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Town of Danville
Board of Selectmen
December 14, 2015
7:45 pm

Meeting televised

Selectmen Present: Chairman Shawn O'Neil, Vice-chair Chris Giordano, Kimberly Farah, Sheila Johannesen, Joshua Horns

Others present: Nathan Landry, Janet Denison, Tim Howard-RMON Networks, Nick Golan-TFMoran, Jake Dusling-TFMoran

Chairman O'Neil opened the meeting with a moment of silence for the troops who put themselves in harm's way. All stood for the Pledge of Allegiance.

I. Delegate

Nathan Landry asked to pick up the paperwork he had left at the office for signatures regarding his Eagle Project proposal. The fundraising application and the contract between the Board of Selectmen and Eagle candidate Landry were signed.

II. PD Grant

Chairman O'Neil explained the grant applied for by Chief Wade Parsons for new radios for the police department. The documents were reviewed. He explained the time sensitivity surrounding signing the agreement tonight and that Chief Parsons has the money in the budget this year to pay for the town's portion. If this is delayed, the 2016 budget will have to be increased to cover the eventual cost. Selectman Farah said she is uncomfortable signing anything without first reading the application. She said that typically a grant application is signed off by the CFO or administrative officer of an organization and this board has not seen the application. Vice-Chair Giordano explained that applying for a grant is not binding. He said that other grants have been awarded to other town committees and the Board of Selectmen was kept apprised of the progress. Vice-Chair Giordano made and Selectman Horns seconded a **motion to authorize Chairman O'Neil to sign the grant agreement**. Selectmen Farah and Johannesen opposed. The motion **passed**. Selectman Farah said she would like a copy of the application for her review.

The Town of Danville Board of Selectmen, in a majority vote, accept the terms of the Emergency Management Performance Grant (EMPG) as presented in the amount of \$7,245.00 for the purchase of radios. Furthermore, the Board acknowledges that the total cost of this project will be \$14,490.00, in which the Town will be responsible for a 50% match (\$7,245.00).

III. Unutil project

Nick Golan and Jake Dusling explained the proposed Unutil project for new utility poles along Route 111. This section of line is known to be one of the least reliable. The proposal will build a new main line, leaving the old one as a backup. This will drastically improve the reliability of service. There will be a double circuit, meaning two lines on one pole, to allow Eversource use of the poles also. Construction is slated to begin next year.

They explained that they are working with the DOT, have looked at the environmental sensitivity and potential historic features as well as endangered species. There are no known potential issues except for one proposed wetland disturbance amounting to 19 square feet of wetland impact. They said this is very small. The proposed line will cross Route 111 a few times, rather than stay on one side of the road, due to topography. There will be some guy lines crossing Route 111 to support the pole, also due to topography. The guy wire will not have any voltage. The proposed poles will be completely on state-owned land.

Vice-chair Giordano asked about the proximity of the new poles to the intersection of Frye Road. It does not appear to interfere with the proposed development on the south side of Route 111 and intersection at Frye Road. A copy of the plans for the development will be forwarded to the Mr. Golan to verify that their proposal doesn't interfere.

They asked about needing a conditional use permit. It was agreed they will need this for a small wetland crossing and would also need to post a bond. The Board will need something in writing from the Planning Board and the Conservation Commission. Mr. Golan said they will contact both town boards to discuss a conditional use permit and the possibility of needing a site plan review with the Planning Board.

IV. Budget

Vice-Chair Giordano made and Selectman Johannesen seconded a **motion to approve the 4316.10 Street Lighting budget for \$8,800.00**. The motion **passed** unanimously.

After discussion, it was agreed to table the 4155.90 Personnel and 4150.60 Information Technologies budgets until next week.

V. Signature File/Minutes

Selectman Johannesen asked that her legal inquiry email to the NHMA be included in the December 7th minutes. Selectman Farah made and Selectman Horns seconded a **motion to approve the December 7, 2015 minutes as amended**. The motion **passed** unanimously.

Vice-chair Giordano made and Selectman Farah seconded a **motion to approve the December 7, 2015 non-public minutes as amended**. The motion **passed** unanimously.

Selectmen signed the corrected 2015-25 Vendor and Payroll manifest.

VI. ZBA notice of violations

The ZBA had granted variance to properties that appear to be in violation of the stipulated conditions. It was agreed that 15 Main Street is in violation of the approved site plan granted by the Planning Board. They will be told they need to build to the approved plan or see the Planning Board with an amended site plan. 2 Hampstead Road appeared to be in violation of some of the conditions specified by the ZBA. The owner will be informed of the possible violations and the fines associated with noncompliance. The letters will state a 30-day end date for showing compliance.

VII. Old/New Business - updates

Selectman Horns said he received an answer from the Attorney General's office that his position as a town Selectman and a member of a cooperative school district budget committee were not incompatible. (letter attached)

Two letters of interest for the position of town treasurer were received. As both applicants were known to most of the board members, it was agreed that interviewing the candidates was not necessary. Vice-chair Giordano made and Selectman Johannesen seconded a **motion to appoint Kathy Beattie as Town of Danville Treasurer**. The motion **passed** unanimously. It was noted that Kathy will need to appoint her own deputy and it can be suggested that the other candidate can fill that position. The appointment will be until the next town election at which time candidates will need to have their names on the ballot. Kathy will also need to resign as a Trustee of the Trust Funds.

VIII. 2016 Warrant Articles

The first draft of the proposed 2016 Warrant Articles was briefly reviewed. Two additional warrants will need to be written: one to rescind the business reporting ordinance and the other for the possible lease/purchase of a loader for the highway department.

Selectman Farah brought up the deposits to the general fund for PaySpan. She asked whether or not the Selectmen were the only ones that can authorize deposits. Patty will be asked for details about the transactions.

It was mentioned that the Community Center needs bids before funds can be encumbered. Chairman O'Neil has spoken with Sal Moccia regarding the feasibility study.

At 10:05 Vice-Chair Giordano made and Selectman Farah seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet Denison
Land Use/Assessing

**ATTORNEY GENERAL
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December 14, 2015

James O'Shaughnessy, Esq.
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Manchester, NH 03101-1845

Re: Incompatibility of Offices Complaint

Dear Attorney O'Shaughnessy:

I am writing in response to your complaint filed on behalf of the Timberlane Regional School District (hereinafter "Timberlane") regarding the incompatibility of offices held by Joshua Horns. According to the complaint, Timberlane is a cooperative school district comprised of the Towns of Atkinson, Danville, Plaistow and Sandown. The complaint alleges that Mr. Horns is a member of Timberlane's Budget Committee, while at the same time serving on the Town of Danville's Board of Selectman.

RSA 669:7 states in pertinent part that "[n]o selectman, town manager, school board member except a cooperative school board member, full-time town, village district, school district except a cooperative school district, or other associated agency employee or village district commissioner shall at the same time serve as a budget committee member-at-large under RSA 32." Also relevant to this discussion is RSA 32:15, V, which similarly provides that "[n]o selectman, town manager, member of the school board, village district commissioner, full-time employee, or part-time department head of the town, school district or village district or other associated agency shall serve as a member-at-large." Budget committee membership specific to a cooperative school district is governed by RSA 195:12-a, I, which prohibits cooperative school board members from serving on the respective district's budget committee, with the exception of one school board member appointed by the board's chairperson.

The above statutory scheme has been interpreted to apply to offices within the same political subdivision, meaning that a member of the governing body cannot serve as a member-at-large on the budget committee serving the same political subdivision. The common law doctrine of incompatible of offices precludes an individual from holding two offices when one office is subordinate to the other, as the governmental checks and balances are eliminated because an individual is reviewing his or her own work. *Town of Littleton v. Taylor*, 138 N.H. 419, 423 (1994).

In *Town of Littleton*, the New Hampshire Supreme Court held that a seated town selectman's employment at the public library did not violate the common law doctrine of incompatible offices. *Id.* at 424. In coming to this conclusion, the Court considered that the Littleton Board of Library Trustees (hereinafter "the Trustees") was the governing board of the library. *Id.* at 422. The Trustees were publicly elected and vested with the custody and management of the library and of all the property of the town relating thereto, excepting trust funds held by the town. *Id.* The Trustees adopted and maintained bylaws which governed the library. *Id.* The library budget was funded by both town taxes and private sources. *Id.* The Trustees determined how to expend, and had the power to expend, all funds provided to the library. *Id.* What the Court considered most important was that the town had no power to discontinue the library. *Town of Littleton*, 138 N.H. at 423.

In contrast, the Court has held that membership on a school district's prudential committee (officers of the school district) is incompatible with the position of auditor of that same school district. *Cotton v. Phillips*, 56 N.H. 220, 223 (1875). The Court took into account that committee members administered the affairs of the school district, took custody of and disbursed the money apportioned to the district, and made contracts with school teachers. *Id.* The auditors examined the accounts and vouchers of the committee and reported their findings. The Court found the two offices were incompatible because an auditor sat in judgment on the acts of the committee, and could conceal a misappropriation of funds from the district. *Id.*

The governing body for the Town of Danville is the Board of Selectmen. RSA 21:48. As a selectman, Mr. Horns, along with his fellow selectmen, is responsible for managing the prudential affairs of the Town of Danville. RSA 41:8. The selectmen are responsible to prepare, publish and make available to the voters the annual report, giving a particular account of all their financial transactions during the fiscal year and the financial condition of the town at the close of the fiscal year. RSA 41:13, :14. Selectmen likewise produce various reports for submission to the commissioner of revenue administration, necessary to compute and establish the tax rate for the town. RSA 21-J:34. The selectmen are also responsible to timely issue and post the warrant, warning of any town meeting. RSA 39:2.

The governing body of a cooperative school district is the school board. RSA 21:48. The school board is responsible for providing an education to all pupils within the school district and for establishing the structure, accountability, advocacy, and delivery of instruction in each school operated and governed in its district. *See* RSA 195:5; *see also* RSA 189:1-a, I, II. Similar to the board of selectmen, the school board is responsible to prepare, publish and make available to the voters an annual report on the financial condition of the school district. *See* RSA 189:28-a. Under RSA 21-J:34, it is the school board's responsibility to submit the required reports to the commissioner of revenue administration. In school district elections the school board is responsible for posting the warrant in the same manner as the selectmen for town elections. RSA 671:27.

The Timberlane Budget Committee, of which Mr. Horns is a member, is responsible to (1) prepare the budget for submission to the voters at Timberlane's annual school district; (2)

Timberlane Regional School District
Re: Incompatibility of Offices Complaint
December 14, 2015
Page 3

confer with Timberlane's school board and school officials relative to estimated costs and revenues; (3) conduct the public hearings required under RSA 32:5, I; and (4) to forward copies of the final budget to the school district clerk and to deliver two copies of the budgets and recommendations upon special warrant articles to the school board at least twenty days before the date set for the annual or special meeting. Where Timberlane is a cooperative school district, the budget committee is not accountable to the Town of Danville Board of Selectman. As such, it does not appear that holding both the offices of selectman and cooperative school district budget committee member offends the common law doctrine of incompatible offices.

The fact that Timberlane is a cooperative school district is a distinguishing characteristic in the context of incompatible offices as prescribed by statute. A cooperative school district is expressly authorized by the legislature to establish a budget committee. RSA 32:14, I (b). If a school district lies wholly within a town authorized to establish a budget committee, such a school district is served by that town's budget committee and membership on the committee would be governed by RSA 32:15. RSA 32:16, I. Timberlane is a cooperative school district, thus membership on its budget committee is governed by RSA 195:12-a, I. *See Sanborn Regional Sch. Dist. v. Budget Comm. of the Sanborn Regional Sch. Dist.*, 150 N.H. 241, 244 (2003) ("RSA chapter 195 deals specifically with cooperative school districts while RSA chapter 32 pertains more generally to municipal budget committees, RSA chapter 195 controls over conflicting provisions of RSA chapter 32."). Where RSA 195:12-a, I, expressly bars all but one school board member from serving on the district's budget committee and holds no such prohibition for selectman of its member towns, we do not believe the offices of selectman and budget committee member of a cooperative school district are incompatible by statute.

If you have any further questions do not hesitate to contact me.

Sincerely,



Stephen G. LaBonte
Assistant Attorney General
Civil Bureau
603-271-3650

Cc: Joshua Horns, Selectman
David Scanlan, Deputy Secretary of State

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