

**Kingston, New Hampshire
Board of Selectmen
Meeting of November 30, 2020
Final MINUTES**

The meeting was called to order at 6:30 PM in the Meeting Room at the Town Hall.

PRESENT: Donald Briggs, Vice Chair; Electra Alessio, Richard Wilson, Kevin St. James, Select Board Members.
Chairman Phillip Coombs arrived at 6:50 PM.

APPOINTMENTS:

Library Trustees and Library Director: Personnel and Budget

Library Director Rebekka Mateyk and Trustees Laura Thibault and Stephanie Hasselback were present to address the Board. They distributed a packet of information and began by recapping the ways the library has coped with the COVID-19 closure, and the activities and programs that were provided, including blood drives. The library reopened on September 1st; Ms. Thibault said that library staff worked whether the building was open or closed.

Ms. Thibault said they were also here because the Budget Committee had questions about Library salary raises. She said these were based on the Hampstead salary survey and also on salaries in local businesses that may be in competition for the same workers. She said there has been quite a bit of turnover in recent years, and the library would like to hire and retain good quality employees. In discussion it was noted that there are three full- time and two part- time employees, and the goal was to bring their pay up to average for the area. A tech position has not been filled to date. Ms. Thibault said that in 2021 they are planning Phase 2 of increasing the salaries to the 50th percentile. She said that the increase for the 2021 budget is 12%, but that the Pay for Performance line decreased. Rebekka Mateyk explained that the cost of benefits has increased but this is not something they can control.

Selectman St. James asked why all the employees were kept on while the library was closed. Ms. Mateyk said that they were furloughed for 10 weeks and used their sick and vacation time.

There was a discussion of the upgrades to the library's Wifi capability to include the parking lot and other outdoor areas, and funding received through various grants for this and other work to increase access to services during the pandemic.

Deputy Treasurer Appointment

Treasurer Jayne Ramie and Mari Eggleston, who Ms. Ramie would like to have appointed as her deputy, were present. There was a brief conversation about the need for backup to the Treasurer in case of illness or vacation.

MOTION: by Selectman St. James to appoint Mari Eggleston as Deputy Treasurer.

SECOND: by Selectman Briggs

Selectman Wilson asked about compensation and what is in the budget. It was decided to look into the logistics of compensation but go ahead with the appointment.

All in favor.

Residents of Jericho Drive: Torromeo Gravel Pit

Several residents that abut the Torromeo Industries property were present to speak to the Board. Matt Taglieri, 24 Jericho Drive, said that he was here 2 weeks ago and would like to know of any developments in the ongoing concerns about blasting and drilling at the Torromeo Industries.

Selectman Wilson said that a lawyer has been consulted and while he is still checking into a few things, he has informed the Town that according to the RSA, Torromeo is not doing anything that is not allowed; they can go up to 50 feet from a property line or 150 feet from a house. He said the attorney is continuing to look into anything else that is written that may stop that. Selectman Wilson added that he had asked if this means this is not a town issue, and the attorney said he is not saying that at this point, but the Town has no liability and this is more of a civil issue. Selectman Wilson said it sounds like it is going to be up to the neighbors to do something.

Mr. Taglieri asked if Selectman Briggs had gone out to see if additional work had been done since he visited with the Town Engineer. Selectman Briggs said they had gone out and there had been no blasting at the north wall, but on the east and west walls. He said all that had been done on the north wall was the clean-up work requested by Mr. Quintal. Mr. Taglieri asked if by any means the work on the north wall had come closer to the property line. Selectman Briggs said he had not been on top of the wall, but down below looking up at the walls. Mr. Taglieri said he is here as a concerned citizen, who is now looking at a construction site rather than woods, and the noise is constant. He said that he and the other neighbors are not letting this go. He said if the Town will not take action, they will find another way.

Selectwoman Alessio said that it is unfair to state that the Town will not take action. She said that the Town can't do anything if the company is not in violation.

Bob Berg, 18 Jericho Drive, read from a prepared statement, which is attached.

Selectman Wilson pointed out that the Town was originally going after the 500' and 200' setbacks Mr. Berg mentioned in his statement, but it was learned that as Torromeo is grandfathered, having been in place before 1979, the local ordinances do not apply. That is why the matter is reverted to RSA 155-e and the setbacks are only 50' and 150'. Selectman Wilson said that he would like to talk to Preston Young at the governor's office (who Mr. Berg said had told him this is a Town issue).

There was a discussion of the trees that were cut, which made the noise problems worse. Chairman Coombs said that with regard to the signing of timber intents, the Board has looked into the process, and learned that by law, unless there is something wrong with the application paperwork or the property is in a certain category of current use, the Board must sign and submit the intent to the DRA within 15 days, 30 days to

allow for review as needed. He said the intent form is strictly an instrument of taxation and the Board has no inspection requirements.

Chairman Coombs also said he had learned that concerning the expansion of the site, the way the RSA is written, the land boundary as it existed on the day the law passed in 1988, 1981 and as established prior to 1979, is his license to operate. If, however, Torromeo had (for example) bought an abutting property, that would constitute an expansion of use and would change the scenario. If he is keeping within the lines of his property as they existed in 1979, there is nothing the Town can do as it falls within that RSA. Chairman Coombs said that he doesn't agree that this is right, but that is what the Board has learned from the attorney, although he is still checking on all aspects.

There was a discussion of various state entities that gave conflicting advice, and details of what has been pursued to solve the situation.

Chairman Coombs said that for the problem of reduced property value, an abatement can be pursued.

Dave Minder, 10 Jericho, addressed the Board, saying he has lived there since 1986. He said that while he does not directly abut the quarry, it has gotten a lot louder. Mr. Minder said that he gets the sense that the Town's hands are tied because of the grandfathering, but that the neighbors will sue the Town because there should have been some sort of covenant when the houses went in. Chairman Coombs said that he is unaware of the existence of any such document, but would be more than happy to look at it if it does exist. He said that there seems to be the perception that the Town is not doing everything it can, but the Board followed every legal recourse possible. Selectman Briggs said that he had talked with the NHDES Alteration of Terrain department about the footprint of the quarry and through satellite pictures could say that they had not gone beyond the acreage of expansion that is allowed.

Mr. Minder said it seems they are just coming closer and closer to the Jericho Drive neighborhood. Selectman Briggs said that at his request, Torromeo has agreed to stop work on the north wall for now. They continue to work on the east and west walls. Mr. Minder mentioned the loss of tax revenue to the Town if all the house values are now nothing. Selectman Coombs said that the Town can only do what is legally allowed.

Mr. James Bouraphael, 22 Jericho, said that Torromeo had filed a timber intent for 5 acres. He said he was told at a meeting that the Board had no recollection of signing a permit. He said the logger then submitted a report of 20 rather than 5 acres. He said that the Select Board signed this on July 20, around the same time he was in touch with the board sharing his concerns and begging for help. Chairman Coombs reiterated the process of filing timber intents, and said that there had been some confusion as there were two intents filed, one of which they had not signed at the time of the conversation. Mr. Bouraphael expressed his frustration that the town had not gone to check what was going on when he complained. He also contended that after Torromeo had been asked to stop work on the north wall, and to clean it up, the wall had been cut closer to the

property. Selectman Briggs said that this was not true. Mr. Bouraphael said it had come at least 30 feet closer to his house and there are three roads in that area now.

Mr. Bouraphael said that RSA 155-E 2 has a provision for work that will have an adverse impact on the neighborhood. He wanted to know what the Town would do about the impact to the neighborhood, saying consulting a lawyer is not good enough. He said noise is a reason to check on the operation of the plant. Chairman Coombs said that Mr. Bouraphael is reading the law to fit his own view, and that the Town's lawyer has a different interpretation. Mr. Bouraphael said that the RSA gives the Town the power to stop any expansion that is having an adverse impact.

Mrs. Bouraphael played a tape of the noise from the quarry that they hear every day. Mr. Bouraphael said that the neighborhood is going to have to pitch in and hire a lawyer.

Mr. Taglieri asked if a site walk had been scheduled. Selectman Briggs said he is still waiting to hear back from Mr. Torromeo, who said he is consulting his insurance company, presumably as he is concerned about liability.

Mr. Minder asked if the noise ordinance applied to commercial properties. Selectman Briggs said that the big problem is the grandfathering, which exempts the site from local ordinances. He said that it looks like the DES alteration of terrain bureau has the most authority over the site, per the original footprint. He reiterated that no blasting has been done on the north wall since the Town requested that he stop, but that he could if he wanted to, according to the RSA. He said that when he went out the drilling was being done on the far west wall, and any work on the north wall was clean up. He said at this time the Town and Torromeo are both waiting to have a definitive word from the attorneys. There was some continued discussion of possible remedies.

Chairman Coombs said every avenue has been pursued, including MSHA, NH DES, the State Police, the Fire Marshall, and attorneys, but if any further information is received, the abutters will be notified by Selectman Wilson.

James Dufresne: Hawks Ridge Development: Update, Information from Site Walk

Mr. Dufresne was present and had given the Board a statement of what is being done on the site and what he would like released at this time.

Selectman Briggs reported on the site walk, saying there are two houses (8 and 14 Bent Grass Circle) that are unfinished. He said that swales and culverts on Mulligan Way can be done according to the approved site plan, which would bring the two houses into compliance. In addition, foundation permits are requested for 1 Mulligan Way and 5 Bent Grass Circle. A \$100,000 bond for paving will be established with the Town to release the remaining four foundation permits. In his statement, Mr. Dufresne said that no homes will receive an occupancy permit unless the Road Agent signs off on the driveway permits.

Selectman Wilson questioned how the amount of the bond was arrived at. Mr. Dufresne said that was from the construction cost estimate prepared by Town Engineer Dennis Quintal dated June, 2019.

There was a discussion of details of what is proposed. Selectman Wilson said that it is in the best interest of the residents to get the work done, as the unfinished houses are unsightly, and the driveways are deteriorating. It was noted that as this is a private road, the Town's Road Agent had no jurisdiction. Mr. St. Hilaire was present for the discussion, and noted that many of the problems could have been avoided if he had had oversight.

MOTION: by Selectman St. James, to lift the Cease and Desist to allow the work and permits requested, pending approval and verification of the bond amount by Town Engineer Dennis Quintal.

SECOND: by Selectwoman Alessio.

All in favor.

Fire Station Building Committee: Plan Review/Water System Design

Fire Chief Graham Pellerin and Kent Walker were present and gave an update on the status of the plans for the new fire house, saying they are 90% complete. There was a discussion of the fire suppression system, designed by Fernandez Fire Protection, which includes designs for sprinklers, pump sizing and piping but does not include cisterns. Mr. Walker said that they had looked into precast concrete cisterns linked together to arrive at the 60,000 gallons of usable water needed. However, at a meeting with SFC engineers, they were cautioned against this plan due to the risk of the ground settling. At this time, the committee is requesting that they be approved to spend not only \$7,000 for the water supply layout, but also for a skilled engineer from SFC to look at the drawings for code compliance. This would include 10 site visits. The total for the layout and this service is \$27,000.

Selectman Wilson said he recalls the Fire Chief and Road Agent being against hiring a clerk of the works. Chairman Coombs said that Bauen, SFC and the Building Inspector are already on board, and wondered if a fourth entity is needed. Chief Pellerin said that in speaking to other fire departments he was told about finding problems after stations were fully built, and he would like to avoid that. Selectman Briggs said he thought this was important as the cisterns will not only feed the fire station, but three Town buildings. Selectman St. James asked if this is above and beyond the budget; Chief Pellerin said impact fees can be used.

MOTION: by Selectwoman Alessio, to approve and sign the purchase order for \$27,000 to include cistern design and 10 site visits to ensure code compliance.

SECOND: by Selectman Wilson

In favor: Alessio, Briggs, St. James, Wilson; Opposed: Coombs; Passes.

PUBLIC COMMENT I:

Evelyn Nathan, Chair of the Conservation Commission, shared some information on the Torromeo site from a conservation perspective. She said they have a 2009 amended

restoration plan monitored by the NH DES, and that Eben Lewis of the DES has been out to the site. In addition, she said she knows Mr. Torromeo has placed some land in a conservation easement, and it might be good to know if he is adhering to the terms of that easement. She said she believes the state Department of Energy and Planning are the easement holders.

Ms. Nathan said that the restoration area is actually several areas around the open pit, and that the DES can go in to be sure everything is in compliance. She said they go out annually, and she can call to see if they are due to go back.

The Board agreed this would be useful and asked Ms. Nathan to follow up with the DES.

Road Agent Rich St. Hilaire said that bids are needed for the fence that is to go up at the Recreation Center. He said in order to encumber the funds, this needs to be done by December 31, and there is not time for do the full bid process. He asked the Board if they would like to do a shortened bid process, or put the job out to bid in 2021. It was agreed to wait and do the full bidding process next year.

Mr. St. Hilaire also addressed the Board about winter plowing. He said he has not been able to find a person with a truck, and would like to know if he can hire a part time person to drive a town truck to help with plowing routes. It was agreed this is acceptable.

OLD BUSINESS:

Employee travel policy

The Board had reviewed two policies for addressing employee travel and quarantine necessary upon return due to the pandemic.

MOTION: by Selectwoman Alessio, to adopt the single page policy.

SECOND: by Selectman St. James

All in favor

NEW BUSINESS:

Sale of Town Owned Land: Discussion of Policy

MOTION: by Selectwoman Alessio, to table this matter until December 7.

SECOND: by Selectman Wilson

All in Favor

Proposed Changes to Town Hall Procedures in response to COVID spread

There was a discussion of possible increased safety measures to be implemented at the Town Hall, after a conversation Selectman Briggs had had with Town Hall employees. It was suggested that the doors might be locked again, and visitors to the building to use the call buttons by the back door to be “buzzed” in a few at a time to cut down on the number of people in the hallway. A drop box accessible from outside was also proposed, as well as adding coded locks to the break room and clerk’s office doors so that only those who work in the building can enter. Holding all meetings remotely was also an option.

After a discussion, it was decided to hold off on locking the building and adding the drop box until there is a Governor’s order mandating it. The locks will be installed. Each

Board or Committee will continue to decide on its own policy about holding meetings remotely or in person.

For the upcoming decision days and election, it was decided that Selectman Briggs will check with the school to see if the high school auditorium could be used, as it is more spacious.

COMMITTEE LIAISON REPORTS:

Selectman St. James reminded the Board about upcoming dates; Decision Day #1 (operating budget) will be on January 9, the Public Hearing for this on January 10; Decision Day #2 is on January 16. Deliberative Session is set for January 30. There was some discussion of the budget and salaries; Selectwoman Alessio will look into Moderator pay. It was agreed that all part time positions need to be assessed.

A warrant article adding a full time Highway administrative assistant is to be prepared with input of the Road Agent.

A notice shared by Human Services administrator Ellen Faulconer was read, informing the public of the Holiday giving tree in the Town Hall

PUBLIC COMMENT II: None heard.

BOARD BUSINESS:

Open Bids for Information Technology Services

Eight bids had been received. These were opened and briefly reviewed; it was agreed to have Vice Chairman Briggs along with two disinterested parties with a technology background read the bids to compare “apples to apples”. A spreadsheet of the information will be prepared.

Companies that submitted bids were:

VC-3, Retrofit Technology, Stellar Network Solutions, RMON, LT Technology Solutions, Block 5 Technology, Rockport Technology, and Maestro Technology.

Accept Unanticipated Funds

MOTION: by Selectwoman Alessio, to accept a Cares Act funding check in the amount of \$3,109 that was awarded to the Town Clerk for elections expenses.

SECOND: by Selectman St. James.

All in favor

CORRESPONDENCE, APPLICATIONS, PURCHASE ORDERS:

- Two property abatements (Map R20 Lot 6 and Map U8 Lot 16) prepared by the Assessor were approved and signed.

APPROVAL OF MEETING MINUTES:

MOTION: by Selectwoman Alessio to approve the public and non-public meeting minutes of November 16, 2020, as written.

SECOND: by Selectman Wilson

In Favor: Alessio, Briggs, Coombs, Wilson; Abstain: St. James; Passes

NON-PUBLIC SESSION:

MOTION: by Selectwoman Alessio, to enter non-public session under RSA 91-A:3, II (l), pending legal issues.

SECOND: by Selectman Briggs

All in favor

Meeting adjourned to non-public session at 9:45 PM.

MOTION: by Selectwoman Alessio, to return to public session at 9:49 PM

SECOND: by Selectman Briggs

All in favor

MOTION to seal these minutes for an undetermined length of time, made by Selectwoman Alessio, seconded by Selectman Wilson, because it is determined that divulgence of this information likely would:

xx Affect adversely the reputation of any person other than a member of this board.

Passed by unanimous roll call vote.

Discussed during non-public session: legal advice concerning a foreclosed property

Next Meeting of the Board:

The Board will meet on December 7 at 7:00 PM.

Adjournment:

MOTION: by Selectman St. James to adjourn at 9:50 PM

SECOND: by Selectman Wilson

All in favor.

Respectfully submitted,
Susan Ayer, Administrative Assistant

Nov 30 2020
Robert Berg
18 Jericho Dr.

I spoke with Preston Young from Governor Sununu's office. He told me that there is nothing that can be done at the state level. This is strictly a town issue.

The industrial zone ordinance 107.6 talks about setbacks of development being 500 feet from the nearest residence (I assume property line). It also mentions commercial uses as being 200 feet. Either way, the timber harvesting and probably the expansion of the pit have violated that. And there's no way to uncut those trees.

<https://www.kingstonnh.org/sites/g/files/vyhlf741/f/uploads/107.pdf>

Most zoning laws for the town have a standard of no detriment to property values in the vicinity or change in essential characteristics including residential neighborhoods on account of items such as noise, vibration, unsightly materials, etc. Although Mr. Torromeo has an existing permitted business, you would think a significant expansion and clear cutting of existing forest would warrant review by the selectmen, planning board, ZBA, and possibly the conservation commission. In the case of Jim and Tina Bouraphael and Matt and Sara Taglieri, as well as the rest of our neighborhood, I'm sure property values have gone down significantly due to the noise and lack of setback. Because of the inaction of the town in enforcing the 500 foot barrier, the town has essentially taken that value from us without our input and have so far not given us any relief. What now is the town willing to do to reimburse us for the reduction? Will our property assessments and taxes be reduced based on this reduction?

https://www.kingstonnh.org/sites/g/files/vyhlf741/f/uploads/ordinance_book_titlei_section100_article_110_comzoneiii_03_12_19.pdf

There are gravel pit and excavation ordinances as well. Is the work Mr. Torromeo is doing large enough in scale to qualify as a new pit?

<https://www.kingstonnh.org/sites/g/files/vyhlf741/f/file/file/900-903.pdf>

and

<https://www.kingstonnh.org/sites/g/files/vyhlf741/f/file/file/900-902.pdf>

When I look at the aquifer protection district and Valley Lane town forests it looks like Torromeo has encroached on them.

https://www.kingstonnh.org/sites/g/files/vyhlf741/f/uploads/aquifer_protection_districts_a_b.pdf

Although this enforcement belongs to the town, state regulation NH RSA 155

E:2 indicates expansion may be modified if it will have an adverse impact on the neighborhood. Well, it's having an adverse impact on my neighborhood.

<https://law.justia.com/codes/new-hampshire/2013/title-xii/chapter-155-e/section-155-e-2>

There is language around August 4, 1989. Ridiculous.

It is further provided that when such excavation is not allowed in that location by local zoning or similar ordinances in effect on August 4, 1989, or when such ordinances allow such excavation only by special exception, expansion may be restricted or modified with conditions by order of the regulator if after notice to the owner and a hearing, the regulator finds that such expansion will have a substantially different and adverse impact on the neighborhood.

The boards signed off on the permit. And the clearing has egregiously exceeded what was permitted. If you don't have any plans to enforce the buffer ordinance based on whatever excuse you may have, we may have no other choice than to seek a remedy in the courts.