

Nottingham Select Board Meeting

08/21/2023

APPROVED Minutes

Approved as amended on September 11, 2023.

Call to Order

Members present: Ben Bartlett, John Morin, Tim Dabrieo, Steve Welch, and Matthew Shirland.
Others: Town Administrator Ellen White.

Members of the public: Please refer to the sign up sheet at the end of this document.

Members Excused: none.

Mr. Bartlett opened the meeting at 6:30 PM with the Pledge of Allegiance.

Approve Manifests: A/P 8/21/2023 and Payroll 8/22/2023

Mr. Dabrieo made a motion to approve the accounts payable manifest of 08/21/2023 and payroll manifest of 08/22/2023. Mr. Welch duly seconded. Motion carried by a 5:0 roll call vote. Mr. Bartlett – aye, Mr. Morin, Mr. Shirland - aye. Mr. Dabrieo – aye, , Mr. Welch – aye.

Approve public minutes 7/26/2023 8/7/2023

Mr. Bartlett noted that there were corrections to the 08/07/2023 draft minutes. Mr. Shirland went over the corrections and Ms. White added a small change to the time of non-public session ending.

Mr. Dabrieo made a motion to approve the public minutes for 07/26/2023 as presented. Mr. Morin duly seconded. Motion carried by a 3:0:2 roll call vote. Mr. Dabrieo – aye, Mr. Bartlett – aye, Mr. Morin - aye. Mr. Dabrieo and Mr. Welch abstained as they were not present at that meeting.

Mr. Shirland made a motion to approve the public minutes for 08/07/2023 as amended with the noted corrections. Mr. Dabrieo duly seconded. Motion carried by a 5:0 roll call vote. Mr. Welch – aye, Mr. Bartlett – aye, Mr. Shirland – aye, Mr. Dabrieo – aye, Mr. Morin - aye.

Approve non-public minutes 7/10 & 7/17/23, 7/26 & 8/7/23

Mr. Welch made a motion to approve the non-public minutes for 07/10/2023 as presented. Mr. Morin duly seconded. Motion carried by a 4:0:1 roll call vote. Mr. Welch – aye, Mr. Bartlett – aye, Mr. Shirland – aye, Mr. Morin - aye. Mr. Dabrieo abstained as he was not present at that meeting.

Mr. Dabrieo made a motion to approve the non-public minutes for 07/17/2023 as presented. Mr. Shirland duly seconded. Motion carried by a 4:0:1 roll call vote. Mr. Welch – aye, Mr. Dabrieo– aye, Mr. Shirland – aye, Mr. Morin - aye. Mr. Bartlett abstained as he was not present at that meeting.

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Mr. Welch made a motion to approve the non-public minutes for 07/26/2023 as presented. Mr. Morin duly seconded. Motion carried by a 3:0:2 roll call vote.— Mr. Dabrieo - aye, Mr. Bartlett – aye, Mr. Morin - aye. Mr. Welch and Mr. Shirland abstained as they were not present at that meeting.

Mr. Shirland made a motion to approve the non-public minutes for 08/07/2023 as presented. Mr. Welch duly seconded. Motion carried by a 4:0:1 roll call vote. Mr. Welch – aye, Mr. Bartlett – aye, Mr. Shirland – aye, Mr. Dabrieo - aye. Mr. Morin abstained as he was not present at that meeting.

BOS Reports from Assigned Boards/Committees Budget, Planning Board, CIP, Marston

Mr. Bartlett noted that the Budget Committee will meet on September 7, 2023.

Mr. Morin provided an update on the latest Zoning Board meeting that he attended and noted that there was a case approved that will be going back to the Planning Board for a 25 lot open space subdivision. Overall, he concluded that building is still going on in Nottingham.

Mr. Dabrieo provided an update on the Marston Property Committee that is working on finishing the dugouts project.

General Business

Town Administrator Report

Ms. White spoke about the following:

- Per Paula Penney, Secretary of State's Office, effective September 1, 2023 the state statute requiring a state license for a Hawker and Peddler or Itinerant Vendor has been repealed. Cities/Towns may still require a local permit however there will be no requirement for a state license. Normally the Town would require proof of a valid Hawker and Peddler license issued by the state for any vendors that will be present at a Special Event. She asked if the Board would like to consider adopting a policy and license requirements at the local level?

Discussion ensued about how many events it would affect in Town, with the Water Cross being the most affected event. Members agreed that this item does not have the top priority but should be looked into in terms of how it may affect the Town and whether simply requiring proof of insurance for vendors who come into Town would suffice. It was also suggested that if anything changes, the Town could look into instituting some type of formal policy.

- Each town is allowed up to four representatives to serve on the Lamprey River Advisory Committee. Currently Peter White is the only representative for Nottingham but he has been absent from meeting attendance and not participating on the committee. Ms. White

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said that if anyone is interested in serving as a representative to reach out to the Town Office.

- The Town is still seeking a representative to serve on Strafford Metropolitan Organization (MPO) Technical Advisory Committee (TAC). If anyone is interested in serving, please reach out to the Town Office. She also read some of the requirements for such a Town representative on the committee. She noted that the Conservation Commission will also be getting the same information and that she can provide more information to those who are interested on when and where the committee meets.
- Ben Bartlett and his crew have done a wonderful job clearing away the trees and brush that have overgrown the space surrounding the town hall and police department. This was noted as an area of concern for the town hall's current pest problem. Ms. White thanked Mr. Bartlett and his crew for volunteering their time and equipment to make this much needed improvement happen.
- The Town has entered into a more aggressive management plan to deal with the pest issues within the town hall and police department. Treatment started last Friday and will hopefully take care of the issues the Police Department has been faced with over the past month.
- Ms. White spoke with the Town Clerk Lori Anderson regarding the placement of the POW/MIA Chair of Honor in her office and they have agreed on a location in the right corner. She will be ordering flags, stanchions and memorial plaque so that the management can get them placed and arrange a formal dedication ceremony with Rolling Thunder in attendance.
- Ms. White said that she has a draft started of a website/hyperlink policy that she will be forwarding for review and consideration at the next meeting on September 11, 2023.
- The requests for proposal for the dry hydrant installation on Kennard was not distributed because additional specifications were needed in order to draft the request. Ms. White will be working on the details to finalize this request with proposal opening to be rescheduled for the next meeting on September 11, 2023.
- Owen Friend-Gray has offered his assistance with initiating an RSA (Road Safety Audit) with NH DOT pertaining to the intersection of 156, Deerfield and Ledge Farm.
- The Town's Asset Management Program that was presented at the last meeting by John Jackman and was deemed complete and approved by NH DES on August 7, 2023. The final disbursement request for this project has been processed and is scheduled to be paid to the Town on August 23, 2023. Ms. White added that this was a great outcome as the Town now has a program that is used daily by the Highway Department and the costs to

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implement were only interest on the forgivable loan, as well as getting a laptop and a tablet that is being used in the field.

- Upcoming important dates: September 7, 2023 - Budget Committee Meeting; September 11, 2023- Next Board of Selectmen Meeting; September 19, 2023 – General Election
- General Correspondence –
 - Jaye Vilchok (email of 7/31), Response drafted – any changes
 - Jaye Vilchok (emails dated 8/9-8/17)

Ms. White said that she has drafted a response to his 07/31/2023 email, which was circulated to the Board, and asked whether the Board thinks it is necessary to respond to other emails from him. By consensus members decided that the response already drafted by Ms. White to Mr. Vilchok's email from 07/31/2023 would suffice.

- Ms. White also requested a Non-Public Session pursuant to RSA 91-A:3, II (e) for legal and (a) for personnel

Assessing

Mr. Welch motioned to approve the Timber Yield tax for Map 48 Lot 4-8. Mr. Dabrieo duly seconded, and motion carried by a 5:0 roll call vote. Mr. Bartlett – aye, Mr. Morin – aye, Mr. Shirland - aye. Mr. Dabrieo – aye, Mr. Welch – aye.

Ms. White noted that there were two additional items added to the folder which are for licenses for Eversource to install two utility poles in the Town right of way. She noted that these only need to be signed by the members. Mr. Bartlett said that they will sign them at the end of the meeting.

Appointments

7:00 Kevin Bassett

Kevin Bassett from 101 Shore Road introduced himself and Jim Franklin from Franklin Associates. Mr. Bartlett said that he would like to ask Mr. Morin his opinion as he is the most experienced Board member with regards to the Planning Board matters. Mr. Morin spoke about his understanding of the issue where the width of the right of way is defined by the Town when it comes to roads withing subdivisions, whereas this is not technically a subdivision, and Mr. Bassett had the road surveyed for the sole purpose of knowing where the road currently is and how wide the existing right of way is. He also noted that the original plan for this road had the right of way planned at 33 feet. Mr. Morin said that he asked some questions at the Planning Board meeting and they referred him to the Zoning Ordinance which does require a 50 foot right of way for a newly designed road for any new subdivision but has a caveat for a minimum right of way of 36 feet in there. He said that the 33 foot width is pretty close to the 36 foot minimum zoning ordinance requirement and, since Mr. Bassett is not doing a new subdivision and technically does not have

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to abide by these rules, maybe the Board can give him an exception. Then Mr. Morin went over the Subdivision Regulations that also set the road surface width parameters based on the traffic and number of dwellings on that road. He said that neither the traffic nor the number of dwellings on this road are significant enough to seek a wider paved section of the road. Mr. Morin also noted that the Warrant Article did not mention anything about the width or the road or right of way.

There was discussion about setting precedent and a possibility to consider other roads on a case by case basis going forward. Mr. Morin opined that since Mr. Bassett is not subdividing, he does not have to follow the regulations that require a 50 foot right of way width and that the 33 foot width should be considered beneficial to the Town for the future widening of the road, and that the Town should work with him.

Mr. Franklin spoke about the fact that he was not able to find any case law or statutes that would allow the townspeople to take land from the private owner and give it to the Board of Selectmen. He explained that by statute the people can petition the Board of Selectmen to put a road from point A to point B and if the Board of Selectmen, after considering it, decides that it is for the public benefit, it can lay the road from point A to point B (or determine a different route if need be). The Board can also decide on the width of the right of way in this case. Mr. Franklin said that there are two options for the Board to proceed after it lays out the road in writing, and that is either to create an easement for the road of a certain width or, if the Board decides that it is necessary, by taking, which would involve awarding damages to the private landowner. He continued to say that the Town Meeting voted to accept the roads as is and where is, and Mr. Bassett realized that the current width of 16 or 12 feet is not going to be adequate for the Town. He then prepared the petition for the Town to lay out those roads as is where is. Mr. Bassett handed out the petition to the Board members.

Then Mr. Franklin said that the question of ownership arises as to who owns the soil under these roads that have been accepted by the Town according to the Warrant Article as he does not believe that the townspeople have the authority to take this land from private landowners and give it to the Board of Selectmen.

Mr. Bassett said that he assumes that he owns the land under the roads and that he would submit to a 25 foot easement split at the center. He noted that there are some exceptions shown on the plan/survey he prepared. Mr. Franklin added that he could give this plan to the Board together with the petition.

Mr. Franklin also noted that Mr. Bassett would like to see the responses to his questions from the Town Counsel in order to know how to proceed.

Then Mr. Franklin showed land under which roads is owned by Mr. Bassett and also the original layout for Lamprey Drive as shown on the original subdivision which does not match where Lamprey Drive currently is. He explained the concept of prescriptive easement, which is a process to legalize a road, that is not laid out, but is used by people for over 20 years, and which still has to be perfected by a court. He also explained that any road found by a surveyor while performing field work has to be researched, sometimes very extensively, to its original owners.

Mr. Franklin said that they are looking for guidance at this point as they are now sure how the Board will treat these roads that were petitioned by the citizens to be accepted by the Town as is where is.

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Then Mr. Franklin answered Board questions about the roads depicted on his plan and the suggested right of way width of 25 feet. He also spoke about the original subdivision plan for Lamprey Drive which had a notation signed by the Zoning Board of Adjustment, which he was not able to find out why they had signed this plan.

There was discussion about the original subdivision plan and its intent and also questions answered by Mr. Franklin about the intent of the petition submitted by Mr. Bassett, which he said is Mr. Bassett agreeing to give the Town a 25 foot easement over his land under these roads so that the Town would not have to award damages for the land taking after the petitioned Warrant Article was approved.

Mr. Bassett also reiterated that he would like to receive the Town Counsel's responses to his questions. Ms. White said that that correspondence is protected by client-attorney privilege and she would need to seek permission of the attorney to disclose it.

Mr. Franklin spoke about being in the dark without knowing the Town Attorney's position on this and that this is the first time in his experience that roads are accepted by the Town meeting like this.

Mr. Bartlett said that the Board was prepared to make a decision tonight but in light of this new information and the submitted petition they would not be able to do so.

There was a lengthy discussion which included statements from unidentified persons from the gallery about the ownership of the land under these roads, their maintenance, their approval by the Town Meeting, the fact that there are other landowners besides Mr. Bassett who may be involved, ownership of Lake Shore Drive, town of Derry's similar issue that was decided by the Rockingham County Superior Court, etc.

Members agreed that they would need to go back to the Town Counsel with all that new information, including the petition submitted by Mr. Bassett, to see what their course of action may be and what actually got transferred to the Town with the approval of the Warrant Article – the maintenance and repair responsibilities alone or the land under these roads as well.

7:30 PM Skip Seaverns

After a brief back and forth between Mr. Seaverns and the Board about the difficulties of trying to find out who owns land under some roads, Mr. Seaverns thanked the Board for issuing the official statement about the Fire Chief situation and said that he had several questions about that statement:

- 1) Whether the investigator, who was hired by the Town Attorney (as stated in the official statement), was in fact working for the Attorney and not the Town.

Ms. White said that this is correct. Mr. Seaverns said that he was not sure how in this case the investigator would be impartial if the Town Attorney is hired to protect the interests of the Town.

Mr. Shirland explained that the process begins with complaints that are provided to the investigator by the Town Attorney, and the investigator has to do what needs to be done to find out whether there are any validity to those complaints. Ms. White added that all the information that the investigator used was provided by the Town through the Town Attorney.

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- 2) The investigator's report indicated that she used the non-public minutes from March 20, 2023 as part of her resources and Mr. Seaverns was wondering if the Board had voted to unseal those minutes for the investigator to be able to use them.

Mr. Morin opined that anything to do with the Town Attorney is covered by the attorney-client privilege, therefore, if the minutes have been provided to the Town Attorney they would also be covered. He added that he was not sure if they were provided to the investigator or if the Town Attorney just told the investigator who to contact to make her own findings.

Mr. Seaverns said that the investigator used the minutes as they are part of her references.

- 3) Mr. Seaverns said that in the non-public session from March 20th there seemed to be two separate issues with two firefighters coming in and also an individual from the recycling center.

Ms. White said that this was not true as this was her first meeting as the Town Administrator for Nottingham and the recycling center employee issue was discussed at another meeting.

Mr. Seaverns insisted that according to his sources that individual was there and that Mr. Scruton earlier at the meeting noted that there is an issue with the recycling center personnel.

Ms. White reiterated that this individual did not come in on March 20th and said that the issue may have been brought up but he did not come in that night.

- 4) Mr. Seaverns asked if any of the firefighters were in a working status at the time of that meeting.

Mr. Morin answered no and asked Mr. Seaverns what the purpose was of his interrogation of the Select Board.

Mr. Seaverns answered that he feels like the personnel policy has not been followed in this case and that he is trying to figure out what went wrong. He said that the initial complaints were received at the non-public session and he was not clear how the Town Administrator could have had scheduled a non-public session for that night having not received the complaints yet.

There was discussion of the timeline of events and how it relates to the personnel policy.

- 5) Mr. Seaverns asked when the Fire Chief was given the opportunity to respond to the complaints as he was the last to be interviewed, and there was no information provided to him to oppose the viewpoints provided by those who complained about him.

Action items for the next meeting.

1. Kevin Basset
2. Proposal for the dry hydrant installation on Kennard
3. Assigning a Board member to each department as a liaison
4. Policy review
5. Marston Property renaming poll

There was a brief discussion about whether a dedication to Charlie Brown would be sufficient given that the Town already had ordered signage for the property.

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Public Comment

Doug Bates asked about renaming Marston property after Charlie Brown. Mr. Welch said that there is a poll going on and Ms. White added that it needs a little more publicity.

Non-Public Session

Mr. Bartlett moved to enter non-public session at 8:39 PM pursuant to RSA 91-A:3, II (a) and (e) Seconded by Mr. Dabrieo. Motion carried by a 5:0 roll call vote. Mr. Bartlett – aye, Mr. Shirland – aye, Mr. Dabrieo – aye, Mr. Welch – aye, Mr. Morin - aye.

Non-public session was entered at 8:09 PM

Resumption of Public Session

The public session was entered at 8:33 PM.

Mr. Dabrieo moved to exit the public session at 8:33 PM, Mr. Morin duly seconded. Motion carried by a 5:0 roll call vote. Mr. Bartlett – aye, Mr. Shirland – aye, Mr. Dabrieo – aye, Mr. Welch – aye, Mr. Morin - aye.

Mr. Morin moved to seal the non-public minutes; Mr. Dabrieo duly seconded. . Motion carried by a 5:0 roll call vote. Mr. Bartlett – aye, Mr. Shirland – aye, Mr. Dabrieo – aye, Mr. Welch – aye, Mr. Morin - aye.

Adjournment:

Motion made by Mr. Morin to adjourn the meeting, which was seconded by Mr. Dabrieo. . Motion carried by a 5:0 roll call vote. Mr. Bartlett – aye, Mr. Shirland – aye, Mr. Dabrieo – aye, Mr. Welch – aye, Mr. Morin - aye.

The meeting adjourned at 8:33 PM.

Submitted by Alvina Snegach

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DATE: AUGUST 7 2023

BOARD OF SELECTMEN MEETING

NAME

ADDRESS

PLEASE PRINT CLEARLY!!!

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|-----|---------------------------|-----------------------------|
| 1. | <u>Kathy Cinfo</u> | <u>23 Little River Road</u> |
| 2. | <u>Doug Bates</u> | <u>30 Longway</u> |
| 3. | <u>Chelli Tennis</u> | <u>17 Robin Hood DR</u> |
| 4. | <u>Skip Seavans</u> | <u>340 Stage Rd</u> |
| 5. | <u>Mark Carpenter</u> | <u>44 Gile Rd</u> |
| 6. | <u>Katie Zink (NHDGS)</u> | |
| 7. | <u>JOHN JACKMAN</u> | |
| 8. | <u>Gary Anderson</u> | <u>50 Gile Rd</u> |
| 9. | <u>Kevin Bassett</u> | <u>101 Shore Drive</u> |
| 10. | <u>Jim Franklin</u> | <u>Candia</u> |
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