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Town of Danville
Board of Selectmen
Monday, March 18, 2024
7:00 pm

Meeting is Video-Recorded

Selectmen present: Shawn O’Neil, Chairman; Annemarie Inman, Vice Chair; Dennis Griffiths; Joe Hester; Dave Knight

Others present: Kim Burnham, Selectmen’s Administrator; Paul Taglieri; Chris Tracy, Town Clerk; Stefanie Dube; Mary Reedy; Chuck Underhill, Town Moderator; Ellen Moore; Lisa Barr; Scott Barr; Mary Jo Gallagher; Jeff Stone; Dave Drislane; John Mileti

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. Officer Appointment and Assignments

Shawn explained that the Delegate Session will begin after the Board appoints a Chairman and Vice-Chairman and board members were assigned to various town committees. He said he does not wish to be the chairman again as he will be preparing to defend, at his own cost, the recent warrant article he authored. He stated every member of the Board is equally capable of being the Chairman. Joe made and Dennis seconded a **motion to appoint Annemarie as the Chair and Shawn as Vice-Chair**. Shawn said he’s personally been impressed with Annemarie’s tact and knows she will excel because her heart is in the right place. Shawn stated that she will be supported. Dave said the town needs her to do this. Annemarie said she will accept the nomination if she knows Shawn will back her up as he has the institutional knowledge. Shawn said he would and mentioned he is impressed that when she doesn’t know something, she will stop, assess and evaluate, then make a decision.

Dave asked for an amendment to the motion that it only be for one person at a time. Joe and Dennis agreed and the **motion was revised to appoint Annemarie as the Chair**. Annemarie abstained. All others voted in favor. The motion **passed**.

Joe made and Dave seconded a **motion to appoint Shawn as Vice-Chair**. Shawn abstained. All others voted in favor. The motion **passed**.

Annemarie asked Shawn to continue chairing the meeting tonight. Sheila was thanked for her years of service to the town, including nine years on the Budget Committee. Dave was asked to serve on the Budget Committee, and he said he would do what the Board needs him to do. Tom Billbrough was commended for the spreadsheet that he puts together for that committee. Joe agreed to represent the Board on the Heritage Commission, Recreation Committee, and Planning Board, and Dennis said he will attend the

Conservation Commission meetings. Dave said he's served on the Heritage Commission and Planning Board, three times each, and agreed to be a back-up if the need arises. Dave will also represent the Board on the Zoning Board of Adjustment. Shawn said he will also be a back-up when necessary. Joe asked about being a liaison on the Forestry Committee. Dennis said that committee overlaps with the Conservation Commission on many issues.

II. Delegate Session

Paul Taglieri asked the Board to consider using the voting machines for the Presidential election. He additionally asked the town moderator to keep to the letter of the law.

Stefanie Dube explained that on Facebook there is a discussion group for a meeting on March 30th regarding the school district. She extended an official invitation to each member of the Selectmen. Shawn said he was going to attend and offer an explanation of the budget spreadsheet and how things are calculated. Stefanie said the meeting is to talk about solutions for the town because solutions are needed now. Shawn agreed, stating the tax base is competing for the same tax dollars and the school takes the majority of it. He said this is not sustainable.

Dave said that he's aware of similar efforts made over the years, coming close to being successful to getting actions started, but sometimes those are stopped by naysayers. He encouraged all to attend the meeting as we will need to hear what worked and what didn't; new people with new energy may come up with new ideas or the legislature will change. He said this type of effort needs to occur every so often. He explained that Norman Major from Plaistow, who serves on the Ways and Means Committee for the state, put forward legislation ruling that we can't make changes to any school district negotiation that was done before 1968. Dave explained that this makes it necessary to convince the entire legislature to make changes: we can't just convince the district. Sandown and Danville will have to work together to make a difference and all the knowledge spanning several decades is needed.

III. Agenda

Post Town Election Discussion

Dennis had asked that this be put on the agenda. Chris Tracy and Chuck Underhill sat at the table and Dennis explained that meeting with the Board post-election should be a regular occurrence. He praised Chris and Chuck for how the election was conducted. Chuck said that Joe knew before the election that he would not be there for the duration and arranged for a substitute. The substitute arrived in a timely manner and asked what help was needed. Chuck asked Joe to pass along appreciation.

Dennis asked if there were any observations from that day. He said something that was new to him was the number of write-in ballots and that some had names written on the line, but the bubble was not filled in next to it. Chuck said that he had attended a workshop prior to the election in which voter intent was discussed. He said he made a judgement call on how to treat those ballots that were not filled out properly. When possible, a new ballot was given to the voter if their ballot was spoiled, the spoiled ballots were collected and taken care of. He said there was one incident in which one of the three ballots did not process correctly in the machine but when offered a new ballot, the voter said they did not have time to fill that out and left.

Speaking of the write-in votes, he said the challenge is reading the voter's intent. It is difficult to know, if the circle is not filled in next to a written-in name, did the voter actually want to cast a vote. Shawn said that some of those were caught just by chance. Chuck concurred, saying that some with write-in candidates, if one had the circle filled in but another didn't, those were caught, but the matter of voter's intent is still a matter of interpretation. He said he'll follow up with the Secretary of State's office. He explained that we have to be at least 51% certain of what the voter meant, otherwise we're casting a vote for that person. He said that his method was that if a name was written down, but the circle was not filled in, the voter did not intend to vote for that person.

Chuck also explained that if someone filled in a circle for a name but also wrote in a name and filled in that circle, that was counted as an over-vote which doesn't count toward anyone. There were also instances in which someone had partially filled in a circle and completely filled another circle and others had check marks. Each was reviewed and Chuck said they do the best they can interpreting voter intent.

Chris said there were a record number of spoiled ballots. Some were caught right after they went into the machine and the voter was given a new ballot to fill in correctly. Chuck said there were 28 ballots reissued. It was noted that each booth has a sign explaining how to properly fill in a ballot. Chuck said he's thinking about making a video explaining what happens to ballots that are not filled in properly. This can be put on the town website or social media. He said there was one absentee ballot that wouldn't process because the voter had used a Sharpie which bled through to the other side of the ballot. This was put into the hand-count pile and it was easy to see the voter intent.

Joe asked if something can be obtained from the Secretary of State regarding interpreting intent. He said it's his opinion that it's more intentional to write in someone's name even if the circle isn't filled in. Chuck said the problem is that if there's a write-in name and another circle is filled in, that is counted as no vote at all. Dave said that there was a time that if the circle wasn't filled in at all, the ballot was not counted. Dennis mentioned one ballot had a star next to a name and questioned what that meant. Chuck said again that there needs to be a 51% certainty. He made a decision for a standard to apply to all ballots to be consistent across the board. Dave said it's good to set a standard to follow.

Shawn commended Chuck on how he ran the election, especially the transparency of the proceedings. Chuck said that it's his belief that the democratic process has to be fair and transparent so those who lose will accept the results. He said it's not his job to judge the content but to manage the process so that everyone else can judge the content. He said a slogan could be, "Minority speaks; Majority rules". He said he didn't have any signs in front of his house, and he stayed publicly silent on all the issues in an effort to maintain fairness and impartiality. Dennis thanked him for that, especially since he doesn't have to do that.

Chris spoke about the write-ins and how long it took to count them. She said that every voter has the right to write in a name, but the bogus names are time consuming and serve no purpose, but they all have to be counted.

Shawn asked Chris to look into the school absentee ballot issue, saying that nothing was changed during the deliberative session so those ballots should have been ready to go. He wanted to know what the delay

was as it was unnecessary. Chris said that Danville was the first town to get theirs because they know the person who would handle the delivery and she spoke to him personally ahead of time, saying they need the ballots quickly. Chuck said a special type of ballot is used for those in the military, set up through the Uniformed and Overseas Absentee Voting Act, in which a ballot is emailed to a voter. This is printed, filled in, then mailed to the voting district, and processed like an absentee ballot. Chris said she didn't think this would be approved for other absentee voters. Chuck suggested it is an alternative and a possibility if there's a delay in delivery of ballots.

Chris explained the process of printing ballots. The day after the school deliberative, the ballot should be sent to the LHS to be approved. A proof is sent back, and when that is approved, they are sent to the printer which is in Oklahoma. The printed ballots are shipped here via ground. The Board members expressed some dismay at this system. Dave said ground delivery takes ten days. Joe explained that he's still waiting for an absentee ballot. Chuck said that if Joe had called in and asked for assistance filling out the ballot, he would have sworn someone in and taken the information over the phone.

Chuck explained a voter had recently married and changed her name but did not have an updated license, nor did she bring in a piece of mail or the marriage certificate. The photo affidavit was offered to her but she declined. Another voter who was not listed on the checklist left after only partially checking in. That ballot was initialed, marked in red, and set aside. The voter did come back, and that ballot was given back to her to finish. It was mentioned that moving forward the town should be able to establish best practices.

Joe asked about the process for counting by hand. Chuck explained that when a certain item is to be counted by hand, two people review each ballot, one being a Democrat and the other a Republican, and a third person can record the decision or be the deciding vote if there's a disagreement. Another hand count that occurs after the election is to count the pieces of paper that are put into the boxes that are then sent back to the state. This needs to match the number on the tickertape that the machine tallies at the end of the night.

Chuck said he's always glad to have additional insight and said he welcomes feedback and opinions on how to conduct elections.

Call Special Meeting to Cure Procedural Deficit Due to Late Posting of Warrant/Budget per RSA 31-5 (b)

Shawn explained that nothing can be done about this until 21 days after the election. Information needs to be sent to the NHDRA, then a date and time agreeable to all parties can be set up. Chris said during the week would be fine and she'd like to have this at the Town Hall. Chuck said we'd need about 15 minutes for this and suggested adding it in front of a Selectmen's meeting. He spoke with legal counsel about the proceedings and was told that nothing on the ballot can be amended, the moderator runs the meeting, and with nothing to amend, there's very little to discuss, including why the meeting is held.

Dave asked what happens if the vote is no. He said the public should be able to know the answer to that question. Chuck suggested the town goes to the default budget and Dave said there's more to it than that. It is unknown if the town has to start the budget process from the beginning. Dave said the answer may be in the original Senate Bill 2 paragraphs. Kim said she can ask the town attorney, Matt Serge, tomorrow and asked Chuck if he can share the emails between himself and Matt. Chuck said the response he got

from Matt is that Matt's opinion is unchanged from the previous emails that have already been sent. Chuck said Matt isn't going to change his opinion nor send a duplicate response.

Kim confirmed that DRA won't consider anything corrected until the proper MS forms, town clerk minutes, and other paperwork are submitted after the special meeting. Chuck said he does not want to hold this meeting during any religious high holy day. Shawn reiterated that this needs to be posted as a public hearing with all the proper notification. Kim said this will be posted in several locations including the Post Office, Library, town website, and that a newspaper of local circulation will need to be contacted in a timely manner to be printed within their deadline to assure a proper timeframe for the notification.

Shawn made and Annemarie seconded a **motion to correct the material of the procedural defect for our posting of the warrant and budget according to our DRA per RSA 31-5 (b)**. The motion **passed** unanimously.

Hazard Mitigation Plan Adoption

Kim said the plan just needs to be adopted. She said of those who were involved in creating the plan, Sheila was the only one to respond to the email Kim sent. The Emergency Management Director has reviewed the plan and has given his approval. Kim said the only outstanding item from the discussions is meeting with the forest ranger to review the field to be burned, otherwise everything is set and the Board only needs to approve the plan.

Joe made and Dennis seconded a **motion to approve the Danville Hazardous Mitigation Plan, updated 2024**. The motion **passed** unanimously.

Dave said there are three required signatures on another document related to the plan just approved. He does not want to discuss this matter at this time as it is likely a non-public topic. Dave made and Dennis seconded a **motion to authorize the Chairman to sign it when it makes sense to do so**. Annemarie reviewed the document, and she said the signatures are of those who hold the position, and if one person holds all three titles, the signatures would all be the same. Dave cautioned that it's a federal process and shouldn't be taken for granted. It was agreed that the Plan is signed by each board member, and Shawn suggested that Annemarie could sign the other document, but it won't be released until the proper signatures are obtained. Dave said this Board can fix the issue easily once it's not a non-public matter.

Frye Road Extension Discussion

Shawn updated the Board on a recent discussion with Charlie Zilch and a developer interested in opening the intersection of Route 111 and Frye Road. The developer will pay all costs to open the intersection, but this has to be done through the town since Danville will be the deed holder. The developer will be going through the Planning Board process. Dave asked if this will be a driveway or if there will be a full intersection with a traffic light. This is unknown but it may be up to what the DOT requires. Dave said there will be a study by the DES because of the impact on the water. These are all Planning Board issues. Chris Giordano was given credit for his work several years ago regarding this.

Police Department Building Update

Shawn said this is a place holder on the agenda as a reminder to discuss as updates occur. He said he'd like to have a discussion soon regarding the recent updates the Board received from the Building Committee. Dave asked if the memory stick given to the former Selectman would be given to him. Kim will check on this. Dennis was praised for his work at the federal level regarding the grants through the BUILD act.

IV. Old/New Business

Employee Manual

Shawn said that he's spoken with Annemarie about the employee manual and would like the Board to focus on making updates. The document was inherited and needs a facelift. Portions can be taken one at a time and updated accordingly, specifically regarding vacation, sick time, and PTO. This will be vetted through legal counsel also. He said he doesn't believe it's anyone's intent to take away benefits. The update will be to clarify what's already there.

Hand Count Presidential Election

Shawn told the Board he'd like their permission to argue before the courts regarding the recent warrant article concerning counting the presidential election by hand. He said he'll represent the town in all capacities. Dennis asked what that meant and gave the example of an attorney saying he'll take this case pro bono. Shawn said that's what he means. He said he'll keep the Board apprised in non-public meetings but will not discuss his strategy in public. He said there are points within the state statutes that are unclear and he is prepared to make that case in court. He wants to do this on the capacity of the Town because he doesn't want to go through a court process only to find out that as an individual he has no standing.

Dave said that like a school case, he needs to prove direct hurt and be aware that he's challenging an administrative right to interpret the constitution on an issue that's not covered in the constitution. He said that if Shawn is authorized to speak as a Selectman, the town is somewhat liable for cost. Dave posited that not having the town involved may be an issue for not having standing, but he's not sure we should tie the town to this in the chance the issue comes back. He said we should stand up for the people without tying the town to liability. He said he has to think about this.

Shawn said that without damages, there will be no liability. Joe said he's totally prepared to support Shawn on this. He said he's also wondered about liability if this comes back to the town but isn't sure there would be anything that would. Dennis asked which party is to act first. Without an election, nothing has happened, no laws have been broken, and there is nothing to take to court.

Dave said the impetus is that we're saying the state has no statutory authority to tell us how to do this. He used an example of an Auburn citizen in a similar situation who is not going after someone for damages or defending actions against him; he's saying you don't have the right to tell me how to do this.

Dave said that as long as we never tell the Moderator what he has to do and how to do it, and he doesn't follow the Selectmen's direction regardless of what the Selectmen say, the state has no say. The state only has a say if the Moderator takes a different task. He said the state will never give a yes or no answer, they will tell someone to speak to their attorney, then tell you afterward that you've made a mistake. Shawn said it's a fine tactic until someone defends their position and he intends to have the court take a position on this issue and he intends to be there to counter that.

Dave again said he's not sure how to have Shawn do this as an individual without the town being tied to it. Shawn said this was supported at the polls and apparently there's an entity that says we can't do this, and he's saying the state needs to justify that. Dave said the only chance for success is if it's proven that they don't have the right to make that rule. The Secretary of State may have been given that right in the absence of any other instruction. His position may have been given to him by the legislature to allow him to fill in the procedural holes. Dave also said he's not sure any cost can be applied if the case is lost.

Shawn said he didn't need a decision tonight but would like to move forward on this before September. Dave said he'd like to create wording that would allow us to join in without putting the responsibility back on the town. Dennis said that words matter, they're hard to retract once they're put forward. He asked Shawn if he's looked at the ACLU to help with this. Shawn said this started with grassroots, it was discussed at Deliberative for a long time, and the day the common man can't argue something in front of a judge is the day our justice system has collapsed.

Dave asked if a line hadn't already been crossed when this was put forward as a Warrant Article and not a Citizen's Petition. Shawn said that when either of those are on the ballot, they each carry the same weight when a vote is cast. Dave said the Citizen's Petition has the grassroots foundation, but the other ties the entity to it from the start. Dennis said he'd argue that the grassroots is the people voting in favor regardless of how the ballot item was added. Dave said that in his opinion, the way this was put on the ballot already ties the town to it. Annemarie said that as Shawn was the lead petitioner, all the Selectmen did was tell him he was approved to put it on the ballot. It was a vote to get it onto the ballot, not tying the town to it. Dave said it is just his opinion that a petition from a citizen would have more weight even though the outcome of either one is the same. Shawn said he does not want to go down a road that would incur a legal liability from the town.

Shawn said the vote means it's the intent of the townspeople to move this forward. The town attorney gave his opinion and at this point, Shawn said he's challenging the town attorney. Joe mentioned the Supreme Court judges have split votes because it comes down to each member giving their opinion. Shawn said he doesn't want to get to a point in the proceedings and be told by the judge he has no grounds to do this. It was mentioned that about 24 municipalities in NH had a variation of this on their ballots.

Dennis said that Wally Fries, a former Moderator, had the practice of testing ballots by hand counting. Then the town was "slapped on the wrist" by the Secretary of State. Therefore in 2010, the Secretary of State said he doesn't want us to hand count anymore and Dennis asked under what authority or what rules changed that caused him to say that? That's where the inconsistency lies. We know the authority to say that is not given to them by the state constitution.

Dave said that the constitution was set up so that no person or group would be all powerful like that, but then the Executive Committee was formed and ruined that. The governor really has no power except to make emergency declarations as everything goes through the Executive Committee. People are given these powers because there's no punishment for it. He said an example of this is the school election being held during a storm. The four towns asked if the election could be delayed. They were told no, but two

towns delayed anyway. There were no fines levied to anyone. Dennis said this highlights grey areas that seem to indicate the Secretary of State has no real authority.

Dave asked how we can let Shawn stand for the town and keep legitimacy but not tie the town to it. Dennis said the most important thing is to consider what sort of backlash or financial obligation would occur in the worst-case scenario. He said we can't have the town coming up with funds to put toward any effort regarding this. Shawn's intentions are understood, but we have to be careful not to go through a door that seems innocuous but is actually binding the town to this litigation. Shawn said that is his goal. He wants a clear and concise ruling by the court that can be given to the Moderator. If the election comes up and there's no decision, we're in a legal quagmire and he plans to push the court to expedite the process and make a decision. He said he's trying to be proactive to get a ruling before the election.

This will be on the agenda in two weeks.

Police Vehicle Purchase

Shawn explained that Chief Parsons had previously been authorized to purchase two vehicles for the Police Department. Those two vehicles have arrived ready to go. Funds will be taken from the Impact Fee Fund, Asset Forfeiture Account, and the PD Detail Revolving Fund to pay for them. The Impact Fee funds have to be used within a certain amount of time after receipt. The Impact Fee fund and Asset Forfeiture accounts will be used in their entirety minus \$1.00 each. The breakdown is as follows:

Impact Fee Fund	\$39,996.23
Asset Forfeiture Account	\$34,020.58
PD Detail Revolving Fund	\$9,483.19
Total Cost of Two Vehicles	\$83,500.00

Shawn made and Dave seconded a **motion to authorize the withdrawal of funds as indicated to pay for the vehicles**. The motion **passed** unanimously.

Default v Operating Budget

Dave suggested adding to the next agenda a discussion of the budget, specifically the delta between the default and operating budgets. He suggested that department managers be contacted for their input and ideas on how to make up the \$87,000.00 difference. He suggested getting rid of the next bulky pick-up and that would bring half of the money back to the town. Dennis said he's unsure if we're locked into this with the Casella contract. The second pick-up could be cancelled and if the town makes more revenue than expected during the year, some items can be added back to department's plans.

There was a short discussion about employee's not getting a bonus or raise for consecutive years and that can be demoralizing. Plaistow is offering a sign-on bonus for new police officers. Annemarie said this is from a town with a tax base that Danville can't come close to.

There was a short discussion about the Budget Committee and Dave said it's his opinion that they made two additions to the budget without legal authority. Shawn said he spoke about certain topics during their public hearing. He said he feels they pick winners and losers based on their own personal criteria. Dave

said the Selectmen made a commitment when it was decided to give employees a raise and that is equivalent to a contract. What the Budget Committee did was akin to anyone of us getting a congratulatory bonus from a VP of Operations then having the Board of Directors strike it from the budget saying it can't happen.

Dave explained that if an employee gets a raise from this Board it is a commitment. What the Budget Committee did was wrong and they need to hold their meetings in public. If this Board gives a raise to its employees because they deserve it, no one can change that, otherwise we're going to drive everyone into unions or contracts.

Road Agent

Dennis said that the Warrant Article he put forward regarding the Road Agent was put in too late and didn't garner a lot of attention, but only lost by 125 votes. He said that nine out of ten people he spoke with about this who had a problem with the idea, thought that it was a power grab by the Selectmen or that the Selectmen are trying to micromanage the Road Agent. Per RSA, the Selectmen already control the Road Agent. Dennis said that Jimmy is a good guy with a good crew, he's diligent, hardworking, and accountable; he deserves health and vacation benefits like an employee. Dennis asked if a contract similar to the police chief, who is also elected, can be put in place for the Road Agent. It was explained that the chief's contract was put in place many years ago before any of the current members of this Board. It's unclear if a similar contract can be made, although it's likely that when Wade retires, the new chief will not be able to have the same contract. Dave mentioned that in the old days, compensation was part of the Warrant Article, but that is not done anymore.

It was suggested that Jimmy put forth a citizen's petition to make the position appointed. That could convey the message that he wants it that way. Annemarie pointed out that anyone authoring a petition makes themselves available at all times to explain the background and reasoning behind the petition. Dave said he can ask the question at the Local Official's Workshop on April 3 regarding this topic and about changing an elected official's salary. He reminded the Board members that once the \$87,000.00 was cut from the town budget, none of that comes out of the library budget. They can choose to reduce their spending, but they are not obligated to do so.

V. Minutes

The public minutes of Monday, March 4, 2024, were reviewed. Dennis made and Annemarie seconded a **motion to approve the Monday, March 4, 2024, public minutes as presented**. Dave and Joe abstained. Shawn, Dennis, and Annemarie voted in favor. The motion **passed**.

Dave referred to the minutes and to the comment about the licensing issue discussion with Mr. Taglieri. He said the entire reason this failed, in his opinion, is that one board member took it upon themselves to act as if they were the entire board, initiated an investigation, went to the state and town people as an individual. Dave said no individual member of the Board has that authority. If the Board of Selectmen had been contacted and asked to investigate, the problem never would have happened. He said that's been one of the common issues in the last nine years. He said it's crazy to still be talking about this three years later. Dave commented that the Board members are administrators, not representatives.

The non-public minutes of Monday, March 4, 2024, were reviewed. Annemarie made and Dennis seconded a **motion to approve the Monday, March 4, 2024, non-public minutes as amended**. Dave and Joe abstained. Shawn, Dennis, and Annemarie voted in favor. The motion **passed**.

VI. Signature File

Several documents were signed, including an Intent to Cut on town property.

VII. Announcements

Thursday, March 21: Dungeons and Dragons Event, Community Center 5pm-9pm

Friday, March 29: Senior Coffee Hour, Community Center 10am-12pm

Monday, April 1: Board of Selectmen Meeting, Town Hall, 7pm

Saturday, April 20: Rabies Clinic, Kimball Safety Complex, 10am-12pm

Friday, April 26: Senior Coffee Hour, Community Center 10am-12pm

Saturday, April 27: Spring Bulk Pick-Up, start time 7am. Sign-up has a hard cut off date of April 19.

Saturday, April 27: Art Show hosted by the Recreation Committee, Community Center, 12pm-6pm. Drop off is the night before, between 3:30pm and 5:30pm.

At 9:18pm, Joe made and Annemarie seconded a **motion to go to a non-public session under RSA 91-A:3, II (b)**. A roll call vote was taken:

Shawn:	yes
Dennis:	yes
Joe:	yes
Annemarie:	yes
David Knight:	yes

The motion **passed** unanimously.

Shawn stated the public portion of the meeting was adjourned.

Respectfully submitted,
Janet Denison