

Note: Draft minutes are subject to corrections, additions and deletions.

February 13, 2017

PRESENT: Rusty Bridle, Chairman  
Jim Waddell, Vice-Chairman  
Rick Griffin, Selectman  
Phil Bean, Selectman  
Regina Barnes, Selectman  
Frederick Welch, Town Manager  
Mark Gearreald, Attorney

### SALUTE TO THE FLAG

#### I. Public Comment Period

#### II. Announcements and Community Calendar

Selectman Waddell: drive safely, slow down, take it easy, and watch out for pedestrians.

Selectman Griffin: thank town employees; they are doing a great job.

Chairman Bridle: adopt a fire hydrant.

#### III. Consent Agenda

##### 1. Fire EMS Warm Zone Equipment Grant \$6,000 Acceptance

Selectman Barnes MOTIONED to MOVE the Consent Agenda SECONDED by Selectman Waddell.

VOTE: 5-0-0

#### IV. Approval of Minutes

##### 1. January 30, 2017

Selectman Waddell MOTIONED to MOVE the APPROVE the Minutes of January 30, 2017 as submitted SECONDED by Selectman Barnes.

VOTE: 5-0-0

#### V. Appointments (2:34)

##### 1. Chris Jacobs, DPW Director & Jen Hale, Deputy DPW Director a. Departmental Update

Director Jacobs: transfer station was closed today, will be open tomorrow; many of our people worked 30 hours; thanks to our people. Solid waste disposal for 2016 was only 38-ton increase

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and recycling was only a 6-ton increase over 2015; rate stayed the same at 30%. Wastewater treatment processed 848,000,000 gallons; 3,142 tons of sludge; 1,555,000 gallons of septic waste. Current projects underway is a wastewater treatment plant facilities plan with Wright Pierce; new employee managing all the trench permits and maintaining GIS mapping system and took the initiative to apply for our Household Hazardous Waste Grant. Sewer and drainage has been busy on Munsey Drive doing brush removal; culvert collapse on Bradstreet, having pipes cleaned and inspected; proceeding to have a liner installed within them.

Deputy Director Hale: Church Street Force Main; plans have been delivered to the state; will be posted tomorrow; ads have been run for bid documents; the bids are due back March 10 with mandatory pre-bid meeting on February 28.

Director Jacobs: mosquito control purchased one steel container; take down collapsing tent to store containers. January 18 EPA released their MS4 permit; outlines how we are supposed to start managing storm water; \$50,000 in this year's budget to address this line.

Deputy Director Hale: went to the New England Environment Show and did presentation on the Church Street Force Main project, which was well attended and had people in awe of how quick we got the project done; nice to hear feedback; a lot of exhibitors; good learning experience.

Director Jacobs: landfill inspection report was received January 24, 2016; reviewed and was satisfactory; been shipped off to DES. We met with Parr Corporation doing preliminary design for the Mill Pond Dam; we have asked for more information. Working on Drakeside Road railroad abutments; field survey was conducted; contractor interested in acquiring all the stone. Going to release bid for chipping and disposing of brush and will be released in March. We will set up for voting on March 13 and take down the day after.

Deputy Director Hale: we completed the stabilization repairs to Bicentennial Wall; after the March vote hoping to have new design for that area. Our new Foreman in vehicle maintenance department has been doing a fantastic job; he is getting us best prices; do own welding; a lot is being done. In process of doing police vehicle inspections in March; \$46,600 spent to repair vehicles; the majority is going towards the collection trucks. We have received one of our new trucks; have not received our new six wheelers yet, but they are coming.

Director Jacobs: looking to get done the MS4 permit; prepare collection system maintenance report; highway department will be busy with upcoming spring projects; generator permits; catch basin cleaning; surplus auction in May; household hazardous waste in June. Sidewalk work will be put out to bid; road resurfacing out to bid; will be very busy with the Church Street force main repair; Lafayette Road sewer repair is a critical project, plans to start after the Seafood Festival; install new trees.

Selectman Barnes: you have been very busy and already thinking about summer; people understand how important the Church Street force main is.

Director Jacobs: interest in the project; trying to put out for ten bids; size of project will attract some good firms.

Selectman Waddell: good report; you are busy and proactive; what is the reason for the 3.2% decrease in the wastewater.

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Director Jacobs: part is due to how dry it was during the summer; part is we are discovering more cases of unchecked run-off coming into the pipes; everyone is more attuned to it; chase down infiltration.

Selectman Waddell: that is proactive instead of reactive. Director Jacobs: yes, it will save us money in the long run.

Deputy Director Hale: water conservation goes a long way.

Selectman Waddell: appeal put together on the Church Street force main. Director Jacobs: it was put together; worked with Attorney Moore; factual based; has a huge bundle of things that we can and should discuss with the state; preserve rights to argue about everything, all in the administrative order; project that has to be done.

Selectman Waddell: you are at the mercy of the state. Director Jacobs: at this point, it lies within their hands.

Selectman Waddell: the MS4 is 200 pages and detailed. Director Jacobs: it is very detailed; that is why we have the management system we have asked for; GIS information up to speed to address the permit; GIS means Geographic Information System; have maps and stacks everywhere and what this would do is bring it all together; has plan data and information data

Selectman Waddell: you have done a lot to be more efficient. Director Jacobs: have to work smart.

Selectman Waddell: I hope people realize the importance of the Church Street force main and the Lafayette Road projects.

Selectman Bean: great report; great work.

Selectman Griffin: solid waste disposal increased a little over ½%, does not appear that we have tons of more refuse coming in with the new buildings there. Deputy Director Hale: they do not get the trash removal services.

Selectman Griffin: we are doing a good job, what about the tires, why are people not paying for them when you take them. Director Jacobs: our contract does not allow us to dispose tires with them; took five years to accumulated 200 tires; managing them so they are not a fire hazard, stored in a container.

Selectman Griffin: we are going to have to work within our budget; people are happy with the way it is. Director Jacobs: the chatter is from the professionals out of Washington is that you are going to see stimulus dollars, more money back to the states for bridges, sewer, water, things of that nature.

Selectman Griffin: sounds like you are on top of it, thanks for your report.

Chairman Bridle: thank all your folks for the excellent job they did this weekend; we had a whole winters worth of snow in one weekend.

Director Jacobs: the next thing we get ready for is melting; clear catch basins.

2. Warren Kelly, 377 Ocean Blvd “Seaside Community Living” (43:30)
  - a. Request for Solid Waste and Recycling Pick-up

Selectman Waddell: I will recuse myself from this discussion as it directly affects me.

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Mr. Kelly: many owners of the condominiums could not make it due to the storm; sent letters; speaking for the entire organization. Denying taxpayers who own condominiums trash pick-up; much larger issue; ruling against request, what stops the board in future voting to make condominium owners for paying other services. The debate is not why condominium owners are being treated differently than homeowners, but why by an ordinance. Ask board to consider their points and vote in favor if you feel we are justified, or state the position clearly, which justifies a vote against their arguments. It was stated that they were in favor for years, but could not garner support; issue is not going away; resolve issue once and for all. The modifications sought is to approve public trash pick-up by town, provided all barrels are to be placed on the public sidewalk 2' apart from each other in front of the condominium building; no town equipment would have to travel on any private way; not acquire any special town equipment. As taxpayers, we pay the same rate annually as all other property owners in the town that do enjoy public pick-up. Upon review of minutes of Planning Board meetings the applicant was under the understanding that private trash pick-up was a town condition; no discussion on this subject ever took place; was led to believe was simply a town condition; never was presented with fact there was an option to trash pick-up. The ordinance was passed in April 2016, while we were permitted in 2015; ordinance cannot be applied to a property permitted before the ordinance was voted on. The State of NH ruling 356-B5 states no condominiums shall be treated differently than any other properties under a different form of ownership by zoning or any land use ordinance. The property has over 100' of sidewalk, which meets by-law requiring the placement of barrels 2' apart; residential area, no business trash pick-up; 90% of owners are seasonal. We feel they are being treated differently; windfall to tax revenue; owners do not feel that the arguments presented by the town are a valid justification for denial of services we pay for. We speak for no other condominium project within town; unique situation; do not compare us to any other project.

Selectman Barnes: when 377 Ocean Boulevard was approved, what were the circumstances for trash pick-up? Director Jacobs: started long before 377 Ocean Boulevard; project 83-89 Ocean Boulevard the question came up with 24 units could we pick up the carts. The carts were kept in corrals out back and trying to get the carts to the side of the road it would of jammed up the side of the road and did we really want Hampton Beach to look like cart city. The same issues came up with many other units; the condos were not singled out because they are condos, it is because we do not want the carts on Ocean Boulevard and it has been decided that we were not covered insurance wise to go onto private property.

Selectman Griffin: is it a state law that we are not to go onto private property. Town Manager Welch: it is not a state law, but it is an insurance problem, as we are not covered to go onto private property.

Selectman Griffin: when the policy was done in 2016, the previous policy was not much different.

Selectman Barnes: that is what I was getting to; it was just reaffirmed; changed to five units from them on.

Selectman Griffin: we have had numerous town meetings and nothing here tonight is different from what was discussed at the public meetings.

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Director Jacobs: came up with the policy due to Kings Highway; condo conversion; policy was drawn up to 5, as long as they had frontage to stage the carts; been a combination of access and have sufficient space to place a number of carts out front.

Mr. Kelly: to clarify; 377 Ocean Boulevard we meet the criteria of frontage; extra wide sidewalks.

Director Jacobs: one thing you have not brought up is you are asking to stage carts and impede a state sidewalk, not town sidewalk. Mr. Kelly: the same as everybody else on Ocean Boulevard.

Selectman Griffin: you are supposed to have them on your own property, not supposed to have them on the sidewalks.

Deputy Director Hale: one thing we are always talking about is looking at the Planning Board's regulation, they look at the project how it fits in; looking at condominiums a much density; where are they getting stored, getting left; aesthetics; drainage; not everything will be cut and dried. This all works as long as you understand we are not doing trash pick-up; need dumpster; screened fence.

Selectman Griffin: we have a policy; it has been decided; not fair to anybody else to make it different; had many public hearings and everybody said exactly what you are saying and this determination was made and this is the policy; have not heard anything you say that is different.

Mr. Kelly: you are not addressing the legal aspects; what is the difference between us and another house. Selectman Griffin: we have a policy.

Chairman Bridle: when you went before the Planning Board, did you sign and agree to the fact you are going to do your own trash pick-up.

Mr. Kelly: I guess I agreed by not disagreeing; and went back and had Planning Board to overturn that ruling and they allowed me to reverse that condition; did planning for two years; so many things looking at and trash barrels was the last thing anyone looked at; no discussion; never came up.

Selectman Griffin: I cannot image that it was not dealt with on the Planning Board, I was on the Planning Board; I fought the battle you are fighting, but this board has already made a policy; it is not any different.

Mr. Kelly: this is your chance to correct it. Selectman Griffin: no, it is not, because we have already listened to other people; everyone else was turned down, why would we turn them down and then change it for you.

Mr. Kelly: I spent the money; got legal counsel; the Planning Board voted in favor of our condominium association; I did the right thing; I have asked respectfully to please talk about our condominium; I am not here to fight.

Selectman Griffin: yes, but there are other condominiums that were denied; you are not following the policy.

Mr. Kelly: at town meeting people voted if you have frontage to put your barrels 2' apart then you are entitled to town pick-up. Selectman Griffin: not for condominiums. Mr. Kelly: it does not say for houses or businesses either.

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Selectman Griffin: Fred can you address his issues.

Town Manager Welch: the complaint is we are violating the condominium statute, is that correct. Mr. Kelly: that is one complaint; also violating town ordinance; it is not a complaint; we are here as taxpayers and we deserve the same benefits as the next taxpayer.

Town Manager Welch: you have had a long dissertation on the fact that the condominium statutes of this state forbid us to do what we are doing. Mr. Kelly: that was one paragraph of my presentation.

Town Manager Welch: the condominium statutes of this state are found in the 400s series of RSAs; the subdivision requirements for this state for condominiums in this particular town are found in title 46 which starts at 670-677; the statutes dealing with solid waste are RSA 149M and are very specific. They give the power to determine whether trash will be picked up or not to this board by state law; they have exercised a position that they are not going to pick up condominiums unless they are five units or less. The town does not legally have to pick up trash at all; if you go to RSA 149M it says the town is required to have a contractual obligation where some place for you to take the trash, we have that. That contractual obligation by the town is at turnkey landfill in Rochester; pick up at our transfer station and we ask people to come there and dispose of their trash there. There is no way unless this board decides to change their position that it has any effect on your property.

Mr. Kelly: how do you justify the taxes? Town Manager Welch: I do not have to justify anything; the taxes are assessed under a state statute; they are assessed because the building has a certain worth; they are assessed what the units are sold for; that is the state law in this state.

Mr. Kelly: you do not feel it is selective benefits by saying that these residents who live and pay taxes in this community are denied the same town benefits as somebody who buys a home right next door to us on the same street.

Town Manager Welch: the state law allows for that in this state. Mr. Kelly: we are talking about the Town of Hampton; this board of selectmen.

Selectman Barnes: yes, because we have people who live in other condominiums for 30-40 years and they do not get their trash picked up.

Selectman Griffin: we have talked about this repeatedly and I see nothing here that wants to make the board change; I was on your side; the board decided it is not going to happen.

Mr. Kelly: are you going to hear the public on this.

Selectman Griffin: no, it is not a public hearing, is it Rusty?

Chairman Bridle: no, this is not a public hearing; you came to talk to us

Selectman Griffin: that is why she is not allowed to talk; you are the one who is talking for them.

Mr. Kelly: I requested what I feel is a rational argument; one resident has gotten a picture of condominiums that have trash barrels all up and down the road and maybe you can answer for those then, because your statement is about condominiums for 30 years.

Selectman Barnes: I did not say for all of them.

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Selectman Griffin: it is not likely to change; we have done this over and over again; how can we change this just for you; you are putting us in a position that is not going to happen.

Mr. Kelly: I am arguing that 377 meets the qualifications.

Selectman Griffin: if it changes, it will probably get more restrictive, that is what I see happening; that is the unfortunate part.

Town Manager Welch: it is very difficult for you to argue that 377 be picked up and nobody else should be picked up. Mr. Kelly: what I am saying that we meet the requirements

Town Manager Welch: you do not meet the requirements established by the board; you have more than five units. Mr. Kelly: that was done in April

Town Manager Welch: no, they increased it from 0 to 5; there are condominiums in this town that have been grandfathered for 50-60 years as individual buildings and were allowed to be picked up from when they were converted from single-family residences to multi-family residents under condominiums; those are the only ones we pick up.

Mr. Kelly: so your only argument is if you own a condominium, you do not get trash pick-up; you have no rational there.

Town Manager Welch: my suggestion to you is the same suggestion I make to anyone in this position or any other position when dealing with the town. If you object to the policy formulated by the board you have the right to petition the town meeting to have all condominiums; you cannot discriminate; as it is going to be a town law, not an ordinance or a direction by the board under the statute. It needs to be applied equally to everybody; if you want to do that, you take your argument to town meeting with a warrant article with the appropriation to buy all the equipment, hire all the employees.

Mr. Kelly: I have no desire to do that, so do not even go there.

Selectman Griffin: that is the only way it is going to change.

Mr. Kelly: I am still not getting an answer in my opinion this is wrong what the board has voted on.

Selectman Griffin: if you want to change it, you have to do what Fred just told you.

Chairman Bridle: the only way to change it is to go with a warrant article.

Mr. Kelly: I want to be clear before I leave; the only answer why not is because it is a condominium.

Chairman Bridle: no, it is because part of the requirements when you went to the Planning Board. Mr. Kelly: that has been reversed, so it is off the table

Town Manager Welch: no, it has not been reversed; if you read the minutes of the Planning Board, it is only reversed if this board votes to reverse it; otherwise, their determination is completely void and off the record; you need to state that the way it is in their minutes.

Mr. Kelly: excuse me, if this board oks it.

Town Manager Welch: if it is not ok then the Planning Board vote is null and void. Mr. Kelly: if I go back, it is only because there is a policy stating no condominiums.

Town Manager Welch: no, you cannot twist the words. Mr. Kelly: I am not.

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Town Manager Welch: you said the Planning Board had changed it, so therefore this board should change it. Mr. Kelly: I said this changed as long as this board accepts it.

Town Manager Welch: no, you said it after I said it. Mr. Kelly: clarify, this happens to be your profession

Town Manager Welch: stop mincing words; you went to the Planning Board you asked them if they would rescind their prior vote; they voted yes provided the board of selectmen votes it; otherwise, their vote is null and voice.

Selectman Griffin: it is not going to happen.

Mr. Kelly: I happen to believe in a democratic system; town government is the greatest system of government.

Chairman Bridle: anybody here that want to change this policy; I see none.

Mr. Kelly: that is pretty obvious; thank you for your time, I appreciate it.

#### VI. Town Manager's Report (1:15:50)

1. A final reminder that the Town Clerk's Office will be closed on Friday, February 17<sup>th</sup> and Tuesday, February 21<sup>st</sup> as the State is changing over its programming.
2. The State Department of Environmental Services Wetlands Division has issued its approval for the Route 101 sewer line construction if the article for its construction passes Town Meeting on March 14<sup>th</sup>.
3. March 1<sup>st</sup> is the last day that property tax payers may file an appeal to their property assessments with the Town Assessors Office or the Board of Selectmen.
4. April 15 is the last day that property owners may file for elderly, veterans, blind, solar and other exemptions allowed by law. Please see the Assessor's Office for the proper for forms that need to be completed and filed with your request.
5. April 15 is the last day for charitable organizations to file their property inventory forms with the Town.
6. April 15 is the last day to file for current use property tax exemption
7. April 15 is the last day to file for the Hampton Beach Precinct tax exemption
8. For those who wish to file for any of the items just listed please come in to the Assessor's office early as the forms need to be filed with your request along with the necessary backup documents to verify your eligibility for the exemption.

Selectman Waddell: pay attention to the dates on the appeals and exemptions; to make the deadline; call assessor's office.

Chairman Bridle: the administrative order. Town Manager Welch: the administrative order has been appealed; everything that is stated in there is stated as the law says we have to present every conceivable argument that can be used. In conjunction with the DPW and attorneys, it does not mean that the appeal board will even accept the appeal or if they do, they will grant the request for the appeal

Chairman Bridle: it was all filed within the times. Town Manager Welch: it was filed on Friday, and had until February 13; had confirmation that it had been delivered

Selectman Waddell: some people said the appeal should be decided before the warrant article; but we have no control over that.

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Town Manager Welch: we have no control over whether the state will accept or will decide before the warrant article

VII. Old Business (1:20:21)

Selectman Griffin: want to ask to make clear again, they asked what about the recycling; what is the policy.

Town Manager Welch: there is no difference between recycling or trash; we do not collect recycling from condominium projects where trash is not collected.

Chairman Bridle: it is the time and carts of picking them up, they are already had their maximum right now.

Selectman Barnes: it is not because they are condominiums.

Chairman Bridle: no.

Selectman Griffin: when the condominiums make the arrangement to have their trash picked up with the private haulers, that is usually when they make the decision to have their recycling picked up.

Town Manager Welch: they can do that, at one of two ways; they can obviously have the company they hire pick it up separately; there are condominiums in town do that; or as individuals they can bring their recycling to the transfer station. They are residents; they can bring their trash to the transfer station, we just cannot pick it up.

VIII. New Business (1:21:55)

IX. Closing Comments

X. Adjournment

Selectman Bean MOTIONED to adjourn the Public Meeting at 8:26PM SECONDED by Selectman Waddell.

VOTE: 5-0-0

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Chairman