

**Kingston, New Hampshire
Board of Selectmen
Meeting of July 15, 2019
FINAL MINUTES**

The meeting was called to order at 6:45 PM in the Meeting Room at the Town Hall.

PRESENT: Chairman Mark Heitz; Kevin St. James, Vice-Chair; Donald Briggs, Jr., Phillip Coombs, Richard Wilson, Selectmen.

Non-Public Session

MOTION: Upon motion of Selectman St. James, **SECOND** of Selectman Heitz, it was voted by roll call to adjourn to Non-Public session under the provisions of **RSA 91-A:3, II(b)** The hiring of any person as a public employee.

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

The Board adjourned at 6:50 PM.

MOTION: Upon motion of Selectman Briggs, **SECOND** of Selectman Wilson, it was voted by roll call to return to public session at 7:10 PM.

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

Topic(s) discussed: Hiring of cemetery sexton

Decisions made:

MOTION: by Selectman Briggs to hire Phillip Coombs as Cemetery Sexton, to work with the current Sexton until the end of 2019 and then to take over in 2020.

SECOND: by Selectman St. James

In favor: Heitz, St. James, Briggs, Wilson; Recuse: Coombs; passed.

SCHEDULED APPOINTMENTS:

Richard Devlin, 3 Cardinal Road

Richard and Denise Devlin introduced themselves and said they had bought the Cardinal Road property in August of 2006. Mr. Devlin said that in late 1999 the previous owner got approval from the town to build a 2-story shed/barn. He said it is well built, with a concrete pad, heat and electricity.

Mr. Devlin brought paperwork for the Selectmen, including an updated survey done recently. He said that just before the closing, the mortgage company saw that there was a problem with the barn encroaching on Town land. At the time, Mr. Devlin said his attorney arranged that the price would be reduced in case the barn needed to be torn down. However, he said he then delayed removal of the building as it was useful, but now that he is planning to sell the property, the problem needs to be confronted.

Mr. Devlin had prepared optional proposals for bringing the barn into compliance, including an easement, swapping of equal square footage along a shared boundary, and purchase of a small piece of the Town property. He said that in order to keep the cost to himself down, he preferred an easement. He also said that the Town parcel is wet and it would be hard to set a price on it.

Selectman Briggs said that essentially 12' x 11' of the barn is on Town property, and it was noted that the Town's ordinance calls for a 20' setback. He pointed out that the permit for the building was issued based on the owner's drawing showing a 42' setback, and said that usually when it is close a survey is required.

There was a discussion of the various options, during which Mr. Devlin said his purchase price had been reduced by \$4,000 due to the issue. Chairman Heitz said that he worried about Town liability if an easement was granted. He said he thought that a fair price for buying a piece of the Town land, 13 years later, would be \$4,000 to \$5,000. Mr. Devlin said that at that price he might be more inclined to tear the building down. Selectman St. James said he thought a land swap would be easiest and not too expensive, as the survey is already done and there should only have to be one closing. Selectman Coombs said he favored either an easement or a land swap; Selectman Wilson said he thought the swap would be a simple lot line adjustment through the Planning Board.

MOTION: by Selectman Briggs, to do an equal land swap, as shown on the lot line change plan provided by Mr. Devlin.

There was no second.

Road Agent Rich St. Hilaire suggested tabling the matter until the next meeting so that he can take a look and make sure the Town is not giving up a drainage easement.

There was also discussion about getting input from Town counsel and Selectman Wilson suggested that Mr. Devlin should get on a Planning Board agenda in case it is needed, to beat the deadline.

MOTION: by Selectman Coombs to table the matter until the next meeting to allow the Road Agent and Town Counsel to give input, and to better understand the process needed.

SECOND: by Selectman St. James

All in favor.

Opening of Sealed Bids for Surplus Police Department Equipment

Three bids were received; two offered bids on all six vehicles/equipment offered, the third bid on two items.

After reading the bids, it was determined that KLG Development was the high bidder on all six items. Selectman Briggs, representing the Police Department, was tasked with reviewing the bids and contacting KLG to finalize the purchase.

Opening of Sealed Proposals for Police Prosecutor Position

Two bids were received for this position, from Coyle Law and Burleigh Law. Chairman Heitz said that this request for proposals was put out because the Town was on a shared program with the County, which has been dissolved.

Coyle Law proposed a contract for \$22,000 per year; Melissa Burleigh's bid was for \$19,000 per year.

MOTION: by Selectman St. James, to authorize the Police Chief to look over the proposals and come back with a recommendation.

SECOND: by Selectman Wilson

All in favor.

All-American Assisted Living: Certificate of Occupancy

Landon Kessler, Brendan Willis and other representatives of the All American Assisted Living project at 4 Main Street were present to discuss final steps toward receiving a Certificate of Occupancy for the building. Also present was Road Agent Rich St. Hilaire. The Selectmen were in receipt of a report from Town Engineer Dennis Quintal after a site visit on Friday, which gave updates on progress at the site. Mr. St. Hilaire said that he was not on the site with Dennis but he had read the report, which included a list of tasks that still need to be done.

Mr. Kessler said that they need the CO to submit to the state for the permitting process. Mr. St. Hilaire said that this has been a long drawn-out process that has been frustrating because some things are still not done that should have been done before the foundation went in. He said they are not earth-shattering, but he wants them to be done right. He added that if the CO is to be issued, it should be with the understanding that only the office people could occupy the building at this time, and that no residents can be moved in until the items on the punch list are completed.

Mr. Kessler said that even if they get the CO today, people would not be able to move in until the State does inspections, and that they will not entertain anything without a CO. He said the company is just trying to move forward.

Mr. Willis, the project superintendent, said that he was in front of the Selectmen in November and did not think there was any misspeak. He said all the swales have been built and have established grass on them. Mr. St. Hilaire said they are not covered with grass as they should be, which is not a big deal but has to be done. He asked about the sewer effluent pump, and Mr. Willis said they have been waiting on that, and once it is inspected by Mr. Quintal and the Health Inspector, they hope to go forward.

Selectman Coombs asked if the Assisted Living group concurred with the punch list items from Mr. Quintal's report. They responded that they also want the job done right. It was also acknowledged that impact fees will be paid.

MOTION: by Selectman Coombs, to issue a conditional Certificate of Occupancy based on the 8 items identified by the Town's Engineering Consultant.

Mr. Landon said that the State will not look at the needed permits if the CO is conditional.

After further discussion, Selectman Coombs modified his motion:

MOTION: by Selectman Coombs to issue the Certificate of Occupancy for All American Assisted Living at 4 Main Street, with an additional letter signed by the applicants agreeing to accomplish the 8 items on the engineering punch list, as well as any further items identified by Truslow Resource Consulting in their last memorandum.

SECOND: by Selectman Briggs

After further discussion in which Mr. Willis said the pump should be started up tomorrow, and other items should be completed by the end of the week, the motion was further modified:

MOTION: by Selectman Coombs to issue the Certificate of Occupancy for All American Assisted Living at 4 Main Street, with an additional letter signed by the applicants

agreeing to accomplish the 8 items on the engineering punch list, as well as any further items identified by Truslow Resource Consulting in their last memorandum. All inspectors must sign off on the CO and anything not completed will be tied to the bond. **All in favor.**

Fire Station Building Committee - Contract with SMP Architecture

Mark Furlong of the Building Committee was present and had provided a copy of the proposal reviewed in May, which had been on hold until the Purchase and Sale agreements were signed. He said he is now asking for approval for the fees outlined in the proposal, and also to engage a construction manager.

There was a discussion of what is included for the cost of \$23,100 listed on the agreement; it was pointed out that support for selection of a construction manager was listed under "Alternate services upon request" and there would be an addition fee of \$3,500.

MOTION: by Selectman St. James, to approve the contract with SMP Architecture and authorize the Chairman to sign the documents approving up to \$26,600. Any additional fees will need to come back to the Board for approval.

SECOND: by Selectman Wilson

In discussion, Mr. Furlong said that the funds will come from Fire Department impact fees, which total around \$55,000 at this time.

Selectman Coombs said that he is concerned about the vague language under "Alternative services upon request", such as the words, "discuss", "assist" and "review". He said he wants to be sure that "support the Town on selection of a Construction Manager" means they will take care of qualifying applicants. Mr. Furlong said that the company has done this many times, and also that all documents developed will come back for review. Selectman St. James said that SMP has done several fire stations in New Hampshire, and also that they have made themselves available to the town for questions.

All in favor.

Selectman St. James said that while on the topic, the Finance Committee wants to know how the Building Committee is planning to go about financing the new fire station building. Mr. Furlong said that four options have been identified:

1. Dump fund.
2. 100% bonding
3. Half of each
4. Bond, make payments, but use interest from dump fund.

Selectman St. James said he liked option 4. Chairman Heitz said this would mean using the interest from the dump fund to pay interest on the building loan, with tax money paying the principal, which would lessen the tax impact. There was a consensus of Selectmen that they did not want to use the dump fund itself to pay for the building. Chairman Heitz said that the Board had looked into the option of investing the money currently in the landfill fund in order to, in essence, allow the Town to lend itself money.

Mr. Furlong said that they had had a preliminary discussion with the Trustees of the Trust Fund, and there did not seem to be a mechanism for doing that. Selectman Wilson said he would like to see a chart of what the funding would look like over 20 years. Mr. Furlong said that when the process is further along, they can reach out to a municipal bond bank.

PUBLIC COMMENT 1:

Glenn Coppelman, Chair of the Planning Board, said he would like to make a few clarifying comments about the business on Route 125 that came to the Selectmen at the last meeting. He said he was not present as there was no notice and the matter was not on the agenda. He said he did, however, watch the meeting and found it painful.

Mr. Coppelman said he recognized two good positions of the Selectmen. One was when Selectman Coombs said the Board was being asked to act on a Planning Board issue, not in the purview of the Board of Selectmen. He said the other was when Selectman St. James pointed out that the matter was brought up under Public Comment, and should not have gone to the extent of a vote and decision.

Mr. Coppelman then said that there was public comment indicating that the Planning Board was dragging its feet and holding up the applicant. He said this was not the case, that the Planning Board does not currently have an application from this applicant to act on. They had reached an end point that could not be resolved and the Planning Board advised them to come back in April if they wanted to do something more than what is on the approved site plan. He said they never came back and now are coming to the Selectmen with the summer half over.

With no application pending with the Planning Board, Mr. Coppelman said the business is only able to do what is on the approved site plan. He said he was able to find minutes from 2008 when Rick Korn took over the business, and needed to get a liquor license and permission for outside serving. At that time the Planning Board had reported to the State and to Mr. Korn that the Pondview had done some serving of liquor outside.

(On a motion by Selectman Coombs, Second of Selectman St. James, it was approved by the majority to allow the speaker 10 more minutes.)

Mr. Coppelman went on to say that the approval in 2008 was based on liquor served in the gazebo and a screened area not defined. Mr. Coppelman concluded that the Planning Board is always happy to sit and discuss this or any other matter with the Selectmen.

Selectman Coombs said that a lot of information was discussed at that meeting that was not previously provided. He added that procedures were not followed, noting that the business owners got eight people to come to the meeting on their behalf but could not come to the Planning Board.

Chairman Heitz said that the Board of Selectmen is the enforcement branch of the Town. He said that they have followed up on requests in the past when the Planning Board pointed out violations. In this case, it was brought to the Board's attention that the applicant had already been approved for what prior owners had done, after being led to

believe they had refused to follow criteria. He said they pursued the note on the recorded site plan that says they can do what the prior owner had done. Then the owner came in with a copy of the liquor license obtained by the prior owner, and asked the Board to issue a letter to the Liquor Commission asking only for the same. Chairman Heitz said that unfortunately the Board was in the position that the Planning Board had approved and recorded that plan and the business owner had documentation. So he said he did not feel the Board acted outside of its capacity, as they issued the letter based on the recorded plan.

Selectman Wilson added that the Board had reached out to counsel on the matter as well.

OLD BUSINESS:

Paving bids 2019

Road Agent Rich St. Hilaire presented bids for paving work. He said that his recommendation was to not take the lowest bidder, but to hire Bell and Flynn. He said that the other bidders have hidden costs, and that having worked with Bell and Flynn in the past, he thinks they will do a better job.

There was some discussion of past work in town. Selectman St. James asked if the town has a policy of taking the low bidder, and Chairman Heitz said that at the discretion of the Board a bidder other than the lowest can be chosen.

Selectman Coombs said that as the Highway liaison, he has seen that there are a lot of challenging roads and he feels it is in the best interest of the town to choose whoever the Road Agent thinks will do the best job and with more attention to detail.

MOTION: by Selectman St. James, to award the 2019 paving project to Bell and Flynn as recommended by the Road Agent.

SECOND: by Selectman Wilson

All in favor

Selectman Wilson then asked Mr. St. Hilaire whether the Conservation Commission has asked him to place trash and recycling bins at Greenwood Pond, and Mr. St. Hilaire said that he has not been asked, but that the policy should be carry in/carry out as at State parks. He said he has put them out in the past but the situation is abused by people bringing their trash there if they miss their pickup day, etc.

It was agreed to discuss this matter at another time.

PFA Information session

Selectman St. James said he had talked to the NH DES and they would be willing to come out any time to participate in an informational session, but would like a list of probable questions ahead of time. This meeting will probably take place in September or October; Selectman St. James said that he would like to reach out to the Newton Selectmen and prepare questions.

There was no objection to having Selectman St. James reach out to Newton, and for people with questions to be directed to him or to the Administrative Assistant.

NEW BUSINESS:

Kingston days food vendors

Selectman Coombs said that this matter was discussed at the inspectors' meeting on Thursday. He said that when the Health Officer's duties were reviewed, it was affirmed that restaurants are not included. However, it was brought up at the meeting that there are vendors on Town property during Kingston days (and at the recent brewfest) that are not being inspected. Selectman Coombs said that A, this could be a liability, and B, asked if the Health Officer should be asked to inspect those facilities to make sure basic sanitation requirements are being met. He said he wanted to bring this up to the Board, whether Health Officer duties should be expanded to these duties for Kingston Days, as it is Town property and a Town event.

Selectman Wilson said that he had been told that vendors can't operate unless licensed by the State. Selectman Coombs said that is a lax system by all he understands. Selectman St. James said that most food trucks have licenses, but wondered who is making sure that the licenses are current and checking the basics such as hand washing and use of gloves. Selectman Briggs asked if he should contact the State DES. Selectman Coombs said that yes, it would be worth seeing what their parameters are for that type of license, and what they expect in that temporary environment. Then, he said, he did not think it would be unreasonable to ask the Health Inspector to go through during his regular hours to make sure the basics are covered. Selectman Briggs said that alternately, maybe the DES will send someone of their own. It was agreed to have Selectman Briggs call the DES.

Committee Liaison Reports

Selectman Coombs said that he is trying to set up the Inspectors' meetings better with an agenda, and to not let things slide.

Selectman St. James asked where the restructuring of permit fees stands, and Selectman Coombs said that is an action item once they get through a backlog of code violations. He said that as that most of the inspectors work in other towns, they are familiar with fees, and this project is on the horizon.

Police Department

Selectman Briggs asked for Board permission to repair the Gator damaged by the bonfire. He said the estimate from the insurance carrier was \$4270.55, but the check was reduced by a \$1000 deductible. All agreed for the repair to be done; the \$1,000 will be made up if possible.

Selectman Briggs then said that police outside detail rates have not been raised in 7 to 9 years, and he proposed raising the administrative fee from \$14 to \$16, and the hourly rate from \$40 to \$45. He said that most other towns are higher; the total amount for Kingston would go to \$71.

MOTION: by Selectman St. James, to increase the Police detail rate from \$54 per hour to \$71 per hour, as stated by the Police Chief, effective immediately.

SECOND: by Selectman Wilson

In favor: Heitz, St. James, Coombs, Wilson; Abstain: Briggs

PUBLIC COMMENT 2

Robert Whitney of Dorre Road reported what he described as an age old problem on Dorre Road. He said a contractor came up the road in the last couple of days with an unregistered tractor loader and smashed into the wall next to his shallow well, so that contaminated road water is running down next to his well. He would like the Town to put a cease and desist order as federal law says that road runoff needs to be 100 feet from all shallow wells. He said he will be suing this person, and that these are not new problems.

Selectman Briggs said that the driver called and he went down to investigate, took pictures and spoke to the Road Agent. He said he talked to Mr. Torromeo and was told he is working with the Road Agent to solve the problem of the road run-off.

CORRESPONDENCE, APPLICATIONS, PURCHASE ORDERS

- Facilities Use License agreement with Smuttynose Brewing for a beer tent during Kingston Days we re-visited, as the Town was waiting for an updated insurance certificate as well as a copy of the State liquor license. These have been obtained. On a **MOTION** by Selectman St. James, **SECOND** of Selectman Coombs, the matter was tabled until it is determined how many police officers may be needed, and any other questions regarding the event can be answered.
- A Prorated Assessment for Damaged Buildings was reviewed, and the revised assessment for 2019 recommended by the Assessor was approved.
- A request was received from the Heritage Commission to have the Town Charter displayed at the museum during Kingston Days, and also to make water available to a historical encampment from the Town Hall. Selectman St. James made a **MOTION** to approve both requests, **SECOND** by Selectman Wilson. There was a discussion of the matter of potable vs. non-potable water after which it was agreed that the water from the Town Hall is not to be used; motion amended to approve only the display of the Town Charter. **All were in favor.**
- One Veterans' Credit was approved.
- The Intent to Excavate form for Dan Parks on Small Pox Road was signed.
- A request from a resident for a refund of Town car registration fee was denied (**MOTION** by Selectman St. James to refund, **SECOND** by Chairman Heitz; In discussion it was noted that the Clerk's Office did all the paperwork and also that this would set a bad precedent. **All opposed; request denied.**
- After a discussion of the language in the 2019 Warrant Article regarding rebates on tax discounts mistakenly not taken, two rebates were approved.
- A Facilities Use request for the Sanborn Indians to use Comeau Field was approved.
- A Facilities Use request for a performance of the 39th Army Band at the Plains in front of the Fire Station on August 19 was approved.
- A memo from Town Planner Glenn Greenwood regarding trees cut at the Bresnahan project was discussed. A buffer of trees left on the project is now undermined by the removal of adjacent trees, and they are now a safety issue as they are falling down. The second part of the memo reported on a stock pile at the Galloway property which has grown exponentially in the past year. These

matters will be sent back to the Planning Board for clarification of what is being requested.

- A request to keep the band stand open during Kingston Days was discussed, and Ernie Landry was authorized to open it for the entire time frame.
- The Administrative Assistant was given permission to attend the Brownfields to Brightfields solar conference or send another interested party, as long as there is no charge.
- A letter from the Town Clerk was reviewed that asked for guidance on whether she can register vehicles for a business owner who has no business occupancy permit. It was agreed that no registrations can be issued to a business before the business occupancy permit is issued.

APPROVAL OF MEETING MINUTES:

MOTION: by Selectman Coombs to approve the public and non-public session meeting minutes of July 1, 2019, as written.

SECOND: by Selectman St. James

In favor: Heitz St. James, Coombs, Briggs, Wilson;

Non-Public Session

MOTION: Upon motion of Selectman St. James, **SECOND** of Selectman Coombs, it was voted by roll call to adjourn to Non-Public session under the provisions of **RSA 91-A:3, II (a)** The dismissal, promotion, or compensation of any public employee

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

The Board adjourned at 9:46 PM.

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

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

Discussed in Non-Public Session: Recreation employee hire. Police officer hire.
Decisions made: New employee hires for these two departments were approved.

Adjournment:

MOTION: by Selectman Coombs to adjourn at 10:15 PM

SECOND: by Selectman Wilson

All in favor.

Respectfully submitted,
Susan Ayer
Administrative Assistant