

Town of Groton
Select Board Work Session Minutes
May 7, 2024

In attendance: John Rescigno, Tony Albert, Ron Madan and Sara Smith (Town Administrator)

John called the meeting to order at 6:00pm.

Meeting Minute Clarification

Per the Select Board, Sara reached out to NHMA and received the following clarification:

1. Yes, minutes are required to be taken but there is no legal requirement to approve minutes.
2. The town clerk is the custodian of town records. This would include minutes of the various boards and bodies in the town. Minutes must be stored with town records at either town hall or the usual place of business for the boards (planning, zoning, etc.). Since most of these boards don't have a dedicated office building in town, that usual place of business is the town hall with the town clerk.
3. It is the board or committee's responsibility to have minutes taken. This is one of the most basic responsibilities of a public body. If a board or committee choose to disregard this important legal requirement, each member, the chair especially is violating their oath of office. Theoretically, this could be grounds to have them removed from office. Even though it is their responsibility to keep minutes, it is ultimately the town (via the taxpayers) that will be responsible for paying their legal fees if they are sued.

Sara mentioned that she reached out to the attorney before and she stated that if we have a policy in place that she would send the Planning Board a letter about the minutes if the Select Board wanted her to. It appears that Deb is working on the minutes now and has sent some over. The Select Board agreed to have the attorney send a letter. Sara will reach out and request this to be sent.

DRA Assessment Letter

Sara explained that DRA sent their Assessment Review report letter which states the areas that the Town is not in substantial compliance. The Assessment is done every five years. This is for the 2021 Assessment that was started end of 2021 but actually completed in 2022. Current Use is an area that most towns struggle with and do not always meet compliance because we don't have the older current use maps and initial applications. We send letters requesting this but they do not always reply. This was on there this year. There were also a few things related to credits and some things that would pertain to Avitar. Sara does not agree with most of the items listed and we have 30 days to respond. She has already reached out to Avitar and there are items that they do not agree with as well but it may take them longer than 30 days to respond. Sara drafted a letter from her to the DRA and wanted to see if the Select Board is okay with her sending this as is or if it should be from them. The Select Board read it and is okay with Sara sending it from her.

Public Works Building Information

Sara has done the following since the last meeting:

- Reached out to the architect since the last meeting. The architect gave some responses but recommended that we send the list that we are working on over to USDA and himself with the items we do not think is necessary for our building. Sara said we are still waiting on this list and we really cannot move forward until we receive this so we know how to proceed.
- Reached out to Michelle at North Country Council. She recommended if we haven't not done so already reaching out directly to USDA program manager who might help us navigate these questions. Most likely it is federal compliance that come with the funds and the questions would

be can they be waived or can the project be rescoped to put USDA funds into areas not requiring this. She said she is willing to participate in these conversations with us. We are going to do what she recommended when we get the list.

- Reached out to see if we can apply for the Congressionally Direct Spending for this. They said that we cannot since we have USDA funds for this project and because you cannot already start projects before you receive the funding and we have already started the process for the building. They also said if we did get any kind of funding we wouldn't know until later this year if we are selected and wouldn't have the funds until 2025 which means we wouldn't be able to start the project this year.
- Reached out to see if this project would qualify for the NBRC grant funding. Since this is just for municipal use it would not be eligible. For NBRC funding, it has to be tied to economic development.
- Sara talked to Elizabeth in Kusters office about their 2025 spending options. We wouldn't be able to do the building because we can't start working on the project until after we know if we have been selected or not. However, Sara asked if we could do the salt shed and sand shed together and we will not start these until 2025. She said that could work so Sara created the application and sent it in with some community letters of support. We should know by December if this project is selected. Sara drafted a letter of support from the Select Board for this. **John motioned to sign the letter, Tony 2nd, so voted.**
- Sara stated that if we move forward with the building only, without the salt and sand sheds, then we are only \$64,614.25 short from the money we have raised and the USDA grant money. If we can shave that amount off then we could possibly do the building this year and then get the Kuster funding to do the salt and sand shed next year with the funding being \$150,000 and our portion being \$50,000 that we would raise at the 2025 Town Meeting. If we don't get the Kuster Funding we would have to raise more money at the 2025 Town Meeting. We would still want to have a public hearing before then to let the Townspeople know we are moving forward without the salt shed and explain this information to them.
- Sara created a spreadsheet and started to list the items we feel we do not need and the costs attached. This is what we will need to send to USDA and the architect. We have Casey and Heath coming to the Select Board meeting so we can discuss these with them.

Tax Warrant

Sara explained that she usually runs the tax warrant the second week in May so she will be running this next week. **John motioned to come in and sign the tax warrant when it is ready, Tony 2nd, so voted.**

Meeting Schedule for June

Sara is on vacation the first week in June. She asked the Select Board if they want to put the meeting off a week, only have one meeting in June or have the meeting without Sara and have someone else take minutes? It was agreed to cancel this meeting and only have the meeting June 18th. They can always schedule a meeting if something else comes up.

Policy Updates

Sara discussed the following policies:

- The Select Board Meeting Protocol policy has the wrong meeting information. Sara updated this policy reflect the current meeting schedule and deadlines to be on the agenda. **John motioned to sign the updated Select Board Meeting Protocol Policy, Tony 2nd, so voted.**
- We currently do not have a non-public meeting and minutes policy. This came up at the right to know meeting. There should be a policy in place. Sara created the policy based on the information from NHMA. Sara made copies and asked the Select Board to review this for the next meeting and let her know if any changes that need to be made. She will have it for them to adopt and sign at the

next meeting as long as everyone is okay with how it is written. Sara will add this to the next meeting agenda to follow up on.

Ditch and Slope reconstruction agreement

Sara explained that her and Bubba worked on this agreement for the work on River Road, Map 1 Lot 75. Bubba wanted the Select Board to look at it and provide feedback. He thinks we need to add more to it. She asked the Select Board if they have anything they would like to add. The Select Board agreed it looked good to them and they do not have anything to add. They said to let them know when we have added the other items and when it is ready to be signed. **John motioned to come in and sign the ditch and slope reconstruction agreement when it is ready, Tony 2nd, so voted.**

Transfer Station Concerns

There is a resident on Sculptured Rocks Road that has been telling the Transfer Station Attendants that the Select Board said he can bring whatever to the Transfer Station and there would be no charge. He is the same one that during the road bans said the Select Board said it was okay to bring furniture. Ron thought that this may have been from many years ago. The Select Board stated that even if this was the case from years ago when they were ordered to clean up their property, it would have been for that year and is not a forever agreement. Sara looked and couldn't find anything stating this was discussed or this was approved. Sara will draft a letter to send to him stating that he needs to follow all Transfer Station procedures and pay what everyone is paying. The Select Board agreed that this letter will be sent to the resident once it is signed and then a copy will be kept on file at the Transfer Station and at the Select Board office. **John motioned to come in and sign the letter once it is ready, Tony 2nd, so voted.**

Meeting with Chief Bagan

Chief Bagan followed up with the Select Board regarding patrolling Private Roads. NHMA stated that private roads are considered driveways and are private property. Their biggest concern was the town liability for maintenance. Naomi from Mitchell Municipal said in her legal opinion, that driving on it to patrol would not create any liability for the town. This is mostly regarding plowing or maintenance to the road. She doesn't believe it is an issue if Chief occasionally patrols a private road. If he has a call for service he is obviously allowed to go. Also, if he gets a request for house checks on private roads, he will go out there. He cannot enforce parking regulations or any other regulations but he can patrol and do checks. If there is any resident that wants him to cease and desist then he has to. He asked if the Select Board want him to cease and desist on all private roads. The Select Board said if the roads are in good condition, then they are okay with him going on the private roads, unless someone requests a cease and desist. They agreed that a lot of people do like to see him out there so they think he should continue to do so.

Chief Bagan also said that he had a town employee that wanted to talk to him about something off the record. He explained that he doesn't do off the record, he would be required to take police action if necessary. He is not there to give advice. The Select Board agreed with how he handled this.

Meeting regarding flood plain concerns

Shannon and Mike LaFreniere requested a meeting with the Select Board regarding some flood plain concerns on Beaver Pond Road. They introduced themselves and said that they wanted to talk about Mike Ethier's excavation and concerns that they have.

They explained that a few years ago the Town sent him a letter stating to cease work on the road until he obtains permitting. The letter stated he needed a Floodplain Development Permit and other necessary permits from governmental agencies, including DES. It also stated that he is going to need to show that the work he was doing is performed in accordance with standard engineering practices and will not increase flood levels in the community during a flood. Sara had the letter and stated that it also states that our

attorney explained that he will have to do this through hydrologic and hydraulic analyses, which means he is going to have to hire a wetlands scientist. Sara said the letter stated clearly that he needs to cease all work being done on the road, which is in the flood plain, and any further development activities until he has taken the steps listed above and submitted the Floodplain Development Permit application.

John asked if he is working on the road again. Shannon and Mike said he never stopped and as far as they know he has not completed the permitting or anything else. Sara said the Town has not received any permits as far as she knows and we can check with the State to see if he has done any with them.

Shannon stated that she has concerns with the work he is doing in the flood plain. She did an overlay of the flood plain with the actual parcel. She showed the Select Board where he is excavating.

Shannon explained that she had reached out to Sara to see his excavation permit and any plans with that. Sara explained that she didn't think we had one so she searched and there was never an excavation RSA 155-E permit filed. She found a letter from the Select Board in 2017 that stated he met with the Select Board and Mary Pinkham-Langer from DES on November 7, 2017 and a conclusion was made that since there had been an excavation area at this location for many years, that the existing disturbed excavation area is grandfathered from a RSA 155-E permit but a notice of Intent to Excavate is still required to be filed each tax year. It does state that any excavation expansion beyond the areas shown on the DES plan is not grandfathered and is subject to Groton Zoning regulations and RSA 155 E:3 permitting.

Shannon stated that her concern with this is that the excavation guidelines that were signed in 2010 state no one is exempt and no one is grandfathered. She did not know how he has gotten away with this for so long and how he ended up being grandfathered. Also, she said if he is grandfathered, he would still have to follow the guidelines. She also read minutes from September of 2017 that state the following *"John asked what they are grandfathered to. Mary explained that you have to have a permit to excavate or you are grandfathered. If you are grandfathered you are only subject to the minimum in express operational standards in 155-E which are very basic. The Zoning Board said that he was grandfathered from Zoning but not having to have a 155E permit. In order to have been grandfathered from having to have a 155E permit, he would have been in operation as of 8/24/79 in removing earth materials two years prior to that so 8/24/77. In addition to that, between 8/4/89 to 8/4/91 anyone claiming to be grandfathered had to submit a report to the regulator stating when the operation first began, how much area was currently open, how many acres they were grandfathered, and the amount remaining cubic yards of earth. This report would have been had to be turned in to Planning Board to be grandfathered. If he didn't do that than he is operating illegally or he has to obtain a permit."*

Sara mentioned that the September of 2017 meeting was only with Mary and the Select Board and there was another meeting in November of 2017 with Mary, the Select Board and Mike. At the meeting in November is when it was decided that he would be grandfathered which is why he was sent the letter in November of 2017 stating that since there had been an excavation area at this location for many years, that the existing disturbed excavation area is grandfathered from a RSA 155-E permit but a notice of Intent to Excavate is still required to be filed each tax year. It does state that any excavation expansion beyond the areas shown on the DES plan is not grandfathered and is subject to Groton Zoning regulations and RSA 155 E:3 permitting.

John mentioned that since it was decided that he was grandfathered for the existing excavation area and that since Mike was sent a letter stating this, we do have to consider him grandfathered for that excavation area. He said that looking at the information that Shannon provided, it does appear that he has done excavating outside of that area which he is not grandfathered for and this would require a permit.

John asked Sara if she can reach out to Mary regarding this since she has been involved. Sara explained that unfortunately Mary is retired. There is a gentleman that took over for her so Sara will contact him and see if he can come out and look at what is being excavated. Sara said she will send him information on this and bring him up to speed.

Mike said that he has also been clear cutting since he has been back from Florida and has dumped about 40 piles of dirt on the road.

Shannon said that they have been here for 11 years and have seen what happens to the flood plain. She provided pictures of what happens at her property. She said they did go to court in 2023 when Mike Ethier had his hearing. She said there never were issues until he starting raising the road. The water used to flow over but now it doesn't and now there are issues. There are also logs that are causing damming. He does this work year round. He continues to work on the road when he was told he shouldn't. She said the town is covered because it is unpermitted work in the flood way. She also believes he should be completing a alteration of plain permit which she doesn't think he has ever done. Shannon mentioned he probably doesn't have reclamation bond either.

Sara said that the floodplain is a separate department and we have worked with them on this as well. Sara said she can reach out to them as well. The Select Board agreed she should.

Shannon said she knows that the Town participates in the flood plain ordinance program and have received funding for this and she would hate to see the town lose this.

Mike said there is another issue regarding when he works on it. He does it every day, all times of the day. He was even doing it at 9:18am Christmas morning and on Thanksgiving he was working on it during their dinner. John said that the Town doesn't really have a noise ordinance with times listed and we have had this issue with loggers in the past. Sara recommended that they may want to speak to the Police Chief regarding that concern to see what he recommends.

John wrapped up by stating that all we can do at this point is reach out to the State for both the excavation concerns and the flood plain concerns and go from there. He thanked Shannon and Mike for meeting with the Select Board.

Having no other business to conduct, Tony motioned to adjourn at 6:59pm, Ron 2nd, so voted.

Respectfully submitted,

Sara Smith
Town Administrator