

**Kingston, New Hampshire
Board of Selectmen
Meeting of September 30, 2019
FINAL MINUTES**

The meeting was called to order at 6:00 PM in the Meeting Room at the Town Hall.

PRESENT: Chairman Mark Heitz; Donald Briggs, Jr., Phillip Coombs, Richard Wilson, Selectmen

ABSENT: Keven St. James, Selectman

APPOINTMENTS:

Work Session with Interim Fire Chief Graham Pellerin – Fire Department topics

Chief Graham Pellerin was present to follow up on payroll issues and other Fire Department matters. He provided a schedule of hours for October.

There was a discussion of payroll; Chief Pellerin said that the weekly hours used to be either 48 or 36, and Selectman St. James had suggested averaging the hours every week to 42. Finance Director Cindy Kenerson was consulted and it was found that the averaging can't be done. Hours will be minimum 32, maximum 48 and overtime paid for over 53 hours unless the employee is on an emergency call. Per diem workers will only be allowed an average of 24 hours in a pay period, and training will be done at their home department. Chief Pellerin said that the federal government mandates no more than an average of 32 hours per week over a calendar year for per diem workers. Scheduling of per diem help is delayed until October 18, while waiting for approval of the Fire Marshall.

Selectman Briggs brought up a recent incident where Kingston sent an ambulance to the County nursing home as Brentwood was unavailable. There was a discussion of mutual aid. Chief Pellerin said there are two different types of mutual aid, one automatic such as for a car accident. He said he had run a report for mutual aid calls outside of the automatic calls, and found that East Kingston had come to Kingston's aid 5 times since January, and Kingston had gone there 5 times. On the other hand, Kingston has been to Brentwood 17 times while they have come to Kingston once. Selectman Briggs said that the problem with mutual aid is that while the department is helping another town, someone in Kingston may be left without help. He said he is glad to help out, but it should not be so lopsided. Chief Pellerin said that no calls have been missed due to being out on mutual aid. It was noted that if the department answers a call in another town, the insurance of the person served is directly billed.

Fire Station Building Committee

Mark Furlong, Chuck Hart and Kent Walker spoke with the Selectmen on several topics related to the proposed Fire Station. They talked about ways the plans for the proposed building are being adjusted to make the building smaller and more efficient. Equipment was taken to the Highway garage to see what fit; as a result, the size of the proposed Fire Station garage bays was cut further. Mr. Walker gave the dimensions; there will now be 8 bays, 4 back-to-back, that will be 31 feet deep, 12 feet wide. He said two

ambulances will fit in one bay, or a boat and utility vehicle. He said the overall size of the proposed building will now be down to 13,100 square feet (compared to the current building's 6,700 square feet) if the current round of changes will work. Mr. Furlong said the biggest change is the addition of a cellar, which will house the electrical and mechanical systems.

Mr. Furlong said that the Committee had reviewed the bids for Bond Counsel and after speaking with the low bidders, recommends Preti Flaherty, at a cost of \$3,000. He said that the main thing now is to get them on board to help with creating the warrant article for March.

The role of the Bond Counsel was discussed, and Mr. Furlong said their job is essentially to make sure the bond holder's interests are protected. The bond is secured through the NH Municipal Bond Bank, but while the Bond Bank has an attorney, it is the responsibility of the Town to retain its own counsel. He said that if the warrant does not pass, there is no charge.

There was a brief discussion of bond details and funding for the project. Mr. Hart said a work session will be needed to finalize details, look at sample bond schedules and get an idea of cost, interest, amortization schedule and term, which can be 15 or 20 years.

MOTION: by Selectman Wilson, to accept the recommendation of the Building Committee to retain Preti Flaherty as Bond Counsel, at a cost of \$3,000.

SECOND: by Selectman Briggs.

It was agreed to have the Building Committee send the contract, when received, directly to Town Counsel for review.

All in favor.

Contract with Construction Manager

Mr. Furlong said another issue is the Construction Manager contract, which was sent to Town Counsel Sumner Kalman as well as to the Town's insurance carrier for legal and risk review. He said that Primex had suggested a few minor changes, but that Attorney Kalman had responded that it was a risk to sign a contract before the closing takes place on the land. Mr. Walker said that the problem with this is that if they wait for the closing on the property, it will be too late to get the Warrant article in on schedule. Mr. Furlong said he feels that people do not always understand construction management.

There was a discussion of what the Construction Manager does, and protections built into the contract, which the Selectmen already approved pending legal review. Selectman Coombs said he would contact Attorney Kalman to ask if he would approve the contract if the land was already secured; Mr. Hart said that what they really wanted to know is if the contract itself is a good one.

It was agreed that the Board would be comfortable moving forward and accepting some liability (\$7,500 for upfront costs) once Counsel has taken another look at the document.

Health Officer:

Health Officer Peter Broderick was present to discuss a matter which had come to his attention; he requested a non-public session

Non-Public Session

MOTION: Upon motion of Selectman Coombs, **SECOND** of Selectman Wilson, it was voted by roll call to adjourn to Non-Public session under the provisions of NH RSA 91-A:3, II (c), Matters which is discussed in public would likely harm the reputation of a person other than a member of this board.

In Favor: Heitz, Briggs, Coombs, Wilson; Motion passed.

The Board adjourned at 6:59 PM.

MOTION: Upon motion of Selectman Briggs, **SECOND** of Selectman Wilson, it was voted by roll call to return to public session at 7:13 PM.

In Favor: Heitz, Briggs, Coombs, Wilson; Motion passed.

MOTION: by Selectman Briggs to seal the non-public meeting minutes for an unspecified length of time, as the divulgence of the information likely harm the reputation of a person other than a member of this Board.

SECOND: by Selectman Wilson

All in favor via roll call vote.

Discussed in Non-Public Session:

How to handle an anonymous health-related complaint.

US CENSUS 2020

Richard Perrin of the Census Bureau gave a brief presentation on the upcoming 2020 Census. He said the census is ordered by the Constitution to count every resident; currently there are about 40 million households in the United States.

Mr. Perrin emphasized the importance of full participation, as the count affects money to be allocated to states and local governments. He said it also affects Congressional districting. He said the information is secure; workers need to sign an oath and carry a badge. The penalties for divulging information are \$250,000 or 5 years in jail. Mr. Perrin added that it is easy to self-respond, which can be done on a paper ballot, by telephone, or online. Once a person responds, the commitment is over. He said no one will knock on your door unless you have not responded in one of those ways.

Mr. Perrin also said that the help of towns and organizations is welcomed, and they encourage participation in a Complete Count Committee. The Census Bureau is available for events where they might set up an information table. They also are hiring enumerators, field representatives and clerical help.

More information and promotional material was shared for the Town to post on bulletin boards and online. The website for the Census Bureau is www.2020census.gov. Mr. Perrin also mentioned that data is available to the public at census.gov/ROAM.

RICOH USA

Kyle Blossom and Maureen Ouellet of Ricoh USA brought information to the Board about digitizing Town records. Mr. Blossom gave an overview of his company and of the process. He said that he had visited the Town Hall to do a site assessment and made a rough calculation of the number and type of documents that the Town may choose to convert to electronic form.

Mr. Blossom said that the most important reason people choose to digitize records is space. He said that 40% of the Assessing/Building office at the Town Hall is full of filing cabinets, which are at capacity. He also said that retrieval of documents is laborious when they are in paper form. The end goal would be a document management system, a Cloud- or server- based repository which could be accessed online. He said this is 35% cheaper than paper records and they can't be misplaced, or destroyed if there is a flood or fire.

Mr. Blossom broke down the three primary components of capture as: 1. Image capture, scanning, 2. Indexing and file naming, and 3. Determining where to keep the files. He recommended Cloud storage as inexpensive and safe. Chairman Heitz asked how much of the work is provided by Ricoh for the quoted prices. Mr. Blossom said that they do everything from packing and scanning the records to delivering the captured images and index data on a USB drive.

Information on volume of records and cost to process was given, based on the preliminary visit to town hall department offices. If all records were digitized, the estimated cost would be \$95,000. Mr. Blossom said that this would be about \$20,000 less if extra quality control coverage and reassembly were excluded. He also said that he would not recommend doing the entire building at once, anyway, but rather to start small, such as doing all the meeting minutes for around \$2,500. He said that meeting minutes are popular, and in digital form would be searchable. He suggested that there should be a discussion with department heads to determine the needs, and where the frustrations are.

Mr. Blossom ended by forecasting that in 10 years all records will be digital, no matter what, but that the town should start slowly, and think space needs and resources, and explore this concept. Chairman Heitz said that if the Town decides to go this route, it will likely go out to bid, and Ricoh will be contacted.

Lisa Kopoulos re: unmerging of Map U12 Lot 48

Chairman Heitz informed Ms. Kopoulos and her daughter, Rhea Wyatt, also present, that the Board had reached out to their attorney, who reviewed the information on the request to unmerge the lot, discussed at prior meetings. He said that an argument can be made that the prior owner merged the lot by behavior, by the way the well was placed, that the land was needed to meet the well radius regulations at the time. He said it was his understanding that if the unmerge was granted they did not plan to move the well but would rather do an easement of some sort, to which Ms. Kopoulos agreed.

Chairman Heitz said that no record had been found of the parcels being taxed separately, although the tax redemption from 1976 does show the original lots all listed with separate values.

In further discussion, Selectman Coombs brought up the other examples that had been cited by the applicants, and that they were originally 3 lots of record, and that there had been no significant improvements made on the third lot, which made it possible to unmerge them. From comments of Town Counsel, on the Toppan Road property, Selectman Coombs read, "All of the evidence submitted by the property owner indicates that he never intended to give up rights to the three parcels he purchased, and that he actually made efforts to act only within original boundary lines and with proper setbacks when he applied for permits."

Selectman Coombs then relayed a conversation about nonconforming lots, saying that the Town has nonconforming uses; lots exist that are too small to meet setbacks, etc, and efforts are made to make them conforming by buying land or adjusting lot lines. He said the idea is to avoid nonconforming lots in perpetuity. He said that he keeps coming back to the idea that this seems to be an example of merger by conduct. He said in this case both lots were needed for a building permit, and that is not straight up similar to the others, where efforts were made to keep them separate. He added that as no one is available who was there in 1982 when the house was built, information is not available from the "horse's mouth." He said his concern is creating nonconforming lots in perpetuity, which is a problem, and against the things that zoning wants to achieve. Selectman Coombs added that there is a lot of information to look at and the decision is not easy, but these are the conclusions he has reached.

Selectman Wilson agreed that there is a lot of information to go through, and suggested that as the Board is already meeting with Attorney Peter Loughlin on Thursday on another matter, they may get some insight from him as well. He said Attorney Loughlin specializes in land use issues and could help out. He added that he is in agreement with others that this could produce a domino effect, and there may be a lot of similar cases to follow. He said that unmerging these small lots is the opposite of what the Town wants to do.

Selectman Coombs said that while the added delay is regrettable he would also like to have Attorney Loughlin's input, as this is a complicated matter. He said that if Ms. Kopoulos could wait one more week for an answer, at that point the Board will have exhausted every avenue.

Chairman Heitz asked if Ms. Kopoulos was comfortable with this, and she said she was, but also wanted to comment that she is not sure that the well was put where it was for the reason that it was the only choice; she said there was at least one other possible well site. She said the lots had been merged prior to the building permit being issued, and she keeps going back to the law that was created to protect homeowners.

Chairman Heitz informed Ms. Kopoulos that the meeting with the attorney will not be open to the public, but that she will be notified of the Board's decision following that meeting.

PUBLIC COMMENT I:

Steve Pascoe, 62 Mill Road: Mr. Pascoe said that he purchased a 3-unit property in 2015 that the Building Inspector has told his realtor is a 2-unit. He said that typically if an assessor finds an illegal unit he would call it out, and it would go back to the Building Inspector. He said the house was built in 1950 and converted to a 2- family in 1966. In 1976 the finished room was added over the garage.

Motion: by Selectman Coombs, noting that the allotted 3 minutes for public comment is up, to allow 5 more minutes of comment.

Second: by Selectman Briggs

All in favor.

There was a discussion of the units in the house and over the garage, Selectman Briggs relaying the timeline as he understood it from the property folder. He said the original apartment in the home was done illegally.

Mr. Pascoe pointed out that he has a 3- bedroom septic plan, and said he pays taxes on three units.

Motion: by Selectman Coombs, to take this matter under advisement in order to consult with the Building Inspector and Assessor, and to look at the property file.

Second: by Selectman Briggs

All in favor.

Mr. Pascoe will get on the Board agenda for October 7.

Gabrielle Ribertone, 150 Main Street: Ms. Ribertone said her property is adjacent to the Fire Station, and so has been tested for PFA contamination. She said that now that the ambient standard has changed, her well now falls into the threshold of requiring treatment. She said her home is currently on the real estate market, and she thinks this will come up on the inspection; she would like information from the Board on how this will be remedied. She said that in talking to the EPA and State DES, she believed the Town is responsible for this, and assumes the contamination is from the Fire Station. She said she is concerned about limits to interested buyers or getting her market value, based on having poor water.

Chairman Heitz said that this begs the question if the Fire Station is responsible for all the contaminated wells. He said that people can contaminate their own wells by disposing of such things as rug cleaner down the drain or dumping it in the yard.

Selectman Briggs cited prior discussions, including with the EPA, about testing for other substances such as caffeine and artificial sweeteners, which also do not break down, to try to identify the source of contaminants. Road Agent Rich St. Hilaire said this had been brought to the attention of Dave Allwine of Stantec, but there has been no response to date. He added that three months ago he recommended that Mr. Allwine should be testing for trace chemicals; he said PFAs include a long list of chemicals, and that one well tested did not even have the same type that is found in fire fighting foam.

Mr. St. Hilaire added that in looking at test results, he could see that the high markers at the Fire Station were not the same high markers at other sites. He said he could not explain this, but it can be seen that they don't match.

Chairman Heitz said that the Town proceeded when the impact was small, and tried to do the right thing. Selectman Coombs said that the town was trying to do the right thing with what was fraudulent information given by the DES at the time. He said that they have not been totally truthful in this entire process, and that this should be repeated for the record. Mr. St. Hilaire agreed, saying that while this was all new to the DES at the time, the EPA has been looking at trace chemicals for years, and showing that in some cases the contamination is from the septic systems and not a site nearby; he said the DES is in constant touch with the EPA, so they should be aware.

Chairman Heitz mentioned the newly lowered standards and said this makes the problem look that much worse. He said he wants to be sure about where the chemicals are coming from before installing any more filtration systems. He mentioned results from near Country Pond that showed contaminants getting into wells from other venues.

Discussion continued on the possible sources of the chemicals, and noting that the fire-fighting foam has not been used in 20 years. Mr. St. Hilaire said that this is affecting a lot of people, and that he understands where Ms. Ribertone is coming from.

It was noted by Mr. St. Hilaire that the report on the well testing by Stantec is due, and that the contract with Stantec will be

Ms. Ribertone is on the agenda for the October 7 meeting.

OLD BUSINESS

Electricity Aggregate contract:

Selectman Coombs requested a legal discussion about this in non-public session at the end of the meeting.

Research into insurance coverage for environmental impacts:

There was a discussion of information shared by the Finance Director about a company that will research past insurance policies to see if any coverage of environmental impacts, such as the Town is facing with the PFA issues, can be found in prior policies. It was affirmed that there will be no cost associated, that the work would be done on a contingency basis.

All were in agreement to have Finance Director Cindy Kenerson pursue this.

Bids received for masonry work at Nichols Museum

Mr. St. Hilaire said that a recommendation had been received from SFC Engineering to award this work to the low bidder, Tito Engineering. The total bid, after adjusting for addition of an added \$50,000 under "other" that had been missing, was still the lowest bid, at \$159,000. Mr. St. Hilaire gave some details on the work to be done and the company. All references were good, and Mr. St. Hilaire said that he and Ernie Landry were here to recommend that a contract be prepared for the Board to sign.

Noting that the expense is high, Mr. St. Hilaire said that there is money available in the reserve fund, and a warrant article could be prepared as in the past. It would either be to authorize the spending of money already in the buildings fund, or to raise and appropriate funds for this purpose. There was a lengthy discussion of other needs of the building, including stained glass windows, double hung windows, and the roof. Mr. Landry said that the masonry is the most critical part, and the stairs were identified as phase one, most critical, at a cost of \$22,000. Selectman Wilson said he thought the company should be asked if they can break down the contract this way, and to do just a part at a time. Mr. St. Hilaire said that realistically, the stairs are the only part that can be accomplished this year, anyway.

There was a lengthy discussion of various costs and transparency to the voters of expenditures.

Stormwater Management:

Mr. St. Hilaire said that he had gotten the Chairman to sign the Stormwater Management plan in between meetings, as it was late getting done. He explained that the Plan is a document that has been discussed with the Seacoast Stormwater Coalition, and is a matter of a template submitted to the EPA by the coalitions. Every town in the Seacoast is submitting the same template. He said it is a boiler plate document, showing that the town is on task in a 5-year process.

Capital Improvement Plan, Highway:

Mr. St. Hilaire said he will be requesting a new truck for the building maintenance crew. He gave details of the needs, saying they have been using surplus equipment but at this point do not have a decent vehicle. Some details of cost and whether to put on a separate article or on the equipment line were discussed.

NEW BUSINESS: None

COMMITTEE LIAISON REPORTS: None

PUBLIC COMMENT II: Rick Russman was present but requested to speak to the Board in non-public session.

CORRESPONDENCE, APPLICATION, PURCHASE ORDERS

- Contract with Preti-Flaherty as Bond Counsel for the Fire Station Building was signed by the Chairman.

APPROVAL OF MEETING MINUTES:

MOTION: by Selectman Coombs to approve the public and non-public meeting minutes of September 23, 2019, as written.

SECOND: by Selectman Wilson

In favor: Heitz, Briggs, Coombs, Wilson.

Bids for Police Station Heating System

Chairman Wilson gave some details on the high efficiency heat pump system proposed, with backup propane furnaces. Two bids were received:

Mass Mechanical Company, Inc.: \$41,500

East North Atlantic: \$41,250

MOTION: by Selectman Coombs, to have Selectman Wilson go through the bids, discuss with Rich St. Hilaire, and come back with a recommendation at the next meeting (October 7).

SECOND: by Selectman Briggs

All in favor

Non-Public Session

MOTION: Upon motion of Selectman Coombs, **SECOND** of Selectman Wilson, it was voted by roll call to adjourn to Non-Public session under the provisions of NH RSA 91-A:3, II (I), Legal

In Favor: Heitz, Briggs, Coombs, Wilson; Motion passed.

The Board adjourned at 9:43 PM.

MOTION: Upon motion of Selectman Briggs, **SECOND** of Selectman Wilson, it was voted by roll call to return to public session at 10:10 PM.

In Favor: Heitz, Briggs, Coombs, Wilson; Motion passed.

MOTION: by Selectman Briggs to seal the non-public meeting minutes for an unspecified length of time, as the divulgence of the information would render an action ineffective.

SECOND: by Selectman Wilson

All in favor via roll call vote.

Discussed in Non-Public Session:

A question regarding real estate negotiations; a change to a previous vote.

Decisions made during Non-Public Session:

The Board voted by unanimous roll call vote to reaffirm authorizing Finance Director Cindy Kenerson to sign the Electricity Aggregate Contract with Rockingham Planning Commission, at the three-year contract rate of .0736 cents per kilowatt hour.

Adjournment:

MOTION: by Selectman Briggs to adjourn at 10:15 PM.

SECOND: by Selectman Wilson.

All in favor.

Respectfully submitted,
Susan Ayer
Administrative Assistant