

1. Call Meeting to Order

Chairwoman Julie Gilman convened the Board at 7:00 pm in the Nowak Room of the Town Office Building. Other members of the Board present were: Mr. Matt Quandt, Mr. William Campbell, Mr. Robert Aldrich, Mr. Don Clement and Town Manager Russ Dean.

2. Public Comment

Ms. Gilman said that anyone wishing to comment on cable should please wait until the point in the agenda when it is discussed. She also reminded everyone that it is election time and it is important to be careful with comments made.

Mr. Jim Knight said that historically there have been printed copies of the final warrant made available for people and asked if that will be done again this year. Ms. Gilman said yes it would. Mr. Knight asked if Attorney Mitchell would be present at the Deliberative Session. Ms. Gilman confirmed that Attorney Mitchell would be there. Mr. Knight then inquired what rate Attorney Mitchell is paid. Mr. Dean said that it is \$ 150.00 per hour.

Mr. Bob Eastman said that he had recently picked up a copy of the MS6. He pointed out where he thinks that a couple of the warrant articles are misnumbered. He said he thought that some of the numbers in the budget summary on page 7 were incorrect. According to his calculations, total appropriations were up 35% over last year. Mr. Clement said that he didn't have a copy of the MS6 document in front of him. Mr. Aldrich thanked Mr. Eastman for his comments.

Mr. Brian Griset pointed out that the draft minutes of the Board of Selectmen's meeting of January 17th do not contain a statement made by Ms. Jennifer Perry that he feels should be there. She had initially said that she was not aware of any storm drains over and above the \$ 250,000 but later came back and amended this figure to 1.1 million dollars.

3. Minutes & Proclamations

a. Regular Session Minutes of January 24, 2011

Mr. Campbell moved to approve the Regular Session Minutes of January 24, 2011 as presented. Mr. Aldrich seconded. Vote: Unanimous Mr. Quandt abstained.

4. Appointments

Mr. Quandt asked to clarify whether or not there is a policy that an individual cannot be on more than one board or committee at a time. Ms. Gilman said that the policy stipulates that an individual cannot be on more than one land use board at the same time.

Mr. Quandt moved to appoint Brian Griset to the ZBA as an alternate. Mr. Aldrich seconded. Vote: 2-3 Mr. Clement, Mr. Campbell and Ms. Gilman opposed. Motion fails.

Mr. Clement stated that he is voting against this appointment. He feels that Mr. Griset has often made statements that are not quite accurate or misleading. An example of this is the statement he made at last week's Board of Selectmen's meeting about there being a coauthority statute relating to RSA 91a pertaining to record retention. Mr. Clement said that he has done some research and there is no such thing as a coauthority statute. There is no statute that mandates that the Town Clerk is the keeper of the

FINAL MINUTES

records. RSA 33 talks about disposition of municipal records. Most records can be kept in an office designated by the municipality. Another example is that he has stated in the past that the Board has violated a State statute by not posting meeting minutes online. This is also not true. Minutes are required to be made available, but are not required to be posted online. Mr. Clement is also concerned that Mr. Griset is a land use consultant. There is a standard for land use boards called a juror standard that requires members to be as impartial as possible. Mr. Clement is concerned that Mr. Griset's occupation might violate the juror standard and leave ZBA decisions open to potential legal challenges.

5. Departments Reports

Mr. Jay Perkins of the Highway Department said that another snowstorm is expected tomorrow and Wednesday and they are ready for it. They have worked to widen the streets. Mr. Campbell asked how they are doing with the budget for snow removal and Mr. Perkins said that it was about 36% expended before the last storm. Mr. Aldrich asked what it costs to clear the downtown each time. Mr. Perkins said the cost is about \$ 10,000 - \$ 18,000 per night, but this is not just for the downtown. Mr. Quandt asked what the priorities are. Mr. Perkins said that narrow streets are cleared first. Mr. Aldrich asked if they are at the point where they are worried about the snow removal budget and thought that this should be considered before Saturday's Deliberative Session. Mr. Dean said that it is possible to petition DRA for an emergency over expenditure if needed. However, this would require a hearing and the monies would come out of the general fund balance.

6. Discussion/Action Items

a. New Business

i. Comcast Contract and Public Access Discussion

Ms. Gilman said that they have been getting comments from people who have been receiving their cable bills with a franchise fee charged at 3.66% instead of 3%. The new contract with Comcast states that the franchise fee will be 3%. Comcast has not made very clear their reasoning for the increase of .66%. They were invited to attend tonight's meeting, but said that they were unavailable. They have been asked to attend the Board of Selectmen's meeting on February 14th.

Mr. Quandt said that the Town has a valid contract with Comcast that says that the franchise fee will be 3%. It is his understanding that Comcast hates dealing with Government Access / Public Access channel programming and he thinks they did this just to cause problems.

Mr. Clement is very angry about this and feels that it is a slap in the face of subscribers. He is inclined to ask the Board to dissolve the contract. The ratepayers are owed a refund of the .66% plus the 6 cents for another charge that was supposed to disappear from bills as well as part of the contract.

Ms. Gilman said there is also an issue of lack of proper notice to the Town and subscribers for the increase. There is a proposed amendment to the Memorandum of Understanding between the Town and Comcast. Mr. Aldrich said that the Town should let its attorney figure this out prior to the meeting on the 14th so that hopefully some resolution can be reached on the 14th.

Mr. Dean said that one of the issues Comcast raised was the notion of making the 3% retroactive to their effective date of the contract which was October 25, 2010. No one expected this and the Town was not notified that this was going to happen.

Mr. Jim Knight quoted section 9.4 of the cable contract pertaining to franchise fees. He said that this situation definitely sounds like a breach of contract to him and this opens up the opportunity for some

FINAL MINUTES

mediation or mitigation. He felt that this also raises concerns about the work that Comcast was supposed to do for free as part of the new contract. He wonders if they will follow through on these promises.

Mr. Sam Bruno, Cable Committee member, said that this came as a total surprise to the Cable Committee. They expected the franchise fee to be 3%. Comcast's explanation so far makes no sense. The committee's understanding is that the effective date of the contract is November 22, 2010, which is the date that the Board signed it.

Mr. Brian Griset has reviewed the cable contract and believes that it has 2 provisions which give it the right to recoup any and all costs under the Federal Statute Communications Act. He asked if their explanation was related to capitalization of those costs and requested more clarity on the explanation that Comcast gave. Ms. Gilman said that there are parts of their services not included in their gross annual revenue. There are costs of doing business, such as advertising, which are not part of franchise fees. Mr. Quandt said that they cannot recoup capitalization costs from franchise fees. Mr. Dean said that in the prior cable contract, Comcast granted the Town around \$ 100,000 and over the years passed that through to subscribers as a franchise related cost of 6 cents on each bill. One of the things that the Cable Committee was able to recently ascertain in the new process is that this had long since expired. What happens in that process is that Comcast amortizes it over a long period of time and charges extremely high interest rates. The committee decided that doing this again was not in the best interests of the town and decided against it so the 6 cents expense is supposed to come off the bills. Comcast has said that it won't come off until May and this explanation is unsatisfactory.

Mr. Jim Knight said that under Section 6.5 of franchise related costs of the contract, the franchise authority acknowledges that under the Cable Act certain costs may be passed along to subscribers in accordance with federal law. Mr. Quandt asked if Comcast has used this as their explanation for the charges in question. Mr. Dean said no. Mr. Dean read through the list of infrastructure improvements that Comcast has promised to provide at no additional cost to the Town. This was one of the key components of the contract negotiations. Mr. Dean said that there are specific provisions in the contract to follow when there are issues.

Mr. Quandt said that the Cable Committee is meeting this Thursday at the Town office building. Ms. Gilman suggested that the committee meet with the Town's legal counsel first and develop a plan of action. After a short discussion it was decided that the Cable Committee will first have a non public session at 5:30 on Thursday with Town legal counsel to be followed by a public meeting after. The meeting will be reposted accordingly with the change.

ii. Private Inflow/Infiltration Discussion

Ms. Gilman said that they haven't finished discussion with the Jady Hill neighborhood on the private work. More dialogue with the residents is needed. They would like to schedule another meeting.

Mr. Quandt said that residents really need to know what laterals require replacement before decisions can be made. He asked if this information has been provided to the residents yet. The lack of this information is the reason for much of the angst among the neighborhood residents. Ms. Perry said that some of the laterals had been identified, but it has not been completed. The next planned public meeting with Wright Pierce is in April. It is fairly conceivable that they will have a good handle on this by then.

Ms. Gilman wished to reiterate that this is an ongoing discussion and dialogue will be continuing. This discussion will not impact the warrant article. She encouraged people to weigh in with their opinions

FINAL MINUTES

and give their feedback to the Town Manager.

Mr. Frank Ferraro felt it was likely that the decision of whether or not people will be paying for the private portion of the work would affect one's decision to vote for or against the warrant article in March. Ms. Gilman said they simply do not have this information available yet.

Mr. Griset said that in the past different boards have had different policies regarding funding of private work in Town. He was concerned that people are going to vote on this project in March and there is no established policy. He believes there is a need to establish a policy that is fair to everybody. Jady Hill has one of the highest inflow rates. However, the I/I issue is town-wide.

Mr. Clement said he believes that there is an established policy. It is that the private homeowner is responsible for the portion of the connection from their property to the street. Mr. Griset said that the homeowner has been responsible for a break or blockage in the sewer line, but not inflow into the system. This is totally new ground. There have been something like 28 to 33 identified sites in Town with I/I issues. Jady Hill is one of the biggest problem areas and is near the top of the priority list. Mr. Griset said that the proposal so far has been for Jady Hill residents to pay 100% of the cost to fix their area. There is likely going to come a time as they work their way down the priority list of sites with identified I/I issues when the decision is made not to correct the issues with much smaller impacts.

Mr. Aldrich said that whatever policy they come up with for Jady Hill will establish a policy for other projects in the future.

Mr. Clement said that they have failing systems in Jady Hill. Manhole covers have been blow off due to excessive CSO's and there has been sewage running in the streets. This is a very serious situation. There is a need to address the biggest problems first.

Mr. Sandy Winter said that he is confused. If the Town already has a policy that it is illegal to put a sump pump into a sewer, but is not enforcing the policy, then what good is it going to do to decide on yet another policy? Mr. Clement said that there are other issues that are causing the problem besides the illegal sump pumps and there is no policy to address inflow and infiltration from these other sources.

iii. Water/Sewer Advisory Committee Discussion

Mr. Campbell said that in the past there was a water and sewer advisory committee which was disbanded in June of 2008 and that seemed like the right thing to do at the time. They had hired some new engineers in Public Works and the need for such a committee didn't seem so acute. Recently there has been a public outcry for such a committee once again. Mr. Campbell asked if such a committee were to be re-established whether it would have the same charge as the old one. Mr. Clement has reviewed the charter. He would like to charge the Town Manager to talk to the DPW and come back to the Board with what they think is a workable charge for a water and sewer advisory committee. Mr. Campbell felt that the previous committee did some good work. He is in favor of reinstalling the committee, although he thought it may be necessary to rework it a bit. He would propose that it not have oversight.

Mr. Quandt has wanted a water and sewer committee since the last one was disbanded. However, he said that he thought this discussion is a little bit too late now that there is a citizen's petition for this on the warrant. He suggested that the Board could have this discussion again in March after the vote. Mr. Aldrich agreed with Mr. Quandt.

FINAL MINUTES

b. Old Business

Mr. Campbell saw a notice for a February 10th Planning Board meeting in the Friday paper. At the last meeting they spoke about having postings in the Foster's. He would like to have all town notices in the Exeter Newsletter if it is not too much more expensive than Foster's and asked what the cost comparison is between the two. The other Board members also expressed interest in knowing what the rates are to advertise in the Fosters versus the Exeter Newsletter. Mr. Dean will get this information. Ms. Gilman said if they switch to the Exeter Newsletter it will lengthen the process between applications and hearings for planning since that paper is not published daily. Mr. Clement asked which notices are historically published in which paper. Mr. Dean will get this information as well.

Mr. Clement said that several months ago this Board voted to ask the Planning Department to talk to the Sportsmen's Club about coming in to do a site plan review per the lease contract that the club signed with the Town of Exeter. A key item was the requirement in the lease that the club would do a site plan review before the Planning Board within two years of the signing of the contract. The lease contract was signed in April of 2009. April of 2011 is only 2 months away and he is concerned that the terms of the contract have not been upheld. He wants to know what the status is of the request for the site plan review. Mr. Dean said that the Sportsmen's Club has been working on it but it is not yet complete. Ms. Gilman said that the code enforcement officer for the Planning Department needs to go out to the club and see what has been done. There was a bit of a misunderstanding in the interpretation of the lease. Mr. Aldrich suggested that they ask the building inspector and planning director to appear before the Board at the next meeting. They can then have a discussion on what actions to take next. It was decided that this would be added to the agenda for February 14th. Ms. Gilman will also ask someone from the Sportsmen's Club to be there.

7. Regular Business

a. Bid Openings – None.

b. A/P and Payroll Manifests

a. Accounts Payable and Payroll Manifests

Mr. Clement moved to approve an accounts payable warrant for checks dated 01/31/2011 in the amount of \$ 2,752.72. Mr. Campbell seconded. Vote: Unanimous

Mr. Clement moved to approve a payroll warrant for week ending 1/23/2011 for checks dated 1/26/2011 for \$ 162,636.47. Mr. Aldrich seconded. Vote: Unanimous

Mr. Clement moved to approve an accounts payable warrant for checks dated 01/28/2011 in the amount of \$ 92,556.71. Mr. Aldrich seconded. Big Ticket Item: a couple of Unutil bills of which the biggest is \$ 7,000 and \$ 14,600 to Woodward and Curran for SCADA work Vote: Unanimous

c. Budget Updates – None.

d. Tax Abatements & Exemptions

Mr. Clement moved that the Board approve a Veteran's Credit for Map 51, Lot 7 in the amount of \$ 500.00. Mr. Aldrich seconded. Vote: Unanimous

FINAL MINUTES

Mr. Clement moved that the Board approve an Elderly Exemption in the amount of \$ 236,251.00. Mr. Aldrich seconded. Vote: Unanimous

Mr. Clement moved that the Board approve a refund abatement for Map 90, Lot 18-11 in the amount of \$ 34.45 plus interest. Mr. Aldrich seconded. Vote: Unanimous

Mr. Clement moved that the Board approve a refund abatement for Map 82, Lot 37-1 in the amount of \$ 2,628.40 plus interest. Mr. Aldrich seconded. Vote: Unanimous

Mr. Clement moved to deny the abatement request for Map 73, Lot 94. Mr. Aldrich seconded. Vote: Unanimous

Mr. Clement moved that the Board approve a refund abatement for Map 19, Lot 3 in the amount of \$ 1,173.90 plus interest. Mr. Aldrich seconded. Vote: Unanimous

Mr. Clement moved to deny a Veteran's Tax Credit for Map 101, Lot 25. Mr. Aldrich seconded. Vote: Unanimous

Mr. Clement moved that the Board approve a refund abatement for Map 73, Lot 294-4 in the amount of \$ 2,340.41 plus interest. Mr. Aldrich seconded. Vote: Unanimous

e. Water/Sewer Abatements - None

f. Permits – None.

g. Town Manager's report

Mr. Dean wished to remind people that Christmas trees will be picked up in the Spring after the snow melts. This morning he attended a meeting at Dover City Hall along with Representative Ginta and representatives from Senator Shaheen's office. They talked about the Great Bay issue and it was a very positive meeting with much good feedback. It is the first of many meetings on a very high profile issue

Mr. Aldrich asked what the status is with meeting with Stratham and North Hampton. Mr. Dean said that Stratham has suggested a date. He will email the Board members with this information tomorrow to see who might be available.

h. Legislative Update

Mr. Quandt said that there is a lot going on at the legislature. Please send any questions to him. Discussion will be coming up soon on the telephone pole tax and he will keep everyone updated. Ms. Gilman asked for the status on House Bill 39 which pertains to defining adequate education. There is discussion about removing art, music and /or foreign language. Mr. Quandt said that there is a lot of controversy about it. It is in the committee process right now. The House calendar can be found online.

i. Selectmen's Committee Reports

Mr. Quandt said that there is a Cable Committee meeting on Thursday. It will be reposted. As discussed earlier, they will have a non-public session first at 5:30 followed by a public session to start around 6:00 or 6:30 pm.

FINAL MINUTES

Ms. Gilman wanted to remind everyone not to forget Deliberative Session this Saturday, February 5th, at 9:00 am at the High School auditorium. She and Mr. Campbell attended the commissioning of the Fire Department's new engine 2 last Thursday. The Heritage Commission meets on Wednesday.

Mr. Aldrich said that the Trails Committee met last Tuesday to discuss some of the projects that are outlined in the trail management plan for 2011. The Arts Committee met on Thursday. They have almost finalized their shows for 2011.

Mr. Clement said that the Heritage Commission will try again to meet on Wednesday.

Mr. Campbell had nothing to report.

j. Correspondence - None

8. Review Board Calendar

Ms. Gilman said that there will be no Board of Selectmen meeting next Monday evening because of Deliberative Session on Saturday. The next regular Board of Selectmen meeting will be Monday, February 14th at 7:00 pm. The Board will meet briefly next Monday, February 7th at 8:30 am, in order to take care of any critical business.

9. Non Public Session

Mr. Aldrich motioned to go into Non Public Session under RSA 91a:32 for compensation.

Mr. Clement called the roll. Mr. Quandt: aye; Mr. Campbell: aye; Ms. Gilman: aye; Mr. Aldrich: aye; Mr. Clement: aye.

10. Adjournment

The Board emerged from non public session and adjourned at 8:30 pm.

Respectfully submitted,

Jennifer Mancinelli
Recording Secretary