

MINUTES OF MEETING

Town of Dixfield

Board of Selectmen/Assessors/Overseers of the Poor

Monday, April 9, 2012

5:00 p.m., Dixfield Town Office

Board Members Present: Stephen G. Donahue (Chair), Norine H. Clarke, Katherine N. Harvey, Malcolm M. Gill

Board Members Absent: Robert V. Withrow (arrived late)

Administration Present: Eugene R. Skibitsky (Town Manager), Charlotte M. Collins (Minutes), David Phair (Public Works Dept.), Jim White (Water Dept.)

Others Present: Freemont Tibbetts, Danny McKay, Scott Belskis, Hart Daley, Ralph Clarke, Officer Broughton, Alice McKay, Tom Carroll (Patriot Renewables)

Press: RVAC, Rumford Falls Times, Lewiston SunJournal

1. **Call to Order:** Chair Donahue called the meeting to order at 5:00 p.m.; all repeated the Pledge of Allegiance.
2. **Approval of Minutes:** On a motion from Mr. Gill and a second from Mrs. Harvey, the Board voted unanimously to approve the minutes of March 26, 2012.
3. **Approval of Warrants and Payroll:** On a motion from Mrs. Clarke and a second from Mrs. Harvey, the Board unanimously approved the warrants and payroll as listed on the agenda.
4. **Department Head Reports:**
 - a. **Water Dept. – Jim White**
 - The annual flushing of the system began today.
 - A broken hydrant was discovered across from the Middle School which will be repaired shortly.
 - Mr. White exhibited a broken fitting from 197 Weld Street and explained why there are standards with which to do proper pipe connections. The department allows copper or industrial-grade PVC pipe.

- The new lawn mower building is complete with the exception of painting the building. Mr. White and crew designed and constructed the building, thus saving the department a considerable amount of money.
- The department is half-way through documenting the curb box records.

b. Public Works Dept. – David Phair

- The annual town clean-up is scheduled for the week of May 14, 2012; an advertisement will be placed in the newspapers.
- The waste oil furnace saved about 3,500 gallons of fuel oil this winter; our sources for waste oil will still be available for the coming year.
- The crew salted and sanded roads a little more than the previous winter, but the town still has reserves left.
- Continued sweeping will be coming this week.
- There is a lot of sand on Rollins Ridge that the department will try to reclaim; much of the patching of roads has been completed, but there is more to do.
- Grading and rock-raking will begin this month.

5. Old Business:

a. Sewer Force Main:

(1) The application to the EPA for funding of the sewer main extension has been submitted. We are awaiting notification--probably during mid-April. Two (2) copies of the contract with Wright Pierce need to be signed as well as another with the DOT when ready. Wright Pierce will do the design of the project; the town will do the inspections. An amendment on page #3 has been added: \$15,000 for work and another \$15,000 for inspection.

On a motion from Mrs. Clarke and a second from Mrs. Harvey, the Board voted unanimously to have the Town Manager sign the amendment with Wright Pierce on the condition the town receives the additional funding for the extension.

(2) There has been a “natural” scenic abutment area created by the new bridge that would serve the townspeople and visitors alike with a nice view of Webb River and its falls and also allow for fishing activities to take place. The Town Manager explained that a letter from the town will be needed to request the State DOT to incorporate this area into the project at the State’s expense with the town maintaining it. On a motion from Mrs. Harvey and a second from Mrs. Clarke, the Board voted unanimously to direct the Town Manager to correspond with the DOT to facilitate access to the abutment area.

(3) Selectmen inquired if the contractor will be held accountable for damages to the sewer line while constructing the bridge; the contractor will be responsible for repairs, not upgrades.

(4) The Town Manager suggested that a Public Hearing be held on May 21, 2012 or June 4, 2012 (preferably) regarding the Wright Pierce Sidewalk Project so that feed back can be gained from the public. All Selectmen agreed on the dates.

b. **Wind Ordinance:** A citizens' petition was delivered to the Town Office and reads as follows:

We, the undersigned registered voters in Dixfield, call upon the Dixfield Select Board to carry out all arrangements necessary to include within the June 2012 ballot, the following question: "Shall the Town of Dixfield enact the wind energy facility ordinance presented herein as "Wind ordinance for Dixfield, Maine, December 14, 2011?"

One hundred forty-two (142) valid registered Dixfield voter signatures and fourteen (14) invalid signatures were written on the petition. One hundred five valid signatures were needed to validate the petition. The petition and attached wind ordinance was then forwarded to the town's attorney and the following response was received via email by the Town Manager:

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Gene Skibitsky, Town Manager  
Town of Dixfield  
207-562-8151  
[townmgr@dixfield.org](mailto:townmgr@dixfield.org)

----- Original Message -----

**From:** Lee Bragg

**To:** 'Gene Skibitsky'

**Sent:** Friday, March 30, 2012 12:32 PM

**Subject:** Wind ordinance petition

Gene,

I have reviewed the petition that seeks to have the Board schedule a referendum vote on a wind ordinance, a draft of which was included with the petition. My research satisfies me that the Board has the discretion to reject the petition, and further that the Board should strongly consider doing so. Several of the provisions in the draft ordinance are illegal on their face and are therefore unenforceable. I offer the following thoughts in this regard:

1. Section 5.0 (Shadow Flicker) is internally inconsistent. It declares shadow flicker to be a nuisance, but then attempts to invest the Planning Board with the authority to determine whether it is a nuisance, and does so without providing any criteria with which the Planning Board can make this determination.

2. Section 7.0 (Town Roads) and Section 8.0 (Fire Response) are both discriminatory in that they seek to impose conditions on wind energy facilities without any basis for distinguishing these projects from other types of projects that have the same or greater potential to negatively impact town roads and fire response. Further, Section 8 essentially makes the Fire Department a permitting agency, and does so without providing standards.

3. Section 9.0 (Safety Setbacks) contains setbacks that greatly exceed the setbacks contained in the State's model ordinance, which raises an issue of reasonableness. In addition, this Section gives abutting property owners the ability to grant what is essentially a variance, which is an illegal use of the variance concept.
4. Section 10.0 (Tax and Valuation) is illegal on its face. Assessors are, by law, agents of the State, even though they are elected by the Town, and they are required to follow the mandatory assessing standards contained in State statutes. These standards preempt the Town's ability to adopt the regulations described in Section 10.
5. The draft ordinance is vague in several other respects which would likely affect its legality, including the lack of a defined permitting procedure.

It would also be reasonable for the Board to refuse to act on the petition in light of the two prior town meeting votes which rejected the idea of restrictions on commercial wind projects. Maine courts have held that the municipal officers can refuse to put a petitioned article on a warrant if it would be reasonable for them to do so. No definition of a "reasonable refusal" appears in the statutes, but, at a minimum, the denial must be objectively reasonable as a matter of law, not merely subjectively reasonable in the view of the municipal officers.

Repetitiveness can be an objectively reasonable basis for a denial. Court decisions in Maine regarding petitions for repetitive votes have generally dealt with petitions that directly seek a re-vote of a previous question. In this case, the subject matter of the prior votes is the same as the subject matter of the petition, but the substance of the petitioned ordinance is much more detailed. This particular set of facts lacks judicial clarity.

The question, therefore, is whether the current petition is repetitive in light of the previous town meeting votes regarding wind facilities. I believe that it would be reasonable for the Board to deny the petition on the grounds of general subject matter redundancy, provided the Board feels that the sentiment of the voters regarding the regulation of wind facilities has been strongly expressed in the prior votes.

Please let me know if further discussion would be helpful

Lee

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Lee K. Bragg

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207 623-1596 main  
207 626-0200 facsimile  
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[lbragg@bernsteinshur.com](mailto:lbragg@bernsteinshur.com)

Portland, ME | Augusta, ME | Manchester, NH

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The Town Manager read Atty. Bragg's letter to the audience after which a vote was taken. On a motion from Mr. Withrow and a second from Mrs. Harvey, the Board voted unanimously to reject the citizens' petition ordinance as recommended by the town's attorney.

The Town Manager suggested that the Board use the wind ordinance that was written by Selectmen Donahue and Clarke and which was vetted by attorneys last year. He updated the ordinance with the new sound levels that the DEP proposed: 55/day and 42/night, etc. On a motion from Mr. Gill and a second from Mr. Withrow, the Board voted unanimously to pursue this ordinance with the suggested changes from the Town Manager and to hold a public hearing May 9, 2012 at 6:00 p.m. at Dirigo High School.

On a motion from Mrs. Harvey and a second from Mrs. Clarke, the Board voted unanimously to approve voting on the Wind Energy Facility Ordinance by secret ballot at the June 12, 2012 elections. *(Copies will be available at the Town Office by the end of April.)*

6. **New Business:**

a. **Oxford County Assessors' Return:** On a motion from Mrs. Clarke and a second from Mrs. Harvey, the Board voted unanimously to sign the Oxford County Assessors' Return.

b. **Building Inspector:** The Town Manager will be appointing Calvin L. Beaumier as Building Inspector for the Town of Dixfield.

c. **Distinguished Citizen 2012:** On a motion from Mr. Gill and a second from Mrs. Clarke, the Board voted unanimously to select Isaac "Ike" Libby of 8 Brian Street as this year's winner of the 2012 Distinguished Citizen Award. Ike helped many area residents that could not afford enormous heating bills during the past winter through his generosity at Hometown Energy. His efforts gained national attention and a trust fund of donations with over \$250,000 was established for future needs.

d. **Finance Comm. Resignation:** On a motion from Mrs. Harvey and a second from Mr. Withrow, the Board voted unanimously to accept the resignation of Terrance Robinson from the Finance Committee. The Board extended their appreciation for his many years of service to the town.

7. **Town Manager's Report:**

a. **Chamber of Commerce Dinner:** So noted.

b. **Mexico Sewer District Minutes:** On a motion from Mr. Withrow and a second from Mrs. Clarke, the Board voted unanimously to accept the minutes as provided by the Mexico Sewer District.

c. **Card of Thanks:** A card of thanks was received by the Board from Mrs. Carmello Puiia thanking them for sending her a copy of the Town Report that was dedicated in part to her husband.

8. Board Questions and Comments:

Mr. Withrow: Asked the Town Manager if there was any feedback from the infrastructure study; a report will be forthcoming.

Mr. Gill: The concrete on the new bridge will be poured soon and the traffic will shift to the other side of the bridge.

Town Manager: Superintendent Tom Ward contacted the Town Manager to let him know that he and the Board of Directors are working hard to make cuts in the school budget, and we are looking at an increase of approximately \$143,000.

9. FYI: So Noted

Correction to Budget Meeting: The Board of Selectmen's Budget Meeting will be held at Ludden Memorial Library on Monday, April 16, 2012, at 5:00 p.m. and NOT at the Town Office.

10. Next Meeting: Monday, April 23, 2012, Town Office at 5:00 p.m.

11. Adjournment: On a motion from Mr. Gill and a second from Mrs. Harvey, the Board unanimously approved adjourning the meeting at 6:00 p.m.

Respectfully submitted,

Charlotte M. Collins
Deputy Treasurer/Secretary

/cmc

Attachments