

Town of Northumberland

Board of Selectmen

Meeting Notice and Proposed Agenda

Date: Monday, April 20th, 2020 Time: 6:00 PM

Place: Town Meeting Room – 10 Station Square

***Board of Selectmen business meetings will adhere to
Executive Emergency Orders #16 and #26**

**No more than 10 total people will be allowed in the meeting room at any point
During the meeting and those people must practice social distancing***

Select Board Members present: Chris Wheelock, Jim Weagle, Michael Phillips

Others present: Jim Gibson, Brian "Boo" Matson, Kim Howson, Lise Howson, Al Rossetto, Glenn Cassady, David Leavitt, recorder.

- 1. Chairman opens the meeting:** Chris opens the meeting and announces Jim will preside as he was informed of the agenda.
- 2. Acceptance of Minutes:** Michael makes motion to accept minutes from April 6, 2020. Chris seconds, all in favor, 3-0.
- 3. Selectmen Business:**

- a. Department Head Business: - Ambulance and Water/Sewer

Glenn reports: 2020 152 calls versus 175 calls in 2019. 18 requests for transfer, 8 accepted, 10 declined. Comstar report. 2020 commitment to date \$60,934.57 Payments to date, \$48,844.75. Because of the pandemic, calls are reduced and transfers reduced as hospitals try to keep the spread to a minimum. Staff is tight, but managing. Some have decided to sit this out, and some are committed to their hometown services. Expenses for this pandemic are being kept track of for possible reimbursement later. All trucks are up to date on services and updates at this time. Quotes for radios are cut in half, much more affordable.

Boo Matson reports for Police Dept. 7 new investigations have been opened, 2 arrests, no crashes. Zach Bishop will be taking final exam and will be cleared for solo work once he has ridden with the Chief or myself. Looking at 2 new officers, 1 full time and 1 part time. Continue to recruit for more fulltime officers. Working on cruiser maintenance. Sharon Copp has passed a background check and will join the department as a part time officer. During this time when calls are reduced, the time is being used to catch up on paperwork, vehicle maintenance.

Jim lets Boo know that the Governor's orders permit the municipality to use fund balances to pay for expenses associated with Covid-19.

- b. Discussion/decision of annual trail permission

Renew use of Main St., Melcher, Riverside and Station Square for parking.

Chris makes motion to accept permissions as last year, Michael seconds, all in favor, 3-0.

- c. Discussion of letter received regarding zoning matter on Longview Dr.

Chris the first issue is I received a number of calls about Shaun regarding the truck traffic on Page Hill. Shaun under the impression he could drive over roads because the temperature was below freezing. When Chris talked to Shaun he explained that even if the temperatures are below freezing the roads are not hardening up, so please suspend driving.

Second issue Long View residents request a cease and desist order. It is up to the Zoning Board but there has to be a public hearing. Two businesses are involved, Swallow and Cape Horn.

Covid-19 is presenting a hold up of hearings. Because the cease and desist involves 2 businesses Chris is not in favor of it. Hoping the road ban will keep Swallow from running trucks. Not fair because there has not been a public hearing.

Michael says he feels much like Chris, would like to have a public hearing, but not happy with the Page Hill issue.

It will be a month before hearings can be held and the road ban is off, hopefully Swallow will be limited in his driving. It also looks as if Swallow is selling his property and looking at property on Route 3.

Michael agrees that Zoning Board should do their thing first.

Lise Howson mentioned that an excavator was moved today.

Chris said he spoke with Shaun on Friday and Saturday.

Lise representing residents on Page Hill says that they have lost confidence in the Zoning Board because of last Zoning Board meeting comments.

Chris is aware of that conversation. Whether he was or not, Jerry did not come across as being impartial. Hope the lack of confidence is not in the system but with the comments. Wants to get hearings on the way, but wants to keep everyone safe. Wants both sides to be represented but need a bigger space.

Al wants to have the letter put into the minutes.

Lise asks the Select Board to include the letter in minutes.

As follows is the letter by residents to Select Board, and request to cease and desist to Select Board.

April 14, 2020

Town of Northumberland

Members of the Board of Selectmen

Members of the Planning Board

Members of the Zoning Board of Adjustment

For several months the Town of Northumberland has been aware that Swallow & Sons Landscaping is operating a business within a Timber Management Zoned District. Despite verbal and written objections submitted to both the Planning Board and Zoning Board of Adjustment in December of 2019 and January of 2020, the Town of Northumberland has allowed this business to continue operating.

It is clear that the Zoning Board of Adjustment refuses to follow the Town of Northumberland Zoning Ordinance. The Zoning Board Chairman, Gerald Crompton, stated, as noted on page 5 of the January 8, 2020 ZBA meeting minutes, that "we are going to have to get over that" in response to our objections to a business operating in our timber management zoned district. At that same meeting, the application for a special exception was brought forward by the Chairman of the Zoning Board and NOT by the applicant himself. On Page III-8 of the Zoning Board of Adjustment in New Hampshire, A Handbook for Local Officials, it lists the

procedures and purpose of a public hearing. #3 says

"Petitioner's presentation of the case". The petitioner, or applicant, did not present his case, the zoning board chair did that for him.

We are all aware of the errors previously made and corrected by town vote to change our zoning ordinance, however, a business is still not allowed in a Timber Management Zone either by permissible use or by special exception. The Zoning Board has argued that Swallow & Sons Landscaping is a home business. Whether it is a commercial business, or a home business is a moot point as neither is allowed under Timber Management.

Under RSA 674:33 paragraph IV (a) A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance. Regarding this authority, the Board of Adjustment New Hampshire states in its handbook on page II- 6 " Under this authority, the board of adjustment has the power to grant those exceptions that are **clearly specified** in the zoning ordinance. The legislative body, in enacting the ordinance, established what can be granted as an exception and the conditions which must be met before the board of adjustment may grant it. Unless a particular use for which an application is submitted is stated in the ordinance as being **explicitly allowed by special exception**, the board of adjustment is **powerless** to grant a special exception for that use. If this fact can be kept in mind, there should be no confusion between the meaning of "special exception" and " variance."

The following is on page III-25 of the Zoning Board of New Hampshire

Handbook: Is the application a request for a variance? If so...

- Would granting the variance not be contrary to the public interest?
- Could the variance be granted without violating the spirit of the ordinance?
- Would granting the variance do substantial justice?
- Could the variance be granted without diminishing the value of abutting properties?
- Would denial of the variance result in unnecessary hardship to the owner?

If the answer to all five questions is yes, the variance should be granted. **If the applicant fails to meet any ONE of the five variance requirements, it cannot be legally granted and should be denied.**

Swallow & Son's Landscaping would also not meet the criteria for a variance. For example, the most obvious, clear cut criteria **NOT** met is "unnecessary hardship". There is nothing distinct or different about the Swallow property from other properties in the district that would only allow the use to be for the operation of Swallow & Sons Landscaping.

Page II-10 of the Zoning Board of New Hampshire Handbook states "Requests for variances are often the most difficult cases that zoning boards have to consider. Opposition of neighbors or the fact that no abutters appear at the hearing should not sway boards. The board must review each of the five variance criteria and grant the variance, **only if they are all met.**" The board does not have the discretion to grant the variance because they like the applicant or because they believe the project is a good idea.

The following is on page B-2 of the Zoning Board of New Hampshire Handbook:

The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area.

(a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a "fair and substantial" way.

(b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. **The use must not alter the essential character of the neighborhood.**

Page II-16 of the Zoning Board of New Hampshire Handbook states "All requests for variances should be reviewed very carefully. Denial of a proper variance request may result in a taking or loss of legitimate property rights of a landowner while **the granting of an improper variance may alter the character of a neighborhood, forever beginning a domino effect as adjacent, affected properties seek similar requests due to the now changed character of the area.**"

We respectfully request that the Town of Northumberland issue a cease and

desist order of all business operations to Swallow & Sons Landscaping, located at 98 Page Hill Road, Northumberland NH and the removal of all business supplies, including but not limited to road deicing materials and landscaping materials, equipment and machinery from the property.

Respectfully Submitted by:

Michael & Theresa Cormier, Abutter

Sue & Joe Marineau,
Resident of Page Hill Road
Susan Wentworth,
Resident of Chellie Lane
Alan & Gail Rossetto,
Abutter

Linda and Jayne Day-Cordes, Abutter

Michael & Ann Leahy,
Resident of Longview Drive
Kim & Lise Howson,
Resident of Longview Drive

Cease and desist request:

Lise Howson representing the residents of Page Hill

We are asking the Board of Selectmen to use its executive power to enforce the laws and regulations of the Town of Northumberland regarding a business being operated at 98 Page Hill Road which is in violation of zoning ordinances.

If the select board chooses not to take action, the board is granting a de facto immunity to the business from the laws and regulations that the other residents of the Town of Northumberland are required to follow. It is becoming apparent that this business and owner are operating under a different set of standards than the rest of the residents. We have identified violations to posted load limits, violations to the zoning ordinance, environmental concerns, noise concerns and threatening behavior. None of which have been properly addressed. This would lead one to believe there is preferential treatment and the town officials that reviewed the concerns are not acting in an impartial manner.

The purpose of the Timber Management District is to permit forestry activities to occur with minimal interference from unrelated development. The business that is operating at 98 Page Hill Road is not in compliance with the purposes of the district and is detrimental to the resources or uses which they protect.

For these reasons the zoning ordinance was designed to prohibit business operation in Timber Management and we respectfully request that the Town of Northumberland issue a cease and desist order of all business operations to Swallow & Sons Landscaping, located at 98 Page Hill Road and the removal of all business supplies, including but not limited to road deicing materials, landscaping materials, equipment and machinery from the property

Al is the Code Enforcement Officer and asks the Select Board for guidance on how to proceed with violations.

Chris tells Al if we go by the rules until the hearings, Cape Horn will have to close.

Al says his job requires him to be impartial and that both businesses are in violation.

Michael asks Al where did the title of Code Enforcement Officer come from?

Al says that originally he was under the impression he was the building inspector. But building inspector is only 1/3 of the job, the others are land use decisions and zoning ordinances per NH RSA.

Chris: both businesses started under the assumption they could have their business under Timber Management. Swallow and Dr. Walker have done everything they were asked to do. After years with both businesses find it hard to issue a cease and desist order.

Al agrees with Chris that Dr. Walker did everything he was asked to do but commercial businesses are not allowed under Timber Management.

Chris reminds Al that the same action could have been taken against every homeowner prior to the March meeting.

Lise: homes are allowed under Timber Management as special exception.

Chris rebuts that per Legal counsel a business could fall under a special exemption depending on circumstances.

Al: Agreed, however the Zoning Board has applications from Swallow for special exemption for 1, a garage, and 2, a salt shed.

Michael: I'm confused. The Zoning Board wants a public hearing about the businesses, that seems to be their territory. Does not seem to be their territory to discuss a salt

shed, it would be a Planning Board, building permit issue. Would like to have a May hearing. Personally, Al should not act under role of building inspector acting as someone who preempts the Zoning Board. Don't want you to do that until this hearing happens.

Al: Is that opinion of Board of Selectmen?

Chris: Don't need a motion, agree with Michael, Al to look at building applications. Chris will look at scheduling a bigger building for a hearing. Maybe there could be one spokesperson for the neighbors in order to cut down the amount of people, will try to arrange as soon as Elaine gets back.

Michael: if the meeting does not happen, I would be open to consider a cease and desist.

Al: Thank you for your decision, I will do nothing.

Chris: Will put your letter on file, I will work on scheduling a meeting.

Lise: I will send an email to Becky.

Al: Is a Podcast possible?

Jim: not at this point but working on it.

Discussion on electronic copy of meeting minutes, not enough detail in minutes.

Chris says that there is no electronic backup, recordings are recorded over after transcribed.

Al would like to have electronic version worked on. Board agrees to work on that.

g. Discussion/decision of "Load Limit Enforcement"

Michael explains that he has lived here for years and understands that when the road ban is on you don't get heavy deliveries. We are spending extra money on repairing roads because some people do not want to comply with the ban.

Jim brings up the loggers in the area, Michael asks if they asked permission. Jim says yes they did.

Chris mentions that Perras gets a few heavy loads that are scheduled during the road ban and permission is asked by Lancaster DOT. Sometimes an exception is made and sometimes not depending on the circumstances.

Lise: Per the State RSA, you can fine.

Chris: There are exceptions to the ban, fuel trucks, milk trucks and the State trucks. Will have to talk to Peter on how to handle.

Glenn: The roads are better than last year, but, they are getting very rutty because of Swallow's trucks, he was spoken to. There are 3 culverts that may collapse because of the weight.

Lise: Swallow's website advertises deliveries during mud season.

Chris has mentioned to Shaun on Friday and Saturday and he is still doing it. Chris will speak to Peter about this.

Glenn: in order to get a bond you have to post road bans.

Conversation on how far do you go with bans and business in residential. Put a weight ban limit of 25 tons. Signage to go up quickly, Peter to enforce and issue ticket and ticketed person goes to court, court determines fine. We can't set the fine but the bond

should be a half million.

Al brings up that the load limit sign is missing from the Page Hill/Lost Nation side but still up at Lancaster end.

Chris: it was there Saturday morning.

Al: it is missing now.

Next subject:

d. Discussion of letter received regarding landlord/tenant matters

David Leavitt present to explain situation and how he has tried to resolve with Landlord and exterminator company. Nothing to be done until after Covid-19.

Chris mentions that when it comes to health issues, regardless of Covid-19, they should be dealt with.

Jim: Four apartments have been treated but not the whole building.

Chris will follow up with the landlord and may write a letter after investigating.

e. Discussion/decision of permit requirements for Transfer Station

Rotobec and Normandeau should have permits for the Transfer Station. Becky to contact both.

f. Discussion of future plans to re-open administrative offices per Governors orders. Will leave it up to Min, Robin and Becky on how they feel.

Mike mentions common sense should prevail but that we should do what Governor orders say.

Chris received a phone call from Pastor Carl on reopening Coos County. Seems complicated, would have to check everyone to see where they actually lived. Government and local are doing fine, stay with what's in place.

g. Discussion/decision/signing of EMPG Program Grant Agreement

A Federal/USDA grant to purchase emergency radios and accessories. There have been no public meeting comments. Michael makes motion to accept, Chris seconds, all in favor, 3-0.

h. Discussion/decision/signing of net meter letter to State

Michael makes motion to sign, Chris seconds, all in favor, 3-0.

i. Discussion/decision/signing of Road Agent Appointment

Discussion to appoint Glenn as Road Agent. There was a letter suggesting Randy Potter. Motion by Michael to appoint Glenn as Road Agent, Chris seconds, all in favor, 3-0.

j. Cash Summary Review

Michael gives monthly cash summary:

Start \$1,200,000

Revenue \$137,000 – pre property tax revenue

Expenses \$320,000 of which \$150,000 went to the school

Balance \$970,000

Should be good.

4. Summer Mowing Same as Last Year

Motion to keep Paul as mower made by Michael, seconded by Chris, all in favor, 3-0.

5. Applications/Permits and Warrants:

a. Building Permit Applications (4)

1. Tracey Morrill, 641 Lost Nation Rd. - replacing an existing garage attached to the house that partially fell in with the last wind storm. It will be a similar building, but 1 ft. wider, 24 X 46 stick-built clapboard with metal roof and electric, zoned agricultural. Contractors - Larry Gray for demo, Rick Robinson builder, and Fred Rainville electrician. It's on the rear of the house away from the road, between the house and barn and meets the setbacks.

Motion to issue permit by Michael, seconded by Chris, all in favor, 3-0.

2. Bruce & Janice Oakes, 466 Brown Rd. - They are hiring Ron Ash to remove all roofing on the house and garage to repair the decking and flashing, installing ice dam protection and reshingling...using a demo can, Paul.

Motion to issue permit by Michael, seconded by Chris, all in favor, 3-0.

3. James & Claudette St. Laurent, 66 Old Village Rd. - want to build a 24 X 24 carport with back and side walls, no door just on ledgepack - log siding with a black metal roof -contractor is A & P Landscaping & Building from Whitefield. It's on over 18 acres, but would be 15 ft from side boundary (minimum is 10) and a little over 50 ft from the center of Old Village Rd.

Motion to issue permit by Michael, seconded by Chris, all in favor, 3-0.

4. Jesse Labbe, 38 Riverside Dr. - Jesse wants to build a 12 X 32 open deck on the front of the house to replace the 3 X 5 step they have there now. It's zoned Residential High Density, and the current distance from the 3 ft. wide step is 62.3 ft to the center of Riverside Dr., so, once the deck is built, it would be over 53 ft., still meeting the 50 ft setback.

Motion to issue permit by Michael, seconded by Chris, all in favor, 3-0.

6. Water/Sewer Abatements (4)

Northumberland School District	\$27.97
Groveton Village Precinct	\$3.48
Dennis Seagull	\$2.94
Richard and Nancy Marshall	\$65.40

Michael makes motion to accept all abatements, Chris seconds, all in favor, 3-0.

7. Yield Tax Warrants (3)

\$2,879.65

\$207.62

\$481.93

Michael makes motion to approve all 3 warrants, Chris seconds, all in favor, 3-0.

8. First quarter sewer drain Warrant for runoff

\$17,500 – the half budgeted. Michael makes motion to sign warrant, Chris

seconds, all in favor, 3-0.

9. Public Matters To Be Addressed By The Board:

Wanda Cloutier called today at 12:25 pm for REC dept. and wanted to know if she could schedule a meeting in the meeting room. Becky told her meetings were suspended but she would check. There would only be 5 of them and she would clean and disinfect after meeting.

Michael is fine and would make a motion to approve. Second by Chris, all in favor, 3-0.

Will proceed as normal for May 4th. Glenn wants to clean pool, waiting for May 4th. Will work by whatever rules apply.

10. Non resident property owner transfer station solid waste.

New applicant Mark and Kelly Yell of Potato Barn Antiques. Michael makes motion to approve, Chris seconds, all in favor, 3-0.

More public matters? Glenn reports that they have worked hard on trailers. $\frac{3}{4}$ stripped, only studding and roofing left. May pull one to the transfer station. Wish the park would have to sit on the trailers.

Motion to go into Non-pub by Chris at 7:23pm, second by Michael, all in favor, 3-0.

11. Non-Public Session: (Pursuant to RSA'S 91-A:3,II (c)):

a. Resident Matters (5)

Motion to come out of non-pub by Michael, second by Chris, all in favor, 3-0.

12. Adjournment:

Motion made by Michael to adjourn at 7:30pm, second by Chris, all in favor, 3-0.

Next meeting, May 4, 2020

Respectfully submitted,

Pam Kathan
Select Board Minute Taker

Minutes approved by Select Board Members on _____

X

Chris Wheelock
Northumberland Select Board Chairman

X

Michael Phillips
Northumberland Select Board Member

X

Jim Weagle
Northumberland Select Board Member