



TOWN OF NORTH HAMPTON, NEW HAMPSHIRE

SELECT BOARD DRAFT MINUTES
WEDNESDAY, OCTOBER 11, 2017
NOTICE OF PUBLIC MEETING
NORTH HAMPTON TOWN HALL
231 ATLANTIC AVENUE
6:00 O'CLOCK PM

NON PUBLIC SESSION I: 6:00 O'CLOCK P.M.
EXECUTIVE CONFERENCE ROOM
TOWN ADMINISTRATIVE OFFICE
233 ATLANTIC AVENUE

NON PUBLIC SESSION II: 6:30 O'CLOCK P.M.
EXECUTIVE CONFERENCE ROOM
TOWN ADMINISTRATIVE OFFICE
233 ATLANTIC AVENUE

1. 6:00 p.m. Call to Order
2. 6:01 p.m. Non-public Session I Pursuant to RSA 91-A:3, II (a)
3. 6:30 p.m. Non-Public Session II Pursuant to RSA 91-A:3, II (a)
4. 6:55 p.m. Return to Regular Session and Recess to Town Hall, 231 Atlantic Avenue
5. 7:00 p.m. Reconvening of Public Session at Town Hall and Pledge of Allegiance

Chair Maggiore called the meeting to order at 7:26 PM. Those in attendance were Selectman Miller, Selectwoman Kilgore and Interim Town Administrator Michael Tully.

Chair Maggiore led the Pledge of Allegiance.

Chair Maggiore stated a vote that was taken in Non Public Session I that was unanimous, and the Town Administrator would be acting on the decision that was made.

40 **Motion by Selectman Miller to seal the minutes of Non Public Session I. Seconded by**
41 **Selectwoman Kilgore. Motion carries 3-0.**

42
43 Chair Maggiore stated a vote was taken in Non Public Session II that was 2 in favor, and 1
44 abstention. Discussion was held regarding the Interim Town Administrator's contract, and the
45 minutes would not be sealed.

46
47 Selectwoman Kilgore stated the board discussed the Deputy Town Administrator and the
48 Emergency Management Director, not the Interim Town Administrator.

49
50 **6. First Public Comment Session**

51
52 Public Comment is an opportunity for residents to ask questions, request information and make
53 comments on issues facing the Town. Individuals will be given not more than three (3) minutes to
54 speak, and people who have already spoken will be asked to wait until everyone has had the
55 chance to speak once. The total time devoted to this agenda item is fifteen (15) minutes.
56 Individuals who are not able to speak during the First Public Comment Session will be given first
57 opportunity to speak during the Second Public Comment Session at the end of the Meeting.

58
59 No Comments.

60
61 **7. Consent Calendar**

- 62 7.1 Payroll Manifest of 09/28//2017 in the amount of \$61,565.07
63 7.2 Payroll Manifest of 10/05/2017 in the amount of \$203,542.97
64 7.3 Accounts Payable Manifest of in the amount of \$185,183.04
65 7.4 Approval of Veteran Tax Credit
66 7.5 Approval of Pole Licenses for Eight (8) Poles on Lovering Road: 121/1, 121/2, 121/3, 121/4,
67 121/5, 121/6, 121/7 and 121/8
68 7.6 Approval of Abatement Recommendation
69 7.7 Approval of Land Use Change Tax

70
71 Interim Town Administrator Tully stated item 7.6 should be removed from the Consent Calendar
72 as it did not come to fruition.

73
74 **Motion by Selectwoman Kilgore to accept the Consent Calendar with the removal of item**
75 **7.6, as presented. Seconded by Selectman Miller. Motion carries 3-0.**

76
77 Chair Maggiore asked to move item 12.1 up on the agenda and the board agreed.

78
79 The Select Board presented Building Inspector Kevin Kelley with a Town Clock, and thanked
80 him for his five years of service with the town.

*Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by
NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.*

*A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a
DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North
Hampton, New Hampshire 03862.*

81 Mr. Kelley read from a prepared statement that will be attached to these minutes.
82
83
84
85

86 **8. Correspondence**

87 8.1 Correspondence from Jay Somers, Comcast Sr. Manager Government Affairs

88 8.2 Correspondence from State of New Hampshire Department of Safety REP Program

89 8.3 Correspondence from State of New Hampshire Department of Natural and Cultural
90 Resources

91 8.4 Correspondence from Pat McLean Regarding a Dog Park in North Hampton
92

93 Chair Maggiore read items 8.1 and 8.4 into the record. After reading Ms. McLean's
94 correspondence the Chair invited her to the podium.
95

96 Ms. McLean stated she had recently moved to North Hampton, and the only dog park in the area
97 is located in Portsmouth. She further stated although she did not have any particular spot in
98 mind, she would be willing to help with the project as it brings people together and creates a
99 sense of community.
100

101 The Select Board agreed a dog park was a good idea, and they would continue this discussion to a
102 date uncertain.
103

104 Interim Town Administrator Tully spoke to correspondence items 8.2 and 8.3, stating a public
105 hearing would be held on October 23, 2017 to accept the funds from the State of New Hampshire
106 Radiological Emergency Preparedness Program.
107

108 Chair Maggiore stated the Select Board had sent a letter to Police Chief Fallon of the Somerville
109 Police Department with condolences for the loss of one of their police officers that was in an
110 accident in North Hampton.
111

112 Selectwoman Kilgore stated she believed there was another piece of correspondence from Laurel
113 Pohl.
114

115 Interim Town Administrator Tully stated he believed Ms. Pohl's correspondence deserved to be a
116 full agenda item on the October 23, 2017 meeting. He further stated he has moved forward to
117 present educational training on RSA 91-A in December and is also working on a policy.
118

119 **9. Committee Updates**

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

120 9.1 Budget Committee

121 Selectman Miller stated there had been an issue with not posting the meeting in a timely
122 manner, and the Budget Committee chair admitted it was his fault and lack of understanding
123 of the process. A “do over” meeting will be held on October 6, 2017.
124

125 9.2 Economic Development Committee

126 Selectwoman Kilgore state the EDC had met on October 4, 2017 and had a guest speaker
127 from UNH explain how a scientific survey is done. She further stated the EDC would like to
128 move forward with the survey and asked if the cost of \$6,400 and \$8,500 could be found in
129 this year’s budget to fund it. Selectwoman Kilgore stated doing the survey would help the
130 town move forward with the Route 1 corridor and commercial district. She also stated the
131 North Hampton Business Association would be holding an open forum on October 26, 2017
132 at the Town Hall.
133

134 9.3 Heritage Commission

135 Chair Maggiore stated he had nothing new to report.
136

137 9.4 Water Commission

138 Chair Maggiore stated a settlement agreement was received and agreed to by the Select
139 Board in the Aquarion Water Company. The settlement allows the town to have a more
140 accurate reflection of the maintenance being done to hydrants. The town had been
141 withholding payment of \$124,000 in hydrant fees, and the settlement reached called for
142 releasing that payment. The board was also satisfied with the water testing that will now be
143 done for water quality. Other items in the agreement were specific to items in Hampton.
144

145 9.5 Capital Improvement Committee

146 This item will be taken up on the agenda.
147

148 9.6 Bandstand Committee

149 Selectwoman Kilgore reported the committee is still promoting their “Buy a Brick” program.
150

151 9.7 275th Anniversary Committee

152 Chair Maggiore stated the celebration was scheduled for October 14, 2017 and gave an
153 itinerary at the events happening throughout the town.
154

155 Selectwoman Kilgore stated she would like to have a monthly report from the Recreation
156 Department. She also stated that the North Hampton Business Association is hosting its
157 annual scarecrow contest and encouraged all to vote on their website for best scarecrow.
158

159 **10. Report of the Interim Town Administrator**

160 10.1 General Report

161 A copy of Interim Town Administrator Tully’s report are attached.
162

163 Chair Maggiore received a consensus of the board to move up agenda item 12.3.

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

Public Works Director John Hubbard stated he was before the board to ask permission to waive the purchasing policy for the purchase of guard rails explaining there are only two or three companies that specialize in this business. He further stated he sent out six requests and the only interest he has gotten was from CWS.

Mr. Hubbard stated the monies had been budgeted for in the Road Maintenance Fund.

Motion by Chair Maggiore to waive the conditions of the purchasing policy which requires the seeking of three bids and to present to the Select Board for approval to allow for the project to move forward. Seconded by Selectman Miller. Motion carries 3-0.

11. Items Left on the Table

11.1 Discussion of Economic Development Committee Charge Revisions

Motion by Chair Maggiore to remove this item from the table. Seconded by Selectman Miller. Motion carries 3-0.

12. New Business

12.1 Presentation to Kevin Kelley

(This item was taken up at the beginning of the meeting.)

12.2 Presentation of Capital Improvements Plan Report- Nancy Monaghan

Capital Improvements Committee Chair Nancy Monaghan gave a recap of the highlights for the 2019-2024 report.

Ms. Monaghan stated the top two projects recommended by the committee were a new dump truck and snowplow for the Department of Public Works to replace a truck that is 16 years old. While the truck is still serviceable, it is nearing the end of its life span, and the town no longer has the services of a private contractor to plow the roads.

Ms. Monaghan stated the truck proposed is a seven year lease/purchase and the committee agrees with the department's desire to keep the existing plow truck for back up.

Ms. Monaghan stated that Laurel Pohl, Budget Committee representative to the CIP, suggested the Department of Public Works consider a Capital Reserve Fund for equipment going forward, with a yearly warrant article of \$35,000 and that suggestion is included in the report.

Ms. Monaghan stated the second large project for 2019 is extending the gas line from Lafayette Road to the North Hampton School on Atlantic Avenue and to replace two extremely aging boilers. She further stated warrant articles were approved over the past

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

several years resulting in \$150,000 for the project. The total cost of the project is \$372,000 therefore \$222,000 would be needed to complete the project.

Ms. Monaghan stated the Fire Department made a request to replace the Command Vehicle which is used to direct all logistics at emergency scenes. She further noted this vehicle can be paid for through the Fire Department's Revolving fund and therefore there would not be a taxable amount to the residents.

Ms. Monaghan stated the Police Department requested one vehicle. She explained over the past few years different rotation schedules have been tested for the replacement of cruisers to try and keep the fleet from getting too aged, unreliable and costly repairs. Last summer, Chief Maddocks undertook an examination if there might be a better replacement plan and rotation schedule and his new plan asks to buy one cruiser each year with a five year premium policy at a cost of \$1,540 for each vehicle. The schedule will be revisited next year to see if the policy is working favorably.

Ms. Monaghan stated the Town Administration has requested a new van for the Recreation Department specifically designed to transport Senior Citizens. The current van is serviceable however very difficult for seniors to enter and exit. She further stated Selectwoman Kilgore had volunteered to look into getting a van donated.

Ms. Monaghan stated a second request was for the installation of a new septic system at the Town Hall, which will replace the current dry well. The town hall is used as a warming shelter and would not be able to handle a large crowd.

Ms. Monaghan stated the North Hampton Public Library made a request to replace an ancient boiler in the library at a cost of \$13,200. She further stated a \$3.5 million library was also requested, however the CIP committee does not recommend this project for next year because there isn't a location or building plans for said project.

Ms. Monaghan stated the CIP has made the aging town buildings a priority over the past several years, and although the Select Board is not putting forth a warrant article this year, the CIP feels it is top priority given the expenses incurred to maintain the buildings each year. The town has spent \$152,000 last year and this year on building upgrades, primarily at the library. The town faces another \$727,000 in upgrades over the coming years if nothing is done.

Ms. Monaghan stated Laurel Pohl suggested the town consider a Capital Reserve Fund with some contribution made each year.

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

(Secretary's Note: Ms. Monaghan's statement regarding the refusal of Laurel Pohl and Selectwoman Kilgore's to sign the Capital Improvements Plan will be attached to these minutes.)

Laurel Pohl, North Road stated she would like to clarify statements made by Ms. Monaghan.

Ms. Pohl stated she did not request a Capital Reserve Fund for the Department of Public Works to smooth out the "peaks and valleys." She stated she had asked the CIP committee for more time to put together a spreadsheet, and that one weekend was not enough time. She further stated the Capital Reserve Fund does not smooth out "peaks and valleys" because the seven year lease/purchase does that. Ms. Pohl stated the savings of approximately \$250,000 over a period of time saves all of the 22 years of financing costs that are funded by lease/purchase agreement.

Ms. Pohl stated the document before the Select Board was rushed, and no process on how to do the CIP was ever agreed upon. She stated the CIP only analyzed and prioritized the current year, and no review was given for the past six year period; they simply passed through what was proposed by the department heads.

Ms. Pohl stated the CIP is a rehash of old documents and that she would not sign something she did not read first. She further stated the revenue source listed on pages 14 and 15 of the CIP are from 2014.

Ms. Pohl asked the Select Board what the process was for receiving correspondence as she had never received acknowledgment her communication was received.

Chair Maggiore stated there is no written policy, and that Interim Town Administrator Tully suggested that this discussion would warrant its own agenda item at the next meeting. He further stated the correspondence was received after the agenda had been sent to the board.

Selectwoman Kilgore stated that Paul had always brought in correspondence received up and until the day of meeting.

Ms. Pohl stated she felt that she was being ignored and would have appreciated an acknowledgment of receipt of her correspondence.

Motion by Selectman Miller to accept the report of the Capital Improvements Committee as presented. Seconded by Chair Maggiore for discussion. Chair Maggiore asked Selectwoman Kilgore if she would offer a minority report as an

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

addendum to the CIP. Selectwoman Kilgore stated she would consider that. Discussion ensued with the Select Board stating they have to accept the CIP at this meeting in order to move forward with the budget season. Motion carries with Miller and Maggiore in favor, and Kilgore opposed.

12.3 Approval to Waive Purchasing Policy for Guard Rail Quote for North & Lovering Roads
(Secretary's Note: this item was taken up earlier in the meeting.)

12.4 Approval of Purchase of SCBA (Self Contained Breathing Apparatus)

Interim Town Administrator Tully stated he was able to secure a federal grant to pay for a portion of the 18 units. He stated the members of the department tested three brands and were all in agreement that the Scott Airpaks would be the best for the department. He mentioned the units were also the least expensive of the three and that the department has worked with Fire Tech and Safety for many years.

Interim Town Administrator Tully stated the majority of the grant money will not be used, and asked the Select Board to authorize the purchase of thermal imagers that go inside of the masks. He further stated that \$6,750 of the cost would come from the Warrant Article that was approved last year.

Interim Town Administrator Tully also spoke to the Gear Extractor and Dryer stating they would like to go with the lowest price from Bergeron Equipment at a cost of \$15,612.

Motion by Selectwoman Kilgore to purchase the SCBA along with the optional thermal imager as suggested tonight by the Fire Chief during the meeting and expending \$117,550. Seconded by Selectman Miller. Motion carries 3-0.

Motion by Selectwoman Kilgore to move forward on the purchase of the Gear Extractor and Dryer with the purchase price of \$15,612. Seconded by Selectman Miller. Motion carries 3-0.

Interim Town Administrator Tully stated there would be a small additional charge for plumbing.

12.5 Approval of Purchase of Gear Extractor and Dryer
(Secretary's Note: This item was taken up under item 12.4.)

12.6 Update on Police and Fire Department Budget Workshop

Chair Maggiore stated the board had run out of time at their workshop to discuss the Emergency Management budget and they would take up at their October 17 workshop.

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

Interim Town Administrator Tully stated the fire department is looking at an increase of 1.92% with the majority of the increase, 10%, for health insurance costs. He also stated fuel is increased do to changing prices at the pump and there is an increase cost as the Jaws of Life are up for their biannual maintenance.

Interim Town Administrator Tully noted there is a 10% increase in overtime in the police department do to the open shifts. He further noted there would be a 6% savings in the health insurance due to changing demographics within the department. An 11% savings would be realized due to the vehicle leases that were not approved at last year's election. An increase in training has been proposed by Acting Police Administrator French which he believes to be cost effective.

Interim Town Administrator Tully stated two sets of tires will need to be replaced on the cruisers. Lockup and breathalyzer line item will increase due to construction needed in the current unusable cells.

12.7 Appointment of Glen Bosworth as Health Officer

Chair Maggiore stated that the position of Health Officer is vacant due to the resignation of Kevin Kelley, and the position must be filled.

Motion by Selectwoman Kilgore to appoint Glen Bosworth as Health Officer for the Town of North Hampton. Seconded by Selectman Miller. Motion carries 3-0.

12.8 Discussion of Court Order Regarding FY18 Warrant Articles 33 and 35

Chair Maggiore gave the history of the citizens petition warrant articles presented at last year's election. He stated that although two of the warrant articles passed, the Select Board needed clarification if they were legally enforceable. On September 27, 2017 the court rendered its decision stating the town was permanently enjoined (not required) to enforce the provision of Warrant Articles 33 and 35.

Chair Maggiore asked to have the summary judgment attached to the minutes.

Selectman Miller asked for a total for legal expenses related to this case, so that when someone complains about the legal budget they can explain why.

Selectwoman Kilgore stated the judge's decision is based on facts and procedures and she agrees with that. She further stated she felt that maybe "these people" felt it was the only way they could express and have their concerns taken seriously with the Conservation

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

Commission and what has happened and whether or not all procedures were followed correctly.

Ms. Pohl suggested that the Select Board work toward a more transparent governance as it is not as apparent as they think. She further asked of the possibility of filming work sessions that are held during the day now that the town has the capability with up to date cameras and equipment.

Shep Kroner, Cedar Road voiced his concerns about the criticism given on the process of the Capital Improvements Plan committee. He stated for change to be effective, changes should be made at the beginning of the process, not at the end.

Mr. Kroner stated there are many trails in North Hampton to take dogs on, and the maps can be found on the Conservation Commission web page.

13. Minutes of Prior Meetings

13.1 Approval of September 25, 2017 Meeting Minutes

Motion by Selectwoman Kilgore to accept the minutes of September 25, 2017 as produced in the Select Board packet. Seconded by Selectman Miller. Motion carries 3-0.

14. Any Other Item that may legally come before the Board

The Board reserves the right to take action on any item relative to the prudential administration of the Town's affairs, which circumstances may require.

Selectwoman Kilgore asked for clarification from Chair Maggiore as to why he signed a recent letter to the editor as "Chair, North Hampton Select Board."

Chair Maggiore stated he was simply identifying himself and that he would write to the newspaper explaining that he was only speaking for himself and not on behalf of the Select Board.

15. Second Public Comment Session

See Item 8, above.

Cynthia Swank, Hobbs Road gave a description of the CIP committee, and stated she was proud of her three years as Chair. She further stated it was a decision of the committee to try to get the report out in time, per RSA, for the budget process. She stated the past four years the report has been done on time.

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

402
403 Frank Ferraro, Post Road thanked the Chair for stopping personal attacks at this meeting, thanked
404 Mr. O'Hara for including PASA trips in the Friday Folder and stated he knows of two contractors
405 that have done work on buildings that are on the National Register and stated he would share the
406 names if interested.

407
408 Laurel Pohl, North Road stated she appreciated Cynthia's comments, and stated fresh ideas are a
409 good thing and that rushing a product is just as bad as not producing a product. She further stated
410 the problems with the CIP committee started at the second meeting and every subsequent
411 meeting, not at the end of the meetings.

412
413 **16. Adjournment**

414 Meeting adjourned at 10:24 PM.

415
416 Respectfully,
417 Janet Facella

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Select Board.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

Statement to the Select Board October 11, 2017, from CIP Committee Chair Nancy Monaghan regarding two members' refusal to sign the final CIP report

I would like to address one other issue if I may. Two of the Committee's members – Kathleen Kilgore, Select Board Representative, and Laurel Pohl, Budget Committee representative, both refused to sign the report, which is their prerogative - no one is compelled to sign. However, it is a rare event, perhaps a singular event, and because by doing so they call into question the integrity of the CIP's work and its product, I wanted you to know the facts.

Mrs. Kilgore wrote on the signature page that while she agrees with all the projects presented, she does not agree with some sections of our report to you. This is mystifying to me – and I suspect to most every other member of the Committee – given Mrs. Kilgore's actions during the Committee's discussion. On the final editing of the document that is now our report, everyone offered suggestions to edit the narrative, and all those suggestions were incorporated, including the only two Mrs. Kilgore raised. She made no further objections regarding the content of the report.

Ms. Pohl wrote that she disagrees with the process and with the product. Ms. Pohl offered several editing suggestions, all of which were incorporated in this final report. There was one document that had been scheduled to be an attachment but did not get into our final report because Ms. Pohl did not have it completed. That document was a chart showing the effects of having a capital reserve fund for the DPW. Because it was not ready at the time this report was finalized and because it was not crucial to this report, it was suggested to Ms. Pohl that she provide the document – when it's ready – to you and to the Budget Committee, of which she is a member.

Ms. Pohl's major process disagreement, as far as I know, was her interpretation of the RSA that authorizes the workings of CIP committees. She believes the RSA requires the CIP committee to analyze and propose funding methods, when the authority for funding clearly lies with the Select Board. The Committee can suggest alternate funding methods to the Select Board, which is what we have done both on the DPW equipment and the town's building needs.

Thank you or your review. The majority of the Committee stands behind its work and its report. I'd like to thank all the members of the Committee for their hard work. We met most every Friday through the summer. Several of the members are here tonight, and I'd like to recognize everyone on the Committee. They are: Shep Kroner, Vice Chair and citizen member; Judy Day, Library Trustee; Vicki Jones, citizen member; Kathleen Kilgore, Select Board representative; Laurel Pohl, Budget Committee representative; James Sununu, School Board representative; and Cynthia Swank, citizen representative.

Jean

New Business

~~12.1 Presentation to Kevin Kelley (departure date is 10-13-2017 – Friday)~~

12.2 CIP Report presentation by Nancy Monaghan

I did not sign the report.

The committee spent adequate time reviewing each department's capital item requests that have been compiled in this report. I firmly believe the department heads are the subject matter experts in proposing equipment needs in order to fulfill the duties and required tasks for their department. The committee then spent time reviewing the capital items requested and ranked them in accordance to priority. What did not happen was analyzing how we should go about funding these requests. We did not review what assets are already set up, reserved for, what incoming funds can be anticipated and how to bridge the difference in a responsible fiscally prudent manner. The CIP is set up as an advisory committee to Select Board and should advise the Select Board on spending and on possible funding. I emphasize advisory only, it's then the Select Board decision to accept the suggestion(s) or not.

Another issue of concern was putting the narrative together for the report. Instead of starting from the scratch, we re-used previous years narrative. This meant conditions in town as they are at this point in time, are not reflected in the report. Only (1) meeting was dedicated to reviewing/revising the narrative. During this meeting we worked collectively as a group on editing the narrative. There was a discussion whether we should meet again to review the revised draft to finalize and sign, but this was declined by a majority of the committee, so we were expected to sign the report without reviewing the final draft. I don't about you but I don't sign documents without reading and agreeing to the content.

In summary, I have an extreme concern here that taking the time to get it right, was not as important as getting it done.

KEVIN KELLEY
BUILDING INSPECTOR/CODE
ENFORCEMENT OFFICER
KKELLEY@NORTHHAMPTON-NH.GOV

TEL: (603) 964-8650



MUNICIPAL OFFICES
233 ATLANTIC AVENUE
NORTH HAMPTON, NH 03862

TEL: (603) 964-8650
FAX: (603) 964-1514

TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
BUILDING INSPECTOR/CODE ENFORCEMENT OFFICER/HEALTH OFFICER

October 11, 2017

Re: Resignation

To the Honorable Board of North Hampton, my co-workers and the residents of North Hampton,

Thank you for allowing me to serve this wonderful town and its residents and business owners alike these past 5 years. To say the last 5 years has been a challenge would be an understatement!

I remember my first days when I came on board and the totality of the work ahead was still unknown but that would change fast as I toured the town with Chief Dennis Cote. As we drove around looking at all the businesses I wondered if I would live long enough to get the things done that I was hired to do.

As time went on and I met many of the residents I came to realize that this town is not much different than most other towns and what was similar was that there was a lot of work to do.

It was gratifying to know that I had the support of not just the Select Board, but so many of its residents as well to get things done that no one seemed to get to. The Select Board with the urging of Town Administrator Paul Apple came to understand that one man could not do the work without an assistant and Glen Bosworth came on as the assistant building inspector.

With the retirement of Chief Cote and the appointment of his successor Chief Michael Tully things changed and for the better. The Building Department and the Fire Department began a partnership that has brought life safety to a level I had only hoped for. The cooperation between every member of the fire department and this office cannot be understated for all the good that has come from it. Chief Tully, Deputy Chief Jason Lajoie, and Lt Martin Tavitian have all given this office all the help and assistance anyone could ask for....and many times without having to ask for it.

I, along with many people I have worked with keep in touch with other communities job postings and when asked "are you looking" no....just seeing what's out there!

That changed a year ago when things changed from being positive to not knowing which direction the town was heading. It did not have that much to do with the residents voting down the various proposals on a safety complex to one of returning to days long past of having a volunteer Fire Department, and maybe a few less police officers too.

I as well as you have heard all the rumors and talk of reducing the number of EMT/FF. As a police officer for 18 years I have watched more than one person die while waiting for an ambulance! Your Fire Department can and has responded in 3 minutes when a call department is 15 to 20 minutes away. I hope you never have to hear the frightening words of their loved one "where are they" knowing it's going to be too long for it to matter as minutes tick away.

I wish nothing but the best for everyone in North Hampton and I hope and pray you realize before it's too late that if you value human life, your children, husbands and wives you will look past the financial aspect of saving a few dollars as it could be you laying on the floor waiting....and waiting, and waiting and as I witnessed it was too late.....

Sincerely,

Kevin Kelley
Health Officer
Building Inspector
Code Enforcement Officer
Town of North Hampton
233 Atlantic Avenue
North Hampton NH 03862
(603) 964-8650 Office
(603) 964-1514 Fax

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

File Copy

Case Name: **Select Board, Town of North Hampton v Ann Larkey**
Case Number: **218-2017-CV-00321**

Enclosed please find a copy of the court's order of September 26, 2017 relative to:

Plaintiff's Motion for Summary Judgment

September 27, 2017

Maureen F. O'Neil
Clerk of Court

(398)

C: Stephen M. Bennett, ESQ; Ann Larkey; Richard Casey O'Kane, ESQ

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

SELECT BOARD, TOWN OF NORTH HAMPTON, NEW HAMPSHIRE

v.

WILLIAM J. GOSSELIN, ET AL.

Docket No. 218-2017-CV-00321

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, the Select Board (the "Board") of the Town of North Hampton, New Hampshire (the "Town"), commenced this declaratory judgment action against Defendants William J. Gosselin, Ann Larkey, and Meredith Loyd Marshall. Plaintiff seeks to have two warrant articles (which were proposed by Defendants and ultimately approved by the Town's voters) held invalid. Plaintiff further seeks a permanent injunction barring enforcement of those articles. Pending before the Court is Plaintiff's motion for summary judgment. Defendants have not filed an objection or otherwise respond to Plaintiff's motion. For the reasons that follow, Plaintiff's motion for summary judgment is **GRANTED**.

Facts

The following facts are undisputed by the parties, unless otherwise noted. Defendants are residents of, and registered voters in, the Town. Pet. Decl. J. ¶¶ 2–4. Prior to the Town's March 2017 elections, Defendants submitted two warrant articles to be placed on the ballot. Maggiore Aff. ¶¶ 4–5. These two warrant articles—Warrant Article 33 and Warrant Article 35—placed certain restrictions upon the Town's conservation commission. *Id.* Exs. B–C. Warrant Article 33 stated as follows:

[S]hall North Hampton vote that any development or changes to any Conservation Land owned or controlled by North Hampton or otherwise designated by North Hampton as Conservation Land be subject to all of the following provisions:

1. said development or changes shall be reviewed by a Review Board for ultimate approval;
2. said Review Board shall consist of 1 member from each of the Planning Board, Zoning Board of Adjustment, and Conservation Commission as well as 1 member from the Select Board and Building Inspector;
3. notices of all Review Board meetings shall be posted at the Town Offices, the Town Clerk's office, the Town Hall, the Town Library and the Town website, and sent by US Registered Mail to all abutters to the Conservation Land, at least 5 days before said meeting;
4. said notices shall described the development or changes and the Conservation Land by its location, commonly known address or name as well as its tax max designation;
5. all meetings shall be open to the public allowing public participation and be broadcast live on Channel 22, recorded and preserved as required by statute;
6. all meeting minutes shall be taken by a duly appointed secretary and available for public review within 5 business days of the meeting;
7. there shall be no closed door meetings, private understandings or private deliberations[.]

Id. Ex. B. Warrant Article 35 stated: "[S]hall North Hampton vote that the members of the Conservation Commission be elected by the public rather than appointed by the Select Board." Id. Ex. C. Prior to the vote, Plaintiff expressed concerns over the articles' legality, but placed both on the ballot for consideration pursuant to statute. Pet. Decl. J. 1-2; see RSA 39:3 ("[T]he selectmen shall insert in their warrant for such meeting the petitioned article with only such minor textual changes as may be required."). Voters approved both articles at the March 14, 2017 election. Id. ¶ 6. "Due to concerns regarding the legality of the actions required by Warrant Articles 33 and 35,

[Plaintiff] has not enforced the provisions of those warrant articles” and filed suit in this Court to determine the articles’ legality. *Maggione Aff.* ¶ 7.

Analysis

Summary judgment is designed “to pierce the pleadings and assess the proof in order to determine if there is a genuine issue of material fact requiring a formal trial of the action.” *Cnty. Oil Co. v. Welch*, 105 N.H. 320, 321 (1964). “A moving party is entitled to summary judgment ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Beckles v. Madden*, 160 N.H. 118, 122 (2010) (quoting RSA 491:8-a, III). In ruling upon the motion, the Court considers “the affidavits and other evidence, and all inferences properly drawn from them, in the light most favorable to the non-moving party.” *Farrelly v. City of Concord*, 168 N.H. 430, 448 (2015) (quotation omitted). Summary judgment shall be granted if the “review of that evidence discloses no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law” *Id.* Where, as here, resolution of the issues involves statutory provisions, the interpretation of said provisions is a question of law for the Court. *Porter v. Town of Sandwich*, 153 N.H. 175, 178 (2006).

Plaintiff argues that both warrant articles violate the provisions of RSA chapter 36-A because the articles usurp the statutory powers and duties expressly granted to Plaintiff and the Conservation Commission (the “Commission”). While Defendants have not objected or otherwise filed a responsive pleading to Plaintiff’s motion, “[f]ailure to object shall not, in and of itself, be grounds for granting the motion.” *See Super. Ct. R.*

13(b). Rather, given that there exists "uncertainty concerning the status or legal rights existing between" the parties, Salem Coalition for Caution, Inc. v. Town of Salem, 121 N.H. 694, 696 (1981), the Court must determine whether the warrant articles at issue violate RSA chapter 36-A.

In interpreting the statutory provisions at issue, the Court considers the statutory scheme as a whole, looking first to the statutory language, "and, if possible, constru[ing] that language according to its plain and ordinary meaning." Zorn v. Demetri, 158 N.H. 437, 438 (2009); see Petition of Malisos, 166 N.H. 726, 729 (2014). The Court interprets the "legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Zorn, 158 N.H. at 438. Words and phrases are not construed in isolation, and the Court interprets "all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Id. at 438–39 (citing In re Alexis O., 157 N.H. 781, 785 (2008)). The objective is to "discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." Id. at 439.

Conservation commissions are creatures of statute. See RSA 36-A:1 (explaining adoption and rescission of provisions). A Town that adopts the "provisions of [RSA chapter 36-A] may establish a conservation commission . . . for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town." RSA 36-A:2 (amended 2017). "The commission shall consist of not less than 3 nor more than 7 members," and "in towns the members of the commission

shall be appointed by the selectmen." RSA 36-A:3 (emphasis added). Pursuant to the statutory grant, such commissions:

may receive gifts of money, personal property, real property, and water rights, either within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes.

RSA 36-A:4, I (emphasis added); see Claridge v. New Hampshire Wetlands Bd., 125 N.H. 745, 751–52 (1984) (explaining that under RSA chapter 36-A "commissions were charged with indexing all open marshlands, swamps and other wetlands, and were empowered to recommend to the selectmen . . . a program for better promotion, development or utilization of such areas." (emphasis added)).

Here, the Court finds that the statutory scheme requires that: (1) the Board selects and appoints members of the Commission; and (2) the Board maintains ultimate authority over the Commission. The statutory mandate is clear in this instance. The plain and ordinary meaning of these provisions establishes that the legislature intended Plaintiff, not the voters or some third-party board, to maintain exclusive control over the Commission. Zorn, 158 N.H. at 438. Indeed, such a conclusion is further supported by the legislative enactments governing other local bodies. See RSA 673:2, II (explaining that planning board members may either be elected or appointed); RSA 673:3, I (noting

that zoning board members "shall either be elected in the manner prescribed by RSA 669, or appointed in a manner prescribed by the local legislative body."). In stark contrast, here, the statutory language of RSA chapter 36-A does not include multiple options for the selection of conservation commission members. In fact, the statute plainly states that "members of the commission shall be appointed by the selectmen." RSA 36-A:3 (emphasis added). "Pursuant to general rules of statutory construction, the word 'shall' is a command, which requires mandatory enforcement." City of Manchester v. Doucet, 133 N.H. 680, 683 (1990). Thus, the statute requires that members of the Commission be appointed by the Board.

In addition, the statute makes clear that acts of a conservation commission are subject only to review by that town's select board or other similar local governing body. RSA 36-A:4, I. Imposing additional requirements than those mandated by statute would certainly subvert the legislature's intent. Cf. Levasseur v. Bd. of Selectman of Hudson, 116 N.H. 340, 342 (1976) ("[T]he legislative body of the town may not impose requirements with respect to matters within the statutory jurisdiction of the planning board."). Indeed, "[i]t is a long established principle under law that towns are but subdivisions of the State and have only the powers the State grants to them." Piper v. Meredith, 110 N.H. 291, 295 (1970) (quotation omitted). To rule otherwise would plainly subvert the intent of the legislature, which would be absurd given the statutes' clear directives. Zorn, 158 N.H. at 438. "Such a state of affairs would exist in derogation of a statutory framework that requires" the select board to both appoint and supervise the Commission—not the voters or a third-party review board. Ehrenberg v. City of Concord, 120 N.H. 656, 661 (1980); cf. City of Claremont v. Craigie, 135 N.H. 528, 532

(1992) (holding that voter requested change to a city charter to require voter approval of the city budget invalid because the "changes would in effect give the city's voters a veto over any proposed fiscal action by the council," which would "render a city unable to fulfill its duties under RSA chapters 44 and 47."). The warrant articles at issue plainly exceed the statutory grant intended by the legislature. Accordingly, the Court finds that Warrant Articles 33 and 35 run afoul of RSA chapter 36-A, and are thus invalid.

The above determination does not end the Court's inquiry, as Plaintiff is further requesting that implementation of those warrant articles be permanently enjoined. The Court finds that a permanent injunction is appropriate in this instance. Whether to grant an injunction in any given case is within the sound discretion of the Court. Town of Atkinson v. Malborn Realty Tr., 164 N.H. 62, 66 (2012) ("It is within the trial court's sound discretion to grant an injunction after consideration of the facts and established principles of equity."). Since injunctions are "considered an extraordinary remedy," ATV Watch v. N.H. Dep't of Res. and Econ. Dev., 155 N.H. 434, 437 (2007) (quotation omitted), the party seeking the injunction must establish: "(1) a present threat of irreparable harm existed; (2) no adequate, alternative remedy at law existed; (3) there was a likelihood of success on the merits by a balance of the probabilities; and (4) the public interest would not be adversely affected if the [C]ourt granted the . . . injunction," Thompson v. N.H. Bd. of Med., 143 N.H. 107, 108 (1998); see 4 G. MacDonald, New Hampshire Practice: Civil Practice and Procedure §19.05 (2014) (discussing the requirements generally).

Plaintiff has certainly established that an injunction is necessary to halt enforcement of the warrant articles at issue. To start, Plaintiff has prevailed on the

merits since the Court has found that the warrant articles violate RSA chapter 36-A. There is no legal remedy in this instance given the nature of the action. Indeed, Plaintiff is not seeking damages at law because no such damages exist. The issue, here, is solely whether the warrant articles run afoul of the statutory authority granted in RSA chapter 36-A. Moreover, irreparable harm exists given that voters are permitted to enforce the warrant articles in successive elections. The facts underlying the instance action evince such a threat of harm. For example, Plaintiff originally cast doubt on the legality of Warrant Articles 33 and 35 prior to the election, but was required to place the articles on the ballot pursuant to statute. See RSA 39:3 ("[T]he selectmen shall insert in their warrant for such meeting the petitioned article with only such minor textual changes as may be required." (emphasis added)). Thus, absent an injunction, voters may continue to chip away at the statutory authority granted to Plaintiff and the Commission by placing additional warrant articles (which seek to implement Warrant Articles 33 and 35) in successive elections. Lastly, permitting enforcement of Warrant Articles 33 and 35 to occur would require Plaintiff to exceed the statutory authority granted to it by the legislature. Piper, 110 N.H. at 295. It is certainly in the public's best interest to ensure that local governing bodies are not in violation of state law. Accordingly, Defendants are permanently enjoined from seeking to enforce the provisions of Warrant Articles 33 and 35.¹

¹ The Court notes that Plaintiffs brought suit against the three named Defendants in their capacities as proponents of the warrant articles. Given that Defendants are representatives of the residents and registered voters in the Town who endorsed and voted for these articles, it naturally follows that Defendants have a "legally sufficient relationship with" these persons such that they are in privity with, and representatives for, these non-party actors. In re Marriage of Marshall, 663 N.E.2d 1113, 1119 (Ill. App. Ct. 1996); see 42 Am. Jur. 2d Injunctions § 279 (2017) ("Under the common law, an injunction binds not only the parties but also those in privity with them, represented by them, or subject to their control." (footnote omitted)). In light of this relationship, the registered voters who are not parties to this action are

The Court is cognizant of Defendants' frustration. Indeed, it is evident from the warrant articles and Defendants' answer that they desire to exhibit more control over local affairs. Such a desire is certainly not unreasonable. However, the proper avenue for change cannot be by way of local procedures which directly conflict with a state statutory mandate. The power to change RSA chapter 36-A, which would give Defendants the control they seek, exists solely with the legislature. See, e.g., In re Goldman, 151 N.H. 770, 773–74 (2005) (recognizing this power generally). Thus, to the extent that Defendants desire such a change in local governance, they must first seek to change the relevant statutory scheme (which grants local bodies their powers). Defendants cannot, as they have attempted here, seek to subvert controlling state statutes by approving local ordinances or articles which directly conflict with those statutes.

Conclusion

For the reasons discussed above, Plaintiff's motion for summary judgment is **GRANTED**. Defendants are **PERMANENTLY ENJOINED** from seeking to enforce the provisions of Warrant Articles 33 and 35.

So Ordered.

September 26, 2017
Date:


Marguerite L. Wageling
Presiding Justice

still "within the class of persons whose conduct is intended to be restrained," and are thus likewise enjoined from seeking to enforce Warrant Articles 33 and 35. 42 Am. Jur. 2d, supra §281.