

North Berwick Board of Selectmen Minutes August 9, 2016

**NORTH BERWICK BOARD OF SELECTMEN MINUTES
AUGUST 9, 2016**

Present: Chairman Galemmo, Selectman Cowan, Selectman Johnson, Sr.,
Selectman Johnson, Jr., Selectman Hall

Also Present: Dwayne Morin, Jeannie Provencher, Laura Shaw, Lincoln Harrison, Dale
Clock, William Houston, Beth Houston, Olivia Houston, Danny Shaw, Justin Shaw, Roger
Frechette

Chairman Galemmo called the meeting to order at 6:33 pm.

- 1. Pledge of Allegiance**
- 2. Review and Approve Minutes of July 19, 2016**

Dwayne Morin stated that he had made a few corrections. On Page 4, under Public Works, the second sentence reads, “The basketball courts are due to be painted...”. It should read, “The basketball court is due to be painted...”. On Page 5, in the last sentence of the last paragraph, it reads, “...decide if they can block it or not themselves.”. It should read, “...decide if they can drive it or not themselves.”. Also, on Page 4, under Public Works the last sentence of the 2nd paragraph currently reads, “They will then remove a culvert on Beech Ridge Road and get this paved.”. It should read, “They will then replace a culvert on Beech Ridge Road and get this paved.”. On Page 8 under Personnel Policy the first sentence reads, “Dwayne stated that a couple meetings ago, they did some personnel policy changes.”. It should read, “Dwayne stated that a couple meetings ago, they proposed some personnel policy changes.”.

Selectman Cowan motioned to approve the minutes of July 19, 2016 as amended. Selectman Johnson, Jr. seconded the motion. VOTE: 5-0

3. Public Input

There was not public input at this time.

5. New Business:

A. Code Enforcement Officer: Appointment of New Code Enforcement Officer

Dwayne introduced Roger Frechette. He is recommending Mr. Frechette to be the new Code Enforcement Officer. Dwayne stated that they had 2 interview processes and they had several good candidates. He said that the Labor Committee was unanimous with their selection of Mr. Frechette. He is currently the Assistant Code Enforcement Officer in Biddeford and has been there for 4 years. He has 25 years of experience in the building trades. Dwayne feels that he will be a great addition to our team.

Selectman Hall motioned to accept Roger Frechette for the position of Code Enforcement Officer. Selectman Cowan seconded the motion. VOTE: 5-0

Dwayne stated that Mr. Frechette will be starting with us on August 22nd.

4. Unfinished Business:

B. Stub Marsh Road: Update on Site Walk and Discussion

Dwayne stated that on 7/27, the Board of Selectmen and some other interested citizens did a site walk at Stub Marsh Road. They are here tonight to discuss whether the boulders should be removed or if they will be allowed to stay there. He stated that during the site walk, there was a question regarding the letter from the Maine DEP and the issue of 20,000 square feet of open water. Dwayne said that the DEP has issued an addendum to this letter which is on page 24 of the Selectmen's packet. Selectmen Cowan suggested that the letter be read aloud so the audience could hear it. Chairman Galemme read the email from Cameron Adams, Environmental Specialist at Bureau of Land Resources, Land Division from Maine DEP into the minutes:

I am writing in response to questions raised about my letter sent to Dan Shaw on July 25th, 2016 regarding the freshwater wetland complex on his property in North Berwick. My letter stated that the Department does not have adjacency jurisdiction to the wetland in question because it does not contain at least 20,000 square feet of aquatic vegetation, emergent marsh, or open water, and is not a peatland, pursuant to the Natural Resources Protection Act (NRPA), 38 M.R.S. §480-C.

Presently, the wetland complex on the Shaw's property contains more than 20,000 square feet of open water. The Wetlands and Waterbodies Protection Rules, Chapter 310, state that a freshwater wetland is a Wetland of Special Significance (WOSS) if it contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation, or open water, unless the 20,000 or more square foot area is the result of an artificial pond or impoundment.

After consulting with Department staff, I initially determined that the wetland complex does not, under normal circumstances, contain enough open water to be considered a WOSS. The open water currently in the wetland is the result of an impoundment (the beaver dam) and historically, the wetland has not exhibited more than 20,000 square feet of open water. Therefore, I stated in my letter that the Department does not have adjacency jurisdiction to the resource.

However, after further consideration and discussions with Division management, I have learned that the Department does not consider the beaver dam to be an artificial impoundment, and that the current state of the wetland may therefore be considered to be “normal circumstances”. As a result, the wetland is considered to be a WOSS by the Department because it contains more than 20,000 square feet of open water.

A permit would be required for any regulated activity within 75 feet of the wetland, pursuant to NRPA, 38 M.R.S. §480-C. Work done to the road that runs through the wetland may require Individual review, with the possibility of being waived to a Tier permit for wetland impact associated with an existing access way. Please contact me about any proposed projects within or adjacent to the WOSS for further information about permitting requirements.

The removal of the beaver dam and the resulting draining of the wetland are still exempt activities pursuant to NRPA §480-Q(21) and as described in my original letter.

Please use this email as an official addendum to my letter from July 25th, 2016.

Chairman Galemmo stated that it appears that they do have adjacency jurisdiction over the area. Selectman Cowan asked if this meant that this was a protected wetland. Dwayne said that the wetland is protected, but if you read the letter as it relates to the road, the road is allowed to be used. He said that if they wanted to do anything to the road, they would need a permit by rule, which is a Tier review. Selectman Cowan asked if this meant that anybody that wanted to use the road would need a permit. Dwayne stated that they would only need a permit if they were repairing or doing any work to the road. Laura Shaw stated that if anybody drives through it now, it becomes a sediment issue and is therefore protected. Selectman Cowan stated that the way she is interpreting the letter is that it is a protected wetland and is a wetland of special significance. Chairman Galemmo wondered what a “regulated activity” would be. Dwayne stated that “regulated activity” would be any work such as digging or building that would happen within the confines of 75 feet from the wetland.

Laura Shaw said that if DEP deemed it more than 20,000 square feet, in the original letter they said that it was a vegetation and sediment issue so people could be fined if they go through it. Dwayne said that this is not what Cameron Adams told him and he wishes that Mr. Adams was present tonight to tell his side. Dwayne said that Mr. Adams told him that it “could” be considered a disturbance and it would be the responsibility of the property owner to fix the disturbance. Laura Shaw said that they could be fined for any damages. Dwayne said that they could fine the property owners or require them to do something else such as removing the beaver dam.

Laura Shaw said that they were also talking to Cory Stearns from IF&W after the site walk the other day. He said that there could be other issues such as turtle or black snake concerns which then become the wildlife biology issues. Selectman Cowan stated that the mention of the blanding turtles does raise some concerns for her because they are a protected species. Mr. Stearns did state that there were likely some of these turtles in this area. Selectman Cowan feels that this is another piece that needs to be addressed more closely. She stated that with this along with the issue of the passageway, she feels that she needs more clarification on the matter. Selectman Cowan stated that the issue at hand is the passageway through the water and she does not feel that this is addressed in the letter. Dwayne stated that it is because he has no jurisdiction over that. He stated that the original letter said that there could be a sediment issue and any damage would be the landowner's responsibility to repair it.

Dan Shaw stated that the rocks were there to protect things and that it is a public easement and Dwayne says it needs to be kept as a public easement. Dwayne said that he is not saying that it is needs to be kept as a public easement but that it is a public easement. Mr. Shaw said that it is okay for people to drive through it, stir up things and with Justin being the landowner, he would be blamed for it. He said that it makes no sense. He asked what it would take for the Town, whether it be the Selectman or the Town Manager, to ask for a judgement from a court.

Lincoln Harrison said that he does not think that it is right for the landowner to be responsible if there is damage done because somebody decides to drive through. Dwayne said that there is a public easement on that road but he would never drive through it. People should not be driving through it but there is a public easement so if they wanted to go through they could. The Selectmen determined it to be a public easement back in 1997. The only way that this can be changed is through the court. He stated that if Mr. Shaw wanted a court to make that determination, he has every right to do so. If the town would bring this before a judge, they would say that it is the Board of Selectmen's decision to make. Chairman Galemmo said that the only thing that the Selectmen can do now is have them remove the boulders or do nothing. Laura Shaw asked if they could make it a walking easement only. Dwayne said that they specifically asked the attorney about this and there is nothing they can do to change that. The only way to change it is by a judge's order. Justin Shaw asked if they could close it temporarily until the road would get fixed by somebody. Chairman Galemmo said they could not. The town has abandoned it so they will not pay to upgrade and maintain it.

Jeannie Provencher asked if the road was in better condition back in 1997 than it is now. Dwayne stated that it was passable then. He said that the water measured back in April was at 486 feet. Dwayne pulled up the picture on the computer to show to the audience.

Chairman Galemmo asked if there was anybody present that wanted the boulders to be removed. William Houston stated that it is a public easement and over the years, the beavers come and go so the road will not always be covered in water as it is now. If the boulders do stay, when the beavers do leave we will be right back here going through this all over again. He stated that obviously nobody should be driving through 2 feet of water but it should still be their choice.

Dale Clock asked Dwayne what the law states. He thought that the law was very specific. Dwayne stated that it actually wasn't and this is why they asked the attorney for their legal

opinion. The attorney states that it is an egress for foot and vehicle traffic. However, there is a provision that states that if somebody blocks off the public easement, the Selectmen may require them to remove the obstruction. Whatever the Board of Selectmen's decision is can be challenged in a court of law and this would be the final determinate of what would happen.

Dale Clock stated that in the Comprehensive Plan and in the Conservation Commission bylaws, this has been an area that has been addressed by them to be an open area access. He stated that there are 3 pieces of town owned land totaling about 60 acres and two of those pieces are currently not accessible.

Selectman Johnson, Sr. said that if for some reason, the road dries up in a few years, there would be no reason to have it blocked. Right now, it certainly is not passable. He said that if it is going to cause problems that will make the landowners responsible, they should probably not open it up.

Chairman Galemmo asked if there were any vehicles that were trying to go through now. Lincoln Harrison stated that there were bikes and ATV's that go down there all the time and tear up the roads. He said that he doesn't know if they are going through the water but they are definitely going through the trails that they are not supposed to be on. Beth Houston stated that they have people coming on their land and they trash the trails. Olivia Houston said that they make ruts in the trails and it makes it hard for the horses to walk the trails. Chairman Galemmo stated that whether they block or unblock it, this will not solve the problem with the trails.

Selectman Hall stated that he doesn't think that anybody should be going through it. He understands that, legally, it is a public access. He is really torn about it and he realizes that doing nothing could put the town in some kind of liability in court. If that is the only way that it can be decided than that is probably what they need to do. At this time, his choice would be to do nothing. Selectman Cowan agreed and said that it is a very difficult situation to make a decision about. She understands both sides and they both have merit. Her biggest concern is that there are some mitigating factors in this situation. She stated that seeing the letter and having it designated as a wetlands puts a different spin on it for her. She is concerned about the environmental impact and potentially destroying a protected species.

Dwayne stated that the Board should make a motion regarding their decision. If this ends up in court, it is important to show that the Board took a stand on it.

Selectman Johnson, Sr. motioned to allow the boulders to stay where they are until the road dries up and will be removed at that time. Selectman Johnson, Jr. seconded the motion. VOTE: 5-0

4. Unfinished Business:

A. Public Works: Update on Projects, Mutual Aid Agreement

Dwayne stated that Hammond Road is complete and it looks like we came in a little under budget. They are working on Randall Road right now. They should be done the graveling today. They did find that they needed to have more gravel than what they originally thought. They will then move to Beech Ridge Road. They have a culvert that they need to replace. After that, they will move on to Diamond Hill Road. They will then set up the pavers to complete the paving.

Dwayne stated that they have been working on a County wide Mutual Aid Agreement with Public Works. We have Mutual Aid Agreements with our Fire, Police and Rescue departments. The only time we would need mutual aid is during massive storms. The agreement would set forth parameters to allow us to assist. If we need assistance from another town, we would have to pay them a fee and if another town needs our help, they would need to pay us. Dwayne stated that Southern Maine Regional has been working with all of the towns to put together a Mutual Aid Agreement. He stated that it was all voluntary. If we have a disaster, and we call Wells, they can turn us down and we can do the same if a town calls us for help.

Selectman Cowan motioned to authorize Dwayne Morin to enter into a Mutual Aid Agreement for Public Works. Selectman Johnson, Sr. seconded the vote. VOTE: 5-0

C. Fire Department: Update on Substation

Dwayne stated that he is still waiting on quotes for the work that needs to be done at the substation. He has one right now but is waiting on a couple others. They have found one more mouse. They have found another hole and will be filling it up. Dwayne said that they will probably have more mice in the fall when it starts getting cooler. He stated that the substation floor will be done in the middle of September.

D. Resolution: State Referendum Ballot Question #2

Chairman Galemmo passed out some information that showed data regarding the tax rates by income. The Resolution is to show support for Ballot Question #2 which would put a 3% surcharge on income earned over \$200,000 that would be earmarked for schools. The question that was asked at the last meeting was why it should just be applied to people earning over \$200,000 and not applied to everyone across the board. He presented some figures for the Selectmen to review. He stated that he included the numbers for rates that included capital gains and rates not including the capital gains. He stated that when capital gains are not included, the wealthier people pay slightly more as a percentage of their income than most other people. His source for this information was from the Citizens for Tax Justice who obtained their information from the Congressional Budget Office. He stated that because Capital Gains are taxed at a lower rate, almost 50% of all Capital Gains are realized from the top 10% of income earners. It really skews what you actually pay in taxes. Chairman Galemmo continued to review the charts and numbers. Chairman Galemmo said that he thinks that this is a great solution to help out with the education budgets. Selectman Cowan stated that she is glad that it is going toward education.

After no further discussion on the resolution, the Board of Selectmen voted on it.
VOTE: 3-2

5. New Business:

A. Abatement/Supplemental: Pawlak Property

Dwayne stated that Mr. Pawlak owns a piece of property that has a part of it in Tree Growth and has a home on it as well. He is selling his home and in order to do so, he needs to take 2 acres of property out of Tree Growth. Mr. Pawlak had talked to Craig and told him what he wanted to do and Craig split the lot. Dwayne stated that we should have waited to do that when the deed came through. The sale of the house ended up falling through so he did not sell the house. When he received his tax bill last year, he paid it. However, he did not realize that there was a separate tax bill for the Tree Growth because Craig had separated it. When we sent him a notice that he had past taxes, Mr. Pawlak did not know that he owed any. Dwayne stated that we need to abate Acct. #1178 and Acct. #2564 and add a Supplemental to Acct. #1178 which puts the parcel back together again. He will owe us \$156.00 in taxes and has 30 days to pay it. Dwayne stated that he had actually already sent us the check.

Selectman Hall motioned to abate taxes on Acct. #1178 in the amount of \$2,743.02 and #2564 in the amount of \$137.34 and add a Supplemental to Acct. #1178 in the amount of \$2,880.36. Selectman Johnson, Sr. seconded the motion. VOTE: 5-0

C. Tax Rate FY17: Review Draft Tax Rate Calculation Form

Dwayne stated that they will be setting the mil rate at the next meeting. He is fairly certain that they will be able to hold the tax rate for this year. They are still verifying all of the numbers to make sure that all the info is correct. He stated that keeping our tax rate at \$12.60 would give us an overlay of about \$262,000 which is about a 3.2% overlay.

6. Other Business:

Dwayne stated that York County has asked him to be on a Commission called the Jail Working Group. He stated that jail costs continue to rise and the Commissioners are putting this group together so they can see how they can better position themselves to absorb those increases or find ways for cost savings. He believes that there are 11 members on the Committee. There are a number of Town Managers, a couple of Commissioners and a couple of lay people. He stated that the jail budget for the County runs about \$8 million per year. This is divided up by 29 towns.

7. Review and Approve Warrants and Correspondence:

Warrant:	July 26, 2016	- \$ 0.00
Warrant:	August 2, 2016	- \$ 96,556.71
Warrant:	August 9, 2016	- \$ 21,807.84

Selectman Hall motioned to approve the Warrant of August 2, 2016 for the amount of \$96,556.71 and the Warrant of August 9, 2016 for the amount of \$21,807.84. Selectman Johnson, Jr. seconded the motion. VOTE: 5-0

8. Adjournment:

Selectman Cowan motioned to go into Executive Session for legal matters at 8:05 pm, come back out of Executive Session at 8:10 pm and adjourn the meeting at 8:10 pm. Selectman Hall seconded the motion. VOTE: 5-0

Respectively Submitted,
Susan Niehoff, Stenographer

Original to Town Clerk
Chairman: Charles Galemmo

Selectman: Wendy Cowan

Selectman: Michael Johnson, Jr.

Selectman: Jonathan Hall

Selectman: Michael Johnson, Sr.