

**DRAFT MINUTES
MINUTES**

BOARD OF SELECTMEN

FEBRUARY 6, 2012

1. Call Meeting to Order

Vice Chairman Matt Quandt convened The Board at 7:00 p.m. in The Nowak Room of the Town Office Building. Other members of The Board present were Selectman Frank Ferraro, Selectwoman Julie Gilman, Selectman Don Clement and Town Manager, Russ Dean.

2. Board Interview: Historic District Commission. This interview did not take place. It will be rescheduled for the next meeting.

3. Public Comment

Don Woodward, of Hemlock Street, Exeter comes forward. He advises the Board that there is a current NH bill, number 1561 of concern to him. The bill seeks to eliminate regional planning commissions. He feels that local towns can not complete projects without these types of commissions. He points out that the Town of Exeter pays a fee to belong to this commission and in return, the State of New Hampshire provides funds for several types of projects. He hopes the Board will investigate the bill and consider sending an official letter of opposition.

Brian Griset, of Cullen Way, Exeter comes forward. He expresses his concerns in regards to the authority and performance of the town manager. He seeks clarification of the Selectmen's oversight. He offers his opinion regarding the line item in the general fund budget that is labeled as a bonus for the town manager. He feels that the performance of the Town Manager, paired with some, in his opinion questionable decisions should be considered when the Town Managers performance is evaluated. He also expresses his concern in regard to a water abatement memo from January 19, 2012. Mr. Quandt advises him that the Board has not yet voted on the abatement. Mr. Griset also expresses his concern in regard to the warrant for replacement water meters. He tells the Board the Town is going to monthly water billing if the warrant article passes. He advises the Board that the Town of Newmarket has recently turned down the idea of restructuring the water billing from quarterly to monthly. Mr. Griset asks where Mr. Jeffers gets the authority to do this. Mr. Quandt responds the Selectmen make this decision. Mr. Griset expresses his concern regarding a memo from the February 1, 2012 Selectman's Meeting packet indicating a \$100 membership was purchased at the IOKA Theatre. He wishes to know under whose authority this membership was purchased. Ms. Gilman informs him the membership was purchased from funds of the Economic Development Commission and was voted upon by the Commission. Mr. Griset expresses his concern in the packet distributed to the Selectmen. He indicates that between January 7, 2012 and February 2, 2012 he sent emails to Mr. Dean, specifically on January 25th and 26th. Those emails were not included as correspondence in the packet. He questions who is responsible for deciding what does and what does not go into the packet distributed to the public and the Selectmen. Mr. Griset questions the town manager's failure on back tax collections and claims the Town is writing off \$100,000 in back taxes and water bills that have not been paid. Mr. Griset feels the performance review of the Town Manager should be a public discussion, open to public comment. He asks the Board to keep in mind a request for resignation.

Mr. Quandt asks Mr. Griset about his 91-A requests as he makes a lot. Mr. Griset suggests he has requested specific background documents but has not received a single document from the town manager's office. Mr. Clement asks Mr. Griset if he has taken any action. Mr. Griset says no. It is up to the selectmen to ensure 91A is adhered to. Mr. Griset references a form on the website that is there for 91A requests. Mr. Griset states the form or the town office does not have a disclosure stating the supreme court has ruled the person does not have to disclose their identity or the reason they are making a request. Mr. Griset claims this has opened the Town up for a lawsuit, in his opinion. Mr. Clement asks Mr. Griset if he does not believe someone has to give their name to get a 91A request. Mr. Griset says yes. Mr. Clement comments about the water bills, and says the Board established the back billing time frame so the Board made the decision about the time frame, not the town manager. Mr. Griset comments the town manager did this without the Board's knowledge.

Vice Chairman Quandt agrees to take Mr. Griset's comments into consideration prior to the performance review of the Town Manager.

4. Minutes & Proclamations

a. Regular Session: January 23, 2012

Mr. Clement moves to approve the Minutes for January 23, 2012. Ms. Gilman seconds. Vote: Unanimous.

b. Non public Session: January 23, 2012

Ms. Gilman moves to approve the Minutes from January 23, 2012, non-public session. Mr. Clement seconds. Vote: Unanimous.

c. Non public Session December 5, 2011

Mr. Ferraro suggests a change in the December 5, 2011 non-public session minutes to reflect the Board's general consensus for the Town Manager to proceed toward negotiating a purchase and sales agreement on behalf of the Town of Exeter. A short discussion ensues regarding the authority of the Town Manager to execute purchase and sales agreements absent an official vote from The Board of Selectmen. Mr. Ferraro suggests the verbiage be changed from 'authorized the Town Manager' to 'encouraged the Town Manager' and strike the verbiage relating to the purchase process as it pertains to an environmental and legal review. Mr. Ferraro says no vote was taken. Mr. Clement recalls consensus was reached to move forward with the process and make it happen. Mr. Ferraro says there was no mention of a purchase and sales. Mr. Ferraro says they were in general agreement with this and says they moved ahead with a public hearing process but signing the purchase and sales would have prejudged the public input. Mr. Quandt clarifies the effect of the purchase and sales. Mr. Ferraro says when we get to old business he will bring it back up. Mr. Clement's opinion was moving forward if it took sitting down with the seller and making the arrangement would be fine with him. Mr. Quandt suggests encouraged. Mr. Ferraro comments you cannot sign a purchase and sales without a vote of the Board on that purchase and sales. Mr. Dean comments that Mr. Ferraro's view contradicts prior practice, and several different instances where the town manager with board consensus, approval, authorization, etcetera. The job is always more difficult with lack of clarity. When Mr. Olson was town manager he would sign deeds. Maybe there is a lack of understanding. A P&S is part of the process. Mr. Ferraro comments about continuing bad, illegal or improper action. Mr. Ferraro called legal services at the local government center, and specifically asked if the town manager absent a vote of the board of selectmen could a town manager sign a purchase and sales and they said no. Mr. Ferraro suggests his integrity is being questioned. He has gone through videotapes and has been questioned about these things at past meetings. Mr. Ferraro is talking about past practices not authorized by the RSAs. Mr. Ferraro has taken more action on this property than anyone to make sure it goes forward.

Mr. Ferraro moves to approve the Minutes, including his suggested amendment. There is no second.

Mr. Clement moves to amend the minutes to reflect the word 'encouraged' in place of the word 'Authorized' and leave the verbiage relating to the purchase process. Ms. Gilman seconds. Vote: Unanimous.

5. Appointments - None

6. Department Reports - None

7. Discussion / Action Items

a. New Business

i. Review Pawnbroker Ordinance Proposal

Police Chief Kane submitted a proposal to the Board regarding the current Town Ordinances relating to the regulation of retail transactions of a pawn or secondhand nature for the purpose of identifying stolen property. The Chief wishes the Board will consider reviewing the new ordinance an enacting it as an official Town of Exeter ordinance. Vice Chairman Quandt advises the Board the state law allows for each town to formulate their own policy. Regardless of what a town policy may regulate, any law enforcement authority in the State can enforce the state law within the Town limits. Mr. Clement expresses his desire to prepare his thoughts and questions prior to Chief Kane making his appearance to present his opinion to the Board.

ii. Tattoo Parlor Ordinance Follow up

Mr. Dean advises the Board of an interested party who inquired about opening a tattoo establishment in the Town of Exeter. He reminds The Board of a town vote in 1998 that enforce prohibiting these types of establishments, unless a licensed physician performed the tattoo. The Town Counsel reviewed the Article and confirmed that the Article is valid. The Article needs to be added to the Health Ordinances as soon as possible. The staff will present the Board with an amended ordinance. Mr. Dean also indicates a review of current ordinances may be necessary to see if there have been any other changes since 1998.

b. Old Business

i. Town Wide Mapping

Ms. Gilman advises the Board of the Heritage Commission's request for proposals for presentation planners. She indicates the RFP's were due last Monday and she recruited Mr. Dean and his administrative assistant to aid her in opening them. Three bids were received. A bid from Emma Diehl, offering no bid. A bid from Preservation Company offering the service for \$12,820. A bid from Bruce Harvey offering the service for \$12,500.

Mr. Clement moves to send the bids to The Heritage Commission for review. Ms. Gilman seconds. Vote: Unanimous

A short discussion regarding the purchase and sales agreement for the Getty property ensues.

Mr. Ferraro moves that the Town Manager bring the purchase and sales agreement he negotiated before the Board for review. Ms. Gilman seconds for discussion.

The discussion continues and Mr. Ferraro reminds the Board that the Department of Environmental Services has indicated that not all of the Getty's had control of the properties. Mr. Clement attempts to clarify what Mr. Ferraro is looking for. Mr. Quandt asks Mr. Dean about the purchase and sales and he indicates it exists.

Mr. Ferraro moves to authorize the Town Manager to negotiate a purchase and sales agreement and bring it before the Board for review. Ms. Gilman seconds. Vote: Unanimous.

8. Regular Business

a. Bid Openings - None

b. A/P and Payroll Manifests

Mr. Ferraro moves to approve an accounts payable warrant article for checks dated 1/27/2012 in the amount of \$116,613.33. Ms. Gilman seconds. Vote: Unanimous

Mr. Ferraro moves to approve an accounts payable warrant article to the Regional Co-Op for a check dated 1/27/2012 in the amount of \$2,052,363.00. Ms. Gilman seconds. Vote: Unanimous

Mr. Ferraro moves to approve a payroll warrant for checks dated 1/25/2012 in the amount of \$167,536.16. Ms. Gilman seconds. Vote: Unanimous

Mr. Ferraro moves to approve a payroll warrant for checks dated 2/1/2012 in the amount of \$175,370.10. Ms. Gilman seconds. Vote: Unanimous

Mr. Ferraro moves to approve an accounts payable warrant for checks dated 2/3/2012 in the amount of \$286,197.43. Ms. Gilman seconds.

A discussion in regards to this warrant ensues. Mr. Ferraro advises The Board that the original warrant amount was \$287,697.43. He advises the invoice from JBC Communications in the amount of \$1,500, has been removed from the warrant amount. He further explains that the invoice is for consulting. There is no agreement in place between JBC Communications and the Town of Exeter that either the Cable Advisory Committee or the Board of Selectmen has approved. The invoice, by statute is not eligible for reimbursement. The agreement that is currently in place was signed by the Town Manager. The Warrant Article for the General Fund only indicates expenditures approved by The Board of Selectmen. The Board defers to Vice Chairman Quandt to offer his opinion of where the Cable Advisory Committee stands on the agreement. Vice Chairman Quandt believes the Cable Advisory Committee has made no recommendation. He also believes no formal vote has been counted. Mr. Dean reminds The Board that this is an 8-month contract, totaling \$24,000 in bi-weekly payments of \$1,500. The Board needs to vote to expend the funds, but the contract is an operating agreement for the access channel and services have already been rendered on it.

Mr. Childs, of JBC Communications comes forward to speak. He is the owner of the business that rendered the services on this contract. He advises The Board that the contract was entered into in good faith on behalf of both parties. He feels that signing a contract and then denying an invoice is almost encouraging a breach of contract. As a vendor he feels it will make it

difficult for future vendors to contract with the Town of Exeter. He has complied with all the terms of the contract. He states it was written as a service agreement with bi-weekly installments so the Board would have control of the contract, as it can be cancelled at any time. Vice Chairman Quandt asks Mr. Childs if he would be available to come and speak before the Cable Advisory Committee to answer any questions in regard to the terms and conditions of the contract. Mr. Ferraro first and foremost, wishes to state that his opinion regarding the invoice in no way reflected on the performance of Mr. Childs, nor his company JBC Communications. His concerns relate specifically to the contract. There appear to be no terms and conditions in the contract, no provisions or liabilities are spelled out. A bi-weekly invoice does not necessarily mean that any work was performed. Mr. Dean advises the Board that fixed fee contracts are common. Vice Chairman asks the Board for a vote on the contract, and opens this idea for comments from the Board. Mr. Ferraro feels that the contract was not listed on the agenda, it should not be voted on this evening. He feels the residents should have the opportunity to speak in the public forum prior to the vote. Ms. Gilman agrees. Mr. Quandt agrees to add the contract to an upcoming agenda for discussion and a vote.

Ms. Gilman moves to approve the JBC Communications invoice for \$1,500 to be expended from Cable Access funds, without setting precedent for future invoices. Mr. Clement seconds. Vote: Unanimous.

Mr. Quandt asks Mr. Dean to schedule a CATV meeting. Ms. Gilman asks to clarify the Board signing the warrant indicates expending from the cable fund. Mr. Quandt clarifies and comments that it is. Mr. Ferraro believes the Board has to vote on the contract. Mr. Clement disagrees with that view. Mr. Childs comes forward and asks how many transactions follow the process he is following. There are many other vendors that should know how it works. Mr. Dean advises there are over 700 vendors who come through the warrant just like the cable fund or like the recreation fund. He cites the example of recreation instructors in the recreation fund, which are done by the Recreation Director and don't come to the Town Manager. We have a pyramid process set up for this in the departments where departments approve expenses they come up to the Board. He cites an example of Palmer and Sicard where the Town paid \$21,000 and it came from the DPW. They submitted an invoice, which was reviewed and submitted to the Board of Selectmen. It just so happened the money spent cumulatively was \$21,000. Mr. Quandt indicates this is a procedural hiccup. Mr. Ferraro comments that pushing this issue to legal counsel under RSA 37 and if the issue comes back as he has been advised then we have to look at the other revolving funds. If it comes back and says no then under 37 we don't have a problem with it. Mr. Quandt suggests the warrant article may have been written too narrow. Mr. Ferraro comments that some funds list the Town Manager as being able to expend, he is just going on the legal advice from the LGC and the way the article is written. Mr. Quandt suggests reviewing the matter with town counsel and it will be brought back before the Board. Mr. Griset comments about contracts under \$25,000. He questions why it is an 8 month contract. Will there be a new contract? Can a contract be broken down into 6 months? Mr. Quandt suggests addressing this when the Board takes this up again.

c. **Budget Updates - None**

d. **Tax Abatements & Exemptions**

Mr. Ferraro moves to approve a supplemental tax collector warrant for Map 74, lot 71 in the amount of \$500. Mr. Clement seconds. Vote: Unanimous.

Mr. Ferraro moves to approve abatement for Map 58, lot 6 in the amount of \$298.30. Ms. Gilman seconds. Vote: Unanimous.

e. **Water/Sewer Abatements**

Number 70 Main Street requested abatement in the amount of \$317.82. The Water and Sewer Advisory Committee recommended the request for the full amount. The abatement was not recommended by the DPW. Vice Chairman Quandt questions if this abatement falls under the one time abate in ten years terms. Mr. Ferraro indicates it does not. The cause of the leak was internal to the house. The leak was due to customer negligence.

Mr. Clement moves to table this abatement for a future Board of Selectman meeting. Mr. Ferraro seconds. Vote: Unanimous.

Number 21 Spruce Street requested abatement in the amount of \$422.05. The Water and Sewer Advisory Committee recommended the request for the full amount. The abatement was not recommended by the DPW. Mr. Clement feels this abatement falls into the one time abate in ten years terms. The family went on vacation and the house sitter didn't notice the toilet was running. Mr. Ferraro feels the cause of the leak was internal to the house, and due to customer negligence.

Ms. Gilman moves to deny this abatement. Mr. Ferraro seconds. Vote: In favor, Ms. Gilman and Mr. Ferraro. Opposed, Mr. Clement. Motion carries.

Number 14 Langdon Ave requested abatement. The Water and Sewer Advisory Committee recommends this abatement in the amount of \$112.00, representing four quarters of service fees. The DPW recommends this abatement as the problem was identified and correction efforts were documented.

Mr. Ferraro moves to table this abatement for a future Board of Selectman meeting. Ms. Gilman seconds. Vote: Unanimous.

Mr. Clement suggests The Board ask the Water and Sewer Advisory Committee to begin producing a memo explaining why they voted to recommend for or against an abatement. Mr. Dean feels the process of abatements is flawed. Residents can sometimes wait several months while the DPW makes a determination, followed by the Water and Sewer Advisory Committee, followed by the Board of Selectman. Mr. Quandt agrees to add this process issue to a future agenda for discussion.

f. Permits

Amare Cantare of Durham, NH applied for a permit to use the Town Hall May 11, 2012 from 5pm to 8pm for a concert. The Exeter Kiwanis Club applied for a permit to use the Town Hall September 1, 2012 from 7:30am to 7:30pm for a UFO festival.

Mr. Ferraro moves to accept the Amare Cantare permit contingent to appropriate insurance forms being filed, and identifying if the group will be paying a fee. Mr. Clement seconds. Vote: Unanimous

Mr. Clement moves to approve the Exeter Kiwanis Club permit. Ms. Gilman seconds. Vote: Unanimous.

g. Legislative Update

Vice Chairman Quandt agrees to look into the suggestion of Don Woodward from earlier in the evening. He advises The Board that there are a lot of bills in process, this will be very full three days.

h. Town Managers Report

Mr. Dean would like to extend a thank you to the people who turned out for deliberative session. The fact sheets regarding the different Warrant Articles are updated and available on the Town Website. He wishes to encourage people to review them for information.

i. Selectman's Committee Reports

Mr. Ferraro reports a Planning Board meeting this week. He reports the Budget Committee had a successful wrap up. He looks forward to getting together in April to work on improving information gathering for charitable contributions.

Ms. Gilman reports an Economic Development Meeting. She reports a Business Retention and Recruitment letter will be sent to local businesses Tuesday morning. She reports a Zoning Ordinance Committee meeting on Wednesday. The Zoning Committee is pursuing development for Portsmouth Avenue and a presentation should be available in a few weeks. She reports a Heritage Commission meeting for Wednesday.

Mr. Clement reports a Conservation Commission Meeting.

j. Correspondence

1. A letter from the Rockingham Planning Commission in regards to the expiration of the appointed Town Representatives in April 2011.
2. Town Clerk correspondence to and from David Morris in regards to the \$1.00 E-Registration fee.
3. A letter from a resident, praising the volunteer group TASC.
4. A letter from The American Red Cross, thanking the Town of Exeter for the donation.

5. A letter from Seacoast Family Promise, thanking the Town of Exeter for the donation.
6. A letter from Families First, thanking the Town of Exeter for the donation.
7. A letter from Start Something, Big Brothers Big Sisters of the Greater Seacoast, thanking the Town of Exeter for the donation.
8. A letter from the Town Manager to resident John Haslam.
9. A letter from John Haslam, a resident, to the Board of Selectman.
10. A letter from Angell & Company, LLC Certified Public Accountants regarding House Bill 1619.
11. An annual notice from Comcast regarding customer privacy policy, payment procedure, equipment compatibility, billing dispute and complaint procedures.
12. A power point presentation from New Hampshire Economic Outlook.
13. CEDS Steering Committee Minutes from February 1, 2012.
14. A letter from New Hampshire Department of Environmental Services to Mike Jeffers, regarding the approval of the Groundwater Discharge permits. The permit copy includes all of the conditions NH DES requires.
15. A notice of reminder that a Job Fair will be held by New Hampshire Employment Security on February 8, and February 9, 2012.

9. Review Board Calendar

The Board of Selectman will meet Monday, February 13, 2012 at 7:00 p.m.

10. Non Public Session - None

11. Adjournment

Ms. Gilman moves to Adjourn. Mr. Clement seconds. Vote: Unanimous.

The Board stood adjourned at 8:50pm.

Respectfully Submitted,

Jennifer Pond
Recording Secretary