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Town of Danville
Board of Selectmen
Monday, January 22, 2024
7:00 pm

Meeting is Video-Recorded

Selectmen present: Shawn O'Neil, Chairman; Annemarie Inman, Vice Chair; Joe Hester; Sheila Johannesen; Dennis Griffiths

Others present: Kim Burnham, Selectmen's Administrator

Shawn called the meeting to order 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. Delegate Session

No one was present in the audience.

II. Agenda

Warrant Article discussion

Dennis explained there was an article on the ballot in 2022 to make the Road Agent an appointed employee rather than an elected official. This was voted down, but Dennis would like to reintroduce this on this year's ballot. He said the Road Agent deserves to have benefits. As an elected official, he is paid by the hour, has no vacations or overtime or eligibility for health insurance.

Shawn said this is a non-budgeted item and he believes the Board has until the articles are officially posted to put this on the ballot. He'd like to check with Legal first to see if it can be included in the ballot. Sheila said the budget hearing has already occurred and Dennis suggested the article could be advisory only. Shawn said there could be a start date for the switch from elected to appointed. Annemarie pointed out there would be little change to the budget.

Dennis explained he spoke with James Seaver, the Road Agent, a few days ago about several details. Dennis reported that James would appreciate having this on the ballot. Shawn again reiterated that if the Warrant Article states the start date is not until January 2025, there would be no tax impact this year. The Board reviewed the wording from the previous article, stating the additional verbiage would say, "To take effect January 1, 2025."

Dennis made and Annemarie seconded a **motion to put forward the warrant article: "To see if the town will vote to discontinue the elected road agent position and to require the selectmen to appoint a highway agent pursuant to RSA 231:62. To take effect January 1, 2025,"** contingent on legal approval that it's not too late to add this to the ballot. Shawn, Dennis, Annemarie, and Joe voted in favor; Sheila opposed. The motion **passed**.

Sheila explained that she's opposed to moving this forward as she'd prefer to have James present to answer questions. Shawn said there can be a discussion during the deliberative session.

There was a short discussion about the proposed Warrant Article regarding hand-counting the presidential votes. Shawn explained the legal opinions obtained by the town can be given to the public at the Selectmen's discretion. There were 91A requests for those opinions referred to by the Town Clerk during the Selectmen's meeting on January 8th. Even though the Town Clerk read a majority of the correspondence from the town attorney, the Selectmen have not waived its attorney/client privilege.

Dennis made and Joe seconded the **motion to release the town counsel January 4, 2024 correspondence regarding the Danville Warrant Article**. Sheila asked if any information will be redacted, specifically the email addresses. It was agreed the town email addresses are available to the public as well as the attorney's, since it can be looked up online. The moderator's email address is private. Shawn referenced the content of the emails in that the Secretary of State answered Barry Hantman, a former moderator, by saying the town council may be consulted regarding hand-counting ballots and if this would be unlawful or not be binding. Matthew Serge, the town attorney was asked, and his response was that the proposed article as written would not be binding if passed. Shawn said the state statutes regarding voting mention that if the ballot counting machine malfunctions, the town is left with hand-counting ballots. He said this implies that a hand count is the safest method or is the last means to tally votes.

Shawn said he'd fight this issue in superior court at his own expense on the town's behalf. He said he'd like to add a sentence to the article stating that the hand-count will be the official vote of the town. He explained the town is not trying to introduce a third unknown and unused option for tallying votes. Dennis asked for clarification of comparing the machine tally to the hand-count tally. He was answered that this is the impetus behind the warrant article and the machine tally will be for reference only. Dennis then said he is wondering about the question as posed to the Attorney General and town council and that there may have been some misunderstanding of the question. He said the answers received seem to imply the town is not going to allow the machine to tally the votes.

Dennis further explained that in 2021 the state legislature tried to pass a bill but was unsuccessful, that municipalities may pick a race and hand count those ballots, in a trust yet verify approach. He said he's mentioning this to point out there's enough ambiguity that the state legislature is trying to clarify the issue and, in his opinion, this is proof that the statutes as written are unclear. It was stated this warrant article could be the push for the state to fix a problem.

Joe mentioned that a statement from the town attorney in the emails implies that someone else on the ballot may argue that their race should also be counted by hand. Shawn said the idea is that the presidential race is more important than the others. He mentioned a case in Georgia where the plaintiffs demonstrated the ease with which a voting machine can be tampered.

The Board mentioned prior discussions of the state requiring municipalities to purchase new ballot counting machines. Joe said he's considered modifying the warrant article to state that every race is hand-counted, knowing it would be expensive. Shawn said that if just one race is counted by hand, it would be enough to address the issue at hand.

Shawn said he'd like a motion to add to the warrant article the verbiage, "The official count will be the hand count." Joe said he'd still like to see every race counted and that another vote can be made so that after the November election, the town can go back to the machine tally. He asked what would happen to the hand counted votes if the warrant article is non-binding. Shawn said that if the town supports this article, it will force the Secretary of State to take a position and depending on that position, it could end

up in court and the judge will have to rule on it. It was stated that if the warrant article is considered non-binding, then the addition of language stating the official result is the hand count would also be non-binding. Joe said as he read the RSAs involving this, the state says the moderator is not held responsible to have a machine count and hand count of ballots. Shawn said he feels the warrant article is clear that just the one race will be hand counted. Dennis said he's against hand counting each race and feels there's no statutory law saying that hand counting one race is legal or illegal.

The Board members discussed the prior election in which the town hand counted one race on a ballot. Shawn explained a race in which he and another candidate tied. The ballots were hand counted more than once in an effort to verify the tally. Dennis said he interprets the RSAs to say that the moderator has a lot of discretion on what to do with what is presented to him regarding voting count issues. Annemarie said she'd prefer to leave the warrant article as is and let the voters decide. Dennis said he's not sure it's clear that the ballots will be counted by machine and by hand if this article passes. He asked about differences in tallies that could exist between the two counting methods and if there would be a need to recount the ballots if the numbers are close.

Shawn said he'd like to add the verbiage about the hand count being the official tally because he'd hate to have the Warrant Article declared nonbinding because there's no official means to say what the official count is. Joe pointed out that the advice received from legal counsel mentions "as written" so there may be an advantage to adding the suggested wording.

The Board discussed which ballots are counted if the oval is filled in or not.

Shawn made and Joe seconded a **motion to add to the warrant article, "The official count will be the hand count."** After a discussion, Dennis made and Joe seconded a **motion to modify this to state, "The official count of the presidential election will be the hand count."** Shawn, Dennis, Annemarie, and Joe voted in favor; Sheila opposed. The motion **passed**.

Elderly Exemption, Ownership Transfer discussion

Shawn explained there was an issue with a property transfer and that a tax exemption was not taken care of appropriately. He said he spoke with Gail in the office to develop a process in which something isn't overlooked, and tax bills are sent out correctly. The appraiser working for the assessing company will also be involved in ensuring this.

Annual Report Dedication

Shawn explained the Selectmen will need to write a dedication letter for the Town Report. Sheila said this is usually discussed in a non-public meeting. Shawn said it's good to have this on the agenda and that it is usually discussed in non-public meetings until it's known by the public.

III. Minutes

The minutes of Monday, January 8, 2023, were reviewed. Sheila made a motion to amend the minutes with several statements. After a short discussion, the motion failed for lack of a second. Dennis made and Annemarie seconded a **motion to accept the January 8, 2024 minutes as submitted**. Shawn, Dennis, Annemarie, and Joe voted in favor; Sheila opposed. The motion **passed**.

IV. Old/New Business

Sheila made and Dennis seconded the **motion to approve the reduction of the bond requirements for Lois Lane to \$14,250.00 per the recommendation of Dennis Quintal, town engineer.** The motion passed unanimously.

Shawn read the following statement for the record. This was drafted by Annemarie and Shawn with the Fire Wards being in agreement with it.

The Fire Chief, in conjunction with the Fire Wards, will select the personnel that will make up the oral review board. This will be tenured personnel within the fire profession, such as area fire chiefs, for example. The Fire Wards and the current Danville Fire Chief are not part of the oral board review committee. The outcome of the oral review committee will be an assessment of each candidate with appropriate scoring. The top three or four candidates will move to a joint interview process consisting of the four-board Selectmen in a non-public meeting and the Fire Wards with the current Fire Chief conducted in a non-public meeting. After the interview process, the Selectmen and Fire Wards will caucus separately in respective non-public meetings. Following caucus, the Selectmen will present their candidate and the Fire Wards will present their candidate at a subsequent joint non-public meeting. It was agreed that both the Board of Selectmen and the Fire Wards will need to be in unanimous agreement for the candidate to move forward and to become the new Danville Fire Chief. It was also agreed that the Board of Selectmen, the Fire Wards, and the Danville Fire Chief will meet to resolve any misunderstandings throughout the process and to resolve any issues that could inhibit moving this process to its conclusion.

Shawn explained that five candidates were discussed by the oral board and all five will continue in the interview process February 9th.

There was a discussion about who will be present for the NH primary election.

Joe mentioned the Planning Board is bringing in the developer to discuss the mailbox structure near Emily Lane. It was clarified that the town has not accepted Emily Lane yet but does expect to. Joe asked if the town does accept the road, will the structure also have to be maintained by the town. It was agreed that will have to be discussed by the Planning Board but generally the town does not maintain mailboxes. Joe said the road agent likes this structure as he will not need to plow around several mailboxes. Kim said the builder said the postmaster preferred the mailbox structure.

Joe said the Snack Shack is falling apart. He was told by the Recreation Committee is leaking badly. He's also been told the sign at Day Field is falling apart. The specific required maintenance will need to be determined.

Kim told the Selectmen that there are two mapping software applications, CAI and Avitar. She said she thinks the town is spending more money than is necessary. She spoke with Avitar and was told their mapping service is for the convenience of residents and others. Shawn said we can look into this proposal.

V. Announcements

Tuesday, January 23, 2024: NH Primary Elections at the Community Center from 8am to 8pm.

Wednesday, January 24, 2024: Declaration of Candidacy begins this day and continues through Friday, February 2, 2024

Monday, January 29, 2024: Board of Selectmen's meeting, 7pm, Town Hall

Saturday, February 3, 2024: Town Meeting Deliberative Session, 10am at the Community Center.

Thursday, February 8, 2024: TRSD Deliberative Session, 40 Greenough Road, Plaistow, NH at 7pm
(Timberlane Performing Arts Center or PAC)

Saturday, April 6, 2024: Rabies Clinic, Kimball Safety Complex, 10am-12pm

At 8:37pm, Joe made and Annemarie seconded a **motion to go to a non-public session under RSA 91-A:3, II (a), (b), and (c)**. A roll call vote was taken:

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| Shawn: | yes |
| Dennis: | yes |
| Sheila: | yes |
| Annemarie: | yes |
| Joe: | yes |

The motion **passed** unanimously.

Shawn stated the public portion of the meeting was adjourned.

Respectfully submitted,
Janet Denison