

**Selectmen's Meeting  
Monday, March 21, 2022**

Chairman Les Babb called the meeting to order at 6:34 PM. Present were Selectmen Les Babb, Ernie Day, and Melissa Florio, and Ellen White, Town Administrator, who recorded these minutes. This meeting was held on the second floor at the Town Hall.

Also in attendance were R.A. Oram, Jerry Knirk, Jeff Nicoll, Rob Cunio, Scott Brooks, Rob Cunio, Mark McConkey, Brian Taylor, Maureen Elliott, Bonnie Elie, Paul Elie, Paul Olzerowicz, Bill Elliott, Justin Brooks, Susan Marks, Roberta MacCarthy, Jean Marshall, Daymond Steer, Tim Otterbach, Blair Folts, Rich Fahy, Rich Barrett, Marie Hanson, Richard Woodstein, and several others unidentified.

**Review of Mail, Sign Manifests, Approval of Minutes**

The accounts payable and payroll manifests were reviewed as well as the red folder containing correspondence.

***Ernie made a motion to approve the minutes of the Selectmen's Meeting held on March 14, 2022 with one amendment to the second to last line of the first page. Melissa seconded. All in favor, the motion passed.***

**Department Head Updates**

Highway Department – Road Agent Scott Brooks presented a letter and contract for the salt/sand storage building plans and specifications. Once signed, a request to bid will go out to three contractors to erect the building. ***Ernie made a motion for Les to sign the contract for the plans for the salt/sand storage shed. Melissa seconded. All in favor, the motion passed.*** Scott anticipates rain this weekend and the roads are still soft therefore no exceptions to the road bans will be granted. A resident had some logs cut on Little Knoll Circuit and the contractor has placed the logs across the street from the property on the shoulder within the town's right-of-way. The Police Department has been contacted for assistance. Should the landowner be notified? Other towns have reported similar instances from the assumed contractor. The Board asked for cones or caution tape to be placed near the logs in response to visibility concerns expressed by residents in the area.

Transfer Station – Justin Brooks reported activity is picking up. The single-stream compactor broke down for approximately one-hour and Atlantic Recycling has been contacted for repair. The fence repair is in progress from a winter plowing incident. Melissa questioned if further research has been conducted on adding cameras to assist with illegal dumping of trash at the gates? Justin responded that wi-fi would be needed unless a game camera option is used. Discussion to be continued.

Fire-Rescue Department – Chief Rob Cunio reported call volume including no new Covid cases, 3 medical aid, and 1 smoke alarm. Cintas completed the fire extinguisher and emergency light inspections last week. Engine 7 is back in service after repairs were completed last week. The alternator in the Tahoe went and was repaired today at Advanced Diesel. They are still waiting on approval for the AED purchase using leftover funds from the LEMP Grant. Rob received a copy of Laconia's inspection form related to short-term rentals and distributed it for review. Rob would like to use Laconia's example as a guide but will be creating his own form. The contract was received from Alexis for the purchase of the new rescue truck. Requested corrections received from a legal

review were incorporated into the document. Appendix A is the specifications which Rob distributed to include with the contract. Rob stated a question was raised regarding warranty coverage on miscellaneous equipment which is to be covered by the respective manufacturer not Alexis. Alexis' warranty coverage is 5-year or 60,000 miles, and 1-year on everything else. Municipal Leasing has provided a payment quote based on an interest rate valid until the 10<sup>th</sup> of next month. **The Board agreed to sign the contract with Alexis for the purchase of the new Rescue.** Rob requested the original signed copy to send back to Alexis.

Town Office – Administrator Ellen White had nothing new to report for the Town Office. The flooring replacement on the first floor of Town Hall is well underway. Ellen questioned who should be initiating contact with the contractors regarding the repair work needed at the Masonic Lodge. Ernie responded that he will work with Mark McKinley.

### **Old / New Business / Discussion:**

Les announced the Board met with three law firms earlier today to discuss the town's legal service needs. ***Melissa made a motion to enter into legal services with Soule, Leslie, Kidder, Sayward & Loughman Attorneys. Ernie seconded. All in favor, the motion passed.***

Meena LLC, Effingham Gas Station – Regional Impact

Les began the discussion by opening the floor to Jeff Nicoll, Conservation Commission Chair. Jeff read from a letter he prepared drafting the FCC's concerns with reference material (letter attached to these minutes). Key elements of concern include the site being a prior gravel pit, the infiltration basin is at the front of the site, being close to Phillips Brook, groundwater & aquifer recharge area, all stormwater absorbs into the aquifer, remediation will be difficult and cleanup expensive, high potential of downstream impact. Melissa asked for clarification on why NH DES offered approval. Jeff explained that NH DES relies heavily on local site review to ensure things are not overlooked; limited resources present a challenge with approvals. Will the Board of Selectmen agree to participate as an abutter? Jeff met with Anne Cunningham to review Effingham's Zoning Ordinance and opinions were offered on certain areas to address; specifically, pollution control and poor drainage, hazardous conditions, and stormwater drainage contained on site. In addition to the contamination of aquifer impacting Freedom.

### **Public Input:**

R.A. Oram stated he is a member of the FCC but is speaking as a resident with 300' on Ossipee River. He questions regional impact and statutory authority. Jerry Knirk responded that RSA 36:54 covers this. Oram further questioned if other designated areas can weigh in and potentially stop the project? Les responded that it is Effingham's decision. They are charged with gathering the information to determine their course of action. Abutters are given first option, but public outcry does not necessarily have enough impact to stop it? Jerry stated that RSA 36:54-56 allows other areas impacted to weigh-in. The town is then obligated to notify the other towns of potential DRI. It does not say that they any control over the decision. Jerry further provided history on the property stating the glacier dumped rubble in the site area with high transmittance of soils with flow direction of the aquifer. Property and recreational values could be impacted. Effingham's groundwater protection was added in 10-years ago to recognize the importance in protecting surface and groundwater. There is a strong case of economical and regional impact as has been found in recognizing this as having DRI.

Paul Elie commented that Jeff provided a though case and raises valid issues. The Planning Board granted DRI. How many could be impacted? Freedom Board of Selectmen has been very supportive

of water quality. A community survey sent several years ago confirmed the same result. The FCC's duties are outlined on pages 1-5 of their regulations where the Board of Selectmen is charged with management of prudential affairs; he suggests the Board of Selectmen express grave concerns too.

Paul Olzerowicz looks at the environmental impact from a financial respect; systems are improved and more advanced, etc., but should those systems fail...the impact on private wells, water systems, etc. as well as the cost to the towns and landowners. Whose responsibility is it to remediate? The entity? Town of Effingham?

Mark McConkey represents Meena Corporation, along with other companies. This project has taken on an ominous cloud with several nights of testimony regarding zoning issues. The technology is far superior than it was 10-years ago. Ossipee has the highest end of impact and the Board of Selectmen along with the Planning Board took the position that they would allow Effingham's Planning Board to deal with it. Gas tanks in Freedom were replaced 7-years ago in the same protection district; three facilities are dispensing gas directly into boats along with others filling their boats from gas cans, all proposing the same risk. The tanks will be installed in the same location, with no additional disturbance, with issued permits in place. Abbotts is located in a swamp, Freedom Market within casting distance of the Ossipee River. Mark loves the lake and would not do anything to jeopardize the water quality. Let the process run for good/bad.

Blair Folts thanked the Board for stepping up to address the concerns. Freedom Market is grandfathered and legally allowed to be there. Abbotts & Staples is considered safer due to the location. The site has been excavated to within 2' of groundwater. There are multiple concerns. Discussion on the tank installation and permitting. Blair stated that tanks were installed illegally and request for an after-the-fact variance is what is being dealt with. This site is not grandfathered.

Roberta MacCarthy, resident of Berry Bay and member of the Berry Bay Association, has expressed concerns and urges the Town take a seat at the table to ensure checks and balances. The town cannot stay and let it happen; it's too important to the region.

Oram questions that the site is not grandfathered? Respondent states Effingham's attorney wrote a letter acknowledging as such.

Jerry stated the Boyles, former owners, removed the tanks in 2015. The application is being addressed as a new gas station with infiltration direct into the stormwater-aquifer.

Mark acknowledged he is working with Meena Corp. and is compensated. He commented on the ODB400 fund balance containing millions of dollars to be used in the event of failure. The business owner is responsible for the first \$10k then this fund kicks in.

Tim Otterbach, of Ossipee, also Green Mountain Conservation Group and Ossipee Lake Alliance, stated RSA 146-D speaks of this fund and it does not cover surface spills.

Jerry stated that remediation efforts come from taxation and it would be nice to not have that problem.

Jeff stated that in the event of an accident, VOC testing is the only way to detect contamination and it is expensive testing. Mark responded that the State offers testing kits at no charge.

Marie Hanson, Berry Bay resident, stated that there is no option for new wells...once the aquifer is contaminated.

Blair responded that contamination goes back to the state and can take a long period of time for correction. She discussed a gas station in West Ossipee where a leak was detected from the smell of gasoline detected in the water of an apartment across the street. It is important to be proactive to protect water quality.

Paul O. as a resident of North Broad Bay further discussed the project's pros and cons in comparison to potential risk. What is the benefit to the risk? Damage to people? What is the gain? How long? For convenience, destruction...

Tim stated that 9 towns sit on the aquifer affected. Downstream, the water source serves over 200k people including those in Maine. All but 2 towns listed have expressed concern. The gas tanks were removed in 2015 and the business functionally operated as a market without gas. The prior owners did not want to expend the monies to bring the tanks up to standards. There are two additional options close by for gas. Oram questions Otterbach's representation for Ossipee. Not in official capacity.

Jerry stated on risk benefit analysis, technology is unnecessary if risk is small.

Ernie stated that a letter written will not impact their action. This was brought up a few weeks back but now abutter status with regional impact has been granted.

Melissa stated the FCC was tasked with investigating, conducting review and coming back with a recommendation. Concerns for the taxpayers and property owners and financial burden have been expressed. Duty is to protect the water quality. Abutter status should be used to follow the FCC recommendations and Anne Cunningham's guidance.

Les would like to address 5 items: Stormwater plans, put in place the best checks and balances, ensure water quality, economic and recreational impact, and ability to drink tap water. ***He would like to charge the FCC with developing a letter of abutter status acknowledging the site as a recharge area and concentrate on stormwater plan in place, checks and balances, and concerns expressed regarding impact. He does not feel it's Freedom's place to tell Effingham whether they can have a gas station or not. Agreed. Will the FCC write the letter? Jeff responded yes. The Board of Selectmen will endorse it.***

#### **Old / New Business / Discussion continued:**

##### Short-Term Rentals:

Les announced they were approved at Town Meeting and a nice FAQ sheet has been developed and is out in distribution. The topic will be discussed as they move forward with creating the permitting and inspection processes. Ernie would like to move forward with the timeline soon. Items to address include septic system, off-street parking, mandatory fire escape, egress doors and windows, licensing and annual fee. Melissa stated we also need to involve potential impact on the Transfer Station as well as point of contact for when resolution is needed. Further, the cost to administer, who administers fines, corrective action, etc. to be addressed soon. Ernie states the fines should be the homeowner's responsibility as the tenants are short-term. Melissa offered to work with Rob on the inspection form.

Les stated the goal is to get the forms in place, review and approval by the Planning Board and move forward from there.

Rich Barrett questions what happens if a short-term rental is owned by a company? Les responded that the ordinance allows 90-days which was a timeframe determined to allow the property owner help in paying the mortgage and property taxes but not making it lucrative for an investor. Rich recapped stating that they cannot be eliminated but hoping to discourage investors.

Paul O. stated it would be best to get the new policy drawn in sand allowing time to educate and make the property owners accountable. He recommends moving quickly so the applicants can get their requests in quickly.

### **Public Input continued:**

Jerry added to the point on the DRI statute regarding the gas station stating that abutters can state they do not want it, and be forceful about it. The Planning Board must hear testimony.

Paul E. questioned what is the bottom line? Les confirmed the FCC will be drafting the letter the Board of Selectmen will be signing.

Paul further questioned the status of the public records vault put in at the Public Safety Building two years ago. Ellen responded that vitals and tax records up through 1995 were moved over last summer and the vault is filled to capacity.

Jean Marshall stated that it is important to have the letter available to read at the meeting on 4/7/2022 and a Freedom representative should be in attendance.

Mark stated he attended a meeting regarding Route 153 concerns a few months ago and is happy to report that similar concerns were expressed by the Town of Effingham. Mark entered it into the 10-year plan to report annually on shoulders, conditions, etc. This was approved by the House and Senate. At a meeting with Executive Councilor Kenney and NH DOT, a series of listening sessions will be scheduled to hear peoples' concerns and is to take place in Effingham in the beginning of April. Public notices will be distributed. Mark stated that accident data is lacking and is very important information to have.

Daymond asked for clarification on the letter to be sent to the Effingham Planning Board. Les recapped on the five items and stated that the request is to make it safer than possible.

Daymond questioned the hiring of an attorney? Les responded that it is for general legal counsel.

Daymond questioned how the town will enforce the 90-day limitation on short-term rentals? Les responded this is still in the works...stay tuned.

### **Non-Public Session:**

Not applicable.

**Any Other Business That May Come Before the Board:**

Richard Woodstein of Camp Robin Hood approached the Board offering his apology and accepting responsibility for work that commenced on the property without permits in place. He then requested a temporary permit to continue work in order to not delay the opening of camp. Ernie responded that until the appropriate permits are approved, the cease-and-desist order remains in effect.

**Adjournment**

Being no further input, Ernie made a motion to adjourn. Melissa seconded. All in favor, the motion passed.

The meeting adjourned at 8:12 PM.

**Consent Agenda**

Minutes – Selectmen’s Meeting– 3/14/2022	Approved
Accounts Payable – Week ending 3/18/2022	Approved
Payroll Manifest – Week ending 3/16/2022	Approved
Emergency Services Contract – Town of Eaton 2022-2023	Approved
Alexis Fire Equipment Sales Agreement	Approved
Advance Storage Technology – Salt Storage Building Proposal	Approved

**Correspondence**

Minutes – Planning Board Meeting – 3/17/2022	Reviewed
E-Mail – Helen Cheese-Probert re: Pre-Existing Short-Term Rentals	Reviewed
E-Mail – Adam Frank, Vacasa re: Short-Term Rentals - legal, nonconforming use	Reviewed
E-Mail – Jean Golden re: Request for STR owner contact information	Reviewed
E-Mail – Anne Cuunningham re: Timing for STR licensing	Reviewed
E-Mail – Melodie Fitts, Voter Integrity re: Class action lawsuit on voting machines	Reviewed
E-Mail – Renee Wheaton re: Status of Senior Resource Coordinator Position	Reviewed
E-Mail – Rick Davidson, Committee on Aging re: “ ”	Reviewed
Letter – Don Johnson re: 2022 Town Election summary of worker and expenses	Reviewed
Letter – Jerry Knirk re: Opposition to Effingham gas station	Reviewed
Letter – FCC re: Proposed gas station review/concerns	Reviewed

Respectfully submitted,  
Ellen N. White, Town Administrator

Approved by the Board of Selectmen on \_\_\_\_\_:

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Leslie R. Babb

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Ernest F. Day, Jr.

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Melissa M. Florio