

APPROVED
TOWN OF PELHAM
BOARD OF SELECTMEN - MEETING MINUTES
January 30, 2018
APPROVED – February 13, 2018

PRESENT: Mr. Doug Viger, Mr. William McDevitt, Ms. Amy Spencer, Mr. Hal Lynde (*arrived during non-public session*), Town Administrator Brian McCarthy

ABSENT: Mr. Paul Leonard

REQUEST FOR NON-PUBLIC SESSION

MOTION: (McDevitt/Spencer) Request for a non-public session per RSA 91-A:3,II,a (Personnel)

ROLL CALL: Mr. Viger-Yes, Mr. McDevitt-Yes; Ms. Spencer-Yes

The Board entered into non-public session at approximately 6:08pm
(*Mr. Lynde arrived during non-public session*)

MOTION: (Lynde/McDevitt) To indefinitely seal the non-public meeting minutes.

ROLL CALL: Mr. Viger-Yes, Mr. McDevitt-Yes; Ms. Spencer-Yes, Mr. Lynde-Yes

The Board returned to public session at approximately 7:14pm

PLEDGE OF ALLEGIANCE

MINUTES REVIEW

January 23, 2018

MOTION: (Spencer/McDevitt) To approve the meeting minutes of January 23, 2018 as amended.

VOTE: (3-0-1) The motion carried. Mr. Viger abstained.

ANNOUNCEMENT(S)

- Sign-up for open positions close February 2, 2018:
 - Selectmen – 1 open for 3yr. term
 - Town Moderator – 1 open for 2yr. term
 - Budget Committee – 3 open for 3yr. term
 - Budget Committee - 1 open for 2yr. term
 - Budget Committee – 1 open for 1yr. term

BOARD OF SELECTMEN MEETING/January 30, 2018

Cemetery Trustee – 2 open for 3yr term

Library Trustee – 1 open for 3yr term

Trustee of the Trust Funds – 1 open for 3yr term

Planning Board – 2 open for 3yr term

Supervisor of the Check List – 1 open for 6yr. term

- Town Deliberative Session – Tuesday, February 6, 2018 at Sherburne Hall, 6 Village Green, Pelham, NH beginning at 7pm

- School Deliberative Session - Wednesday, February 7, 2018 at Sherburne Hall, 6 Village Green, Pelham, NH beginning at 7pm

- Town Meeting – Tuesday March 13, 2018 at Pelham High School – polling hours 7am-8pm

- PUBLIC HEARING – Notice of Public Hearing Pursuant to RSA 284-51 - Notice is hereby given that the Selectmen of Town Pelham, NH will hold a public hearing on the proposal to allow the operation of keno games within the Town of Pelham. Said public hearing will be held at 6:45 pm, on Tuesday, February 13, 2018 at the Pelham Municipal Center, 6 Village Green, Pelham, NH.

OPEN FORUM

No one came forward.

APPOINTMENT(S)

Mike Davey, Energy Efficiency Investments, Inc. – Fire Station Boiler System

Mr. McCarthy explained that the Town had been working with Energy Efficiency Investments, Inc. ('EEI') and asked them to assist in getting a quote for a boiler replacement at the Municipal Building when converting from oil to gas. He stated that the Fire Department boiler system had been troublesome and had broken down multiple times since the department opened. He asked Mr. Davey to evaluate their boiler. He said Mr. Davey brought two independent contractors with him to review the boiler system and all three came to the same conclusion that the system installed (when the building was built) is undersized and will no function properly to meet the needs of the department. He noted the boilers had deteriorated to the point that it was feared they would fail. Mr. McCarthy stated if the boilers failed, they would have a problem keeping the building open without a heating system. He asked Mr. Davey to discuss his suggested remedy.

Mr. Davey told the Board that one of the companies that conducts regular maintenance raised a 'red flag' that there is a significant amount of corrosion in the two boilers. He spoke about the design of the system and its function for the department. He said although the boilers could be fixed, because of the corrosion, it was there recommendation rather than putting money into the repair of the boilers (which would be converted to natural gas in a few months) to 'upsized' the boilers at this time. He explained that the corrosion appeared to be from a water chemistry issue, therefore as part of the proposed budget would be the installation of a water treatment system for the new boilers to prevent future corrosion.

Mr. Viger understood EEI was brought in as an independent consultant. EEI then brought in their team to determine what the best fix would be and the budget price. He asked if they submitted it out to bid. Mr. Davey answered yes. Mr. Viger also understood that EEI's fee was added onto the bid process. Mr. Davey said that was correct.

Mr. Lynde questioned if the boiler would be adequate to heat the building if the showers were disconnected. Mr. Davey replied it would go a long way toward solving it, but it would involve putting in a new gas piece of equipment. He noted the existing gas lines weren't big enough. He explained

BOARD OF SELECTMEN MEETING/January 30, 2018

the conversion from propane to natural gas was a simple dial adjustment; the equipment was designed to work off either.

Mr. McDevitt was very concerned why they were running into a problem with the boiler, since the building was only three years old. He heard that there was corrosion caused by the water and wanted to know if that was unforeseeable. Mr. Davey answered no; boiler instructions provide information regarding how the boiler would operate under specific water conditions. When results are returned, he suspected that the water chemistry was outside the normal tolerances. Going forward, he recommended a water quality test done annually as part of a general services contract. Mr. McDevitt questioned if the boiler was undersized in the first place. Mr. Davey replied if they were the original boiler installers, they would have put in larger boilers, and not had a situation where the domestic load taxed the heating system. Mr. McDevitt commented they had a construction manager oversee the whole process and felt they should be informed of the situation. He said there may be some recourse.

Mr. Viger understood that the boilers originally specified by the engineer were not what was submitted by the contractor, although the engineer accepted them as an equal.

Ms. Spencer commented it might be worth exploring whether there is a 'discovery' rule that might apply on the labor. Mr. Lynde suggested Mr. McCarthy forward the emails from Mr. Davey to the architect.

Mr. Viger wanted to know the timeframe. Mr. Davey replied if the boilers ceased, the Town would be forced to make the decision whether or not to try and fix or replace the boilers. He believed the recommendation was to move forward with the design and implementation of the conversion, so the building could operate. Mr. Viger asked what type of 'down time' there would be to replace them now. Mr. Davey said if they were replaced during the heating season it would be a staged replacement process.

Mr. McCarthy told the Board that Mr. Davey provided a quote of approximately \$95,000 to complete the project. He noted there were funds remaining from the Fire Department warrant article that would cover the expense, with no additional cost to the taxpayers. He asked for the Board's support to replace the boilers. Mr. Lynde asked for Mr. Viger's recommendation. Mr. Viger recommended that the Board advise Mr. Davey to move forward with the process to get the bidding process together and 'pull the trigger' at a later time. He said if something happened they would be ready to take action, but if nothing happened until spring, they might be able to save some money. The Board agreed.

MOTION: (Lynde/Spencer) To allow Mr. McCarthy to instruct Mr. Davey to move forward with the bid process for the replacement of the Fire Station boilers and domestic hot water.

VOTE: (4-0-0) The motion carried.

Discussion on the CMAQ Grant (intersection of Mammoth Road/Sherburne Road and Mammoth Road/Marsh Road)

Planning Director Jeff Gowan came forward for the discussion. Mr. McCarthy told the Board that he was able to reach out to Thomas Jamison of NH Department of Transportation ('DOT') to find out if the proposed warrant article to accept the CMAQ Grant has to specify 'roundabouts' or if it could read 'intersection control' instead. He said Mr. Jamison agreed that 'intersection control' would be the best language, since the engineering study still needed to be conducted to fully evaluate which would be the best solution. He said if the engineering study came back with one traffic light, or some other kind of

remedy, having the warrant article read 'roundabout' would commit the Town to only a roundabout. Mr. McCarthy stated Mr. Jamison agreed with the proposed language change to 'intersection control'. There was a brief discussion regarding how the article would be amended. Mr. McCarthy noted the language of the article could be changed at the Town's Deliberative Session. The Board was provided with a draft article for review, once the Board is comfortable with the language, the final version will be read at the Town's Deliberative Session.

Mr. Lynde questioned if they should add the words "no tax impact". Mr. McCarthy didn't believe those words could be added. Mr. McDevitt replied the Department of Revenue Administration ('DRA') has let the words 'no new tax impact' and/or 'no new property tax' be on the warrant in the past. Mr. McCarthy commented that every year the DRA changed what wording they allow on articles. He said he would bring any language forward the Board wanted to insert.

Mr. Viger said the Board all agreed in principal that the wording should read 'intersection control' and not 'roundabout'.

Mr. Gowan commented that nothing would happen until after the March vote. He said if voter's approved, the stipulation would be signed. Mr. McDevitt wanted to know the construction timeframe if the voters approved the article. Mr. Gowan believed the process would begin in May. After preliminary engineering and costing the project could begin. He said there would be a series of things the Town would need to do. Mr. Lynde questioned if there was anything the Town could start doing now. Mr. Gowan felt it would make sense to follow the process the DOT has established. Mr. Lynde understood the Town had exaction money they could spend. Mr. Gowan said the only expenditure they've made against that account was for some application assistance. Mr. Viger didn't feel anything should be done prior to Town Meeting. Mr. Lynde was concerned about the time limit to hold exaction fees. He said if the Town didn't accept the grant the project was still included on the State's 10-year plan (scheduled for 2027). Mr. Gowan noted the State's plan included one intersection. He didn't put a lot of faith in the date. Mr. Lynde said the Town had the money (from exaction fees) to start the engineering review process with the State. The concern was the six-year time clock in which the Town could use the exaction fees (before they would need to be returned to a developer). Mr. Gowan noted he kept a close eye on when the exaction fees were collected; a portion of the first exaction collected has already been spent. He said if it got to the point where the first money in the account was getting ready to mature, he believed they could find an appropriate place to spend it. He was also worried about the time clock and kept a running spreadsheet.

Discussion on the clearing of Class VI roads

Mr. McDevitt stated the Board had a discussion at their previous meeting but suggested that the interested parties return when they had a more compete board. Mr. Lynde pointed out that during the previous meeting a motion was made to deny Mr. Picard from taking any further action that would improve Class VI roads that ended with a (1-1-1) vote. Procedurally, Mr. Viger questioned how the matter was being brought back in front of the Board since the Board voted and the motion failed. Mr. McDevitt replied the Board told the people involved to come back when there were more people present. He noted during the previous meeting Mr. Lynde had recused himself. Mr. Viger asked if there was any new information.

Ms. Spencer didn't know if they needed to re-discuss things from the previous meeting. She believed the Selectmen received an email from the State level regarding the petition warrant article. She viewed the two topics as a point-counterpoint discussion. She said there was a group who wanted to clear and open up the Class VI roads for vehicular use and there was another group of citizens who wanted to close them down altogether. She noted that the petition article wasn't clear as to what portion of road

182 they were proposing to close off. The email from the State spoke to the concern of access to State land.
183 Ms. Spencer didn't know if the Board would discuss the petition article at the same time as the issue of
184 whether to grant permission to clear the roads. She said she would be really concerned about endorsing
185 a position, especially with concern from the State. Last week, with some reservation due to liability
186 issues, she supported granting permission to open up the roads for use (historical and recreational). She
187 said she would tend to stand by that position. She understood there was a similar issue in Windham
188 about the use of Class VI roads. Mr. McCarthy noted that issue involved a dam. Ms. Spencer felt it
189 would be consistent to allow continued use of the roads as they had been used. It was her understanding
190 that the roads had been used in the proposed manner before. She believed she would grant permission
191 to a private party to open the roads, but noted she was subject to persuasion.
192

193 Mr. Viger commented there are two separate issues. He didn't see in the minutes whether the Board
194 voted to recommend, or not recommend. Mr. Lynde replied the Board didn't take a vote. Mr. Viger
195 understood that the Board had a discussion and the article would be placed on the warrant without the
196 Selectmen taking a position. He said a separate issue was whether the Selectmen wanted to authorize
197 someone to maintain and clear a Class VI road. Mr. Lynde stated he spoke with a representative of the
198 Division of Forest and Lands who commented they wouldn't want anything closed, but the State was
199 not concerned about access because they own the property and have a right of access across the land.
200 Mr. Viger suggested he bring it up at Deliberative Session if he wanted to speak to that portion when
201 its reviewed. Ms. Spencer saw an email from the Department of Natural and Cultural Resources that
202 expressed concern about the citizen's petition. Mr. McDevitt said the problem with the petition was
203 it's confusingly worded. He explained to Mr. Viger that the Board suggested to the petitioner that they
204 might wish to clarify it at the Deliberative Session. He said they also made clear that it would appear
205 at Deliberative Session with nothing from the Board of Selectmen. He noted the Selectmen might hold
206 a very brief (posted) Selectmen's meeting after the session, and maybe take a position on the new
207 wording, if new wording was offered.
208

209 Mr. Viger stated the conversation regarding the petition warrant article was over. Mr. McCarthy
210 reported that the petitioner came back (after the last Selectmen meeting) and dropped off a revised
211 citizen's petition; however, there were no signatures to accompany it. He said Town Counsel advised
212 that with no signatures, the petitioner's best avenue would be to come to the Deliberative Session. He
213 pointed out that Attorney David Groff, who represented the petitioner Mr. Jacques, was seated in the
214 public. Mr. McDevitt stated he couldn't support the article the way it was written because his
215 understanding from the wording was that all of Gibson Road would be closed from the terminus of
216 Jeremy Hill Road back down to the property belonging to Mr. Wood. He noted that wasn't what the
217 maps said and didn't think that's what the petitioner was trying to explain (during the previous meeting).
218 Mr. Viger stated the Board had no purview over the petition article. Mr. McDevitt said the Board
219 provided procedural advice.
220

221 Mr. Viger stated the petition article had nothing to do with clearing Class VI roads.
222

223 Mr. McDevitt read aloud a letter submitted to the Board. *(See Attached)* He spoke about Town liability
224 and referenced RSA 231:50 and a portion aloud and believed it was a clear statement that the Town
225 wouldn't incur liability for things that happen on the road. He believed if the Board supported clearing
226 the Class VI roads that the volunteers don't have such immunity. He said the NH Municipal
227 Association ('NHMA') recommends, and RSA 508:17 leans in the direction that the person wanting to
228 do work should request written authorization from Town. The request should include the scope of the
229 work, time period, specific limitations on scope, and to whom the volunteer should report. He
230 understood if those things are covered, the person would have the same protection as the Town does;
231 however, he was not providing legal advice. Mr. McDevitt stated he understood the request and had
232 pushed back on it because he felt the action would raise the level of traffic and vehicles over the road

and noise. He said the Town encourages people to hike on Town land and felt people would have to look over their shoulder to see if vehicles were coming. He discussed the situation that occurred when Hinds Lane was opened for fishing. He said when it was opened to the public, word got out on the internet. He had asked Town Counsel if the Town could restrict Class VI use to local residency and was told they could not. He was concerned with social media that the roads would have more use than they want. Another concern he had was the speed of the vehicles on the road and noted the only speed limit they are allowed to impose is 30mph. He stated he couldn't support further clearing of the road. Ms. Spencer said Mr. McDevitt's points were very well taken.

Mr. Viger opened discussion to public input. Mr. Lynde stepped away from the Board (he was an abutter to the area in question) to speak as a resident.

Mr. Hal Lynde, 114 Jeremy Hill Road questioned if the fire tower road was a Class VI road owned by the State. He said there were some endangered plants in the area the State was concerned about. He said he'd had discussions with some people regarding Class VI roads and the volunteer work people did to clear areas of trash and fallen trees. He felt if there was specific area to be cleaned/cleared, it would be nice to have volunteers involved; however, when someone says they are going to clear a road, he didn't know what that meant and was concerned with them possibly widening the road or clearing an area they weren't supposed to. He felt it would be appropriate for volunteers to explain their intentions and be specific as to what they wanted to do.

Mr. Viger referenced the book 'Knowing the Territory'. He understood that Class VI roads were considered roads and any vehicle travelling over it would need to be legally registered. He said if the roads were cleared, anything not allowed on a regular road, such as snowmobiles, dirt bikes etc. were not allowed on the Class VI road.

MOTION: (McDevitt/Spencer) To deny the request to do any furthering clearing on Class VI roads in Town.

VOTE: (3-0-1) The motion carried. Mr. Lynde abstained.

Review of the 2018 Voter's Guide

The Selectmen were provided a revised draft of the 2018 Voter's Guide to review based on changes discussed at the previous meeting. Mr. McCarthy stated he would like to have the final version ready by Town Deliberative Session, so it could be mailed out immediately after.

The Board offered comments and slight amendments. Mr. McCarthy will further revise the guide and send to the Selectmen for finalization.

Review on the draft Sign Policy

The Board was provided with a revised draft of the policy that included changes made at their previous meeting.

There was clarification of the allowed size for signs, the updated policy indicated 16SF was the maximum. There was a brief discussion regarding sign placement restrictions. Mr. McDevitt suggested adding words that would prohibit signs from being placed that would interfere with the orderly flow of traffic or pedestrian safety. Mr. McCarthy would like to be the point person regarding sign placement and would speak with the respective agency if there were problems.

BOARD OF SELECTMEN MEETING/January 30, 2018

Mr. McDevitt felt the Board should adopt a sign policy and see how it worked before requiring people to get a permit. He felt it might be a little more bureaucracy than they should get into at this point. He believed a lot of people would violate the policy at first; they should be treated gently and informed about the policy. He said if the policy didn't work, then they could require a permit.

Mr. McCarthy liked the idea of having a downloadable form on the website, so the Town can have the opportunity to contact someone to collect their signs after an event. There was further discussion about the proposed policy. Mr. Viger felt the Board should go with the advice of Town Counsel and not have a policy.

Mr. McCarthy told the Board he would further amend the proposed policy and ask them to review and vote after the Deliberative Session.

Review of the new Well Water Board Rules

Mr. Lynde provided the Board with a copy of the new Well Water Board Rules. He said approximately every ten years they review and adjust their rules. He suggested they ask Paul Zarnowski to review the new rules and inform if there are changes the Town should consider making to its rules.

Mr. McDevitt questioned if the new rules would help resolve issues that the Planning Board had with conservation subdivisions regarding well and septic radiuses overlapping. Mr. Lynde said it might. He believed they had been provided with a copy of the rules to review.

SELECTMEN / TOWN ADMINISTRATOR REPORTS

No reports.

ADJOURNMENT

MOTION: (Spencer/Lynde) To adjourn the meeting.

VOTE: (4-0-0) The motion carried.

The meeting was adjourned at approximately 8:28pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary

328

ATTACHMENT

I oppose the Town giving Mr. Picard permission to clear Class VI roads. The Town of Pelham 2015 Street Index Map clearly marks Class VI roads and according to the map, clearing has already been done beyond the end of the Class VI road leading to the State land. The Class VI road does not continue southeast through to Jeremy Hill Rd. Since the roads are not surveyed and all boundaries marked, the Town should not give someone permission to clear what that individual might think is a road. There are numerous old logging roads and roads to houses long gone that may appear to be but are not Town roads. If permission is given to clear, who will monitor what is cut so abutters rights concerning trees fallen on and near the road are protected? Who will measure and mark the width of the road along its entire length?

Mr. Picard's stated intent is to drive vehicles on these roads. They originated in the horse and buggy days and are not meant for cars and trucks. Without culverts over streams, fill for wet and soft areas, and erosion control the roads will be destroyed for hiking, skiing, horseback riding, mountain biking and other passive uses. Some parts of Baldwin Hill Rd are already down to bare ledge , other areas are so eroded from vehicles that walking is almost impossible and large amounts of sand and silt have flowed from the torn up road into what was once a clean brook. Since the road has been cleared there have been more vehicles speeding through and more ATV activity.

I believe the Town may also have liability issues if it allows someone to perform road clearing on Town roads and is injured. When the roads become so impassable from vehicle traffic, who is going to repair them?

Linda Steck Reed
131 Jeremy Hill Rd
Pelham, NH 03076

329