

TOWN OF HAMPTON
MINUTES OF THE BOARD OF SELECTMEN
MONDAY, SEPTEMBER 08, 2008

6:00PM Viewing of property at 2 Dover Avenue RSA 231:75

6:30PM Non-Meeting with Counsel – RSA 91-A: 2, I, c

PRESENT: William Lally, Chairman
James Workman
Richard Nichols
Richard Bateman
Frederick, Town Manager
Attorney Constanza
Attorney Mark Gearreald, Town Attorney

REGRETS: Richard Griffin, Vice Chairman

7:15PM

Chairman Lally called the meeting to order at 7:15PM

SALUTE TO THE FLAG

Chairman Lally introduced those in attendance.

I. Hearing on claim under RSA 231:75 for 2 Dover Avenue

Chairman Lally explained the reason for the Hearing.

Mr. Workman excused himself from voting on the hearing.

Attorney Francis Murphy, attorney for the petitioner Rosemary Pittman.

Attorney David Donovan, attorney representing the Town.

Attorney Murphy raised objections to Attorney Donovan's role in representing the town, due to representation for the Contractor in another case, which creates a conflict of interest.

Attorney Donovan qualified that there is no conflict of interest for the purposes of this hearing.

Attorney Murphy made an offer of proof "that the legal issue does the statue fits", and requested that the Board vote that the claims alleged facts fit the stature scope to move forward.

TOWN OF HAMPTON
MINUTES OF THE BOARD OF SELECTMEN
MONDAY, SEPTEMBER 08, 2008

Attorney Constanza explained that the determination of facts; as claimed under the statute need to be heard before the Board could make the decision on whether the statute applies.

Attorney Donovan agreed that the offer of proof needs to be heard.

Attorney Murphy submitted his document, a report of the claim as an offer of proof that is the basis of the claim. Attorney Murphy, in addition submitted a written summary that outlined the highlighted areas of the document to the Board. Attorney Murphy read from that summary.

Attorney Donovan presented to the Board his findings regarding this petition. Attorney Donovan pointed out that the petition was incorrectly named with respect to who has filed the petition. With regard to this petition, the statute under which this petition was filed, the statute instruct the selectmen to view the property for damages and assess for damages from the permanent grade change in the road which is the language of the statute, the allegation of damages are from dewatering and vibrations. The statute does not apply to this claim, as the damages viewed were alleged damages from dewatering and vibrations. In addition, the viewing and inspection show that the damage is old, as in, grass is growing in the cracks and the cracks have old patches. The grade change was temporary. The report that Attorney Murphy submitted reference and applies to the Kings Highway road repair and not to Dover Avenue, which are in different areas of town and have different soils and characteristic; obviously, someone did not do their homework. Attorney Donovan argued that the plaintiffs could not plead their case under RSA 75.

Attorney Constanza clarified the procedural issue before the Board; the summary judgment procedure; and if what has been presented to the Board by Attorney Murphy does it fit the Statute criteria and is accepted, or not, and then this would move onto superior court.

Board Discussion.

Mr. Nichols inquired to Attorney Murphy a question about the procedures under the RSA 231:78. Did Attorney Murphy have any proof that the town directly participate in the work outside of the house, Attorney Murphy respond that he did not look under that statute; to see if it applies; as it pertains to this claim. The Town [had] supervised through the auspicious of the Engineer. The engineering was doing the supervising as the Town hired them. Attorney Murphy did not ask himself these questions in preparation of this.

Mr. Bateman asked if the Engineer take on all the responsibility, Attorney Murphy stated that the Engineer does not take on all the responsibility.

General discussion with respect to the following: OSHA's responsibility in the construction of the road; the Town's responsibility under RSA 75, which was rewritten in 1848; the viewing of the property and how the alleged damages occurred, either by outside influences such as settling, the age of the building; or the soils on which it is built.

Mr. Nichols MOTIONED that the statute RSA 231:75 does not apply based on the language in the in RSA 231:78, in that it does not appear that the Town was directly involved and the evidence given does not prove that the Town was directly involved . Mr. Bateman SECONDED.

TOWN OF HAMPTON
MINUTES OF THE BOARD OF SELECTMEN
MONDAY, SEPTEMBER 08, 2008

VOTE: 3-0-1 (Workman)

II. Presentation of Commendation to Mr. Robert Pierce

Chairman Lally introduced Mr. Pierce and read the commendation to residents of the Town and to Mr. Pierce.

Applause.

III. Public Comment Period – No Public Comment.

IV. Announcements and Community Calendar

Primary Election is tomorrow and remember to vote.

Commemoration of September 11, 2001 will be held next Thursday.

V. Appointments

1. Public Works Director – Departmental Update

Mr. Price summarized his report to the Board.

General questions from the Board: the Vandalism at the Transfer Station and surveillance videos cameras, investigating the implementation of a system; Smuttynose's discharge requirements, Mr. Price is working diligently with Smuttynose on that issue; if the Town have issues with the recent rain at the Seafood Festival, no major problems occurred; Recycling at the festival, the Recycling effort was successful at the Seafood Festival.

2. Larry Bingeman, Aquiron Water - Discussion on the Water rate increase

Larry Bingeman presented a power point presentation that established the reasons for the Water Rate Increase to the PUC (Public Utilities Commission). Mr. Bingeman recognizes that proposing a rate increase at this time "is never a good time".

This is a 21% increase overall. The proposal includes a step increase as well, which includes the cost of the replacement of the Mill Road Water Tank. The rate increase is driven by the improvements and investments the company has done.

General questions from Board members and the Town Attorney on what the particular aspects from which the rate increase comes from.

3. Skip Webb – "James House Call to Muster"

Mr. Webb [in costume] read a historical document calling the public to participate in the "Call to Muster".

Mr. Bateman MOTIONED echoed the MUSTER. Mr. Lally SECONDED.

VOTE: 4-0-0

Minutes – August 11, 2008 & August 25, 2008

Minutes August 11, 2008

TOWN OF HAMPTON
MINUTES OF THE BOARD OF SELECTMEN
MONDAY, SEPTEMBER 08, 2008

Page 1: Mr. Phelan to Mr. Gopalan, of 21 Windmill Lane; change Palham to Gopalan.

Mr. Bateman MOTIONED to accept of the minutes of August 11, 2008 as amended. Mr. Nichols SECONDED.

VOTE: 4-0-0

Minutes August 25, 2008

Page 7: Mr. Bateman Seconded the motion.

Mr. Bateman MOTIONED to accept of the minutes of August 25, 2008 as amended. Mr. Nichols SECONDED.

VOTE: 3-0-1 (Workman)

Mr. Bateman asked of the Town Manager a question on the Employee Contracts regarding the one-year probation period for Department heads, if they are requested to move on. Mr. Welch responded that it occurs usually at the 10 month, as each employee is given a monthly performance review.

VI. Old Business

1. Town Manager's Report

1. Mr. Welch summarized his report to the Board.

General Discussion on the report and the following topics: Scheduling of the perambulation of Hampton Falls; Retirement Legislation; De-classify the minutes on the Non-Public Session for Negotiations; Lane closure on the Underwood Bridge and the pedestrian paths.

The Board had consensus on the following items:

- i. Televising the non-partisan debates
- ii. Conversations with the candidates for representatives at the High School and whether it would be possible for CH. 22 to televise them.
- iii. Scheduling of a meeting with the CBA Council for employee contracts.

2. Taylor River Estates and Cessna Way

Discussion on Taylor River Estates

Mr. Welch explained the history of Taylor River Estates. The question of whether this road is or is not a regular public highway built in accordance with subdivision regulations standards. Taylor River Estates is not a regular public road under the 1983 Planning Board Subdivision Regulations Standards. The application to the Planning Board was specific in that this road was a road for a mobile home condominium park; and was and is incorporated as a 366B entity.

Mr. Welch stated that he believes the Town should not be accepting this condominium road or for that matter any condominium road for approval as emergency lane.

TOWN OF HAMPTON
MINUTES OF THE BOARD OF SELECTMEN
MONDAY, SEPTEMBER 08, 2008

Mr. Welch's recommendation is that the Board should not approve this road as an Emergency Lane or for that matter, any condominium's road or roads be approved as Emergency Lanes.

In addition, there is validity to that statement that the road is not a regular highway either, in that the road does not meet the minimum specification of the 1983 Subdivision Regulations Standards for the construction of a road. The minutes of the Planning Board show that during the approval process for the Developer stated that he would not be constructing the road to the specifications of the Subdivision Regulation Standards of 1983 for this condominium development.

Cessna Way:

Mr. Welch explained that the Planning Board documents and Cessna Way is not a street but an utility way and an access way to two lots. Mr. Welch's recommendation is that this way as well should not be approved as an Emergency Lane.

Consensus of the Board is that the above two requests are not within the purview of the Board and the jurisdiction to approve them as Emergency Lanes; now or in the future.

VII. New Business

1. Petition for Accessible Parking Space and Street Light Pole on J Street

Consensus that the Board discuss the Town Managers memorandum regarding the new street lighting at the Beach will be discussed with the petition for the street light pole on J Street.

Mr. Welch explained that there are three issues regarding the Beach Street Lighting.

1. The conduits for the street lighting system were installed in the sidewalk during the reconstruction, but the "wiring" for street pole lighting was not.
2. The specific areas in which the light poles were to be installed (two poles per street) would have had a "base system" built under the sidewalk. The areas of the base system would have held the electrical and mechanical components for light pole and that base system location would have been identified by a "knock out"; which is an area that is scored or identified by plating that could be popped off. The locations of the knock outs for the base system were not installed/identified and so the locations of each base system is unknown. The wiring in these base systems may not have been installed.
3. The current type of Mercury Vapor lighting is now outlawed under Federal Regulations and although the lights can be replaced, eventually when the bulbs become unavailable the lighting system, the light system will be replaced High Pressure Sodium Lighting.

All the above items cost additional money that was not factored or budgeted in the reconstruction of the streets at the Beach.

Discussion

Fay, Spofford and Thorndike (FST) is meeting with Town Officials on Friday and questions will be addressed concerning the above items and other items that are outstanding regarding the reconstruction of the streets at the Beach.

TOWN OF HAMPTON
MINUTES OF THE BOARD OF SELECTMEN
MONDAY, SEPTEMBER 08, 2008

The petition is to light the parking area of Preston's Parking lot, to deter vandalism, and the pole in question had never had a light on it. The intent of street lighting is not to illuminate private property, and any lighting installed would be focused on the street and not on the parking lot.

The request for the light for the pole was tabled.

General discussion on lighting problems within the town and the costs associated with installing new lighting throughout the town.

Mr. Bateman MOTIONED to designate one Accessible Parking Spaces on J Street. Mr. Workman SECONDED.

VOTE: 4-0-0

General discussion on proposed warrants for town meeting; recycling standards, the types of material to be recycled (education of the populous) and curbside pick-up differences between number of units, residential and commercial and mandatory recycling.

Attorney Gearreald requested to meeting with the Board after the meeting under RSA 91-A

VIII. Consent Agenda

1. Raffle Permit "The Birchtree Center"
2. Appointment of Debra Perry, as an alternate to the Lane Memorial Library Trustees
3. Request from the Southeast Land Trust for Hampton's Tax Parcel Data from the Rockingham Regional Planning Commission
4. Cemetery Deeds (Kooyoomjian, Kingston, Cull, Heath, Woodburn, Baker and Philbrick) at the Hampton Cemetery
5. Hampton Rotary Club request for placement of a banner (1st Annual Golf Outing) across Route 1, south of High Street.
6. Parade License – Tri-State Seacoast Century Weekend

Mr. Bateman MOTIONED to move the consent agenda. Mr. Nichols SECONDED.

VOTE: 4-0-0

IX. Adjournment

Mr. Workman MOTIONED to adjourn. Mr. Bateman SECONDED.

VOTE: 4-0-0

Meeting adjourned at 09:43PM

Chairman

Non-Public meeting under RSA 91-A