

**Nottingham Select Board Meeting**

**6/21/21**

**Official Minutes as of 6/28/21**

**1 Call to Order**

2 Members Present: Chair Ben Bartlett, Vice Chair John Morin, Tony Dumas, Donna Danis

3 Absent: Tiler Eaton

4 Others: Lorraine Petrini, Chris Sterndale, Steve Soreff, Gene Reed

5 Chair opened the meeting at 6:30pm with the Pledge of Allegiance.

6 Mr. Bartlett recognized and thanked the Supervisor of the Checklist, Moderator and the rest of  
7 the election workers for their work for the election.

**8 Approve Manifests**

9 **Ms. Danis made a motion to approve the accounts payable manifest of 6/14/21 and payroll**  
10 **manifest of 6/15/21. Mr. Dumas seconded. Unanimously approved by a vote of 4-0.**

**11 Approve Minutes**

12 **Mr. Dumas made a motion to approve the public minutes from 5/3/21 as written. Mr.**  
13 **Morin seconded. Unanimously approved by a vote of 5-0.**

14 **Mr. Morin made a motion to approve the public and non-public minutes from 5/17/21 as**  
15 **written. Ms. Danis seconded. Unanimously approved by a vote of 5-0.**

**16 BOS Reports from Assigned Boards/Committees**

*17 Budget Committee*

18 Not meeting at this time.

*19 Planning Board*

20 Not in session.

*21 CIP*

22 Mr. Eaton is not here to go over the meeting.

*23 300<sup>th</sup> Celebration Committee*

24 Mr. Soreff said the flags are up at the Nottingham Square.

*25 Marston Property*

26 Discussed later in meeting.

**27 Town Administrator Report**

28 Rec camp starts next week. PLIA has a meeting next week. Plumbing repairs will need to be  
29 made on old town hall. Fire chief will be coming in to speak to BOS in upcoming meeting.

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There is no policy for holidays that fall on the weekend for the town workers. Mr. Sterndale is asking about 4<sup>th</sup> of July which falls on Sunday. Mr. Bartlett said he would be in favor of having the holiday on Monday. Mr. Dumas and Danis concurred. There will be a policy written up to celebrate on Monday if holiday falls on weekend.

The governor's order allowing zoom has lapsed so all meetings must be in person. The ZBA met last week and they will meet tomorrow night to redo the meeting in zoom last week.

Mr. Sterndale asked if the BOS wants to pursue a way of hybrid meeting. It would be for the public to hear the meeting and also participate; the BOS would meet in person. Mr. Dumas said the cost was in the \$30k range. He said all the broadcast equipment that they have currently was procured in the 90's and needs to be replaced. With modern equipment, they would have an ability to plug into a laptop to have a meeting. Mr. Bartlett asked if the \$30K+ would be a yearly fee or one-time fee. Mr. Dumas said it would be a one-time cost but potentially some costs. Mr. Sterndale said they may need someone to manage the cameras while the meeting is going on. Mr. Bartlett asked if the federal funding would cover some of this. Mr. Sterndale said it may. There is also a cable access fund that has \$30K+ in it. Ms. Danis asked if the \$30k gets the ideal system or if it's a band-aid solution. Mr. Dumas said it would be a real solution. Mr. Bartlett suggested that Mr. Dumas be in charge of this along with Mr. Sterndale. Ms. Danis asked how far advanced is the school than the town in terms of broadcast equipment. Mr. Dumas said not as far as you may think. Mr. Sterndale suggested sharing a space with the school for equipment. Mr. Dumas said the equipment could be in a wheeled cabinet. Mr. Sterndale said to have two \$30k rooms may not be ideal.

Mr. Sterndale showed off a t-shirt that was a quasi-uniform for the town workers. It's not available to the public.

Mr. Sterndale said he will not be at the meeting next week. He will be gone for the next couple of weeks. People can reach out to the chair and vice chair of the BOS.

**Action Items from Last Meetings**

*5/3/21 minutes*

**Assessing**

**Assessing**

Map	Lot	Subject	Map	Lot	Subject
63	17	Elderly Exemption	70	53	Elderly Exemption
58	7	Land Use Chng Tax Sub 1-1	58	7	LUCT Sub 1-2
58	7	LUCT Sub 1-3	63	47	LUCT
63	47-A	LUCT	63	47-B	LUCT
63	47-C	LUCT	66	1-4	LUCT
71	150-1	LUCT	71	150-3	LUCT

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59 Mr. Morin will recuse himself for the accessing portion of the meeting.

60 **Ms. Danis made a motion to approve the Elderly Exemption for Map 63, Lot 7 and Map 70,**  
61 **Lot 53. Mr. Dumas seconded. Unanimously approved by a vote of 3-0.**

62 **Mr. Dumas made a motion to approve the land use change tax for Map 58 Lot 7 1-1, Map**  
63 **58 Lot 1-2, Map 58 Lot 7 Sub 1-3. Ms. Danis seconded. Unanimously approved by a vote of**  
64 **3-0.**

65 **Mr. Dumas made a motion to approve the land use change tax for Lot 71 Lot 150-1, Lot**  
66 **150-3. Ms. Danis seconded. Unanimously approved by a vote of 3-0.**

67 **Mr. Dumas made a motion to approve the land use change tax for Map 66 Lot 1-4. Ms.**  
68 **Danis seconded. Unanimously approved by a vote of 3-0.**

69 **Mr. Dumas made a motion to approve the land use change tax for Map 63 Lot 47, 47-A, 47-**  
70 **B and 47-C. Ms. Danis seconded. Unanimously approved by a vote of 3-0.**

71 Mr. Morin said the properties at Map 63 all sold at market value is what they are being charged  
72 for the LUCT tax. The properties at Map 47 A, B and C all sold under for what the current  
73 market is. They are taxed higher than what the current market is. He will go through the  
74 abatement process. These properties don't have water rights. He feels like Avitar made a mistake  
75 on these three lots.

76 Ms. Danis said her suggestion is approving the motions and Mr. Morin will move to the  
77 abatement process.

78 **Unanimously approved by a vote of 3-0.**

79 **General Business**

80 *Stormwater Asset Management Grant*

81 **Mr. Bartlett made a motion to authorize the BOS chairperson and Town Administrator**  
82 **Chris Sterndale to sign loan agreements and documents pertaining to application and**  
83 **disbursement of funds for the Clean Water SRF Loan program. Mr. Dumas seconded.**  
84 **Unanimously approved by a vote of 4-0.**

85 *Sale of Town Property*

86 Freeman Hall Road parcel was sold. The Smoke Street parcel is struggling with getting the title.  
87 The town has given the potential owners an extension to later this week. The Rte. 4 parcel has no  
88 updated news.

89 **Mr. Dumas made a motion to authorize the deed transfer of Tax Map 5, Lot 2-29 and Map**  
90 **5, Lot 2-31 to Thomas and Leona Duda. Ms. Danis seconded. Unanimously approved by a**  
91 **vote of 4-0.**

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Mr. Bartlett asked if there were any other properties in town that will be sold. Mr. Sterndale said there are none at this time that can be easily sold and are tax deeded.

*Marston Well*

Ms. Danis said they had a 2<sup>nd</sup> cleanup which Kortney Dorow said went very well. There were about 12-15 people. The fundraising is at \$24k and some comes from corporate sponsorships and individual donors.

They would like to move forward with getting the well done. She is looking for a formal vote tonight. Federal funds will be used. There is no public water source in town. In the event of a disaster, they can use that water. Also irrigation can be provided for the fields. The appropriate cost is \$60k. That doesn't include the irrigation system. The irrigation system and the backstops will come from the fundraised money. The electrical infrastructure is provided by Carl Edin for free. The electrical labor is provided by IBEW free of charge coordinated by Tiler Eaton.

Mr. Morin asked if there is a per foot cost for the well. Mr. Sterndale said it could be higher or lower than the given price. He said the price is in the same neighborhood as the well built at the highway dept. building.

There will be a 10x10 shed built at Marston Farms field and Shea Concrete is going to provide the pads free of charge.

Mr. Bartlett said he would be in favor of the well if it fell under the federal funding.

**Ms. Danis made a motion for the Board to approve \$60K for the infrastructure of the well at the Marston Farms field using the federal funding money. Mr. Dumas seconded. Unanimously approved by a vote of 4-0.**

*Impact Fee Appropriation*

**Mr. Dumas made a motion to approve the expenditure of \$32,199 in fire department impact fees for a principal payment on the fire station bond. Ms. Danis seconded.**

Mr. Reed read the following:

"To BOS June 21 2021

I came here tonight to request the Board suspend payments from the resident's impact fee accounts for payments to benefit the principal due on the Fire Station bond/loan.

This request for is for the following reasons

The overwhelming legal opinion is that new development must have caused the need to build the Fire Station.

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Better stated is a dual rational nexus test: The municipality must demonstrate a reasonable connection between the need for the additional capital facility and the new development causation of that capital construction. I know of no such test being applied.

“Impact fee” means a fee imposed on a development to help meet the “needs occasioned” by that development for the construction or improvement of capital facilities owned or operated by the municipality”. C. Christine Fillmore is Staff Attorney NHMA “Demystifying Impact Fees”

2nd RSA 674:21 Innovative Land Use Controls. – V. As used in this section ‘impact fee’ means a fee or assessment imposed upon development, including subdivision, building construction, or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; municipal road systems and rights-of-way; municipal office facilities; public school facilities; the municipality’s proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; public library facilities; and public recreational facilities not including public open space. No later than July 1, 1993, all impact fee ordinances shall be subject to the following:

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153 2 nd 674:21 Innovative Land Use Controls. – V (a)The amount of any  
154 such fee shall be a proportional share of municipal capital  
155 improvement costs which is reasonably related to the capital  
156 needs created by the development, and to the benefits  
157 accruing to the development from the capital improvements  
158 financed by the fee. Upgrading of existing facilities and  
159 infrastructures, the need for which is not created by new  
160 development, shall not be paid for by impact fees.

161 C. Christine Fillmore is Staff Attorney NHMA  
162 “Demystifying Impact Fees” states it clearly: “Notably,  
163 impact fees may not be charged for upgrading existing  
164 facilities or infrastructure unless the need for the upgrade  
165 is created by the development. RSA 674:21, V(a). “

166  
167 2. Additionally, Impact fees being collected years after the  
168 Fire Station construction was completed certainly cannot  
169 be attributed “occasioned by” to those homeowners after  
170 the fact of construction. The requirement is that the  
171 need be caused by development to spend their impact  
172 fee held by the Town.

173 “If the impact fee collected is spent on a capital  
174 improvement that was made necessary by the new  
175 development that was assessed the fee, that would  
176 comply with the impact fee statute.”

177 Stephen Buckley, Legal Services Counsel, NHMA  
178 My comment: The Fire Station was not built to help meet the needs  
179 occasioned by that development for the construction. The  
180 reasons for building the new Fire Station were related to septic

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181 issues, mold, and housing of existing equipment. (A matter of  
182 record presented at Town Meeting.) Construction was not due to  
183 needs of new development and therefore not qualified for impact  
184 fee distribution.

185

186 If an impact fee is spent on an improper purpose the  
187 courts can order a full or partial refund.. Clare vs. Town of  
188 Hudson

189 Stephen Buckley, Legal Services Counsel, NHMA

190

191 My Comments:

192 1. It is clear,,, time and again that the new fire station  
193 MUST have been necessitated or “occasioned by” the

194

195 IMPACT of new development. Therefore the need of a new  
196 fire station not being related to new development does  
197 not meet the lawful standard of applying impact fees.

198 The Planning Board Studies by consultant are not  
199 approval or license to spend impact fees, but to quantify  
200 the amount to be collected as impact fees.

201 In the past I have been assured that we have legal  
202 opinions that support the spending of Fire Station impact  
203 fees. I request supporting legal opinions for our review. I  
204 make this request at a time when the NH Supreme Court  
205 has ruled that a balance test be applied to legal opinions  
206 which could make them public and exempt from lawyer-  
207 client privilege. See Hampstead School Board vs. SAU55”

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208 Mr. Morin asked don't we have more fire department trucks. Mr. Reed said they don't qualify  
209 for the impact fees. He said it was difficult to park the vehicles in old fire station and there was  
210 mold. Ms. Danis asked if Mr. Reed looked at BOS minutes as well; he said he did not but he  
211 welcomes the information. Tom Sweeney did put on a presentation but Mr. Reed said he is not  
212 sure if that was recorded.

213 Mr. Bartlett said there are developments in town. Mr. Reed said it was not caused by them.

214 Mr. Bartlett asked for legal input from Mr. Sterndale.

215 **Mr. Bartlett recommended tabling this issue. The Board concurred.**

216 Mr. Reed read info from what Charlie Brown had said about impact fees.

217 *Town Warrant Articles*

218 The attorney said that Article 20 was advisory only. The policy remains on the books till the  
219 BOS does something.

220 Mr. Morin would like to have a future discussion about this.

221 Mr. Sterndale went over an update on what the town is doing regarding for the town warrant  
222 articles.

223 There will be a Q2 financial update at the 2<sup>nd</sup> July meeting.

224 The new highway dept. truck will come after winter. Mr. Bartlett suggested taking this  
225 international truck out of commission and using a contractor. Mr. Sterndale said they may not be  
226 able to find a contractor.

227 The building inspector will take the lead for the community center kitchen project.

228 There is a land use clerk vacancy.

229 The E-911 coordinator has left. The town may do the E-911 in sections.

230 Bids will go out for cemetery and paving.

231 Ms. Danis suggested having a workshop with the 300<sup>th</sup> Celebration Committee. The committee  
232 can discuss their vision and costs. She said there are concerns about safety.

233 Mr. Sterndale said they have to figure out where the roads are on the approved plans for the  
234 roads approved by Article 19. Mr. Bartlett asked if roads need to be surveyed. Mr. Sterndale said  
235 he does not think so. They will need help regarding these roads and they are asking the attorney.  
236 There are chunks of roads that were never EL roads but now are town roads. There are some  
237 culverts and guard rails on some of these roads; they need to determine what the current  
238 equipment can handle.

239 Mr. Morin asked how much more mileage they have. Mr. Sterndale said Dolloff Dam Road,  
240 Jamsa Rd. and Sachs Rd. were not covered by EL and now are town roads.



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241 Mr. Sterndale said he is meeting with Strafford Regional this week.

242 Speed limits can only go down to 25mph and the speed on some of these roads should be lower.  
243 There are parts of these new town roads that are private in Raymond in order to get to the roads  
244 in Nottingham.

245 Ms. Danis and Mr. Morin said they are no longer recusing themselves from the lawsuit for the  
246 private roads. Mr. Sterndale said the lawsuit has been moved out 2 months. It's on hold, waiting  
247 for plaintiffs.

248 **Appointments**

249 **Review Action Items for Next Meeting**

250 *6/28/21: Election of Officers, committee assignments*

251 *7/12/21 Old Town Hall*

252 *PLIA meeting, fire chief meeting*

253 *Impact fee for fire station*

254 *Warrant Article 20 discussion*

255 *Q2 financial update at the 2<sup>nd</sup> July meeting*

256 *300<sup>th</sup> celebration committee*

257 **Non-Public per RSA 91-A:3 II (a), (b), (c), (d), (e), and/or (l) if required.**

258 **Adjourn**

259 **Ms. Danis made a motion to adjourn the public meeting at 7:38 pm and go into non-public**  
260 **RSA 91-A:3 II (a and e). seconded. Roll call vote: Mr. Bartlett-yay, Mr. Morin-yay, Ms.**  
261 **Danis-yay and Mr. Dumas-yay. Unanimously approved by a vote of 4-0.**

262 The non-public meeting ended at 7:46 pm.

263

264 **Ms. Danis made a motion to seal minutes of non-public session. Mr. Dumas seconded. Roll**  
265 **call vote: Mr. Bartlett-yay, Ms. Danis-yay, Mr. Dumas-yay and Mr. Morin-yay.**  
266 **Unanimously approved by a vote of 4-0.**

267

268 **Ms. Danis made a motion to adjourn the public meeting at 7:47pm. Mr. Dumas seconded.**  
269 **Roll call vote: Mr. Bartlett-yay, Ms. Danis-yay, Mr. Dumas-yay and Mr. Morin-yay.**  
270 **Unanimously approved by a vote of 4-0.**

271

272