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Town of Danville  
Board of Selectmen  
July 12, 2021  
7:00 PM

6:52 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; Cheryl and David Laplume

Shawn called the meeting to order at 6:52 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 asks if there are any members of the public not on the agenda who wish to address the BOS. No members of the public ask to speak.

Shawn closes the Delegate session at 6:53 PM

**II. Agenda**

**Timberlane School District Impact fees:** Shawn explains the school district is being proactive by asking about this now, instead of in September as usual. He notes the school district is “getting its act together under new leadership”. Shawn states that there is currently \$325,000 in the School Impact Fee fund. Approximately \$60,000 are deposits from 2021 so far. He reminds the BOS that these impact fees must be used within seven (7) years from the date of deposit, otherwise, they must be returned to the owner of record at the time the fees were paid. He also notes that the BOS resolved that issue with past withdrawals and ensured that the Town used any residual funds before they expired<sup>i</sup>.

Dr. Farah asks for clarification, noting that at the end of 2019 the fund balance was \$185,000. The BOS withdrew \$150,000<sup>ii</sup> and applied it to the Town’s school bill, leaving only \$35,000 in the account. She notes any impact fees paid prior to 2019 would have been expended with that withdrawal.

Shawn suggests the BOS use \$150,000 from the current balance towards this year’s (2021) Town’s school bill. That would leave \$175,000 in the fund. Dr. Farah disagrees with taking so little and suggests the BOS withdraw \$275,000. Shawn explains that he tries to keep enough funds available to ensure a level-funded withdrawal each year. He notes that in some years, there may not be as much construction and therefore a lower amount of impact fees would be available. He gives the example that in the first half of 2021, the Town has only collected \$60,000 in impact fees. He reiterates that he would like to be able to have the same amount of money available to put towards the school taxes for at least a couple more years.

Dr. Farah explains that her thought process is that the money is intended to offset the impact that building is having on the Town. She notes that people have suffered through COVID and that the interest rate on the fund is low. Given these circumstances, she suggests the BOS may want to pull out as much as possible to offset the taxes. Shawn states the BOS could even liquidate the fund, but then they would only have the School Impact Fees collected from the last half of 2021 to use against the taxes next year. He reiterates his suggestion to have enough left in the fund to withdraw a level amount each year to reduce the Town’s portion of the school taxes. Dr. Farah responds that she

could follow Shawn's line of reasoning, but that it is a new line of reasoning and historically that is not what has been done (with the School Impact fee fund). Shawn notes there is no policy per se, the decision on the amount to withdraw is "basically what the BOS felt at that time". He reiterates that he hopes the BOS will leave some money in the fund this year that can be used against the taxes in 2022. Dr. Farah also expresses her concern that school funding revenue is down this year and the Town will have a substantial increase in the school taxes even though the school budget was level-funded.

Steve asks if the School Impact Fees are used for the school's operating budget. Shawn explains the impact fees go to capital projects only. Dr. Farah reiterates her suggestion that the BOS withdraw at least \$200,000. Shawn states this will leave \$125,000 in the fund for next year. Dr. Farah motions to authorize the Treasurer to disperse \$200,000 from the School Impact Fee fund to be put towards the Town's payment to the Timberlane School District. Second by Sheila. Vote is unanimous (5-0).

**Pine St. Town Offices:** Shawn states that he has no update on this issue. Dr. Farah states that she asked for this to be on the agenda and refers to the previous discussions of using the lot for town offices. She states that she feels the BOS should start the process as they did for the new police station and move this project forward. Shawn confirms she is asking that the BOS form an ad hoc committee to study the issue. Shawn asks Kim to post that the BOS is looking for applicants/volunteers to investigate the prospect of moving the town offices to the lot located on Pine St., next to the Post Office. Sheila confirms that this committee will need a Selectman's representative. Shawn suggests that Sheila is volunteering to do that.

On a related subject, Dr. Farah asks if the BOS intends to bring the Warrant for the new police station forward again. She asks if the BOS had discussed why the original Warrant did not pass and how to bring it forward again. Shawn explains that with the increase in building costs, the Town would get much less in the police station for the same price. He notes that he did talk to Chief Parsons, who felt that with everyone dealing with COVID, no one was interested in addressing the project last year. Dottie states that she had also spoken with Chief Parsons and asked if it could be a smaller project. Chief Parsons had responded that there was nothing left to "leave out."

Steve states that he had heard the original figure of \$1.2M for the construction of the new police station and was concerned when the price increased to \$2.6M. He notes that he feels that is why the Warrant failed. He suggests that the project could have been done by building a base building with the ability to expand in future years. He notes that if the price came in under \$2M the Warrant may have passed. Sheila agrees the BOS definitely got a "sticker shock" when the price of the project was presented. Dr. Farah asks if the proposed police station was designed for the Town as it is now or for the Town in twenty-five years when it has been built out. Shawn explains the thought was to look at the size of the police station with the ability to expand. He notes the projected build-out of the Town is approximately 8500, the Town's current population is 4500. The question is whether to design something for the future or just build for the current status and risk out-growing it. Shawn notes he believes the design was based on future growth from what he remembers of those discussions.

Dr. Farah asks if it would make more sense to build the new police station for where the Town is now with a design plan to expand when it is needed. Steve agrees and states he feels that would satisfy the taxpayers. Dr. Farah suggests discussing the new police station that way so the BOS can put it forward on the 2022 Town Warrant. Shawn agrees he would like to bring the project back, noting all the engineering, site plans, and tests pits have already been done.

Steve asks if there is also a Public Safety Impact Fee fund. Sheila states that the Town does not have one. Shawn explains that there would have had to be another Mayberry study as was done for the School Impact Fees and that everything would have had to be situated and put on the Town Warrant. Dr. Farah adds that it wasn't done because, based on the size of the Town, the impact fees would be very small. Shawn notes that the money from the Public Safety impact fees would probably only pay for the cost of the study. At that time, the BOS determined they would not move forward with those impact fees. Dr. Farah notes that BOS moved forward with the school impact fees because the school budget was so much larger in comparison to the other Town budget lines. Shawn notes that the

BOS had also looked at a highway impact fee and a recreation impact fee. Dr. Farah states that all that information should be in the file.

**Samuel Eaton Trust:** Shawn explains the BOS needs to find out exactly what is stated in the Eaton will that created the Trust, as well as how the disbursements have been made. He states that “apparently, it seems the Court has intervened multiple times over the years to rule on the intent of the will.” Dr. Farah clarifies that the Trustees must go to the courts, the courts do not initiate the case. Dr. Farah and Shawn agree the court has made rulings on specific cases regarding the Eaton Trust over the years. Kim notes she has provided the BOS with a copy of the decree, a motion to modify, and a motion to amend documents that she found in the safe. Dr. Farah confirms that it is her understanding that there was a court ruling in 1941 because “if the wishes of the Trust’s donor cannot be fulfilled, the Town must go to court to get a dispensation of that Trust.” The Eaton trust was to be used only for a high school in Danville. In 1941, the Court ruled that the trust funds can only be used for the transportation of students. Dr. Farah confirms this would be only for Danville students. Kim states the ruling states for “Danville scholars.” Dr. Farah states that when these disbursements are made, the school needs to be made aware that money goes directly towards Danville taxes.

Kim refers to the e-mail from the DOJ that she forwarded to the BOS. Dr. Farah asks why the Town still has that trust because she believes it is now a school trust fund. Kim states that is not clear. The DOJ specifically said that he wants to investigate the trust further, but if someone wanted to make a motion to do whatever they wanted to do with the trust, they would need to do it that way. Dr. Farah clarifies that he is saying that if the Trustees can’t fulfill the donor’s wishes, they must go to court. She questions if, with the current decree, the Eaton Trust is now a school fund. Shawn disagrees with the premise that the trust comes under the jurisdiction of the school, noting that even though it was meant for that, it was created by a Danville resident and it wasn’t given to the school district. He states that he believes the Town should still have jurisdiction over the trust. Shawn notes his concern of the Eaton Trust “being in the bubble of ‘all trust funds’”. He expresses his concern of Danville being “properly credited for any payments out of the Eaton Trust toward the costs from the school district to offset these payments”.

Dr. Farah agrees and notes there is a question if the disbursement that went out in 2016 was used to offset Town taxes. Shawn notes those disbursements should be used only for Danville taxes. Dr. Farah notes the decree states the funds are for Danville. She explains that it makes more sense for the Trustees of the Trust Funds that manage the school funds to manage the Eaton Trust because it is to be used for school purposes only. Shawn notes the BOS is “learning a lot about this trust now and where the trust “resides” should be on its own merits”. He states that he wants to ensure the donor’s wishes are honored and the Town doesn’t lose the oversight of the funds and no longer knows if the funds are being applied on behalf of the Town. He compares the Eaton Trust to the School impact fees- the BOS knows those are being applied to Danville taxes. He believes the disbursements should be made by request from Danville’s Trustees of the Trust Funds to ensure they have been applied to Danville.

Dr. Farah states that the Trustees of the Trust Funds have a fiduciary responsibility, regardless of the town, to fulfill the obligations of the donor. Shawn agrees, noting that fiduciary responsibility is a “conscious decision”. He notes that “many, many years of people moving in and out of roles has created holes that get bigger and a lot of things fall into these holes when they are not part of the current conversations”. If the Trustees of the Trust funds have trusts on the books, the BOS can watch them all the time. Dr. Farah notes “it has been here all this time and still hasn’t been discussed.” Kim notes that she could not find the 1941 court ruling and refers Dr. Farah to the paragraph of modification: “...in case said school district shall vote to establish a high school....” If Danville did not build a high school, and the district did not get involved, there is specific language in the modification. Dr. Farah asks for Kim’s interpretation of Clarence Collins’ request to modify the original decree. The court ruled they (the Trustees) could modify it but the school district would have to vote to establish a high school according to the terms of the original decree. Kim reviews the specifics of the original decree.

Dottie notes the Town built Eaton School where the Community Center is today. She states it was a high school at one time but was a K-12 grammar school in 1950 when she attended it. Kim notes the Eaton Trust was created in 1911 and she is not aware of any monies from the Eaton Trust being used for the Eaton School. She notes that the \$37,000 in the fund is the same amount as when the trust started. Dr. Farah notes that the BOS received an e-mail

from the Trustees of the Trust Funds stating that a court decree from 1941 states the funds must go towards transportation costs. Kim reiterates that she has not found that decree from 1941 and refers Dr. Farah to the motion to amend modification which reads “Danville scholars transported to and from the high school that is created”. Dr. Farah states that the school district must be aware of this because they requested a disbursement in 2016. The amount of \$218 (only the interest was disbursed) was paid to the school. Kim states the Eaton Trust is still a puzzle. Dottie notes that in the 1960’s she went to Sanborn High School and had to pay for her own bus trip every week. Kim confirms that she was not ever reimbursed for that, noting that there is a list of people who were reimbursed. Dr. Farah states this issue will need to be revisited and put back on the agenda.

**Future Goals of the BOS:** Dr. Farah asks if the BOS had set any goals for the current year. Sheila notes that they had not set any goals for 2021. Shawn asks Dr. Farah if she wanted to create a document for future goals. Dr. Farah defers, noting she was just wondering. Sheila agrees the BOS should have goals. Dr. Farah notes the evening’s discussion about the condition of documents in the safe that are old and moldy and suggests that perhaps the Town could begin the process of digitizing some of those documents so they are preserved and the Town is not storing paper. She acknowledges this would be an expense for the Town, but that it is important as the storage issue is becoming overwhelming.

Shawn agrees and questions if the NH State Archives would accept some of the Town’s documents and digitize them, noting the Town would pay for that. He notes this issue is not just in Danville, but in every town in NH, and the NH State Archives might be the best location for all these documents. Sheila notes that at one time the Heritage Commission was working on a project for the materials in the safe and had talked about installing a dehumidifier, however, that never materialized. Dr. Farah notes that in the past few years, the State has changed the RSAs regarding the storage of records and now allows for the storage of some electronic records. Shawn expresses concern that the Town could do what they think is best, and the next town does something different, leading to numerous formats that may not be compatible. He reiterates his idea of having a State-sponsored database for all NH town records so that all NH towns’ records would be coordinated and digitized in the same format. He suggests that after digitization the Town could move the actual documents to someplace like Iron Mountain for storage. He notes there would need to be a discussion on that kind of investment, and if moving those items out of state would be legal. Dr. Farah reiterates the changes made to the NH RSAs regarding electronic storage. Kim states that more research and information are needed for both storage and document preservation.

**Home Occupation Permit:** Dottie requests that the BOS address a Home Occupation Permit for 10 Cote Dr. that is in the Signature File. Cheryl and David Laplume are requesting to create a condo owners association by converting a current duplex into two condo units. She notes the Laplume’s have already been to the Planning Board. Ms. Laplume explains that the application needs to be approved by the BOS and sent to Town Counsel. The Planning Board had instructed them to complete the Home Occupation Permit application. Ms. Laplume explains there is some confusion, noting that originally, they were going to also separate the back lot, creating three (3) condo units, but that required more work, so they decided to separate the duplex into the two units that already exist. Mr. Laplume confirms that they have just created the two (2) condo units, the BOS needs to sign the application, Town Counsel reviews the condo association documents and it’s all done. Dr. Farah asks if Town Counsel has approved the condo association documents. Mr. Laplume explains they must be approved by the BOS before Town Counsel reviews anything.

Shawn states that he understands the Laplume’s are trying to break up a duplex and make them condo units but does not understand why there is a Home Occupation Permit application. Ms. Laplume states that was the confusion. Dr. Farah states that she spoke to Mr. Hantman (Planning Board Chair) and her understanding was that the Laplume’s wanted to form a condo association and that they needed to prepare the required condo documents. Mr. and Ms. Laplume state that this has been done and they were sent to Gail (ZBA secretary). Mr. Laplume states that they were told the BOS must sign the Home Business Permit application before the condo documents are sent to Town Counsel. Sheila expresses concern about signing the application without seeing the rest of the condo documents. Shawn notes they should be “pretty much boiler-plate.”

Dr. Farah asks who is responsible for trash pick-up at these condos. Ms. Laplume states that each owner already has containers to put out. Dr. Farah confirms that the Town is responsible for trash pick-up at this address and questions if the Town should be responsible if it is a condo association. Mr. Laplume states that it is a duplex. Ms. Laplume states that they are simply condensing the duplex and there are only the two (2) units. They are condensing it so that they can separate the units. Shawn explains that this will make it two separate legal parcels and they will be taxed proportionately. Dr. Farah expresses concern that condo associations typically pay for their own trash removal and she is concerned this is setting a precedent for other condo units. Mr. Laplume states the Town is already picking up trash for the condo units “out back at the end of Opal”. Mr. Laplume notes that the owner did the same kind of condensing that they are asking to do. Shawn notes that he believes the Planning Board has a “litmus test” for the number of units in a condo. Ms. Laplume notes that during the discussion with the Planning Board, that third unit (yet unbuilt) made a difference in how the Planning Board viewed the condo plan and that is why they dropped it. Shawn notes that the two units are already established as a duplex and the Laplume’s are simply breaking them into separate properties.

Sheila expresses concern that other owners with apartment buildings could make them into condos. There is more discussion about the “third lot”. Mr. Laplume confirms it will become a common space for the condos and the people who own the condos are responsible for maintaining it. Dr. Farah expresses concern about who would be responsible for maintaining the commons space if the condo association becomes defunct. Sheila also expresses her concern with a previous issue with the Colby Pond Association which ultimately never formed. She asks what precludes the condo association from dissolving. Ms. Laplume explains that the condo association is managed by the two owners of the units and that is what the condo agreement covers. Shawn notes that he is still confused by the Home Occupation Permit application. Ms. Laplume state she believes they were instructed to fill one out in error, that it was only needed if they moved forward with the third unit. Kim explains that Mr. Hantman wanted them (the Laplume’s) to establish a business. Steve suggests the BOS sign the application and send it to Town Counsel to review it. Dr. Farah states she is still confused. There is more discussion. Shawn suggests the Laplume’s forward the condo association documents to Town Counsel for review and wait for feedback from him. Kim notes that Town Counsel is on vacation. She will keep the Laplume’s updated. Shawn asks her to also keep the Planning Board in the loop.

### **III. Old/New Business**

**Minutes:** The BOS review the minutes for the June 28, 2021 public BOS meeting. Dr. Farah motions to approve the minutes as written. Second by Dottie. Vote is unanimous (5-0).

The BOS review the minutes for the June 28, 2021 Non-Public BOS meeting under NHRSA 91-A 3:II(d). Dr. Farah motions to approve the minutes as written. Second by Dottie. Vote is unanimous (5-0).

**Signature File:** Shawn notes there is a new Affinity agreement for the LED lighting. Sheila motions to authorize the Chair to sign the new agreement. Second by Dr. Farah. Vote is unanimous (5-0). Kim explains that the first payment is due when the equipment has been delivered to the sites. That payment will be for \$85,591.45 and she can request it in the next meeting’s set of warrants. Affinity will bill weekly with no interest. They will bill as each job is done. Shawn asks how the incentive will be applied. Kim explains the Town pays for the project in full. Affinity then submits the paperwork to Unitil and then will reimburse the Town \$5591. She notes there is only \$18,000 left in the Repairs and Maintenance budget.

Shawn reads the Town Announcements listed below. He notes the next BOS meeting will be the annual meeting at the Olde Meeting House and suggests that there be a light agenda.



**Driveway Issue:** Shawn explains that he has noticed that at the corner of Back Road and Main St., coming down from Rte. 111-A, a driveway has been added to have access off Back Rd that is approximately one car length long before it drops off about six (6) feet to a retaining wall. There is also pavement from the existing driveway. He expresses his concern that 1) was there a driveway permit issued when that was added, and 2) there are serious safety concerns. He notes that someone could take a sharp right not knowing it was not a road and drop off the end

“real quick”. He feels the BOS needs to address this issue promptly. Dr. Farah notes that she is also aware of this new driveway and is concerned.





Kim asks for clarification of the BOS decision to pay for the Town’s website and the Town’s cable service from two different budget lines. She explains that Civic+ hosts and maintains the Town’s website and confirms that they should be paid from the Town’s budget; and that Town Hall Streams hosts the Town’s cable and streaming access and should continue to be paid from the Cable budget. Shawn suggests that the BOS re-motion the change to address the clarity of the motion. The original motion from the June 14, 2021 BOS minutes reads: *“Dr. Farah motions that the costs associated with the Town’s website should be taken from the Town budget and not from the Cable Fund. Second by Shawn. There is a discussion regarding the fact that years ago, the Town website was handled by volunteers. Vote is unanimous (5-0)”*. Dr. Farah motions to continue to pay Town Hall Streams from the Cable budget and to pay Civic+ from the Town budget. Second by Sheila. Vote is unanimous (5-0).

#### IV. Town Announcements

##### Calendar

-  **July 13- Tuesday:** Town Elections at the Community Center 8:00 AM-8:00 PM
-  **July 26- Monday:** BOS meeting: Annual Meeting at the Olde Meeting House @7:00 PM

##### Olde Home Days Schedule:

-  **August 27- Friday:** Movie Night- dusk at Day Field
-  **August 28- Saturday:** Olde Home Day- a variety of events 11:00 AM-3:00 PM at Day Field
-  **August 28- Saturday:** Fireworks Display- dusk at Colby Field (currently there is no rain date)
-  **August 29- Sunday:** Olde Home Days Flea Market- 11:00 AM to 3:00 PM at Day Field

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

The public session of the June 28, 2021 BOS meeting ends at 8:00 PM

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

Respectfully Submitted  
Deborah A. Christie

<sup>i</sup> **School Impact Fee Account:** Scott notes there are no monies in this account that are expiring. Shawn explains that he wanted to update the BOS on the account. These are school impact fees paid to the town. If the town does not authorize expenditure of these funds to offset impact to the schools, they are returned to the current parcel owner. He confirms these funds can be used only to offset school impact fees. Scott informs the BOS the current fund is \$171,970, plus interest. Of that amount, \$37,702.79 is due to expire in 2021. Shawn suggests the BOS address the issue now to avoid accidentally missing the deadline and having to refund the fees. Dave K. motions to tell DRA that \$37,702.79 will be used this year. Seconded by Shawn. Vote is unanimous. Shawn asks that Patty contact the School District and forward notice that \$37,302.79 has been voted on for expenditure so the District is aware that has been done. Board of Selectmen’s Minutes, August 12, 2019

<sup>ii</sup> **School Impact Tax:** Shawn explains the financials are due for the schools in order to set the tax rate in the Fall that is then used to generate the December tax bills. All four towns in the district need to report to the Department of Revenue (DOR) and the schools to tell them what they are applying for school impact fees. Shawn explains to the BOS that school impact fees have been adopted by the Town under NH RSA that allowed, by a previous Town Meeting Vote to “establish the School Impact Fee Fund for the schools for new constructions.” The 2020 School Impact Fee fund received deposits of \$143,058 and in FY2020 has earned \$731.44 in interest. The current total in the fund is \$329,285.26 as of July 31, 2020. Shawn would like discussion of how much to use and believes a

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reasonable amount is \$150,000, which will still leave a significant amount in the fund. He notes there are a couple of caveats with the fund.

- 1) The Town must use the funds within seven (7) years of when the funds came in. This means the fund is a revolving account.
- 2) If the funds are not used within that time limit, they must be returned to the deed holder of the property when they have expired.

Shawn notes the Town does not have an issue with time expiring, and could probably have added to the account for several more years. He believes they have 2-3 years before needing to address a time restraint. Steve asks where the money goes when it is removed from the fund. Shawn explains is it sent to the school district and when they figure out Danville's portion of the tax, will amortize it as a "per \$1000 of valuation". He explains the School Impact Fund buys down the tax rate. He also notes the expenditures of these funds are limited by law to very few uses including capital improvement. Shawn notes he tries to keep the process on the schedule as a yearly task for the BOS. He notes that since 2002 almost \$1M in impact fees have been used to reduce school costs to the taxpayers. Joshua motions to withdraw \$150,000 from the School Impact Fee Fund to be given to the school district to offset Danville taxes. Second by Steve. Vote is 4 yes, 1 abstain. Joshua abstains as he had new construction this year. Motion to withdraw \$150,000 from the School Impact Fee Fund passes. Board of Selectmen's Minutes, August 10, 2020

➤ **PLEASE PRINT. THANK YOU!**

NAME	ADDRESS
DIANE LEONARD	192 PINE ST.
David Leonard	192 Pine St.
Sheryl + David LaPlume	24 Hemlock Ln