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Town of Danville Board of Selectmen Monday, June 1, 2021 7:00 PM

7:00 PM Meeting is Video-Recorded

Selectmen Present: Shawn O'Neil, Chair; Steve Woitkun, Vice-Chair; Sheila Johannesen, Dottie Billbrough, and Dr. Kim Farah

Others Present: Kimberly Burnham, Selectmen Administrator; Members of the public (in order of speaking) JJ Bradbury, Carsten Springer, Bonnie Bailey, Lisa Barr, Stacy O'Connor, Unidentified Non-Resident, Barry Hantman, Town Moderator; Kevin Dube, Sayre DeVito, Dennis Griffiths, Ken Ira. Other residents and interested parties are also part of the public audience

Shawn called the meeting to order at 6:55 PM and 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. Delegates

Shawn acknowledges that tonight's meeting is a "full house" and states that the first order of business he would like to bring up is the mask mandate. Dr. Farah requests a point of order and asks Shawn to follow the vote of the BOS and ask people to put their masks on. Shawn responds that he is "not going to follow that." Dr. Farah requests that "for the record, have the minutes show the Chair is refusing to follow the motion that was made and passed by the BOS, thank you, let's move on."

Shawn motions that the Town of Danville rescind their "alleged" mask mandate. Second by Steve. Dr. Farah asks to amend that motion. Shawn states the motion is open for discussion and that Dr. Farah has to wait until the Chair recognizes her. Dr. Farah raises her hand and is recognized by Shawn. She states that she would like to amend the motion by dropping the word "alleged". Her amendment is seconded by Dottie. Shawn agrees to take the amendment under consideration and that he would adopt it. Dr. Farah clarifies there is a motion on the floor and an amendment on the floor with a first and second. She states that "respectfully Mr. Chair, you need to now vote the amendment and put on the floor, the amended motion." Shawn calls the question on the motion to remove the word "alleged" from his original motion. The vote is 3 yes (Dr. Farah, Dottie, & Sheila) and 2 no (Shawn and Steve) (3-2). The motion on the amendment to remove the word "alleged" passes. The new motion reads: "that the Town of Danville rescind their mask mandate."

Shawn states that he wants to open discussion to the public and asks for public comment on the motion. JJ Bradbury speaks. "Mr. Chairman, since the time this policy was enforced, the State guidelines have changed, the federal guidelines have changed, for crying out loud, Wal-Mart has changed. I think that eventually, we're going to be taking our masks off. Let's do it now, let's get it done, and let's get on to the rest of the business. So far this has been an embarrassment to the Town". Shawn states that he "would concur." Dr. Farah raises her hand and states that "she is in favor of removing the mask mandate." Shawn reminds her that she has not been recognized. Dr. Farah states that she "understands that, but is letting him know." Shawn asks "why she gets to trump everyone else who has raised their hand." Dr. Farah responds that "her guess is that the majority of the people are in favor of removing the mask mandate." An unidentified member of the public asks "if there is anyone who wants to speak against it (removing the mask mandate)." Sheila asks to call the question. Shawn asks if the "BOS is not going to give the public an opportunity to comment on it." Dr. Farah states "that's not what she said", and that she was "letting him know that she was voting to remove the mask mandate." Shawn responds that "when we get to that portion, you can vote."

Shawn recognizes Carsten Springer. Mr. Springer expresses his concern that "the Town implemented the mask mandate three (3) days after the Governor removed the mandate for the State. It's true, it made the Town look like an embarrassment. We're certainly not following the science. As far as I know the people in this room, including myself, right now are wearing a mask for one reason only, because, at the last meeting, three (3) members of the BOS were apparently terrified and had to flee the room even though we're twenty (20) feet away from them because we were not wearing masks. We're not wishing to do that to people, but this is insanity."

Bonnie Bowley states that she "just wants to say to the BOS members who are clearly so scared, that you have every right to step down."

Lisa Barr states she "would like to thank Mr. Chairman and other BOS members who have thought about this carefully and have made the right decision. I feel you've looked at both sides and have made a determination and I really do appreciate your thoughtfulness and you're listening to the peoples' voices and their ideas and it's just very important that we have people like you representing us."

Kevin Dube states that "the information that we have based on removing the mask mandate is not even new information. I think there was a serious lack of logical and critical thinking. The overwhelming information out there was that masks do not work, they are non-effective, and they actually suppress the immune system. We were in a dangerous place and I'm glad we have support now to end the mandate."

Several members of the public stated, "take them off the children." Shawn responds "that's a different subject for a different discussion."

Stacy O'Connor addresses Dr. Farah stating "nobody wants the masks, I get it, I'm right there with you. I wear it all day at work, I have no choice. But can we go back to taking away the mask mandate, please, just so we can get done and get to other Town business. Please, I'm begging you."

Shawn agrees and calls the question. Kim rereads the motion. Dr. Farah states she has a question, "just to be clear, and I know this is not a School Board meeting, but there are people here from the school...." Shawn interrupts her stating "this has nothing to do with the school and I'm calling the question." Vote is unanimous (5-0). The mask mandate has been rescinded.

Shawn asks if there are other matters to discuss during the Delegate Session. Stacy O'Connor asks if the BOS has heard anything regarding Colby Pond and the HAWC water increases. Dr. Farah states that "yes, they have, I'm sorry, I'm out of order, I'll let the chair handle that." Shawn explains that he and Dr. Farah are going to be on a "Zoom" equivalent meeting with other towns' people who are interveners and yes, they are looking to address that , but relative to Colby Pond and HAWC, he knows they have given some information to the PUC, it was more of a comment that we weren't taking an official stance on that comment about the rates for that, but yes, there's stuff happening with that." Ms. O'Connor explains that we (Colby Pond Association) proposed a draft letter asking the State to remove the "no wells" clause from our deeds. She asks if the BOS would back them (Colby Pond) on that. Shawn states that "speaking for myself, he would." Dr. Farah raises her hand. Ms. O'Connor asks her. Dr. Farah states "there was a meeting of all the interveners and she would be happy to discuss it with her (Ms. O'Connor)." Ms. O'Connor reiterates her question if the BOS would back the Colby Pond residents' getting the "no wells" clause removed from their deeds. Dr. Farah clarifies "if the Town can back that, I would be in favor of backing it. I don't know if the Town, as an entity, can do anything about it." She continues that "she would be supportive of it, but is not sure the Town can do that (support the letter). As a person, I support it." Ms. O'Connor begins to poll the BOS if they would back the letter. Dottie says "personally, yes". Sheila says yes. A member of the public asks if there is any contractual obligation with the Town. Ms. O'Connor states the Town has nothing to with it. Shawn explains that Lewis Builders retained those (water) rights when they developed Colby Pond and sold it "as is". Ms. O'Connor explains that her lawyer had asked her to ask if the BOS would back Colby Pond on the letter.

Shawn states there is "a lot of stuff going on with this because as you can see, all the evidence and all the reasons for their rate hike is for the infrastructure purposes, and the infrastructure is not going to Colby Pond; it's going elsewhere so HAWC can't use that as a rationale to raise their rates and that's part of the argument the Town is making to the PUC." Shawn recognizes Dr. Farah's raised hand. Dr. Farah tells Ms. O'Connor that she should be aware that at the meeting with the interveners and what the Chair is talking about regarding the Town having "no comment" her understanding is the PUC has already approved the temporary rate increase of about 27%". Dr. Farah explains that she attended that meeting and spoke for the Town as an intervener. The next step is working against a permanent rate increase.

A member of the public identifies himself as a "non-resident" and asks if (HAWC) is a contractual obligation, if they've already agreed to the rates of some kind. Dr. Farah explains HAWC has to go to the PUC to get rate increases approved. They did that. The PUC hears from anybody who's listed as an intervener and interveners are allowed to state why they don't think those increases are fair. Dr. Farah gives an example of the difference in rates between a hydrant and a municipal building. She states "It's up to the PUC to approve that rate increase. The gentleman asks "who has the ultimate say in somebody putting a well in their backyard, who owns that authority?" Shawn explains that clause is in the homeowners' deeds that the (water) rights were not transferred. Dr. Farah clarifies that HAWC owns the water rights and only they have the authority to pull water out. She compares it to the "mineral rights" issues out West. The gentleman clarifies that "a third party has the right to say you can or cannot drill a hole in your own property?" Shawn reiterates that's what people signed when they purchased their properties. Ms. O'Connor explains that Lewis Builders own HAWC, so they contract with HAWC for water and that's all you can have. It is written in their deeds on page 32, section 3 that owners can have no other source of water. They can't even have a rain barrel on their property. There are multiple discussions among the public.

Shawn asks if there are any other discussions. Steve motions that at the June and July Deliberative Session and Voting, face masks will be worn based solely on individual choice. Shawn explains that the mask mandate has been removed. Shawn explains that the opinion from Town Counsel quoted the RSA 41:11(a)<sup>1</sup> that the BOS has the right to legislate ordinances unless that authority has been delegated to another authority. In 2010-2011 there was a Warrant Article for the Town to purchase the Fire Hall from the Fire Association, there was also an adjacent Warrant Article that passed in which the Town delegated the authority of that building to a separate committee, not within the purview of the BOS. So, therefore, anything the BOS would make relative to that is not applicable to that property. Sheila disagrees stating "the Town purchased that property." Shawn agrees, but notes that "the Townspeople, the legislative body, via Town Meeting, delegated the authority, not to the BOS, but to another committee." He states that he "wants to go on record that this was Dottie's son's Warrant Article and would like to give him a hat tip. It was a good one, now that you look at it because that would have prevented us from having to deal with the mask mandate anyways if the BOS did not rescind that (the mask mandate)." Mr. Hantman clarifies that the rules for the elections and deliberative sessions are set by the Moderator, but he does not intend to do anything different than what the BOS decided tonight.

Mr. Springer states that in response to Mr. Hantman, he would "like to point out that on Town Meeting Day, neither the Moderator nor the BOS are the final arbiters of the votes taken. It is the Townspeople". . And it has been repeatedly upheld in court when the BOS have chosen to do one thing and have been told to do something else at Town Meeting. With this discussion as to who has authority and who has the ability to tell people what to do, and he's not talking about masks, but a much bigger situation, he is asking the Chair and Vice-Chair to poll the BOS members, so the Townspeople understand where the BOS members stand, on the following question: as a member of the BOS, is it your belief that the Police should be instructed to arrest individuals for not following a BOS policy." Mr. Springer states he wants to know what the BOS thinks about that kind of activity. He states that he "thinks it is unfair to the Police, it is not a law, and he doesn't think it is what the BOS intends, but is not certain."

Shawn starts the poll with Dr. Farah. She states that "she's not sure how to answer that question". Mr. Springer states it is a very simple question. Dr. Farah and Mr. Hantman both state that "policy is not law". Dr. Farah goes on to state that she "is not aware of anyone in Town being arrested because of a policy and would certainly say no." Mr. Springer confirms what Dr. Farah has said. Dr. Farah states that "you don't arrest somebody for a policy,

you arrest them for an infraction of the law." Mr. Springer confirms Dr. Farah's statement. Dr. Farah states that he is correct. A member of the public asks if the BOS can do anything regarding a woman who was arrested at a School Board meeting. Shawn reiterates "that's a different discussion". Mr. Springer then asks for Shawn's opinion. There is an animated discussion when Dr. Farah asks who is polling the BOS. Shawn asks Dottie who responds "the police have to uphold the law". Mr. Springer responds with "I didn't ask about the law, I asked about policy". Dottie replies with "nope, not that I'm aware of, just law. However, if there is a public disturbance, disorderly conduct, certainly the police can arrest somebody." Mr. Springer states "that is not what I asked." Mr. Springer asks Sheila who responds "not policy, just law." Steve responds with "no". Shawn states "I concur with Steve."

1. Ms. Barr states that she is asking with regards to the voting machines as previously discussed in April. She asks if "in light of the situation in Windham, can the Town re-visit the issue and think about getting rid of the (voting) machines." Shawn explains it will be at the State level to figure out what transpires. Several members of the public disagree, stating it is the Town that decides. He reminds the public and the BOS that he brought the topic to the BOS and that people should "understand where he sits relative to that issue and that he's often wanted to do a hand recount of what the Town currently has but does not have this right now. The Town has whatever this magical box spits out as a number and we take it as gospel, but that's a different topic". Ms. Barr asks when that topic should be brought up, stating she is concerned with the July 13 elections. Shawn notes the Town used the voting machines in the School District vote in March. A member of the public asks if the Townspeople can request a hand count of the ballots. Shawn explains the ballots are under the State's jurisdiction and the only way to do a hand recount is by petitioning Superior Court.

Another resident asks if there can be a hand recount for the July 13 elections, noting the State will not have the forensic audit report out on Windham until after July 13. Shawn refers the question to Mr. Hantman, noting that Mr. Hantman has held hand recounts for close races on election day. The resident asks Mr. Hantman if the Town must use the machines until after the report (from Windham) is out. Mr. Hantman explains that "we will conduct our elections in accordance with the RSA's<sup>iii</sup> and directions from the Secretary of State. Danville is not listed as a hand-count Town in the State of NH, we are listed as a machine-count town and that's how ballots will be counted." Someone asks if that's up to the BOS. Mr. Hantman reiterates it is not up to the BOS. Mr. Springer asks if that can be brought up at the Deliberative Session. Mr. Hantman responds that it cannot. Ms. Barr states that "It is up to the Town". She has "spent a lot of time researching this". Shawn notes that assuming what she said is true, it would be to be on a Warrant Article for the Townspeople to vote, and that deadline was back in January. They are just waiting for the Deliberative Session and the elections.

Sayre DeVito asks why the Deliberative Session and the elections are so late, and that she "does not clearly understand why the Town did that." Shawn explains "the vote by the BOS included two existing members and one former member who decided to move it, against his and Steve's recommendations". Ms. DeVito asks what their reason was. Shawn states that he "does not know their rationale, but they made a motion, it was seconded and therefore the BOS had to vote on it." Shawn suggests the two BOS members still on the board answer Ms. DeVito's question.

Dottie explains that "we were asked by various people to postpone the Deliberative Session and elections because the Governor's Executive Order said the BOS could do so and the Moderator suggested doing it at the latest possible date which was June for the Deliberative Session and July for the elections because we had a lot of COVID cases here". Ms. DeVito asks how many COVID cases there were. Dottie states that "right now, I don't remember."

Dennis Griffiths states that "correct me if I'm wrong, but didn't we have an election that we had to show up and vote for?" A member of the public states that it was for the school budget. Mr. Griffiths states that he "doesn't care what it was for, but I was in a building to vote for something- and I couldn't fill out another bubble at the same time for the people that we're voting for the BOS." Shawn explains the Town was "compelled to hold the school elections on that date (March 9)". Mr. Griffiths responds that "we had to go to vote because that was the

day, we had to go down there, masks, no masks, whatever, and you guys still vote to take it off so we have to do a second vote, so all the people who worked that election have to work this election when it could have been just one. The people who were 'exposed' are now 'double-exposed' supposedly. I'm not following you guys logic- this is asinine, it's a giant waste of time". Mr. Griffiths points towards the BOS and continues "you're just a person and you're just a person... but you're just a citizen, just like this guy (points to the person sitting next to him) you're no smarter than anybody else and nobody put you in charge, elected you to make critical life and death....I can tell you something, there is no one on this planet that gives me permission to breathe freely...so when you went that far and now you mash up the election and split up ...have you no logic? You know what's great about this whole situation is everybody's colors show- and you didn't see my face in this Town before, but you'll see it again. . ...what you choose when your back is against the wall and it was bad bad choices." Shawn agrees. Mr. Griffiths continues "really bad choices...because you have a whole Town that is very, very upset with the lack of logic that was supported by three (3) out the five (5) of you there."

Mr. Springer asks to speak. He reminds everyone "there is an election coming up. One person sitting on the BOS was appointed and not elected and is running for another short term. Elections have consequences, let's pay attention and vote for the right people." . Dr. Farah raises her hand and is recognized by Shawn. She states that she "would encourage you all to vote and I would encourage all of you to run for Town offices." Mr. Springer states "we can't anymore". Dr. Farah responds "excuse me, Carsten, I'm speaking, would you please let me finish." Mr. Springer states "sure, finish up." Dr. Farah continues "I urge you to run for elected offices. I ran, I came down on the last afternoon on Friday. There was no one running for Selectman. That's all I need to say."

Mr. Griffiths states "Listen Kim (Dr. Farah), you're no better than I am, okay. Good for you, thank you, you did your civic duty and I commend you for that. Everyone should step up and do their civic duty, even just showing up for a meeting. I wholeheartedly agree with you. It's the decisions you made after that. The decisions you made were wrong, poorly thought out, not critically thought out very well and now you're in the situation that you're in which has put us in the situation. We came here tonight feeling not great about things because of you...do you understand that, Kim? You're never going to get any further." Dr. Farah responds "I guess I don't understand that, thank you very much and I certainly hope you run."

There are multiple discussions. Shawn recognizes Mr. Springer. Mr. Springer asks "...regarding the candidacy and the filing the papers...". Shawn states "we've triple-checked that now and there's no..." Mr. Springer asks to finish. "Regarding the people who wanted to run as candidates who can't now because of the shifting of the goalposts, whether or not it was done according to the Governor's order or not. I do not believe it was the Governor's order's intent to limit our choices for candidates, and we certainly can write-in candidates in this election and I would submit to you that the Secretary of State Office really ought to be questioned again as to whether or not we did what was intended." Shawn asks if there is any further discussion.

Ms. Barr asks if there is a filing period for new candidates. Shawn states they've (the Town) have already checked three (3) times and candidate filing cannot be opened. Ms. Barr asks "why, if the BOS closed the candidacy filing period in January." Shawn agrees that is true. Mr. Hantman explains "we have checked with the Secretary of State Office on three (3) occasions. The way the Town conducted and did the openings for candidates was done in accordance with their direction, and we checked it as plain as day again". Mr. Hantman notes that his hand was raised for a different reason. He announces to the public that "there is a problem with live-streaming tonight, it does not appear to be on the Town's end, the meeting is being broadcast on Channel 20." Mr. Springer confirms the meeting is being recorded. Mr. Hantman reiterates that it is also being broadcast on Channel 20.

Ken Ira identifies himself and states that he "spoke with the Secretary of State for over an hour today about this particular issue and the ruling at the AG's office. The ruling that the AG's office made...back in February was intended to be if the filing period was closed at the time the BOS made their decision (to move the Deliberative Session and elections), then it should remain closed, but that's not the case with Danville. The Emergency Order was executed on January 22 and on January 25, in the middle of the filing period, the BOS voted to shift the election to July 13. It was not closed when we shifted our elections to July 13. The law clearly states that for an election, the filing period is seven (7) Wednesdays before the election until the following week's Friday. The new

filing period should have been opened last Wednesday and should close this Friday. The Secretary of State says that I have a very good argument and that he was not aware of this at the time that the Town's filing period was still open and had not been closed (when the BOS changed the dates of the Deliberative Session and elections.). So, I believe with all due respect that the information from the State is wrong because they didn't have all the facts." Shawn asks Mr. Ira to relay that information to Mr. Hantman and the Town Clerk, particularly who he actually talked to. Mr. Ira states that he spoke directly to Secretary of State, Mr. Gardner. Shawn notes that's the "head dude" and reiterates his request that the information is shared and that the BOS should get a legal opinion on that. Mr. Springer states "before Friday." Mr. Ira asks the BOS to make a motion because by the time they meet, the official filing period will be closed and it will be too late. He "respectfully asks the BOS to make a motion tonight pending legal counsel or additional advice from the State...". Shawn states that he "understands that Mr. Ira wants the BOS to do something, but it's out of our jurisdiction." Mr. Ira disagrees stating that "because the BOS voted to extend the election period". There is a short discussion. Mr. Ira states "you moved the election, that is your jurisdiction, not hers (referring to the Town Clerk) or his (referring to Mr. Hantman)." Shawn states that he can understand Mr. Ira's point.

Mr. Springer states that he "wants to make the BOS aware that at least one candidate has filed and it's pending for the Secretary of State and the BOS". Shawn states that it is "duly noted." Shawn closes the Delegate Session at 7:33 PM.

#### II. Agenda

**Wellingham Farms:** Shawn reviews paperwork for Wellingham Farms and determines that it needs to be discussed in a Non-Public session. He asks the public to quiet down so the BOS can conduct the remaining business.

Sayre DeVito asks the BOS to make a motion on the open candidates' filing period before they (the public) leave. Dottie states that the BOS does not have jurisdiction. Ms. DeVito disagrees stating "you do, you guys moved the election." Shawn motions to allow Legal counsel to provide an opinion on opening the candidacy up pending Legal review. Second by Steve. Dr. Farah asks Kim to read back the motion. Shawn explains that "it's based upon the information that the candidacy window was not closed when the BOS decided to move the election and that's the key phrase that needs to be conveyed to legal counsel." Dottie states that according to the minutes, the BOS voted to move the elections on January 25. There is a BOS discussion if the candidacy filing period was still open. She notes the BOS had to make a decision because the Deliberative Session would have been the following week. Shawn adds that "the BOS would have had to post the Warrant Articles that evening (January 25) and therefore, when they found out about the school district in the subsequent days, the BOS couldn't rescind the vote because the last filing period was that very evening that the BOS decided to change the Deliberative Session and elections on the original date."

Ms. DeVito asks that "may I respectfully request that you consult the attorney within a certain time period because the cut-off day is Friday". Shawn agrees that "time is of the essence and I will make sure of that and I know Kim will as well." Ms. Barr adds to "ask the Secretary of State, that is very important." Shawn assures them that he "will handle it."

An audience member asks that the motion be re-read. Kim reads the motion as "to get pending Legal opinion on the candidates' nights for review based upon candidacy end date according to the Emergency Order, if it was closed or if it would move forward with all the other changes in dates". Dr. Farah requests that Kim read the motion again. Kim notes that she can't write as fast as they talk. Dr. Farah states that she's "asked to vote on a motion and she's not clear on what the motion is." She apologizes to Kim, noting "there was one motion and now it's reading differently". Kim reads the motion again, "to seek legal opinion relative to open candidacy based on the review upon the moving forward the dates of candidacy pertaining to moving the emergency order for voting." Dr. Farah requests an explanation of the motion.

Shawn states the motion is to seek Legal counsel. Dr. Farah calls a point of order as a motion is already on the floor. Shawn and Steve agree to withdraw their motion and their second and start over again. Shawn rewords his motion "to seek Legal counsel's opinion on the Town of Danville's decision to move their election while the filing period for candidacies was still open. And that the BOS will follow that recommendation to open the window if legally possible." Shawn clarifies that is his motion, but all the other information that will go up will be Mr. Ira's conversation with the Secretary of State. Dr. Farah requests that the motion be read back. Dr. Farah and Kim reread the motion multiple times.

Mr. Hantman asks if he can recommend better language for the motion. All the BOS agree. He suggests "to seek a legal opinion regarding the appropriate filing candidacy window given that Danville moved its election and Deliberative Session while the filing window was open. And for the BOS to act appropriately based on that legal opinion." Dr. Farah requests a point of order noting there is already a motion and a second on the floor. Shawn states he will rescind his motion and Steve agrees to rescind his second. Dr. Farah makes the motion suggested by Mr. Hantman. Second by Sheila. Shawn calls the question. Vote is unanimous (5-0).

American Legion Lot Agreement: Shawn asks the BOS if they had looked at the information in their packets. Dr. Farah suggests the BOS should look forward to (using) the lot for Town Offices. Shawn acknowledges her comment. Ms. O'Connor asks if the American Legion is aware that one of the American Flags was entangled and ripped out of the pole and another one was hanging. Dr. Farah confirms these flags were on the telephone poles. Ms. O'Connor states they are on the poles just past the Post Office. Dr. Farah continues her comments and suggests that "perhaps the Town should determine what the footprint would be for Town Offices as it doesn't appear that the Police Dept thinks it would be adequate for them". Shawn again acknowledges her comments. There are no further comments on the topic.

**Roof Repair:** Kim clarifies that 2x6's were sufficient and that no further work needs to be done. There is no further comment from the BOS.

**Eagle Scout Ceremony:** Dottie volunteers to represent the BOS at the Eagle Scout ceremony on June 6 at 1:30 PM. Shawn thanks her for stepping forward.

Day Field Gates: Shawn explains that several items came up in regards to locks on the gates. He notes that he thought the gates where a car can get through by the dumpster and store were locked so people wouldn't drive on the field and that the Fire Dept, Police Dept, and Auger (landscape contractor) had keys so they could get in there. Now people want it unlocked and he states that he doesn't understand the rationale. Dottie explains that with summer coming and organized sports coming to an end, the kids downtown would like to go have pick-up games and she doesn't see why the Town would lock the field. Shawn notes that the field is not locked, just the double gates where a vehicle can get through. Dottie clarifies that the gate near the library is locked, noting that in the past it wasn't, but is now. She notes it's the way they get through for Olde Home Days, etc., and questions why it must be locked during the summer. Shawn reiterates it (leaving them unlocked) would make it very easy for someone to go onto the fields with a vehicle. Dottie argues that "it's a park." Sheila asks why "if it was unlocked all this time and now it's locked." Ms. O'Connor responds "no". Shawn notes that when it came up for discussion it was discovered that it was unlocked and that it's not an entrance that people normally use. Dottie explains that if the kids go to the store first and then want a pick-up game, it's easier to go through that entrance than walk around to the other open gate. She also states the library has been using that entrance to do Story-times. Shawn states that he has no problem giving the library a key for the gates. He reiterates his viewpoint that he "would not want to see open access where somebody would take advantage." Shawn confirms that the library could have a key so they can open the gate for Story-times. Dottie agrees that is the "perfect solution."

Dr. Farah suggests that an alternative solution could be to put another small gate there next to the double gates which could be kept locked. She asks what those costs of that might be, noting "it might be easier than having all these keys around". Shawn agrees that is a good point and asks Kim to get the costs of putting in a new gate. In the interim, he asks that she give the library a key to the double gates.

Danville Youth Baseball: Kim explains that Jimmy (Road Agent) has walked around with the League officers. She has spoken to Nathan (DYBL leader) regarding the list that was made as she has not received it yet. There is also a question regarding the use of the snack shack. Shawn explains the problem with the snack shack is unattended kids inside the snack shack. Sheila asks who owns the snack shack. Ms. O'Connor states it is owned by the Recreation Dept. Sheila confirms that the Town of Danville owns it. Shawn notes there were issues with graffiti and he wants to be sure there are adults on the premises at all times. He states that he "has no problems with the full understanding there have been issues before and he doesn't want to go down that road again." Sheila states that she has "no problem with them (DYBL) and she thinks they should be able to use it." The consensus of the BOS is that DYBL can use the snack shack with those caveats.

#### III. Old/New Business

**Minutes:** The BOS review the minutes for the May 3, 2021 public BOS meeting. Dr. Farah motions to accept the minutes of the May 3, 2021 public BOS meeting as written. Second by Dottie. Dr. Farah motions to call the question. Shawn asks for a minute to review the minutes. Shawn calls the question. Vote is unanimous (5-0).

The BOS review the notes that were transcribed from the non-meeting of May 17, 2021. Shawn explains the "minutes" were "generated for the non-meeting due to no quorum, but in light of what transpired and the camera was not on to start, but did capture some of that, he thought that it was in the best interests of the Town in full disclosure of things that were happening by this body (the BOS) and he's stated that on multiple occasions from the start that this was a non-meeting and Steve and himself at the time explained to the people what had transpired and they had some follow-up questions. We captured that and they're reflected in these non-binding minutes or whatever you want to call them, a record of it". Shawn states that he's "okay with whatever the BOS decides to do related to that, but that he thinks it's in the best interests of the Town and in disclosure of what transpired that evening."

Dr. Farah motions to amend the May 17 minutes to read "The meeting was called to order by the Chair. There was not a quorum of the meeting. No meeting was held." Second by Dottie. Dr. Farah states that she wants to comment on her motion. "While it might seem prudent in this case Mr. Chair, you are now setting the precedent for somebody else in that chair to decide when official minutes are taken of what is considered to be 'no meeting'. That's the rationale from my motion." Shawn calls the question. Vote is 3 yes (Dr. Farah, Dottie, Sheila) and 2- no (Shawn and Steve). (3-2) The motion to amend the May 17, non-meeting minutes passes. Shawn states that he does have the "minutes" and will be posting them on social media. Sheila states "of course you will." Shawn responds with "I have nothing to hide". Sheila states that "neither do we". Dr. Farah states "Mr. Chair, feel free to post my rationale also." Shawn states that he is not at liberty to do that. Dr. Farah responds that "I am giving you the authority to do that." Shawn states that he "will take that under consideration."

**Signature File:** Shawn reviews the Fireworks contract. Kim clarifies that it is from the Recreation Dept. Dr. Farah motions to authorize the Chair to sign for pyrotechnics for Olde Home Days. Second by Sheila. Vote is unanimous (5-0).

Dr. Farah motions to authorize the Chair to sign the letter regarding Rotwell: Tax Map 2, Lot 75-1. Second by Dottie. Dr. Farah calls the question. She immediately reiterates there is a motion to call the question. Shawn asks her to stop, stating he "wants to read the letter before he signs it". He states he "understands the motion has been made and seconded. He understands she wants to move the questions, but he would like to read it." Dr. Farah apologizes stating she "thought he read the warrants before the meeting." Shawn responds that he "never said he did." There is a short, animated discussion of prior issues he was dealing with "thanks to the three of you (referring to Dr. Farah, Dottie, and Sheila). Shawn calls the question. Vote is unanimous (5-0). Shawn signs the letter.

Shawn states that he has received an appointment request for Roger Whitehouse as a member of the Zoning Board. He requests a motion to approve him. Dr. Farah motions to approve Roger Whitehouse's appointment to the Zoning Board. Second by Steve. Vote is 3 yes (Shawn, Steve, Dr. Farah), 1 no (Dottie), and 1 abstention (Sheila). (3-1-1). Motion passes. Roger Whitehouse is appointed to the Zoning Board.

Shawn reads the Town Announcements listed below.

Dr. Farah asks if the BOS is not handling the rest of the business from the May 17 BOS agenda. Shawn notes that he thought it all moved forward and asked what was missing that Dr. Farah would like to address. Dr. Farah notes that the impact fees and Anzalari issue have not been addressed. Kim explains the impact fees item was for informational purposes only and the Anzalari issue cannot be addressed until the Town gets the report back from DES because the Town needs their (DES') response. Dr. Farah states the BOS still needs to make a decision on the impact fees. Shawn asks for clarification. Dr. Farah explains she is referring to the school impact fees that are in the agenda packet, the amount the Town needs to put towards the taxes. Shawn explains that decision needs to be done before Sept. 1. Dr. Farah notes that it was on the May 17 agenda, but dropped from the June 1 agenda. Kim explains the e-mail she received was for informational purposes. Dr. Farah asks if it will be on the next agenda. Kim explains the tax rate doesn't get set until sometime in August. Shawn then explains that generally, the BOS addresses the impact fees during the summer. Dr. Farah explains that she is "just stating that it was on the May 17 agenda, that's all. And that she just wants to go back to the agenda and make sure things get addressed that's all". Shawn asks Kim to schedule that discussion for the first BOS meeting after August 1.

Mr. Hantman asks the BOS to address the letter that the Cable Committee sent to the BOS. Shawn acknowledges that the BOS did get his letter, and apologizes "that things have...". Mr. Hantman states he understands and just asks that at some point the BOS addresses his letter. Kim states that she will put his letter on the next agenda.

Steve addresses Mr. Hantman stating that he "saw something on social media that they (the Town) were going to hold the Deliberative Session outside and that handing out literature will not be allowed. Mr. Hantman notes that it has never been allowed in the hall. He states that "they can be outside the gate handing out whatever they want, but inside the gate, no handouts with the exception of the Town Warrant, the Budget, and the Default Budget". Mr. Hantman reiterates that handouts were not allowed in the hall and he will be following the same protocol outside. Shawn asks Mr. Hantman if he had a contingency plan if it rains. Mr. Hantman notes the current forecast is good. Shawn confirms that Mr. Hantman would consider moving the meeting inside if it should rain. He asks that "if in light of tonight's meeting, he would consider moving the Deliberative Session inside. Mr. Hantman responds that he is "keeping the Deliberative Session outside because it has taken the issue off the table." Mr. Springer states that "the issue isn't off the table." Mr. Hantman responds that "it's off the table for that meeting." Steve notes that it's going to be 90' and sunny and suggests that he should have the ambulance standing by. Mr. Springer states that "we've put ourselves in a problem here for the Town." Shawn explains the BOS' obligation is to designate a place for the Deliberative Session. He states "the BOS has done that and it is out of our hands."

**Candidates' Night:** Shawn states that he thinks the BOS should hold a Candidates' Night and that they have always done one. Mr. Hantman corrects that stating they "have not done a Candidates' Night in years with no contested items on the ballot, like this year." And he "does not intend to hold a Candidates' Night." Mr. Hantman clarifies that if the earlier motion to re-open the filing period is upheld, the names on the ballots change, and there are contested races, he would reconsider that issue.

Mr. Springer asks that "just for clarity, to re-read the motion that was voted on and passed." He "wants to clarify if the BOS is waiting for an opinion from Legal counsel or is the Town waiting for the Secretary of State." Mr. Carsten notes the motion was amended and he was concerned it was not "amended with the proper intent." Shawn explains that he will ask Legal counsel, and explain what has transpired, and make it clear when the BOS approved that motion (to move the Deliberative Session and elections) the candidate filing window was still open. He will ask Counsel to contact the Secretary of State and note another individual had brought up the issue on very strong grounds that the filing window should probably be re-opened. Shawn clarifies that the answer will be coming from Legal counsel in consultation with the Secretary of State. Another member of the public also asks to hear the motion again. Mr. Ira states that Dr. Farah "changed the motion so the BOS has to vote again after the Legal opinion and that would be too late. They just listened to it on video and the amendment was to come back to the BOS and that she (Dr. Farah) pulled one over on me." Shawn notes that wasn't the intent. There is an animated public discussion regarding the amended motion. Shawn asks Dr. Farah if "the motion was that the BOS would

have to come back and vote or was it that whatever Counsel says, the BOS would undertake." Dr. Farah states the motion is that the "BOS would base their decisions on Legal counsel." Shawn asks "does that mean to take it under consideration?" He asks if that was her intent. Dr. Farah asks Shawn "if, when you get a legal opinion, do have to bring it to the BOS or do you act on it as the BOS Chair." Shawn responds that he acts on it "if he has been authorized."

Shawn again asks Dr. Farah if her interpretation of her motion is that the opinion must come back to the BOS. Dr. Farah re-reads the motion "to seek a legal opinion regarding the appropriate filing candidacy window given that Danville moved its' election and Deliberative Session while the filing window was open. And for the BOS to act appropriately based on that legal opinion." There is more discussion from the public regarding the clarity of the motion. Shawn motions that the BOS follow Legal counsel's recommendations on the open filing window matter previously voted on by the BOS. Second by Steve. Shawn asks the public if this clarifies that BOS action is binding on Counsel's advice. Dr. Farah asks that the motion be re-read. Kim re-reads the motion. Shawn states the BOS will follow Counsel's recommendations on that matter. Dr. Farah requests that the motion be re-read again. Shawn asks Steve to rescind his second and states that he will rescind his motion. Sheila states that Mr. Hantman should be doing the phone calls as Moderator. Dr. Farah disagrees, stating it is the Town Clerk that handles the candidates. Dottie and Sheila agree the Town Clerk should be the one talking to Legal counsel, not the BOS. Sheila reminds Shawn of this fact. Shawn states that "she (the Town Clerk) has been, she has been checking the last three times." Sheila states that "she can check the fourth time." Dottie also states that she (the Town Clerk) should be the one checking with Legal counsel because she's in charge of the candidates. Shawn disagrees, stating that he wants "to be the one to convey to Counsel the totality of the facts and not a selected part of it."

Shawn confirms that he has rescinded his motion and that Steve has rescinded his second. Shawn reads his new motion. "The BOS will follow the recommendation of Legal counsel on the issue approved previously relative to the candidacy window for the Town of Danville." Mr. Springer asks if this includes the Secretary of State. Shawn explains that will be conveyed to Counsel to contact the Secretary of State because the BOS has had information that he (the Secretary of State) believes that this is a serious issue, etc." Motion is seconded by Steve. Dr. Farah asks that the motion be read again. Another member of the public confirms that Shawn will talk to Counsel. Shawn explains that doesn't need to be part of the motion. Dr. Farah states that "this does not fall under BOS purview." She states that Shawn can make that motion and she will approve that motion, but that "it does not fall under BOS purview." Shawn calls the question. Vote is unanimous (5-0).

#### IV. Town Announcements

#### Calendar

- June 14- Monday: Board of Selectman's Meeting, 7:00 PM at the Town Hall
- June 5- Saturday: Town Deliberative Session at the Community Center 10:00 AM
- ♣ July 13- Tuesday: Town Elections at the Community Center 8:00 AM-8:00 PM

There being no further items to discuss Shawn motions to go into a Non-Public session under NH RSA 91-A 3:II(c). Second by Sheila. Roll call vote: Shawn-yes, Steve-yes, Sheila-yes, Dottie-yes, Dr. Farah- yes.

Dottie also motions to go into a Non-Public session under NH RSA 91-A 3:II(a). Second by Sheila. Roll Call vote: Shawn-yes, Steve-yes, Sheila-yes, Dottie-yes, Dr. Farah-yes.

Public Meeting is ended at 8:22 PM.

Minutes derived by video provided on the Town of Danville website.

Respectfully Submitted Deborah A. Christie

'NH RSA. Title III: Towns, Cities, Village Districts, and Unincoporated Places. Chapter 41:11-a(1) Selectmen Section I. The selectmen shall have authority to manage all real property owned by the town and to regulate its use, unless such management and regulation is delegated to other public officers by vote of the town, or is governed by other statutes, including but not limited to RSA 31:112, RSA 35-B, RSA 36-A:4, and RSA 202-A:6. Source. 1994, 17:1. 2009, 121:1, eff. Aug. 21, 2009.

www.gencourt.state.nh.us/rsa/html/indexes/default.html

ii NH RSA Title LXIII: Elections: Chapter 659: Election Procedure 659:1-659:103. www.gencourt.state.nh.us/rsa/html/indexes/default.html

NH RSA Title LXIII: Elections: *Chapter 660: Post Election Procedure 660:1-660:27*. www.gencourt.state.nh.us/rsa/html/indexes/default.html

NH RSA Title LXIII: Elections: Chapter 669: Town Elections 669:1-660:75. www.gencourt.state.nh.us/rsa/html/indexes/default.html

iv NH RSA TITL	E LXIII ELECTIONS. CHAPTER 669-TOWN ELECTIONS By O	Official Ballot Section 669:19 Nominations:
Nonpartisan Ball	ot System. – In a town which has adopted the nonpartisan ballot sy	stem as provided in RSA 669:13, all
candidates shall fi	le a declaration of candidacy with the town clerk during the filing p	eriod for town candidates. All candidates
who file on the las	st day of the filing period shall do so in person before the town clerk	x. The filing period shall begin on the
seventh Wednesd	lay and end on the Friday of the following week before the town	election. Such declaration of candidacy
shall be prepared b	by the town clerk in substantially the following form: I,	, declare that I am domiciled
in the town of	, and that I am a registered voter therein; that I am a	candidate for the office of
	and hereby request that my name be printed on the official nonpart	tisan ballot of the town of
	<b>Source.</b> 1979, 410:1. 1983, 154:1. 1987, 299:4. 1988, 126:2. 1994	4, 4:31. 2008, 148:2. 2011, 40:1, eff. July 8,
2011. www.genc	ourt.state.nh.us/rsa/html/indexes/default.html	

See attachments:

Matthew R. Serge, Esq email regarding Declaration of Candidacy.

Town of Danville candidates window - Email (Shawn O'Neil and Matthew Serge)

Sign in sheet BOS meeting on June 1, 2021

iii ibid

#### **TownAdmin**

From:

Matthew R. Serge

Sent:

Thursday, June 3, 2021 3:04 PM

To:

TownAdmin

Subject:

RE: declaration of candidacy.

HI, Kim. My apologies for the delay. I am not always near my phone during work hours, so please feel free to shoot me an email or call my office directly (603-716-2895) and you'll probably have better luck catching me.

As for this candidacy issue, I am familiar with the controlling statutes and, as I mentioned to Shawn yesterday in an email, the Secretary of State's office governs elections (state and local) and is the ultimate arbiter (next to a judge) on the election laws. I contacted Attorney Bud Fitch at the SOS office after learning about Christine's multiple discussions with others in the SOS office, including Secretary Gardner. He echoed the position already taken by the rest of the office that in no case can the period for filing a declaration of candidacy be extended or re-opened after the original period of time expired (for the original March meeting date). He explained that while part of the problem is that the period already started before the meeting was postponed pursuant to Executive Order, the SOS and the AG have collectively taken the position that the period for filing a declaration of candidacy or the period for filing petitioned zoning ordinances should not be changed from the original dates regardless.

From my perspective the statutes are certainly subject to interpretation, and I do not necessarily agree that as a matter of course the time periods set out above could not be changed under any circumstances. That said, I do understand the position that once the period started it must run its course and a town cannot then extend that period, or re-open the period. I believe a judge would agree that that is the correct way to interpret the law because there is only one period provided for in the statute, and it could be seen as inequitable to allow those who declared candidacy in a timely manner. I actually had this issue come up with respect to petitioned zoning ordinances and I believe the same argument holds true. Moreover, a judge would certainly give deference to the SOS's interpretation given that agency's role in elections. So, on balance I feel the SOS's reading of the law is reasonable.

Thank you.

-Matt

From: TownAdmin <townadmin@townofdanville.org>

Sent: Thursday, June 3, 2021 1:12 PM

To: Matthew R. Serge

Cc: Shawn Oneil <shawn oneil@alum.rit.edu>; 'Steve Woitkun' <danville13c1@aol.com>; Sheila ACO <SheilaAndRoy@aol.com>; Dottie <dbillbro@comcast.net>; Kim Farah <kfarahsb@gmail.com>; Christine Tracy

<ctracy@townofdanville.org>; barry@hantman.net

Subject: FW: declaration of candidacy.

Hi Matt,

I left you two voice messages but wanted to follow up in writing. See below Chris Tracy, Town Clerk's message and my request to have your legal opinion in writing, as soon as possible as the deadline would be tomorrow at 5:00 pm.

Thank you,



Kim

From: TownAdmin

Sent: Wednesday, June 2, 2021 2:21 PM

To: Christine Tracy < <a href="mailto:ctracy@townofdanville.org">ctracy@townofdanville.org</a>; Shawn Oneil <a href="mailto:shawn\_oneil@alum.rit.edu">shawn\_oneil@alum.rit.edu</a>; Steve Woitkun <a href="mailto:danville13c1@aol.com">danville13c1@aol.com</a>; Sheila ACO <a href="mailto:shawnofdanville.org">Sheila ACO <

Subject: RE: declaration of candidacy.

Chris,

Can I make a suggestion that we request Matt Serge, Esq., legal opinion in writing to corroborate Bill Gardner, SOS final decision??

Thank you,

Kim

From: Christine Tracy < <a href="mailto:ctracy@townofdanville.org">ctracy@townofdanville.org</a>

Sent: Wednesday, June 2, 2021 11:48 AM

To: Shawn Oneil <shawn oneil@alum.rit.edu>; Steve Woitkun <danville13c1@aol.com>; Sheila ACO <<sheilaAndRoy@aol.com>; Dottie Billbrough <dbillbro@comcast.net>; Kim Farah <kfarah84@comcast.net>; Barry Hantman <br/>
| Hantma

Hello all,

So, for the 4<sup>th</sup> and I hope, final time, I spoke with SOS Bill Gardner this morning and the filing period will NOT change. I also spoke with Matt Serge Legal Counsel and he is standing by Secretary Gardner's decision. Can we please put this to bed now?

Christine Tracy

Danville Town Clerk 210 Main St. Danville, NH 03819 603-382-8253 ext 2

Market Da Market

On Jun 2, 2021, at 11:44 AM, Shawn O'Nell <shawn\_oneil@mail.rit.edu> wrote:

Ok. Please talk directly with SoS. Key issue is that our window was not closed at the time of moving the date.

Shawn

603-401-0461

On Wed, Jun 2, 2021, 11:28 AM Matthew R. Serge < MSerge@dwmlaw.com > wrote:

Hi, Shawn. My apologies but I have been in telephone conferences all morning. I will look into this and be back to you ASAP.

A Survey Company Sch Difference (1)

-Matt

From: Shawn O'Neil <shawn oneil@mail.rit.edu>

Sent: Wednesday, June 2, 2021 9:26 AM
To: Matthew R. Serge < 45 Company of the Co

Subject: Town of Danville candidates window - priority

Matt,

This is a priority.

The town of Danville, via a vote by the BOS, moved Town meeting to 2nd tuesday in July. Our deliberative is this Sat, june 5. The legal question we have is that since our candidate window was previously open and not closed, when bos moved the dates, that people should be allowed to sign up due to current statues surrounding candidates sign-ups for candidacy prior to townmeeting. Someone was talking directly with SoS Gavin and he indicated that he sees the legal issue since the window was not closed. Can you consult with him and allow people to sign up? The window would close this friday according to existing RSAs.

If you have questions please call me.

893-401:046Th

Thank you,

Shawn O'Neil

Chair

#### TownAdmin

From: Shawn O'Neil <shawn\_oneil@mail.rit.edu> Sent: Thursday, June 10, 2021 11:56 AM TownAdmin To: Subject: Fwd: Town of Danville candidates window - priority Follow Up Flag: Follow up Flag Status: Flagged Did we get his opinion? S ----- Forwarded message ------From: Shawn O'Neil < shawn oneil@mail.rit.edu> Date: Sun, Jun 6, 2021, 9:26 PM Subject: Re: Town of Danville candidates window - priority To: Matthew R. Serge Man and State of the Street of the When can i expect this? Shawn On Wed, Jun 2, 2021, 5:22 PM Shawn O'Neil <shawn oneil@mail.rit.edu> wrote: Please send me your final written opinion. Please note it will most likely be released publicly. Shawn On Wed, Jun 2, 2021, 4:19 PM Matthew R. Serge minw.com.wrote: Shawn/. By way of update, I spoke with Christine Tracy and she explained to me that she has spoken with the SOS office multiple times (including with Secretary Gardner today), and they have consistently said the candidacy window is no longer open under the circumstances here. Earlier today I sent an email to Attorney Bud Fitch at SOS to see about getting his take on this. I am waiting to hear back and will let you know as soon as I do. If I don't hear back from him tomorrow morning, I will call him. I will say that this is a very grey area, and the statutes are silent in postponing elections and how that effects candidacy deadlines. Aside from the fact that the SOS controls the elections (state and local) and has the final say (aside from a judge), the courts would tend to defer to the SOS in these situations. Just food for thought. I'll be in touch when I make contact with Attorney Fitch. -Matt -Matt Sent from my iPhone

## **Board of Selectmen**

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Meeting

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Jim Brans	114 Emerstal
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Albert Tuld	il Greeky st
Com Nelvan	70 Veneden R2
Champer .	fondorn RA
O Tolert Free	222 hope Pond.
Sandra NElson	70 Sandown Rd
George Nelson	/( )/
Rose Love	21 Colby Rd.
ART GRISWOLD	13 LAMBS WAY
Dennis GerFaths	131 Emeared Dr
Chee Edwards	26 Caleb Dr
Sayon, Devito	28 Opal Dr.
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## **Board of Selectmen**

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Shirley Creska	12 Jul- gendruce fre Diray NH
Tray Sexton	25 Mallard Dr Atten NH
Harie Corea	1.6. Box 5/3, Northwood, Not
Swaw LaPointe	52 Feench Kd Epping NH
Jason used	19 Wash Port Rd Harrestad.
Kathenia Wax!	19wash Pord la Hamptera
Herry Chier	100 Blake H. 11 11 Ch Cos 120
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Josie Comandala	"So Barbary St the South
Donna Chick	100 Blake HIRd (tr OssipeeN4
Karen Stoker	500 Salem St. #603 Medfor MA
Vuony Tranc	679 Clay St Monichells 14 H
Doug Wilsing	10 Tidewater Firm Rd Greenland NH
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## **Board of Selectmen**

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NAME	ADDRESS
Ed Larg	86 MAIN ST
Sat Bon	107 MAIN ST
Michel Cook	169 Phosest for Dr.
Lo Gallant	TRHOINGSIDED, DeryNH
KMan	131 R Raymond Rd Normy ham
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July 1	11 Chigane DIND NA
Pan Drish	17 Gerialy Ct
CHAY KELLEY	GO Whitehall L.J. Hosksett NH

## **Board of Selectmen**

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Name	ADDRESS
harlene Xmistions	Pelham DH
Railere Xmisting Kevin Edwards	Pelham NY Pelham NY