

Kingston, New Hampshire
Board of Selectmen
Meeting of April 23, 2018
MINUTES- DRAFT

PRESENT: Mark Heitz, Chairman; George Korn, Phillip Coombs, Kevin St. James and Donald Briggs, Jr., Selectmen.

The Chairman called the meeting to order at 7:00 PM.

PUBLIC HEARING: To Review Reasons for Calling a Special Town Meeting

The Chairman said that a Special Town Meeting is to be held on May 9, 2018 at 7:00 PM at the Town Hall. He read from a letter dated April 2, 2018 from the New Hampshire Department of Revenue Administration (DRA), which informed the Selectmen that the MS-737 form was not posted with the annual meeting warrant on January 29th, as prescribed by RSA 32:5, VI. For this reason, the DRA found that the March 13, 2018 annual meeting was procedurally defective and invalid. In order to bring the Town into compliance and ratify the budget, a procedural defect meeting needs to be held.

Rick Edelman of the Budget Committee said that he would like it to be known that the MS-737 was completed and turned in on time but was lost.

Chairman Heitz said that the Town Moderator will run the meeting on May 9, and whoever shows up will vote.

There being no further comment or questions, Chairman Heitz made a **MOTION** to close the public hearing, at 7:05 pm.

SECOND: by Selectman Korn, approved by all.

Review of Prior Meeting Minutes

MOTION: By Chairman Heitz to approve the meeting minutes of April 16, 2018, as written.

SECOND: By Selectman Korn.

Selectman St. James pointed out correspondence forwarded from Recreation Director Paul Butler that asked for corrections to the minutes, page 2, second and third paragraphs. These corrections had been printed for approval:

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“ Mr. Butler then asked for direction on how to handle a ~~request from a parent to provide a situation in which one-on-one helper~~ to a child with special needs. The child has this ~~one-on-one~~ supervision when in school, and the parent feels *whether* it is needed then required at camp as well. Mr. Butler said that generally this is a safety issue, as the child requires more supervision than the usual 1:10 ratio. *He said that he wants to be sure everyone is as safe as can be, but did not know if Kingston Recreation is obligated to provide extra help.*

There was a discussion of who would pay for the extra help, as the child would be at camp for 40 hour weeks. It was noted that the school system pays for the extra person

when the child is at school, but that school is mandated while *the Town is not mandated to provide recreation camp is not*. The cost of providing the extra help was considered, as well as setting a precedent for future such requests. Issues of liability for a non-Town employee and also ADA compliance at the camp were discussed.”

MOTION: By Selectman St. James to approve the April 13 meeting minutes as amended.

SECOND: by Selectman Coombs, approved by all.

MOTION: By Selectman St. James to approve the non-public meeting minutes of April 16, 2018, as written.

SECOND: By Selectman Briggs, approved by all.

OLD BUSINESS

Fire Station Building Committee

Eleven letters of interest have been received to date, along with the recommendation of the Fire Chief for three Fire Department personnel to serve. It was noted that it had been decided to include one Selectman and the Road Agent, and that the idea was to include a cross section of residents in a committee of eleven. The Selectmen will review the letters in order to select six people to serve on the committee. The Committee will elect its own Chair once formed.

Hawks Ridge Development

The Chairman opened discussion on problems at the Granite Fields Condominium site owned by Hawks Ridge of South Kingston, LLC by asking for Building Inspector Robert Steward, Town Engineer Dennis Quintal and Planning Board Chair Glenn Coppelman to come forward to be available for questions and input.

It was asked and answered that the owners of record for the site are Hawks Ridge of South Kingston, LLC, Robert Villella and James Dufresne.

Selectman Coombs said that the reason this matter has come to the Selectmen is that during the last Planning Board hearing with Hawks Ridge, it was identified that site plan violations going back 6 months have not been resolved. Also, clarification was requested on the scope of the cease and desist order issued in October by the Building Inspector. Selectman Coombs said that the matter is brought before the Selectmen for enforcement action.

The cease and desist letter sent by Mr. Steward on October 4, 2017, addressed to Robert Villella, 3 McIntosh Lane, PO Box 492, Hampstead NH and copied to Steven Cummings, PE and James Dufresne, was read:

***“A structure, the permit for which was issued for 6 Mulligan Way as referenced above, is actually located and constructed to an area on Bent Grass Circle in the same development, contrary to the approved site Plan (RCRD D-37717).*”**

Article 904-Site Plan review, of the Town of Kingston's Ordinances, Rules and regulations (09.04.11B as amended) states that any proposed changes from an approved site plan will require the prior approval of the Planning Board. Cease all construction immediately, relative to this project and contact the Planning Board to arrange for modification review of the site plan."

Selectman Briggs said that the opinion of the attorney (for Hawks Ridge) was that this was not meant to shut down the entire project, and that administrative enforcement procedures were not followed. He said that specifics should have been spelled out. Mr. Steward said that at the time of the letter, the intent was to get the attention of the builder, not to issue a full cease and desist. He said he did not send the letter via certified mail.

Chairman Heitz asked Mr. Coppelman if it was usually the Planning Board itself that would request cease and desist action of the Selectmen. Mr. Coppelman said that it had been hoped that work could continue to remedy the site plan issues, and that a full cease and desist order was not thought to be necessary in October, but that since then, a lot of problems have come to light in addition to the matters in the cease and desist letter sent by Mr. Steward.

Selectman Coombs said that the site is a mess, the residents in completed homes are being impacted and that the Town needs to get in front of the problem.

Chairman Heitz asked if any building permits had been issued since the October letter was sent. Mr. Steward said no, but work continues on the other homes. No additional homes are to be built until the site is in compliance. Selectman St. James asked how many of the parcels remain unbuilt, and Mr. Steward said there are six or seven left with no activity.

The Building Inspector said there are currently four active permits as well as the one for the house that was constructed in the wrong location. He said he was asked and granted permission to close it up for the winter, but it is not legal.

Chairman Heitz said that of three homes, only two were built, and another was put across the street, and wondered if an amended site plan had been submitted. Mr. Coppelman said that in fact the Planning Board expected to see an amended site plan but do not have one to date. The applicants have been before the Planning Board several times, and the case has now been continued once again, but while there has been a lot of information and testimony offered, there is no formal plan to address amendments.

Mr. Quintal said that there was an amended plan submitted, but it was just for the relocation of the building, and did not address drainage and storm water issues. This, plus residents sharing concerns, triggered the Planning Board to authorize a site inspection by Mr. Quintal, during which he found a number of things that were not in compliance with the site plan. These findings are in his site inspection report of December 15, which includes photographs and has been submitted to the Selectmen.

Among other things, he said he found that a swale had been filled in, and there was water in the driveways and down the edges of the road. He said that this is a problem in the cold weather as when the water freezes it breaks up the hot top. He added that this is a liability to the homeowners and an illustration of why the development should be built in accordance to the approved site plan.

Selectman St. James said that he felt it is time to act, as the owners not only moved a house, but swapped #4 and #20, and went to the Registry of Deeds with those plans without notifying the Planning Board. He said he felt the owners were acting in a devious fashion, and that the Selectmen need to work together with the Planning Board.

Selectman Briggs said that he was told by Jim Dufresne that the whole site was under a cease and desist order. Mr. Steward said this is not the case, that work is still going on there but no additional permits are being issued. Selectman Briggs asked Fire Chief Bill Seaman to then say why he told contractors not to go out to do work on a house. Chief Seaman said that he had given a verbal okay to backfill but there has been no final inspection.

A letter was submitted to the Board written by Robert Vilella authorizing William Bartlett to represent him and Hawks Ridge of South Kingston, LLC at this meeting. Mr. Bartlett said he is here on his own behalf, as the builder of the house on Lot 1, as well as to represent Mr. Vilella.

Mr. Bartlett said that Mr. Vilella has suggested that an additional \$10,000 could be added to the engineering bond, and then Mr. Quintal can work with Hawks Ridge. There was a discussion of having Mr. Quintal oversee the project and what can be done to bring the site into compliance with the current site plan.

Mr. Quintal pointed out where modifications to the site plan need to be done in order to deal with drainage. He said that one house is so close to the road the swale can't be put in, and where house #4 was moved some things need to be redesigned; he said he can follow the plan and go out and check things, but it is not his purview to design these items for the owners.

William Bartlett said that three or four weeks ago he went forward to put in a propane tank at 2 Bent Grass Circle. The crew came in and dug the hole, but when he went to the Fire Department for a permit, he was told they could not issue one, that the Building Inspector had told them they can't. Mr. Bartlett said he can't heat the house in order to tape and mud the walls, and that the stop order makes no sense.

Chief Seaman clarified that the hole was blasted and the tank already in the ground, but he was asked to hold off on the inspection until after the Planning Board meeting.

Chairman Heitz said that something is needed to motivate the owners to follow the plan as submitted and approved. Mr. Bartlett said there should be some compromise; his house is due to close in 20 days. He said that there are three builders on site.

Selectmen Briggs asked Mr. Quintal and Mr. Steward if they had issues with the two builders present who are building houses separate from Hawks Ridge, Mr. Bartlett and Todd Fitzgerald, owner of House #6, Unit 3. Mr. Fitzgerald said that his house is 98%

complete, has a tentative closing date of May 31, and he doesn't believe it has any issues with drainage.

Mr. Quintal said that the problem is that all the home sites need to be done according to the site plan in order to solve runoff problems, and that he does not know if these two are according to plan or not. He said there are two separate drainage areas. Selectman Briggs suggested the Selectmen could go and take a look, or Mr. Quintal could go if money was added to the engineering bond.

Selectman St. James asked why there is not a revised plan. There was no answer to this, but it was noted that the engineer has been on site with a design crew recently.

Road Agent Richard St. Hilaire asked to give his input and said that he is in agreement with Mr. Quintal, and that what is on the ground now has no relation to the approved plan. He said the whole project has to comply and that this will be a Town road, which includes all drainage. He said that the Planning Board did not bond the road, and suggested that from now on all roads should be bonded. With no bond and no inspections, problems such as the builder filling swales take place.

Selectman St. James said he thought the Town should go forward with a full cease and desist order. Mr. St. Hilaire said that what is in place is not a full cease and desist. Selectman Briggs said that the Town is not doing due diligence and the current cease and desist is illegal, leaving the Town liable. Mr. Briggs said that this should be done legally or not at all. Mr. St. Hilaire said he worries about the EPA, and that the Town is responsible for seeing that their rules are enforced.

There was a discussion of whether to issue a cease and desist order or table until the Planning Board comes forth with a request. Chairman Heitz said that in the past, if a project is not done in compliance with the plan signed by the Planning Board, they would come to the Selectmen for a cease and desist. He said that in this case, what needs to be done is already in writing.

Mr. Steward was asked if work could be started on the 6 empty lots where permits were issued a year or two ago. He said that the permits were issued and never started, for unknown reasons, but that the site plan is in violation and that is why this discussion is taking place. It is the responsibility of the developer to have the whole thing in compliance.

Mr. Fitzgerald said that he is nearly finished and nobody stopped his permits; Mr. Bartlett is only waiting for an inspection on his propane tank.

MOTION: By Chairman Heitz to allow the two houses currently under construction being built by Bill Bartlett (owned by Teatad, 2 Bent Grass Circle, Map R3, Lot 4-4-1) and Todd Fitzgerald (6 Bent Grass Circle, Map R3 Lot 4-4-3) to be completed as long as they comply with the existing site plan; to rescind all building permits that have not been acted on as of tonight; and to issue a Cease and Desist order on all work in progress by Hawks Ridge of South Kingston, LLC.

SECOND: Selectman St. James.

The form of the Cease and Desist (to utilize the report written by Dennis Quintal in December) was discussed, as well as the projects to be stopped by it. Mr. Bartlett noted that two houses in process owned by Mr. Villella are complete and waiting to close, but the consensus of the Board was that those need to be under the Cease and Desist as Mr. Villella is part owner of the company causing all the problems.

Selectman Coombs asked that money for replenishment of the engineering bond be added in the amount of \$5,000. Mr. Quintal said he thought this would be sufficient.

IN FAVOR: Heitz, Korn, St. James, Coombs. **ABSTAIN:** Briggs. Motion carried.

LOCO Running: Stonyfield 5K and Fair

Arlon Chaffee and Mike St. Laurent of LOCO Running were present to review plans for the upcoming Stonyfield 5K race and fair to be held on the Plains on May 12.

Items noted:

- Permit has been issued; certificate of insurance submitted
- Facilities Use/License Agreement, including alcohol service requested, is now before the Selectmen for signatures
- LOCO representatives have met with all Town Department heads, who are comfortable with the plans
- Representatives met with the electrical inspector. Electrical poles have been tested.
- Course map is on file with the Town; residents will be notified by signs along the course which will be placed the week before the race.
- The race will be about one hour in duration, beginning at 10:00 am.
- The fair will include 50 vendors, 8-10 of which will be food/drink related. A beer garden will be catered and the caterer has obtained an off-premises license.
- The fair will be family oriented, free and open to the public. There will be a petting zoo, a climbing wall and a kids' race.
- There are expected to be around 1800 runners, and twice to three times that many spectators and fair goers.

The Selectmen agreed to sign the Facilities Use/License Agreement.

OLD BUSINESS

Recreation - Summer Camp

Recreation Director Paul Butler returned to follow up on discussion at the April 16 meeting, regarding handicapped access at the camp. He said he had spoken to a number of people including contacts at the New Hampshire Municipal Association, and received various answers to the question of whether the camp needs to comply with the Americans with Disabilities Act (ADA).

Mr. Butler said that the last call he made was to an attorney with the Town's insurance company, Primex, who said that each case should be taken separately, and reasonable accommodation made according to the individual disability.

Mr. Butler also said he had talked to the parent of the child who has one-on-one help in school, and the parent said the child is okay with no special supervision. In that case, if the parent does not want the coverage, they can sign a document saying it has been

pursued and the parent declined. He said his contact at Primex said that the Town is not required to grant every request, but does need to offer reasonable accommodation. Some requests are not reasonable, such as changing the size of a soccer field to allow a disabled child to play.

On a related topic, Mr. Butler researched ADA compliance on the playground at the camp. It was decided that rather than have the state come in to inspect it, the Town will continue to work with Primex on a case by case basis.

NEW BUSINESS

Kingston Days

Lynn Gainty, Chair of the Kingston Days Committee, was present to talk about the 2018 event with the Selectmen.

Chairman Heitz said he had some concerns about the vendors' insurance binders, and asked if they all name the Town as an insured. Ms. Gainty said that this can be done, but for years has had all food vendors sign a general liability clause that they are responsible. Chairman Heitz asked if this has been reviewed by the Selectmen, and Ms. Gainty said she got the form from the Town years ago.

Selectman Briggs said he had a package of material from Primex that includes the options of a certificate of additional insurance or a TULIP policy, for a one-day event.

Selectman Coombs said that a million dollar insurance policy seems like a lot for crafters, but reasonable for food vendors. There was a discussion of which vendors have their own insurance, and the question of whether or not insurance was needed for the carnival workers who camped at the Little League field. Chairman Heitz said that in part, the Kingston Days Committee has operated separately from the Town, but he would have liked to know about the use of the field as a campground a little earlier. Ms. Gainty said she had notified abutters and there was an insurance policy in place. She also said that she and Chief Briggs had done an extensive search, and talked to the Little League and Department heads and the field was the best choice. She added that there were no complaints about the use of the field, and the campers left it as they found it.

There was a discussion of how much involvement the Selectmen should have with Kingston Days, and it was agreed that there was no need to micro-manage the event, but that the Board should be kept informed of changes and insurance liability.

Volunteers need to fill out a volunteer form and bring to Finance Officer Cindy Kenerson. Ms. Gainty gave the Selectmen the application for a Facility License Agreement for the alcohol vendor for the upcoming fundraising dinner, to be held during the 2018 Kingston Days, but raising funds for the 325th Celebration to take place in 2019.

Chairman Heitz said he would like to know how much the costs of the 325th celebration are being offset by Kingston Days events.

On another topic, Ms. Gainty informed the Selectmen that she is the new Chair of the Budget Committee.

Administrative Items

- A traffic scoping meeting regarding a new project on Route 125 near Carriage Towne Plaza is to be held on May 9 in Concord.

- A Facilities Use application was received from Seacoast United for use of the Magnusson baseball field. It was decided to get input from Little League and Rich St. Hilaire before signing.
- An email from a resident, reporting ticks at Magnusson Field will be sent a reply saying that the Town only sprays for mosquitos when monitoring shows the presence of West Nile or Triple E in mosquitos.

Fire Station Contamination Report

A preliminary report of testing at the fire house was received for review. The final report is still pending, which will direct the Town how to proceed with abatement. Selectman Briggs said he would like to pursue a grant to be used for abatement, but will need the final report from the state. It was agreed to have Selectman Briggs do the preliminary steps for the grant.

Adjournment

There being no further business before the Board, the meeting adjourned at 10:20 PM.
(**MOTION:** Selectman St. James; **SECOND:** Selectman Korn, unanimous)

Respectfully submitted,

Susan Ayer
Administrative Assistant