

**Board of Selectmen  
9 February 2009  
Minutes**

**4:40 p.m.** - Chairman Don Guarino called the meeting to order. Present were Chairman Guarino, Selectmen Rachel Hatch and Betty Ann Abbott, Town Administrator Tim Warren and Clerk Lois Dionne.

**4:43 p.m. - Enter into Non-Public Session as per RSA 91-A:3, II(a)**

Selectman Hatch moved to Enter into Non-Public Session as per RSA 91-A:3, II(a) - Dismissal, promotion or setting compensation for public employees or the investigation of any charges against him, unless the employee affected has a right to a meeting or requests that the meeting be open, in which case the request shall be granted. Selectman Abbott seconded. Motion passed 3-0.

The Selectmen discussed a personnel issue.

**5:06 p.m. – Out of Non-Public Session**

Selectman Hatch moved to come Out of Non-Public Session. Selectman Abbott seconded. Motion passed 3-0.

**MOTION – Selectman Abbott moved to seal the minutes of the above non-public session. Selectman Hatch seconded. Motion passed 3-0.**

**5:07 p.m. - Enter into Non-Public Session as per RSA 91-A:3, II(b)**

Selectman Hatch moved to Enter into Non-Public Session as per RSA 91-A:3, II(b) – Consideration of the hiring of a public employee. Selectman Abbott seconded. Motion passed 3-0.

The Selectmen, along with Justin Leavitt, interviewed applicants for the position of recycling attendant.

**7:00 p.m. – Out of Non-Public Session**

Selectman Hatch moved to come Out of Non-Public Session. Selectman Abbott seconded. Motion passed 3-0.

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**MOTION – Selectman Hatch moved to hire Steven Hartford to fill the position of recycling attendant at the recycling facility. Selectman Abbott seconded. Motion passed 3-0.**

**7:01 – Public Input** – Present for public input were Israel Willard and Brenda and Brett Currier.

**Free Room – Recycling Center** – Israel Willard was concerned that we had closed the “free room” to everyone, and because of damage that had been done by a few people, the whole Town had been punished. He asked if the Selectmen had ever considered having volunteers run that room. Israel said it is obvious someone has to watch it because people put stuff in there because they don’t want to pay to recycle it. He said he had been in the room last Wednesday and the room isn’t set up to put anything in.

Justin Leavitt said there are bookshelves in there on the left, and he is getting ready to put up more shelving, but he hasn’t had time to get them up; there are two tables on which to put small items. Israel asked why we couldn’t ask volunteers to put up the shelves and organize the room.

Chairman Guarino felt there would be liability concerns because they are not employees of the Town. Selectman Abbott pointed out that we have volunteers for hazardous waste day and other things. Tim felt there is a section in our liability policy that would cover volunteers. Israel asked that the Selectmen not take time out of public input to discuss whether volunteers would be covered, but to discuss that later.

**Morrill – Class VI Road Agreement** – Mr. Willard stated that when Dave Clairmont, Brian Forst and Don Guarino were on the Board of Selectmen, they had come up with a solution to the Gale and Donovan Road issue. He said that since that time, there has been a Class VI Road Committee who had also made recommendations, and Don and Betty Ann had “thrown it all out the window”, and come up with their own take on it. Israel asked why anybody would volunteer, because the Class VI Road Committee had volunteered and put in over a year’s worth of time, and Don and Betty had disregarded the whole thing, and took the original agreement that was agreed on by our Town Counsel, threw it out and had come up with their own agreement. Mr. Willard asked for an explanation. He asked how we would cover the safety issue on Gale Road in the winter time when the road is icy, and the fire truck is trying to go down there, and the Donovan’s are coming up; the road is one lane wide.

Chairman Guarino stated that the courts asked the parties to come together with the mediator. He said this could have gone to trial and cost the taxpayers a substantial amount of money in preparation of the trial.

Israel said he had been involved with this since the “get go”, and the specifications that Dave Clairmont, Brian Forst and Don had written had never gone to court. He said the

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current board had taken it upon themselves not to take it to court. Mr. Willard felt the Selectmen had lowered the standards without having the standards that were set forth by the previous board tested in court.

Chairman Guarino disagreed that they had thrown the standards away. He said they were the same standards set by the previous board.

Selectman Abbott said they were ordered by the court to reduce the expense because it was exorbitant.

Israel said it has been watered down to nothing. Chairman Guarino replied that they hadn't changed the specifications for Donovan Road from the intersection of Gale Road to the Morrill's house. He said the specifications in the agreement are copied from what he (Don), Dave and Brian had come up with. Mr. Willard commented on the engineer and bond part of the agreement, and asked who would come up with the amount of the bond to be posted.

Chairman Guarino stated that the Selectmen come up with the amount of the bond. Selectman Abbott added that the amount of the bond would depend on how much work needs to be done. Israel reiterated that he wanted to know how much a bond would be for that job. Brett Currier stated that you have to get estimates on the cost of the job before you could determine the amount of the bond. Mr. Willard was also concerned about what materials would be used in the upgrade of the road, and that a building permit would be issued without any work being done on the road.

Chairman Guarino stated that there are a number of things the Morrills are required to do before a building permit could be issued. He said the Board of Selectmen have to accept the engineer to oversee the upgrade of the road, and accept a bond before we would issue a building permit.

Israel said nothing had been added into the agreement that they weren't setting a precedent for all the other people who live down there. Chairman Guarino said there are no more houses or camps on Class VI roads in Gilmanton, so this does not set a precedent. Don added that this agreement settled something that has been ongoing for three years, and that he felt he and Betty Ann had represented the Town in the best possible manner. He said they had actually added some things that hadn't been in the original specifications in regards to the culvert and guardrails.

There was more discussion on the culvert and guardrail, a dredge and fill permit and access and turn-around for emergency vehicles. Selectman Abbott added that it had been noted in the Selectmen's minutes that this agreement does not supersede the need for the Morrills to get any other permits that might be needed. Selectman Abbott said she had voiced two concerns during the mediation; that they protect the town and our ability to get emergency vehicles in and out, and the other was that they not completely undermine

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our ordinances. She said they feel they have done that, and that they saved the Town at least \$50,000 by mediating the issue without “giving away the farm”. Israel didn’t see how they felt they saved the Town money, because the specifications had never been tested in court. Don said they would have had to spend the money to have it tested. Selectman Abbott said it was the court that had told them to mediate.

Israel said they had done nothing about the safety of Gale Road. Brett Currier said it would be no different than it is now, because there is already a house down there. Selectman Abbott said that in mediation, there is generally a compromise, and they had given up the upgrade of Gale Road. Israel felt it wasn’t given a chance.

**Article #8** – Brett Currier asked how Article 8 had become an article. (This is an article to see if the Town will vote to raise the money to repair and erect the cupola on the Academy Building this year).

Selectman Abbott explained that it had been brought forward because some people want to see the cupola repaired and erected this year, and neither the Selectmen nor the Budget Committee felt it should be done this year. Chairman Guarino said there are people who wondered why it wasn’t carried in the regular budget, but the Selectmen felt as there are other repairs to the building that are more urgent, they were the ones included in this year’s budget.

Selectman Hatch stated that the sentiment of the HDC was to get costs to erect it this year. She said the Board of Selectmen got estimates and decided to let the voters decide.

Brett said he wasn’t against it, he just wondered how it had come about, because usually when there is something that the Selectmen or planning board don’t support, it is presented as a petition article.

**Barnstead’s Groundwater Withdrawal Ordinance** – Present for the discussion were Conservation Chair Nanci Mitchell, Conservation Commission members Brenda Sens and Sue Hale-deSeve, Planning Board Vice-Chair John Funk, Gale Darrell of Barnstead and Ellen Hayes of Keene.

Gale Darrell explained that Barnstead had established their ordinance after Nottingham had been stuck with a contaminated aquifer after DES had approved a ten-day pump test, and they were also without water. She said that even though they had passed an ordinance not to allow a bottling plant site, the Selectmen and the Planning Board had met behind closed doors and made an agreement with USA Springs and the lawyers to overturn the ordinance because it was illegal. She said the citizens found out three years later that the ordinance wasn’t on the books anymore. Gale said after spending \$350,000 to try to prevent USA Springs site in their community, the Community guardians and the “Save our Groundwater” people were told that they had no standing in court, were not

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allowed to speak or to present evidence, and at the end of the court session, the judge had told them if they didn't like the decision to change the law.

Gale said Nottingham had called her and asked how they had done their ordinance in Barnstead because they wanted to do it there. She said Nottingham had claimed Article 10 of the NH Constitution that says if you try every single legal avenue to address your grievances under the law and you find that there is no remedy, it is your duty to alter, abolish or amend that law. Gale said they had studied the ordinance, had gone over each section and why it was there, and the legal basis for it. They decided to do an educational outreach program, which they started in 2006, and the legal defense fund from Pennsylvania assisted with it by holding a democracy school there, as well as several public meetings with question and answer sessions. Gale said in 2007 the ordinance had passed with over 63% majority; it was brought up again at Town Meeting and had passed by 62%.

Selectman Abbott asked how they had gone about educating the public. Gale replied that they had showed a film, talked about global water use, held potluck dinners where they discussed the issues, did door to door campaigning, and handed out pamphlets and books. This had been a yearlong process.

Gale stated that Nottingham, Atkinson and Barnstead have passed the ordinance, and Goffstown is looking at it. Gale said this approach works well with large corporations who were granted personhoods in the 1800's, which allows them the same civil and political rights we have, so they can claim their 4<sup>th</sup>, and 5<sup>th</sup> amendment rights, contracts and commerce laws, and use their wealth to override the will of the community. By having an ordinance, it gives people a place to stand with a foothold in the constitutional law; a place to stand where you can make the community will a form of protected conversation in the town.

Gale said if Gilmanton wants no water withdrawal, you could make that law in the town regardless of the fact that according to the lawyer, it is illegal, unenforceable and unconstitutional, and we are preempted by State law. Gale said that is the regulatory law, and what they are dealing with is the constitutional law, which is the people's law, and it is a separate and higher law. People don't usually practice it, because it is removed from us, but if you pay attention to it, it is quite useful to a community to be able to say "no" to something.

Selectman Abbott asked if they would be going to the Supreme Court. Gale replied that is the premise, because if there is an illegitimate law, that is where the discussion takes place. She cited examples such as women's suffrage and civil rights. Gale pointed out that fighting a regulatory fight is expensive, but a constitutional fight is less expensive because the discussions are limited to what the citizens want to talk about, and issues are usually settled in much less time. Gale said that the lawyer who had helped draft the ordinances, if it is challenged in the communities he worked in, and they passed the

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ordinance, would give all his briefs and counsel to the community, and he would work along side them pro bono; all you would have to pay for would be his living and travel expenses.

Chairman Guarino stated that last week it had been discussed whether or not it would be better to have an ordinance although it had some technical flaws. He asked if any body had looked in Barnstead in terms of large water withdrawal, and felt because of the ordinance, it wouldn't be worth the challenge. Gale said when Pennichuck had come into Barnstead and had taken over a water supply at Lock Lake, they (Barnstead) had written them a letter and showed them the ordinance, and told them when they were in Barnstead, they were under that ordinance, and they had accommodated and held to the ordinance.

Selectman Hatch asked if the existing ordinance in Barnstead affected the individual property owner; if someone makes soda, would they have to get a groundwater withdrawal permit. Gale said it affects everyone, but not in a negative way. Ellen Hayes said that it affects everyone, but the only time the ordinance kicks in, is when you violate it, i.e. if you withdraw more than the allowed gallons per day. She said if you have a contract agreement with the town to make soda, then it is allowed. Ellen said people have begun to realize that water is the new oil, and the ordinances are designed to stop corporations coming in and lowering aquifers, and contaminating wells, etc. She added that the ordinance only prohibit what you want to protect.

Selectman Abbott asked if the ordinance we had brought forward was the same as Barnstead's with only the name of the Town being changed. Nanci said she had thought that was the case, but had learned tonight that part of it had been removed; it doesn't include the amendments that Barnstead's has. Gale said Barnstead's ordinance has the civil rights protection and many more layers of the nature's rights protection than the one drawn up by Gilmanton, which makes it more defensible and stronger.

John Funk stated that his observation of the whole premise of the legal argument is that towns have powers greater than the State, and that is not the case. He said the constitution gives the powers to the State government, and in turn, the State government gives the towns their charters. The town operates under the charter, and the citizens have the powers granted to you by the State of New Hampshire. John said that what has been proposed here is that there is some natural law that supersedes everything, and gives the power to the people, and the laws of the State of NH are meaningless because there are natural rights that the people have that supersede all powers that are given to government.

Selectman Abbott stated that they are saying that it goes to the Constitution. John replied that the Constitution gives the power to the State of NH in respect to municipalities .If you play this out, what happens is each town in NH develops its own set of principles as to what it likes and doesn't like, and as an example, Gilmanton could decide it didn't want any big trucks to go through town because of the noise and it is damaging to the

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environment, and tie it to this natural law. He said if this happened, the state would become a jumble of different laws, passed under some guise of natural law, which would make our state an unworkable set of legal organizations.

John said he is not against what these people are trying to do in regards to water; he recognizes that our water resources are valuable and we need to work to protect them, but “hanging our hat” on some theory of natural law is a false premise to protect our rights. He said he had already expressed some concerns in terms of the specific language of the ordinance. John said he hasn’t studied the issue to the length that these ladies had done, but is looking at it from a basic principle, and that we, in New Hampshire, haven’t given our towns the right to take the kind of action to just say no. John suggested a regulatory process that would allow the Selectmen to consider all the factors with respect to withdrawal, and make a judgment as to whether it would be adverse to the people in town; this is a different approach.

There was a great deal more discussion on the rights of towns to adopt ordinances to protect their groundwater, and at least to make a statement. It was stated that large companies wanting to extract large amounts of groundwater are more likely to look for towns without ordinances, than trying to get around them, or fight them. It was the consensus that Gilmanton’s ordinance, as it is currently written, has flaws and it would probably be a good idea for it to be voted down at Town Meeting, and give the Planning Board and Conservation Commission a year to come up with a better written ordinance, and time to educate the residents on the importance of protecting our groundwater.

### **8:20 p.m. – Break**

### **8:27 p.m. – Back in Session**

#### **8:28 p.m. - Enter into Non-Public Session as per RSA 91-A:3, II(a)**

Selectman Abbott moved to Enter into Non-Public Session as per RSA 91-A:3, II(a)-Dismissal, promotion or setting compensation for public employees or the investigation of any charges against him, unless the employee affected has a right to a meeting or requests that the meeting be open, in which case the request shall be granted.

Brett Currier asked for a non-public session with the Selectmen to discuss a personnel issue.

#### **8:35 p.m. – Out of Non-Public Session**

Selectman Abbott moved to come Out of Non-Public Session. Selectman Hatch seconded. Motion passed 3-0.

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**Fire Dept Update**

**Snowmobile** – Chief Lockwood informed the Selectmen that the snowmobile they had acquired had been registered and insured; sixteen members of the department have been trained to operate it.

**Fire Pond** – Chief Lockwood said he had received an email from Paula Gilman of the Conservation Commission asking him for specifications for a fire pond. He said she wants criteria for anyone wanting to put in a pond and call it a fire pond. Chief Lockwood said he is not comfortable giving specific size because it depends on the application. He asked for approval to meet with Conservation Commission to explain it. The Selectmen said he didn't need their approval to do this.

**Grant Applications**

**Medical Supplies** - Chief Lockwood informed the Selectmen that he had grant application out to Boundtree, a medical supply company out of Henniker who handles medical supplies and EMS equipment.

**Tools** - He has an application in to Stanley Tools, who supplies various tools.

**Department of Agriculture** – Chief Lockwood said the Department of Agriculture has a rural development program for communities under 10,000 population; he has paperwork in with them for an initial request for funding.

**Stimulus – Public Safety Building** – Chief Lockwood stated that after talking with Chairman Guarino today, he had found plans for the Public Safety Building, and had talked with a couple of contractors to get ideas for site work costs, and is going to submit a grant request for the stimulus plan, but the project has to be “shovel ready”. He explained that means if you receive a grant, you have to be able to start the project immediately. The grant is a \$1.2 million dollar grant.

There was discussion that we wouldn't be able to do that because it is not on a warrant, and the Selectmen would need permission to accept the grant and expend the funds. It was felt that if we could get that money, it would be worth having a special town meeting to get permission to do the project. It was stated that we already have the property, and we have the scaled-down plan for a safety building that had been presented after the first building had failed.

Chairman Guarino asked how we would go about getting that application in. Chief Lockwood said the State has an office of Economic Stimulus that they have just created specifically to administer these monies. He said they are accepting applications, but don't have any criteria built yet.

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Selectman Hatch asked if he was looking for next year. Chief Lockwood replied that it would be for this year; they are getting the money and distributing it, but they couldn't tell him how they would be doing it, other than that the State would be getting some for highway money, and the rest would be spread as much as they could. He felt we would be in good standing if we only ask for one thing. The money would be given outright.

**Transfer Station** – Chief Lockwood said he has been working with Justin Leavitt at the transfer station regarding questions Justin has about the transfer station. He feels Justin has a handle on things and is working in the right direction.

**Code Enforcement** – Chief Lockwood said he had been working with Bob Flanders on several things this week. He said one thing that they had worked on was a heating system that hadn't been properly installed. Chief Lockwood said he had come across this while out there on another call. He said the lady had been having issues with the installer; there were things they hadn't done, and when looking at the contract, they had found things the company hadn't provided. Chief Lockwood stated that while looking at the contract, it said they would meet all applicable codes, and the permit fees were included in the price. He said they had never gotten a permit; and were told that because they hadn't gotten a permit, they were subject to a fine. Chief Lockwood stated that after he and Bob had gotten on it, the company had taken care of the issue immediately.

It was stated that many people are unaware that a permit is required to replace an existing furnace. Another thing people are not aware of is that in New Hampshire a person needs to be licensed to do propane work. Basically anything done to a home, other than a new roof or siding, needs to have a permit. Chief Lockwood said he and Bob are not driving around looking for violations, but when they come upon them in the course of their job, they address them.

### **8:55 p.m. - Enter into Non-Public Session as per RSA 91-A:3, II(a)**

Selectman Hatch moved to Enter into Non-Public Session as per RSA 91-A:3, II(a) - Dismissal, promotion or setting compensation for public employees or the investigation of any charges against him, unless the employee affected has a right to a meeting or requests that the meeting be open, in which case the request shall be granted. Selectman Abbott seconded. Motion passed 3-0.

The Selectmen discussed a personnel issue.

### **9:30 p.m. – Out of Non-Public Session**

Selectman Hatch moved to come Out of Non-Public Session. Selectman Abbott seconded. Motion passed 3-0.

**MOTION** – Selectman Abbott moved to seal the minutes of the above non-public session. Selectman Hatch seconded. Motion passed 3-0.

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**Warrant Article & Budget Review** – The Selectmen briefly reviewed and made minor adjustments to a couple of warrant articles and to the budget.

**Call Pay** – Chief Lockwood stated that they currently pay \$35 per night for EMS coverage for call people, but that some nights they don't have any call people, and he asks the day people to come out. He asked if they could get the \$35 if nobody else signs up. The Selectmen felt this would be fair.

**Approval of Minutes** – The Selectmen reviewed the minutes of last week's minutes.

**MOTION – Selectman Hatch moved to accept the minutes of February 2, 2009 as amended. Selectman Abbott seconded. Motion passed 3-0.**

## **FYI**

**Retirement** – Tim informed the Selectmen that Pastor Linda is retiring and they are having an evening of friendship and fellowship to honor her on Saturday, February 28<sup>th</sup> at 5:00 p.m.

**Resignation-** Tim informed that Selectmen that we had received a letter of resignation as an alternate on the Conservation Commission from Eric Rowley. A copy of the letter has been forwarded to Nanci Mitchell.

**Knox Box** – Tim said the fire department has requested a contact list for the Knox box out back (box holds keys to building) in case of an emergency. They need a primary contact, a secondary and a third contact. Rachel will be the primary, Betty Ann the secondary and Tim the third.

**YRL (Year Round Library) Land** – Selectman Abbott referred to a discussion at the Budget Committee meeting with the Year Round Library about putting a new police station on their property. Betty Ann pointed out that the Year Round Library doesn't own the property in discussion. She didn't feel it would be a good idea negotiating a spot on the Year Round Library's land for the police station, and that funding \$75,000 a year for a lease of the land is ridiculous when we can buy a piece of land for \$75,000. Chairman Guarino didn't feel that was what had been meant. He felt they meant the Selectmen hadn't researched the question that there might be a parcel of land available for lease from the Library, but there had been no price mentioned for the lease.

**HDC Meeting** – Selectman Hatch stated that at the HDC meeting last week, the commission discussed how to better hold the residents in the district accountable. She said one of the suggestions had been if they don't comply, to send a certified letter, and then have someone go out to look at it. They are also going to look into charging fees for noncompliance. She just wanted to let the Selectmen that they would be coming to the Board of Selectmen with this in the future.

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Selectman Abbott asked Rachel if the HDC had discussed the cupola. Rachel replied that they want the town to fund it this year. Rachel said she had told them that the Selectmen had agreed to let the residents decide if they want it done this year, and anyone who wished, could speak to it at Town meeting.

**Rollins Pond Dam** – Chairman Guarino asked Chief Lockwood if he had spoken with DES about the Rollins Pond Dam. Chief Lockwood replied that he had, and was waiting for an answer back from them.

**10:10 p.m. – MOTION – Selectman Hatch moved to adjourn the meeting. Selectman Abbott seconded. Motion passed 3-0.**

Respectfully submitted,

Lois Dionne  
Recording Clerk