

Town of Danville
Board of Selectmen
Public Minutes
March 18, 2013
7:00 PM

Selectmen Present: Shawn O'Neil, Chris Giordano, Annemarie Inman, Russell Harding
Excused – Michelle Cooper

Others present: Patricia Shogren – Selectmen's Administrator, Beth Caillouette, Bruce Caillouette, John Hughes, Steve Woitkun, Jim Daley, John Lauze, Dave Webber, Mark Sullivan, Judy Jervis, Paul Jervis, Barbara Hughes, Sheila Johannsen, Tom Billbrough, Jr. and others

Attendees took a moment of silence for our troops who put themselves in harm's way and for the family of Jacob Carver, then stood for the pledge of allegiance.

I. Public Hearing – Acceptance of Heron Drive and a portion of Caleb Drive

Vice-chair Giordano made the motion, seconded by Selectman Inman, to open the public hearing. Motion passed. Chairman O'Neil asked for questions. Bruce Caillouette, Road Agent, stated that the roads met spec and were approved by the Town Engineer. Since there were no questions, Vice-chair Giordano made the motion, seconded by Selectman Inman, to close the public hearing. Motion passed. Vice-chair Giordano made the motion, seconded by Selectman Inman, to accept the roads as described in the deed. Motion passed and the roads were accepted.

II. Delegate Session

Bruce Caillouette stated that he had the opportunity to obtain clean fill for no cost and wanted to get the Board's okay to get the fill and put the bulk of it where it was needed. The Board approved.

III. Granite Run Project – Lamontagne Builders

Dave Webber stated that the Building Inspector had informed John Lauze that sprinklers were needed in the last four-unit condo. Dave Stated that Frank [Caparco] sold the project to Lamontagne Builders and the project was exempt from sprinklers and all units had been built without sprinklers and he did not understand why it was now required. He stated he spoke with Frank and Frank confirmed the exemption status of the project. Vice-chair Giordano stated that he sat on the Planning Board at that time and that in 2002, when the plans were being reviewed, there was no sprinkler ordinance but all of the building began after the ordinance was passed and has been on-going for over ten years. Chairman O'Neil asked at what time does Lamontagne meet zoning. Dave stated that our Town Attorney was involved back when this project was originally before the planning board and supported the exemption. Vice-chair Giordano cited Article VII of the Zoning Ordinance, Fire Protection, passed on 4/1/05. He stated that Lamontagne needed to do their research and produce the documents exempting the project. Written documentation was needed, not memory.

VI. Signature File/Minutes

Vice-chair Giordano made the motion, seconded by Selectman Inman, to appoint David Caillouette as alternate to the Conservation Commission, term to expire in 2015. Motion passed.

Vice-chair Giordano made the motion, seconded by Selectman Inman, to appoint Carol Baird to the Heritage Commission, term to expire in 2016. Motion passed.

Vice-chair Giordano made the motion, seconded by Selectman Inman, to appoint Carsten Springer to the Conservation Commission, term to expire in 2015. Motion passed. Vice-chair Giordano amended the motion to have the term expire in 2016, seconded by Selectman Inman. Motion passed.

Vice-chair Giordano made the motion, seconded by Selectman Inman, to appoint Al Hess to the Conservation Commission, term to expire in 2016. Motion passed.

Selectmen signed the Vendor and Payroll Warrants and an authorization to the Treasurer to pay the Comstar invoice. Selectmen signed two elderly exemptions.

Chairman O'Neil stated that the Block Grant for 2013 was \$90,816.76. He asked Patty to follow up with Bruce to ensure the two accepted roads were added to our inventory with DOT and to confirm back to the Board when DOT received this information.

Vice-chair Giordano made the motion, seconded by Selectman Inman, to accept the March 4, 2013 minutes as written. Motion passed.

Vice-chair Giordano made the motion, seconded by Selectman Inman, to accept the March 4, 2013 8:40 PM non-public minutes as written and to unseal these minutes. Motion passed.

Vice-chair Giordano made the motion, seconded by Selectman Inman, to accept the March 4, 2013 8:50 PM non-public minutes as written. Motion passed.

IV. Board of Selectman officers

Vice-chair made the motion, seconded by Selectman Inman, to appoint Shawn O'Neil as Chairman of the Board. Giordano and Inman voted yes, Harding voted no, and O'Neil abstained. Motion passed.

Chairman O'Neil made the motion, seconded by Selectman Inman, to appoint Chris Giordano as Vice-chair. Motion passed. Giordano abstained.

Committee representatives:

Budget – Shawn O'Neil

Planning Board – Chris Giordano

Heritage – Annemarie Inman

HazMat – Annemarie Inman

ZBA – Annemarie Inman

Conservation – Russell Harding is an appointed member through the Conservation Commission.

Chairman O'Neil read the announcements. Selectman Harding asked that the number of members for website committee be reviewed since they were down a member and it should return to a five member board.

V. Old Business

Vice-chair Giordano stated that Selectman Harding had been on an unpaid leave of absence citing his presence under the circumstances a distraction to the Board. He stated Selectman Harding just showed up at the last meeting and Vice-chair Giordano asked Selectman Harding what had changed. Selectman Harding stated that he felt his pending litigation was a distraction and his last correspondence stated his absence would be until February 28, 2013. He stated that he currently had no court date and he felt he could not continue to not attend the Board meetings. Vice-chair Giordano asked what is different now [the distraction] from before. The distraction still exists. Selectmen Harding stated he will continue to do the job he was elected to do.

Vice-chair Giordano found the information he had been looking for during the discussion with Lamontagne from the Land Sub-division Control Regulations, Section III – I, which outlined the four-year exemption (page 18). He stated the dates of the project would need to be researched and he would contact Jim Daley. Selectman asked Patty to contact Peter Loughlin and instruct him to continue forward with the legal paperwork and title/deed research needed for Conservation to purchase the property from the Sanborn Family Irrevocable trust.

The Board recessed for ten minutes to wait for Sheila Johannsen for the next Agenda item.

VI. Elected ACO Position

Selectman Inman congratulated Sheila Johanssen on her new position with the Town. She stated she had two orders of business to address with Sheila and began with the outcome of Sheila's complaint to Rockingham Superior Court when Sheila interrupted her. Selectman Inman stated that with reference to the court proceedings mentioned at last week's meeting which Sheila brought suit against the town for her 91-A request ... Sheila stated this was not the reason she was asked to come and this subject was irrelevant to the ACO position. After numerous interruptions by Sheila as Selectman Inman tried to speak, Selectman Inman stated that this information was relevant due to the information being stated by Sheila as important to her election and position as ACO and continued stating that the court wrote *"Upon review of all the evidence submitted, the Court finds and rules that the Town of Danville is not in violation of RSA 91-A with respect to the documents requested by the plaintiff. Those documents were assembled and disseminated in a timely fashion after necessary inspection so as to assure that the personal information was not sent to the plaintiff by mistake. Accordingly, the plaintiff's Petition is dismissed. So ordered."* Sheila stated this wasn't over yet and we should be getting something from our lawyer.

Selectman Inman stated that the next piece of business was the ACO position. She stated she had concerns and had reached out to the Town Attorney for an explanation of RSA 41:2, Optional Officers, because there was no statute in the RSA that outlines responsibilities or duties described by law. She read the letter from Town Counsel Peter Loughlin in its entirety (attached). Selectman Inman continued, asking Sheila that until Chief Parsons returned to work and the Board was able to discuss a job description and duties for the elected position, she remain patient and direct any questions to herself or Patty. Upon Chief Parsons return, Sheila can discuss with him any duties he sees fit to delegate to her and make him aware of Sheila's voluntary capacity.

Selectman Inman asked that going forward, she encouraged residents to notify the Danville PD with any animal issues, concerns, or complaints that may arise both for proper handling and public safety and stated that if a resident chose to contact Sheila that it was absolutely their choice but she cautioned Sheila that she would be acting as a volunteer and, as such, her access to Town resources will be extremely limited due to liability concerns and pursuant to the contract currently executed with the Town of Plaistow. She asked Sheila if she had any questions and Sheila asked for her to repeat all that she had just said. Selectman Inman stated she would include her notes for the meeting in the minutes instead of repeating all she had just said.

At 8:15 PM, Vice-chair Giordano made the motion, seconded by Selectman Inman, to adjourn. Motion passed.

Respectfully submitted,

Patricia Shogren
Selectmen's Administrator

Peter J. Loughlin

ATTORNEY AT LAW

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February 1, 2013

VIA EMAIL:

Shawn O'Neil, Chairman
Danville Board of Selectmen
Town of Danville
210 Main Street
Danville, NH 03819

Dear Shawn:

By letter dated January 24, 2012, I made the following comment concerning Article 2012-17, Citizen Petition – Animal Control Officer:

RSA 41:2, **Optional Officers**, permits towns to elect “such other offices as it may have judged necessary for managing its affairs, who shall perform the duties prescribed by law.” If the voters choose to make the Animal Control Office an elected office, that is their right. Absent statutory authorization, however, I don't think that the position can be designated as having a three year term. Multiple year terms of town officials are only allowed when the enabling legislation specifically authorizes such terms, such as the Three Year Term for a Tax Collector, RSA 41:2-b; the Three Year Term for Town Treasurer, RSA 41:26-b; or the Three Year Term for Selectmen, RSA 41:8. If the voters decide to have an elected Animal Control Officer, the budget for that position will have to go through the normal budget process for fiscal 2013. This year's Town Meeting cannot obligate next year's Town Meeting to fund the position.

As was indicated last year, the Town Meeting has the authority to elect “such officers as it may have judged necessary for managing its affairs, who shall perform the duties prescribed by law.” You have raised a question as to what the duties of the Animal Control Officer might be. While positions of Animal Control Officers exist in a number of police departments and in a number of towns, and as a result of various inter-governmental agreements between towns, there are, to the best of my knowledge, no statutorily defined duties for Animal Control Officers. In other words, while a Town Meeting could decide to create the position of an Animal Control Officer, absent statutory authority for that position, or absent delegation of authority by the Chief of

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Police or by the Board of Selectmen, that position would not carry with it any inherent rights or responsibilities.

The Town Clerk is responsible for issuing dog licenses, although the Clerk may authorize local law enforcement officers to issue licenses or collect license fees pursuant to RSA 466:4. The Town Clerk has the authority to authorize the local police department, including "the dog officer," or even a local humane society to issue licenses, however, the delegation has to come from the Town Clerk.

Since you had asked about a Right to Know Law request concerning certain records related to dog licenses, I call your attention to RSA 466:1-d, List of Licensed Dog Owners. Although a list of persons who have failed to register a dog must be provided to the Board of Selectmen by the Town Clerk, RSA 466:1-d provides restrictions on the disclosure of lists of dog owners.

Best personal regards.

Sincerely,

Peter J. Loughlin

PJL/dea

Cc: Janet Denison

Danville 2013\2013-02-01 Ltr to ONeil Re ACO

Shawn – I know you have a deliberative session tomorrow so I am dictating this before leaving for a meeting this afternoon. I will not have had a chance to review it, but I wanted to at least provide you with some basic information.

First, congratulations on your campaign.

I have 2 orders of business to review with you, Sheila. I would like to address the outcome of your complaint to Rockingham Superior Court where, in summary, you aggrieved that the Town and the BOS had delayed supplying you with the documents you requested under RSA 91A. The opinion of the court, dated March 11, 2013, reads as follows:

The entire NOTICE OF DECISION will be posted with the court documents on the Town website.

The next piece of business I would like to discuss is that of the ACO position. We posed 2 questions to Town counsel. The first, WHAT ARE THE DUTIES OF AN ACO and the second, WHO IS RESPONSIBLE FOR ISSUING DOG LICENSES AND ARE THE RECORDS PUBLIC? Peter's response by letter dated February 1, 2013 was this:

So, to summarize, the ACO is considered an elected, non-compensatory position without inherent rights or responsibilities and your duties, if any, will be set forth by the Danville PD. Given some of the intangible circumstances, I would ask that until Chief Parsons returns to his post that you address any questions or concerns you have to myself or to Patty and we will work with you for resolution. Upon his return, you can discuss with him any duties he sees fit to delegate to you and you can make him aware of your voluntary capacity. With regard to the dog licensing, that delegation remains with the Town Clerk per RSA and it will be at their discretion.

Going forward, I would encourage residents to notify the Danville PD with any animal issues, concerns, or complaints that may arise both for proper handling and public safety. Sheila, should a resident choose to contact you that is absolutely their choice, however I would caution you that you would be acting as a volunteer and, as such, your access to Town resources will be extremely limited due to liability concerns and pursuant to the contract currently executed with the Town of Plaistow.

Finally, my last bulleted item is the request expressed by Vice Chairman Giordano to move the line item for the ACO under the Danville PD and I believe steps are being taken – or already have been taken – to remedy that.

Questions?