

Select Board Meeting  
Monday, March 2nd, 2020  
Town Offices, Nowak Room  
Final Minutes

1. Call Meeting to Order

Members present: Anne Surman, Kathy Corson, Julie Gilman, Molly Cowan, Niko Papakonstantis, and Russ Dean were present at this meeting. The meeting was called to order by Ms. Corson at 6:52 PM and the Board went downstairs for an interview. The meeting reconvened at 7:04 PM.

2. Public Comment

a. There was no public comment at this meeting.

3. Proclamations/Recognitions

a. There were no proclamations/recognitions at this meeting.

4. Approval of Minutes

a. Regular Meeting: February 18, 2020

**MOTION:** Mr. Papakonstantis moved to approve the minutes of Feb 18, 2020 as submitted. Ms. Surman seconded. All were in favor.

5. Appointments

**MOTION:** Mr. Papakonstantis moved to appoint Connor Barry to the Communications Committee, term to end 4/30/21. Ms. Cowan seconded. All were in favor.

6. Discussion/Action Items

a. External Communications Analysis: Nick Campion

Nick Campion of 75 Newfields Road presented a study of town communications he'd done as part of his MPA capstone project. He said that he established a baseline of Exeter's demographics, looked into each department, conducted interviews, and did qualitative and quantitative analysis. He also did external interviews in communities that have communication officers, as well as a content analysis on best practices for municipalities.

He found that almost everyone uses the town website; people are also using social media, the town newspaper, and public forums to get updates on town happenings. Departments communicate for three main purposes: 63% informative public information, 12% regulatory notices, and 25% promotional. This communication is mainly through Facebook and email. He found there are 20 social media pages across the departments: 14 on Facebook, 3 Twitter, and 3 Instagram. The Facebook page for the town of Exeter is the largest, with 5,000 followers. The weaknesses were lack of consistent engagements and too many tools. Other barriers to success were time and concerns about legal issues. Departments rated their own external outreach higher than the town's, meaning that everyone felt they were "above average."

For short-term goals, he recommended that once a capital project is done, the town should invite the press, abutters, and local businesses to note its completion, and do a press release, as well as put it on social media. He also suggested consolidating some

redundancies on social media and streamlining where a department has more than one page on a single platform. The town should seek internal experts; there are some highly skilled department heads who could provide guidance, like Bob Glowacky from EXTV and the members of the Communications Committee. In the long term, the town should consider creating a communications strategy master plan, potentially in partnership with UNH. The town could benefit from hiring or appointing a Public Information Officer or Director of Communication. Studies show that people are forecasted to spend 3 hours 22 mins on their phones this year, and it's projected that 72.6% of internet users will be accessing the web solely on their phone by 2025. The town should think mobile friendly in all initiatives.

b. Healthy Climate

Walter Mitchell, Town Counsel, was present for the discussion.

Maura Fay, 13 Forest Street, said her group is looking to revisit the Right to a Healthy Climate Ordinance and how the town may choose to act on it. They met with Board members and Mr. Dean in January, and were asked to bring additional information from attorney Kira Kelly, which she has done. She's asking for the town to describe how they will be implementing the ordinance. The Select Board has chosen not to sign, but that does not make it an invalid ordinance. Other boards should be using it in their decision making.

Ms. Fay read a letter from Attorney Kira Kelly dated January 13, 2020:

*Dear Exeter Select Board:*

*I am writing to confirm a legal question posed at the January 2nd, 2020 meeting between three members of Citizen Action for Exeter's Environment, Ms. Sanborn of the Community Environmental Legal Defense Fund, Mr. Dean, Mr. Papakonstantis, Ms. Corson, and myself. At this meeting, I noted that the right to a Healthy Climate Ordinance is binding, valid, and enforceable, according to its stated terms, immediately upon enactment. Article 30 on the March 12, 2019 Town Meeting ballot asked "Shall the Town of Exeter adopt the Right to a Healthy Climate Ordinance." The ballot question for this article concluded that once adopted at Town Meeting the ordinance is effective immediately. For any acts taken at a NH Town Meeting to be valid, the subject matter of the business shall be distinctly stated in the warrant, and nothing done at any meeting, except the election of any Town Officer required by law to be made at such meeting, shall be valid, unless the subject thereof is so stated - NH RSA 39:2. The March 2019 Town Meeting warrant described the ordinance and included the text of the proposed law in its entirety, satisfying the RSA's sole validity requirement for this action, aside from the petitioning requirements in NH RSA 39:3, which in this instance are not in dispute. The voters declared through the plain text of the ballot question that they intended to adopt the ordinance as a binding, enforceable law. The item is titled an ordinance, which is traditionally binding, as opposed to a resolution, which citizens and government officials commonly understand to be an emphatic statement with no legal effect; see, for example, the resolution in Article 28 of the March 2019 ballot. Similarly, the statement in the ballot question indicating that the ordinance is to take immediate effect would be illogical for a ballot item that created no legal consequences through its*

*adoption. The plain text of the ordinance declares itself to be a binding law that enshrines legally enforceable rights. All laws are presumed to be valid until and unless they are overturned through a judicial opinion. Ordinances are no exception to this well-known legal principle: "we presume that the challenged ordinance is valid, and require the challenger to prove otherwise" - Community Resources for Justice Inc. v City of Manchester, 154 N.H. 748, 756-57 (2007), citing Verizon v New England v City of Rochester. An ordinance stands, legitimate and in full effect, without an order from a court with jurisdiction over the enacting municipality. No such order has overturned the Right to a Healthy Climate Ordinance.*

Town Attorney Walter Mitchell said the only thing of any weight the letter said was that this article had a title that called it an ordinance, but an ordinance has to have content that purports to be regulatory. This statement doesn't have that content. There's nothing regulatory in what was voted on. The suggestion that there should be some board to regulate Planning Board and ZBA, where is that in the ordinance? This town has only the authority that is granted to it by the legislative bodies that are superior to it, namely the State and Federal legislature. Absent authority delegated by those authorities, the town doesn't have the authority to go off on its own and create different things. It's fascinating that people would like this ordinance to be enacted, but in taking steps to enact this against private property owners, the town is acting without legal authority. The proponents acknowledge that there have to be significant constitutional changes on the state and federal level to get what they want, yet they're pushing the town to act without legal authority. His recommendation is that the Select Board should do nothing to enforce this ordinance in any way. There are other significant illegalities. This tries to pretend that the voters of Exeter have the authority to change decisional law decided by the Supreme Court on whether a corporation can be considered a person. They can't change that just by voting on something at town meeting. Over 100 years of decisional law, there's a doctrine of preemption, where certain areas are so thoroughly regulated at the state or federal level that towns do not have the authority to make their own regulations. It also seeks to condemn with very little definition or standards what it is that should be prohibited. There are certain land use practices that the writers of this aren't happy about, but it only prohibits those activities if they're performed by a corporation or business entity or a government. If an individual does these same actions, it's apparently okay with them. For that reason alone, it violates equal provisions.

Ms. Cowan asked to hear where the proponents saw it fitting in with town law and how to implement it.

Ms. Fay said there had been some confusion about creating a supervisory board, which wasn't their intention. They were asking for the town as a whole to create policies and procedures for existing boards that would incorporate the principles of this decision into their decision making. Ms. Surman said there's already a process with the Technical Review Committee. This ordinance is not even defined well enough that anyone would be able to act on it. Ms. Fay said they want to talk about where it would make sense, but instead came to a meeting where they were told this is invalid. Mr. Dean said when his office look at this statement, they don't know from an administrative end how to enforce this. When they read this, they can't make a determination on whether the Select Board

is supposed to sign this, does it supersede the Planning Board, etc. There's no enforcement mechanism. In Nottingham, a company has sued the town on enforcement of a similar ordinance, which is in active litigation.

Mr. Papakonstantis said he understands that the proponents want the process to remain the same, and go through the Planning Board. Would they be looking to the Select Board to overrule the Planning Board if they thought the Planning Board had erred? Ms. Fay said that was not the intention of the ordinance. The idea is that this is something all Boards should be using in making decisions. The Select Board should tell the Planning Board how they should use that concept in their decision making.

The Board agreed to let Attorney Kira Kelly, a non-resident, to speak.

Ms. Kelly said this is an ordinance and it must be treated as such. It might be unfamiliar, but just because they don't want to have to deal with it doesn't mean they can abdicate settled law. Legislation is valid and binding until overturned by a judiciary. Legal opinions conflict, but they must defer to the principle that it's valid until overturned. Ms. Surman said that Attorney Mitchell felt that there would need to be an overarching state or federal law change for this to be valid. Ms. Kelly said they have to wait until the judiciary heard the issue. The will of the people is behind this. They are willing to work with the town to help the town figure out how to use this. The town has an obligation as a board representing the interests of the people of this municipality. According to NH RSA 39:3, *"the selectmen shall insert in their warrant for such meeting the petitioned article with only such minor textual changes as may be required. Such corrections shall not in any way change the intended effect of the article as presented in the original language of the petition."* NH Articles 2 and 10 are the authority for this.

Mr. Papakonstantis said that in the language of the Article, it reads *"As we are purportedly constrained by state and federal law, which courts interpret to require us to accept such harmful corporate activity, we the people of Exeter are unable under our current system of local government to secure human rights and ecosystem rights by banning said activity. Therefore, we deem it necessary to alter our system of local government, and we do so by adopting this Right to a Healthy Climate Ordinance."* Is this suggesting that the local legislative body can supersede state and federal authority? Ms. Kelly said there's something called an inherent right. The right to local self-governance is something ingrained in the history of this country, and in the 10th amendment to NH constitution. Article 2 of the Bill of Rights of the NH Constitution says that the authority for the government comes from the people. When the Constitution and the laws conflict, they must go with the Constitution. State regulations are not enough. This ordinance does not violate the Constitution but is upholding the fundamental rights. State laws are infringing on inalienable rights and constitutional guarantees.

Ms. Gilman said they're not a home rule state, and only get permission to do things from the state. On the idea of enforcement, the ordinance doesn't speak to it and the state hasn't given us a regulation to enforce this, so how does this go forward? Ms. Kelly said it's a matter of judicial opinion. They're bound to the plain text of the constitution. Where the constitution and the law conflict, the law should be rectified. They don't want to eradicate Dillon's Rule in its entirety, only where it infringes on fundamental

rights. The town should start by posting the ordinance on the town website, which will deter outside forces who may try to come in and undermine these rights.

Ms. Gilman said right now, they have a Planning Board, where all meetings are public and televised. If there were interest from people about how this applies to a project, they could come to that meeting. Ms. Kelly asked who would make the final decision on a project, and Ms. Gilman said the Planning Board. Ms. Kelly said the Planning Board's decision might not go far enough. Ms. Surman said this gets them back to an overarching board. The Planning Board are the Land Use people, it's a rare thing that the Select Board would ever overrule them. Ms. Kelly said this is not a regulatory ordinance, and not meant to supersede Planning Board criteria, but the Planning Board shouldn't even be considering projects that violate fundamental rights to clean air, clean water, etc. Ms. Corson countered that any large development could be interpreted as doing that. Ms. Kelly said the town would have to come up with procedures that allow the community to weigh in on the process. The company would have to prove to the town that it's not going to harm the community. Ms. Corson asked if a 100 home development powered by oil would be in violation. Ms. Kelly said homes built by individual homeowners would not, but a corporation maybe. Ms. Corson asked will they define what's major. Ms. Kelly said there could be policies adopted by the town on what this would look like.

Mr. Mitchell said there were two invitations issued to the Select Board: his invitation/challenge to read the ordinance and see if they can figure out from reading it what they're supposed to do, and the invitation by Ms. Kelly, which is an invitation for the Town of Exeter and its taxpayers to be sued. No matter how illegal, she wants the Board to try to enforce this ordinance in some vague way against property owners. That will get the town sued. That happens sometimes for a good purpose, but the strong likelihood here is that the town and its taxpayers will lose that litigation.

Mr. Dean said Nottingham is dealing with a similar issue, and a judge has not yet ruled on the validity of that ordinance. The concern about administration is real, how to enforce this day to day. Ms. Corson said they would need a master plan of this with some kind of consulting just to figure out the parameters.

Ms. Surman said the town already has a defined review process between the Conservation Commission, technical review, the Planning Board, and the Zoning Board. It's already difficult to develop in Exeter. Ms. Fay said the Planning Board and Technical Review Committee have specific procedures in place, but do not allow the community to say "this is too much harm for the community." Instead, they follow regulations from the state that a certain level of harm is acceptable. They don't have regulations that are sufficient. Ms. Corson said some Exeter Planning Board regulations are stricter than the state. The town's fertilizer ordinance is one of the only ones in NH.

Ms. Gilman said she would like to have proponents of the ordinance to work with them to take a project through the proposed process in theory. Ms. Cowan said it would make sense to have a working group workshop on how to bake this into the regulatory bodies of the town. Mr. Papakonstantis thought a test case would be premature until they have an opportunity to establish a dialog on this after the election. Ms. Fay said she would appreciate that. They wanted a working group when they initially came to the

Board. Mr. Papakonstantis said they would continue the discussion after the upcoming election.

c. Q4 Financial report - 2019

Doreen Chester, the town Finance Director, gave the Q4 update. General Fund Revenue was \$19.7M, up \$639,000 over projection, due to the Motor Vehicle up \$65,000, building permits and fees up \$246,000, and the money they got back from the state revenue sharing, which was suspended in 2009 and now is providing \$159,000 this year. Meals and Rooms tax revenue was \$779,000, an increase of \$5,000 from previous. Income from departments was up \$147,000 from the prior year. The LED streetlight program rebate was \$132,000, blue bag revenue was \$592,000, transfer station permit fees had an increase of \$13,000, and the new brush dump fees brought in \$6,000. In property taxes, the town follows the calendar year and schools are on a fiscal year, so it's not complete. The town billed \$51M in tax revenues, and allocated  $\frac{2}{3}$  to school and county. The sale of town property on Garrison Lane brought in \$132,000. There was interest revenue of \$133,000, up from only \$1,300 in the prior year. In transfers from the EMS revolving fund, which is at 95% of revenues after expenses, there was \$220,000. There were projects with excess bond proceeds, and reimbursements from The Trustee of Trust Funds, for Snow and Ice, sick leave, transportation, etc.

In expenditures, it was mainly retirements causing variances. The General Fund was \$18.9M spent vs a \$19.6M budget, \$717,000 less spent than projected, although they carried over \$228,000 in warrant articles and have funds encumbered. In the General Government group, there were \$867,000 in expenditures, with a balance of \$21,000. There was a retirement of the assistant Town Clerk in May 2019 which was replaced with less senior staff, so there were some savings. In the Finance group, overall expenditures were \$864,000 or 97% spent, with a balance of \$23,600. In Finance there was another retirement, of an Accounting Clerk, in May. In Tax Collection, there was a retirement of the Deputy Tax Collector in July. The Tax office has a \$13,000 balance. IT was 99% spent; that department made scheduled computer equipment purchases. In Planning and other Boards, there were \$545,000 in expenditures, and they were close to 100% spent. There was a \$20,000 match for an MTAG grant expenditure, which was offset with \$11,500 in revenue to the General Fund. In Economic development they were at \$139,000 or 95% spent; there was a slight savings in unspent secretarial and intern wages.

In the Police Department, expenditures were at \$3.4M or 92% spent, \$290,000 less than projected due to retirements. In Police Administration, the Police Chief and Office Manager retired for a savings of \$77,800; there was also a Patrol retirement, and the ACO retired in April, and was not replaced until December. The Fire Department was at \$3.75M, or 97% spent. In Fire Administration, there was a new part time clerk position in 2019, but hiring was delayed. There were \$9,700 in savings due to wages. In Fire Suppression, a veteran Firefighter retired in 2018 and was not replaced until February, which generated some savings.

Public Works was \$5.3M or 99% spent against this year's budget. Stormwater was at \$47,000, or 79% expended; \$20,000 was encumbered for asset management. Highways and streets was spent at \$1.95M. Some larger ticket items were not expended, as they were not able to get contractors. The Solid Waste program was spent at \$1.3M, or 102% against budget. Trash collection and recycling are the largest expenditure. Trash is \$76 a ton and recycling \$120 a ton, which doesn't include the cost of the truck at \$24,000 a month. Blue bag revenues offset these costs, but not 100%. In Snow and Ice, it was a very snowy year, and they were \$465,000 spent or 148%. There was a deficit of \$150,000 in the Snow and Ice category. The Select Board approved \$100,000 to offset expenditures from the Snow and Ice account. In Maintenance, there's a large project to repair the cupola at Town Hall, which is encumbered for 2020. In Welfare, there was a large uptick in the number of cases, partly because some state programs were dropped. The town provided \$53,000 in direct rental assistance alone.

In the Water fund, revenues were at \$3.65M, or 111% of expected. Water Consumption charges were \$2.99M. Water Service charges were \$587,000. Water impact fees were \$16,000. There was a rate adjustment in October 2019. Water expenses were at \$3.28M, or 99% spent. Water Admin was at \$339,000, a \$28,000 variance, due to a decrease in wages and taxes, specifically a delay in hiring for a Senior Water Sewer Assistant Engineer position, which was postponed to August 2019. Water Distribution was spent at \$791,000. Water treatment was at \$751,000, with overtime wages up \$19,000. The debt service was at \$1.15M; it increased this year by \$30,000 due to the Washington Street project debt coming online..

The Sewer Fund had a revenue of \$4.4M or 154% collected over expected. There was a \$712,000 increase in revenues from the Sewer rate increases. Usage charges were at \$3.67M. Service charges were at \$565,000. There was an increase due to debt service from the Waste Water Treatment Plant. For Sewer expenses, Sewer Admin was at \$372,000 or 95% spent. Sewer Collection was at \$578,000 or 87% spent. \$40,000 encumbered for pipe relining. Sewer Treatment had a balance of \$25,000, due to a position not being filled until November 2019. The debt service increased by \$212,000 to \$881,000. The DES auditors advised paying \$305,000 on the bond in December, rather than waiting until 2020. There will be a payment of \$3.4M in 2021. There was an appropriation from the Sewer Reserve Fund, a \$24,000 charge for the Belmont Street Pump Station.

In the Revolving Funds, CATV had revenues of \$149,000 and wages of \$101,000; there was some turnover in part time staff. General expenses were \$85,000, down from \$128,000 in the prior year, due to a one-time expenditure for the CATV office relocating to Town Hall. The Rec Revolving Fund was at \$716,000 vs \$732,000 last year, due to a drop in special event revenues. Rec impact fees were down \$97,000. Program revenues have increased by \$9,000. Expenses, wages and taxes were at \$255,000. In Rec General Expenses, Programming was at \$184,000, and Special Events at \$44,000. Capital outlay was made using the Revolving fund; they spent \$100,000 in impact fees for Kids Park renovations, basketball court resurfacing, pool filtration and a new lift, and other projects. The EMS Revolving fund was at \$580,000, \$27,000 higher than the prior year, due to an increase in call volume. Expenses were

\$377,000, up by \$51,000, due to overtime wages. A new ambulance was lease purchased, a 3 year lease with \$78,000 payments. They also purchased a new CPR compressor for \$10,700.

d. Public Hearing: Swasey Parkway Event Fees/Facility Fees

**MOTION:** Mr. Papakonstantis moved to open the public hearing regarding Swasey Parkway event fees. Ms. Surman seconded. All were in favor.

Ms. Corson summarized the changes being discussed: the new fees are \$100 per event for non-profits or \$150 per event for for-profits; they took out the “seasonal” category; and the Farmer’s Market is grandfathered. She opened the discussion to public comment.

Martha Mackenty of 10 Chestnut Street said she was here to support Swag on Swasey. It’s not just a flea market, it’s part of this community. It attracts people to town. People are anxious to have it continue.

Ms. Corson mentioned that the Select Board received several letters in support of Swag on Swasey as well.

Andrea Burzon, an Exeter resident and business owner, said Swag on Swasey is helpful to her business. Many of her customers appreciate it as well. As a resident, she’s an abutter of Swasey Parkway, and finds that there’s a minimal impact created by this event compared to other events.

Betty Hannaberry, a former abutter of Swasey Parkway, said she never saw any mess from Swag on Swasey. Events like this make Exeter unique.

Cynthia Whitcomb, owner of a business at 187 Water Street, said she loves Swag on Swasey and the people it attracts. The event helps their area of Water Street.

Susan Heel, an Exeter resident, said Swag on Swasey brings families to the Parkway and the downtown. She would be sad if it wasn’t there.

**MOTION:** Ms. Surman moved to close the public hearing. Ms. Gilman seconded. All were in favor.

**MOTION:** Ms. Surman moved to adopt the new fees for Swasey Parkway. Ms. Cowan seconded. Mr. Papakonstantis voted nay, and the motion passed 4-1.

e. Public Hearing: TAP Program Easements

**MOTION:** Mr. Papakonstantis moved to open the public hearing needed for the acquisition of land to complete the TAP program sidewalks. Ms. Surman seconded. All were in favor.

Ms. Corson opened the public hearing, but there was no discussion.

**MOTION:** Mr. Papakonstantis moved to close the public hearing. Ms. Surman seconded. All were in favor.

7. Regular Business

a. Tax Abatements, Veterans Credits and Exemptions

**MOTION:** Mr. Papakonstantis moved to approve a Veteran’s Credit of \$1,000 for 71/72. Ms. Surman seconded. All were in favor.



**MOTION:** Mr. Papakonstantis moved to approve a Veteran's Credit of \$500 for 86/65 and 73/136. Ms. Gilman seconded. All were in favor.

**MOTION:** Mr. Papakonstantis moved to approve an Elderly Exemption of \$183,751 for 104/79/516 and 68/6/814. Ms. Cowan seconded. All were in favor.

**MOTION:** Mr. Papakonstantis moved to approve an Elderly Exemption of \$152,251 for 104/79/9, and 63/188. Ms. Cowan seconded. All were in favor.

**MOTION:** Mr. Papakonstantis moved to approve an Elderly Exemption of \$236,251 for 73/136. Ms. Cowan seconded. All were in favor.

**MOTION:** Mr. Papakonstantis moved to approve a Disability Exemption of \$125,000 for 104/35. Ms. Cowan seconded. All were in favor.

**MOTION:** Mr. Papakonstantis moved to approve an abatement of \$1,107.65 for 81/53. Ms. Cowan seconded. All were in favor.

**MOTION:** Mr. Papakonstantis moved to approve an abatement of \$123.33 for 68/6/224. Ms. Cowan seconded. All were in favor.

**MOTION:** Mr. Papakonstantis moved to approve an abatement of \$504.96 for 72/17/5. Ms. Cowan seconded. All were in favor.

b. Permits & Approvals

- i. There were no Permits & Approvals at this meeting.

c. Town Manager's Report

- i. Town reports came in last Friday, and are available to the public at the Town Offices.

He attended the meeting on the proposed NIPDES permit, which was a joint meeting with Newmarket and legal representation. As a result of the public hearing in Portsmouth, the EPA extended the public comment period until April, which is a positive change. He will attend another meeting on the permit in Rochester, with the staff of both Senators and Congressman Pappas.

- ii. He met last week on the Emergency Operations Plan, which they're continuing to update.
- iii. The Town Moderator couldn't be here tonight since he's at RiverWoods helping with the warrant. There will be "I voted" stickers this time. Pam McElroy reached out to the high school, so they're hoping to have student volunteers to pass them out.

d. Select Board Committee Reports

- i. Ms. Gilman said she had no meetings. A bill that she submitted for reversing the definition of contracts in a default budget is coming out of her committee tomorrow.
- ii. Mr. Papakonstantis said the Planning Board and Facilities meetings were cancelled. He has a Sustainability meeting tomorrow.
- iii. Ms. Corson said she has a Communications Committee meeting tomorrow.
- iv. Ms. Cowan had no meetings.

- v. Ms. Surman said there's an E911 meeting tomorrow. She was able to attend this morning's swearing-in of the two new police officers. She thanked former and current town volunteers and employees, as this is her last meeting.
- vi. Ms. Cowan presented a token of appreciation to recognize Ms. Corson and Ms. Surman, who are both retiring from the Board.
- e. Correspondence
  - i. There was no correspondence considered at this meeting.
- f. Review Board Calendar
  - i. The next meeting is March 16th.

8. Non-Public Session

**MOTION:** Ms. Gilman moved to enter into non-public session pursuant to RSA 91-A:3 II(c). Mr. Papakonstantis seconded. By a roll call vote, all were in favor, and the meeting went into nonpublic at 9:14 PM.

9. Adjournment

Respectfully Submitted,  
Joanna Bartell  
Recording Secretary