

**NEW DURHAM BOARD OF SELECTMEN
New Durham Town Hall
July 9, 2020, 8:00 a.m.**

Final Approved 07-23-20

In accordance with Governor's Executive Order #12, pursuant to RSA 91-A: 2

Attendees log into: Join Zoom Meeting

<https://us02web.zoom.us/j/87287521447?pwd=VHJzOGtaWnJVTHlwTTFLOtJ6RUxaZz09>

Meeting ID: 872 8752 1447 Password: 374353; Or via telephone number: 1-646-558-8656;

Meeting ID: Meeting ID: 872 8752 1447; Password: 374353

Technical difficulties contact Town Administrator Scott Kinmond at skinmond@newdurhamnh.us or by phone at 603-556-1516.

Note: Town of New Durham offers no security assurances to those connecting via PC to a third party software and hardware not configured or controlled by our IT Service provider.

PRESENT

Chair David Swenson – via Zoom, at Town Hall

Selectman Cecile Chase – via Zoom

Selectman Dorothy Veisel – via Zoom

ALSO PRESENT

Scott Kinmond, Town Administrator – via Zoom at Town Hall

Mike Gelinas, Resident – via Zoom at Town Hall

Shawn Bernier, Police Chief – via Zoom at Town Hall

CALL TO ORDER

Chair Swenson called the meeting to order at 8:00 a.m.

Chair Swenson stated that due to the State of Emergency declared by Governor Sununu and pursuant to Executive Order #12 the Town is authorized to meet electronically. He stated there is no physical location to observe this meeting. However, in accordance with the Order it was confirmed that they are providing public access to the meeting by telephone with additional access possibilities by video (Zoom); all members of the Board of Selectmen and Town Administrator have the ability to communicate contemporaneously during this meeting; the public has access to contemporaneously listen and participate via links posted on the agenda. Chair Swenson confirmed the meeting was posted appropriately with access numbers. He stated in the event the public is unable to access the meeting it would be adjourned and rescheduled. Chair Swenson stated in the event they need to go into non-public session a separate phone number will be used for the Board of Selectmen members to use and they will then enter nonpublic session. Chair Swenson stated all motions would be taken by roll call; roll call attendance was taken for those participating in the Zoom meeting. Chair Swenson confirmed all participants not physically attending at the Town Hall location, including the Board of Selectmen members, are alone.

AGENDA REVIEW

Selectman Chase asked if there were changes which prompted this meeting; she noted the agenda items were discussed at the last meeting and the July meeting was delayed to July 23. Chair Swenson stated two things came up since the last Select Board meeting, particularly with regards to the litigation item on the agenda, which was the reason the meeting was called. Selectman Chase stated she wants to be clear for what constitutes a call for a special meeting. Chair Swenson indicated that is outlined, to a certain extent, in the Select Board Guidelines developed when Selectmen Swenson, Chase, and Doherty were on the Select Board.

Appointments/Announcements

Powder Mill Snowmobile Club – Project Updates & Club Use of Town Roadways

Mike Gelinas, resident, stated the snowmobile and ATV club have been working on the trails in the Devils Den Road area. He stated it was roughly \$26,000 worth of work on the trail and the big hills were crowned nicely to avoid erosion. Mr. Gelinas presented a list for review by the Board of the hours and estimated values of the work completed. Mr. Gelinas stated there are two other projects to replace crushed culverts on Webster Road; he applied for grants but did not receive them. He stated there has been discussion with a resident on the top of the Ridge who has an excavator and has offered to clean up around Tan road for easier trail access, at no cost to the Town. He thanked Russ Walden for supplying equipment. Mr. Gelinas gave the Board an updated list of all the Class V roads and crossings which are used by the clubs.

Use of Trail Maintenance Vehicles on Class 5 Roads

Police Chief Bernier asked if the meeting done in the 2000s regarding trail maintenance vehicles going down roads was done properly. He stated they are supposed to let abutters know 14 days in advance of a public hearing that OHRVs would be operating on a Class VI road. Police Chief Bernier stated he was given this information by a Game Officer and was requested to ask this question. It was confirmed the exact date of the meeting is unknown but both Mr. Gelinas and Police Chief Bernier recall the meeting. Chief Bernier stated he wants to be sure if the Board of Selectmen is giving permission for OHRVs to operate on the roads that it is being done properly. Mr. Gelinas stated he spoke with Chris Gamache, NH Bureau of Trails and was advised the registration for maintenance vehicles is different from ATVs; he will find out more information. After discussion, Chair Swenson suggesting posting the public meeting for the first scheduled meeting in August should a Public Hearing be required; Mr. Gelinas asked how they would notify nearly 800 property owners. Chair Swenson indicated that it may be done via newspaper / web announcement similar to other Public Hearings but asked Town Administrator to follow up with Town Counsel for advice.

NEW BUSINESS

SELT Parking Lot – Drainage Request

Chair Swenson stated the Board previously had reviewed the request from South East Land Trust (SELT) but it was determined there wasn't enough information for the Board to take a formal action at that time; the Planning Board was asked to give recommendations and any actions they deem necessary. He stated the Planning Board met on July 7, 2020 and he asked Selectman Veisel for an update. Selectman Veisel stated the Planning Board reviewed the plans, found them to be sound, and didn't see a need to have it reviewed by the Town Engineer as Don Vachon, Dave Bennett, and three

gentlemen from NH DOT had all expressed the opinion that they felt the storm water runoff would be adequately treated and would not threaten the road at all. Town Administrator Kinmond stated the official reviewed the drainage plan and it will be a better drainage system as it will take the storm water from that area and traverse a portion of Town property to access another cross culvert. He stated the Planning Board was satisfied with the plans; SELT requested a Memorandum of Understanding / Drainage approval. Town Administrator Kinmond stated the Town property is a natural swale and if there is an event where it needs to be cleaned it would be fully the responsibility of SELT. Selectman Chase noted volunteers are managing this project; it was clarified SELT is responsible and Mr. Gelinas stated he would be involved with installation.

Chair Swenson made a motion to give SELT the right to extend and to maintain drainage and embankments from the construction of its trailhead parking lot, to beyond the limits of the Town right-of-way, passing through Town land, Map 240, Lot 007, along near Merrymeeting Lake Road & Brackett Rd, to the culvert under the road. This will be necessary to provide drainage and embankments at such an angle as will maintain the material of said slope against ordinary erosion in accordance with highway or sidewalk construction. Survey map and drawings are provided and would authorize the Chairman of the Board of Selectmen to sign on behalf of the Town of New Durham and understand this motion is based on it being consistent with the Planning Board action of July 7, 2020. Discussion: Selectman Veisel noted the map and lot number listed on the agenda is incorrect; she stated the motion by the Planning Board was to cover both lots being used for parking lots. Chair Swenson stated the Board of Selectmen action is only in regards to the one which involves Town property. **Selectman Veisel seconded the motion. Roll Call Vote: Selectman Veisel – aye; Selectman Chase – aye; Chair Swenson – aye. Motion passed 3-0-0.**

Litigation and Legal Firm Representation

Chair Swenson stated the Town of New Durham has been officially served with a civil action in regards to a June 25, 2017 incident in which a Police Department employee was looking after an accident that occurred; there is an allegation that some things were not done appropriately. He stated the individual bringing the suit originally collected insurance from the other party's insurance and recently filed against the Town for the same incident and alleges things were not done according to required procedures in regards to investigation of the incident. Chair Swenson stated the information has been provided to Primex. Police Chief Bernier stated the action is not only against the Police Department but the Town as well in regards to the intersection and road maintenance. Chair Swenson stated the accident was unfortunate but the claim was paid to the limit of the insurance and now this is seeking additional compensation from the Town's insurance.

Chair Swenson stated there were some actions in December 2019 and February 2020 due to some changes in the current Town counsel. At that time there was concern about continuity of coverage relative to legal opinions and responses in a specific case; on December 31, 2019 a code violation case was moved to Drummond Woodson and then in February 2020 an engagement letter was approved for the same litigation action which is still ongoing. He stated the attorney in that case moved to another firm and they wanted legal continuity. Chair Swenson stated after some discussions with Town Administrator Kinmond it was his understanding there are some concerns regarding the services of the

current Town Counsel and it seems to be the services from the other firm are more active and involved. Town Administrator Kinmond explained the agreement with Mitchell Group allows for other cases to be consulted by the firm; he stated they are not bound by the current legal representation to that firm. He stated the firm of Drummond Woodsum is a larger, more comprehensive firm than the current Town Counsel. He also noted Primex uses Drummond Woodsum for some of these types of cases. Selectman Chase asked if there have been problems with timeliness of responses with current Town Counsel; Town Administrator Kinmond replied yes and noted it is a smaller firm with less staff but the Land Use opinions have been good. Chair Swenson stated there is also the option of picking and choosing firms for different cases if the Board feels that is an appropriate decision. Selectman Chase suggested using the Drummond, Woodsum firm on this case due to their relationship with Primex; moving forward she suggests they look at cases individually unless there is a change in contracts or discussion with the Mitchell Group. Selectman Veisel suggested keeping the access available to the Mitchell Group for the Planning Board and Zoning Board of Adjustment unless there is a compelling reason to change but using Drummond for other cases. Town Administrator Kinmond suggested it could be cumbersome to come to the Board for each case. Selectman Chase stated she just wants to be fair to the Mitchell Group, who have served the Town well, and suggested having a discussion with them. Chair Swenson noted there were recent discussions with the Mitchell Group in regards to concerns. By consensus of the Board it was agreed the cases for Land Use related issues would continue with Mitchell Group and other cases could go through Drummond Woodsum to ensure they are getting up to date expertise and representation.

Selectman Chase stated she is an abutter to the land use case and requested an update on the status of the case as she has seen no change in the condition of the property. Town Administrator Kinmond stated they were notified last week by Attorney Whitley of Drummond Woodsum the case has been scheduled for a final hearing on August 18, 2020 at Strafford County Court. He stated the Building Inspector and assistant will have to testify; nothing has changed in regards to the preliminary injunction awarded by the court. No signed agreement has been returned and Town Administrator Kinmond stated the attorney was informed that would remain open until the court date in order to obtain compliance. Selectman Chase asked if Code Enforcement personnel would be able to provide photographs; she explained those originally submitted did not provide a true full representation of the condition of the property, specifically the motorhomes as there were minor children living in them at that time. It was noted that due to privacy issues, full photos may be problematic but additional photos may be taken. It was advised that any photos planned to be used in court be fully turned over to opposing sides to make sure they can be submitted in court.

Next Meeting

July 23, 2020, 8:00 a.m.

August 6, 2020, 6:00 p.m.

August 13, 2020

APPROVAL OF MINUTES

Meeting of June 1, 2020 – Edits were made. **Selectman Chase made a motion to approve the minutes as amended. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Veisel –**

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aye; Selectman Chase – aye; Chair Swenson – aye. Motion passed 3-0-0.

Meeting of June 8, 2020 – Edits were made. **Selectman Chase made a motion to approve the minutes as amended. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Veisel – aye; Selectman Chase – aye; Chair Swenson – aye. Motion passed 3-0-0.**

Meeting of June 15, 2020 – Edits were made. **Selectman Chase made a motion to approve the minutes as amended. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Veisel – aye; Selectman Chase – aye; Chair Swenson – aye. Motion passed 3-0-0.**

ADJOURN

Chair Swenson made a motion to adjourn. Selectman Chase seconded the motion. Roll Call Vote: Selectman Veisel – aye; Selectman Chase – aye; Chair Swenson – aye. Motion passed 3-0-0.

The meeting was adjourned at 9:41 a.m.

Respectfully Submitted,

Jennifer Riel, Recording Secretary