they were notified to stop work and they would need to go before the Planning Board for a conditional use permit.

Chair Swenson suggested a public notice be posted as soon as possible and schedule the hearing for March 10, 2024 with a preliminary review on February 20, 2024 to assure all was complete for the March 10, 2024 hearing. Selectman DeCoff noted the March 10, 2024 meeting is a business meeting.

Mr. Therrien noted there are concerns about bias with some members of the Planning Board. Chair Swenson stated it is up to the individual as to whether they will recuse themselves. There was further discussion about the letter received from Town Counsel and the order to cease and desist. After discussion, it was the consensus of the Board to show support for trying to help the O'Brien's without mitigating decisions in anyway, decisions that have been made and setting a precedent.

The Select Board by unanimous consensus suggested that the O'Brien issues be expedited working with Code Enforcement Officer Therrien and the PB, that an unofficial preliminary stormwater management review be done to assure all was complete and the PB proceed with the appropriate review and action.

Transfer Station Ceiling Quotes

Ms. Purrington presented quotes for work to be done to the transfer station ceiling; she stated over the weekend the insulation started to come down on residents. She stated she discussed with Fire Chief Varney as to the type of sheetrock that would be needed and firesafe sheetrock was recommended.

Ms. Purrington stated they are using the waste oil faster than they collect it so the heat is being shut off during the week; she explained the balers need to be kept warm and they are looking at insulating around the machines. The work would not include taping and mudding at this point.

Chair Swenson noted the CRF Public Works Facilities and Improvement had a balance of \$65,453 as of 12/31/23.

MOTION: To approve the purchase order from AJB Construction of Chester, NH in an amount up to \$4,200 for drywall installation, labor and materials per proposal #4033 with funds to be sourced from the CRF Public Works Facilities and Improvement. Motion by Chair Swenson. Second by Selectman DeCoff. Roll Call Vote: Vice Chair Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

MOTION: To approve the installation of insulation from Superior Insulation, LLC job #6619371 for the quote up to \$2,225 for the Solid Waste building with the source of funds to come from the CRF Public Works Facilities and Improvement. Motion by Chair Swenson. Second by Vice Chair Veisel. Roll Call Vote: Selectman Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

DPW Truck – Purchase vs. Lease, Timing, New vs. Used, Etc.

A summary of quote comparisons for purchase and lease were presented by DPW for review by the Board. It was agreed to discuss this further at a future meeting.

Chair Swenson stated he asked Judy Purington regarding outside contracting and to track the costs for the current outside contract for Kings Highway snow plowing.

The Board discussed having a crosswalk painted on South Shore Road. Interim Town Administrator Chase is looking into it.

Meetinghouse Restoration – Donation Acceptance

Ellen Phillips, Chair of the 1772 Meetinghouse Restoration Committee, presented a donation for acceptance by the Board.

MOTION: To accept the donations received through December 31, 2023 in the amount of \$108.77 from the 1772 Meetinghouse Restoration Committee and deposit into the 1772 Meetinghouse Charitable Trust Fund. Motion by Selectman DeCoff. Second by Selectman Veisel. Roll Call Vote: Selectman Veisel – aye; Selectman DeCoff – aye; Chair Swenson – ayes. Motion passed 3-0-0.

Meetinghouse Project – Warren Street

Bob Bickford, 1772 Meetinghouse Committee, stated they met with Warren Street Associates to discuss the project manager qualifications for the project; he stated a draft proposal was presented for review. Mr. Bickford gave the Board an overview of the draft proposal.

Ms. Phillips stated at the Deliberative Session it was an oversight that there was no Warrant Article for the Town to accept the forgivable loan; she spoke with Chair Swenson after the meeting and if the grant is received, the Board can call a special meeting to have voters vote on the acceptance. It was noted that a Special Meeting usually requires about 3 weeks for posting the notice. Mr. Bickford noted a condition of the grant is to have a certificate of occupancy by August 2025. Chair Swenson

stated as soon as they know if the grant will be received, they will begin the process for a Special Meeting.

Deliberative Session – Update Warrant Articles

Due to Deliberative Session voted changes and information updates in Accounts 4191 and 4192 providing \$500 stipends to all regular members of the Planning Board and ZBA Warrant Article 4 was changed increasing it from \$4,047,923 to \$4,052,423. Therefore the Select Board needs to vote on recommendation position for this updated amount.

MOTION: To recommend 2024 Warrant Article 4 for the FY2024 Operating Budget in the amount of \$4,052,423. Motion by Chair Swenson. Second by Selectman DeCoff. Roll Call Vote: Vice Chair Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

ARPA Funds – Update Balance

Chair Swenson provide a brief review of the remaining ARPA funds after recent usage actions from the Board. As of 02/07/24 there are approximately \$4,960.

Total Notice 2024 Contract for Services

Tax Collection and Land Use functions in the Town need tax lien execution documentation and rely on an outside vendor to provide the necessary deed / title research and, at times, notice preparation services. The vendor of Total Notice, LLC has provided an agreement to the Town for these services.

MOTION: To approve agreement with Total Notice, LLC for the purposes of tax lien and deed taking requirements in the amount of \$2,047.50 with cost of \$25 for each research and notice prep and \$20 for each research only and authorize the Board Chair to sign the Agreement. Motion by Selectman DeCoff. Second by Vice Chair Veisel. Roll Call Vote: Vice Chair Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

TAN Update

The Tax Anticipation Note (TAN) needed at the end of 2023 has now been fully repaid. The note was paid 01/16/2024 with an interest cost of \$8,509.82.

School Payments – Jan – June 2024

Chair Swenson reviewed the required school payments for January – March 2024 with the purposes of assuring the Town as the necessary funds for these payments and to inform the public of the high monthly payments New Durham is required to pay with the current school budget.

HR Policy Review – PTO, Etc.

Chair Swenson that during various discussions during 2023 it was felt there may need to be slight edits to the PTO and FMLA sections of the ND HR Policy Manual.

During this discussion Chair Swenson also asked to have the table in the PTO policy reviewed to assure it is current and complete.

The PTO section is a relatively minor edit as follows:

MOTION: To edit the current Paid Time Off (PTO) section of the Town's HR Policy Manual by adding to the Section PTO Accrual the following statement: "Employee does not accrue PTO during any approved FMLA leave." Motion by Chair Swenson. Second by Vice Chair Veisel. Roll Call Vote: Vice Chair Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

The edits for the FMLA may be a bit more extensive and it was suggested that Interim TA Chase and Chair Swenson derive recommendations and bring back to the Board.

RTK Process Discussion – Electronic vs. Hard Copy, etc.

Discussion postponed.

Meeting Schedule

The next regularly scheduled Select Board meeting will be March 07, 2024 at 10 a.m.

Minutes 01/10/24

Minute review was postponed to a future meeting.

MOTION: To enter nonpublic session pursuant to RS 91:A-3II, (a) *The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted;* (b) *The hiring of any person as a public employee;* (c) *Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on the inability to pay or poverty of the applicant.;* (l) *Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.*

Motion by Chair Swenson. Second by Vice Chair Veisel. Roll Call Vote: Selectman Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

The Board left public session at 1:02 p.m.

The Board reentered public session at 1:54 p.m.

MOTION: To seal the minutes of the non-public session of the January 10, 2024 meeting for reasons it may adversely affect the reputation of one other than the Board. Motion by Chair Swenson. Second by Vice Chair Veisel. Roll Call Vote: Vice Chair Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

MOTION: To adjourn the meeting. Motion by Chair Swenson. Second by Vice Chair Veisel. Roll Call Vote: Selectman Veisel – aye; Selectman DeCoff – aye; Chair Swenson – aye. Motion passed 3-0-0.

The meeting was adjourned at 1:55 p.m.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary