

Town of Farmington
Board of Selectmen Public Meeting Minutes
Monday, March 1, 2021

Board Members Present:

Paula Proulx, Chairman
Neil Johnson, Vice Chairman
Dave Connolly
TJ Place
Gerry Vachon

Others Present:

Terrie Riordan
Joseph Puccia
Kelly Heon, Assessing Clerk
Allen Funk, Blue Planet Funding
James Reinert, Fire Chief

1). Call to Order:

Chairman Proulx called the meeting to order at 6 p.m.

2). Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

3). Public Input:

a). Smith Court - Terrie Riordan said that on Feb. 21, 2020 property owners abutting Smith Court received a letter from Town Administrator Arthur Capello stating Smith Court was never accepted by the town as a Town road. She said acceptance of the road was put to a vote at Town Meeting in 1961 but there is no record of the results of the vote.

She said as a result, pursuant to RSA 231:59 the Town is prohibited from spending Town funds to maintain non-Town-owned roads. She read that Warrant Article #24 asked if the town would vote to accept it as a Town road and noted that the article specified that the road would be designated as Smith Court if accepted.

Ms. Riordan said the road was known as Smith Court since 1947 when apartments were built in a vacant building there. She said the name change was made because the conditional phrase in the 1961 warrant article had been met and it is designated as Smith Court as stated it would be. This is one of many proofs that the 1961 vote result was in favor of Smith Court being accepted as a Town road she said.

She said on 07/09/20 they received a 2nd letter from Mr. Capello where he stated by state law the Town can no longer plow Smith Court given that it is a private road. She said Mr. Capello said Smith Court has been reclassified as a private road because there is no record of the acceptance vote by the town.

Ms. Riordan said 1961 was a much simpler time and the Town records and meeting minutes were stored in cardboard boxes in someone's house and it is very unfortunate that they were lost but they are not responsible for the loss of those records. We should not be penalized or made to suffer undue emotional strain or financial hardship because of it she said.

She noted that the decision to reclassify Smith Court coincides with an article in the

March/April 2020 edition of NH Town and City (published by the NH Municipal Assoc.) entitled "Legal Q & A: Stop Plowing that Private Road". She said the author encouraged Towns to stop plowing private roads and by continuing to do so the Town is implying acceptance of the road as a Town road and will be responsible for it as declared by the NH Supreme Court in 2007. Ms. Riordan said in order to try to overturn the reclassification they have done extensive research, wrote a petition and submitted it to the Town to be added to the 2021 Town Meeting Warrant. She asked why they are being forced to do this when there is a vast collection of official documents from the past 60 years supporting the fact that the town voted in favor of accepting Smith Court as a Town road in 1961 and nothing has been found to prove otherwise. She said the 1961 Smith Court article has been deemed null and void and asked what that means for the other 24 articles that were voted on that night. She said the votes are missing for the other articles so they must also be deemed null and void and re-voted and the governing body shouldn't be allowed to choose which articles are accepted or rejected to fit their agenda. She asked to have the Town Attorney review this argument and determine its legality on the part of the Town.

Ms. Riordan said a second legal matter related to Smith Court is the 2007 NH Supreme Court decision in the Hersh vs. Polonski case where the court said highways aren't just created by a municipal vote or by a formal dedication and acceptance but can also be created because the Town does something to that road once it is built and listed the actions municipalities could take that would imply that the governing body meant to accept a private road as a municipal highway including improvements, repairs, snow removal or assigning Police patrols to it. She said former residents said the road started out as a dirt road and the Town put down crushed rock, treated the road surface every summer, paved the road and has maintained the road ever since up. There is also evidence the Police were assigned to patrol Smith Court in the 1962/1964 Police reports printed in the local newspaper and a person arrested lived at Smith Court proving the street name had been changed at that time. The Town by its long history and faithful dedication of performing the actions listed in the 2007 court decision has implicitly implied the governing body meant to accept Smith Court as a municipal highway she said. She said further proof of the acceptance of Smith Court as a Town owned road can be found by looking at any current town or state map, property deed, Town survey, priority level road classification list, snow removal list, etc. and it is not now nor has it ever been listed, labeled or classified as a private road. None of the previous or current property owners on Smith Court have any legal claim or deed of ownership for any part of the road and per the Jan. 5, 1866 land deed the road shall remain free and open until the time comes that all the land owners adjacent to the bypass agree to close it and they shall have the right to do so. The landowners never came together to close it therefore it is still a legal public pass way she said.

Ms. Riordan said the subdivision plan survey done by Norway Plains Assoc. lists Smith Court as a public way by prescription and the survey was accepted and recorded by the Farmington

Planning Board on Sept. 8, 1987 and recorded in the Strafford County Registry of Deeds on August 19, 2002. She said the proof that Smith Court is a public Town road is overwhelming and she would like to submit this argument as well to the Town's legal counsel for review and determination of its legality on the part of the Town of Farmington.

Chairman Proulx asked Ms. Riordan to provide copies of her arguments (see attached) to the board for consideration in the event they vote to submit them to the Attorney.

Mr. Johnson asked Ms. Riordan what the first specific question to the Attorney would be.

Ms. Riordan said if Article #24 is required to be re-voted on because the 1961 vote results were not physically produced then the other 24 warrant articles should have to do the same.

Mr. Johnson said that she was asking for the status of the other 24 warrant articles from 1961.

Ms. Riordan said their article has been singled out and the other articles have not.

Mr. Johnson said it depends on what the other articles are and for example one of the articles would be for the 1961 Town operating budget and if they say its illegal there is nothing that can be done about it. He said she is asking the Attorney for the status of the remaining 24 warrant articles and how they are affected by not being able to find the documentation.

Ms. Riordan said not all of the articles fall under a "yea or nay" vote but for those articles that do their article should not be singled out from the rest of them so either they all have to be re-voted or none of them have to be re-voted. She said the evidence is overwhelming that it was accepted as a Town road and there has not been any proof brought forward to say otherwise and yet they still have to go through this process to get the petition and have it re-voted on.

Motion: (Johnson, second Connolly) to pose the question to Town Counsel about the Town's inability to find the vote results for the 1961 warrant articles: What is the impact on the remaining 24 articles and are they being treated similarly as the Smith Court warrant article is being treated in that it's been taken like it never was addressed or voted on passed 5-0.

Motion: (Johnson, second Place) to address the history of the Town performing road maintenance including repairing, snow removal and its relation in light of the Hersh vs. Polonski case especially having done so since the 1961 vote was taken and what impact that has on whether it is a Town owned road or not passed 5-0.

Chairman Proulx said both questions will go to Town Counsel.

b). Dodge Cross Road resident Joseph Puccia asked if there was anything that could be done to the dirt side of the road as he is witnessing many incidents due to the steep hill on the road. He said this past weekend there were 2 serious incidents where a U-Haul truck delivering appliances couldn't get up the road and kept sliding backwards and getting stuck and a Post Office vehicle was spinning out on the hill requiring help to get it moving in the right direction. He asked if the board could start to discuss ways to improve the road by paving it or by some other means. Someone could have gotten killed with that truck sliding backwards he said.

Chairman Proulx asked if the DPW had been out sanding the area at that time.

Mr. Puccia said he is new here and isn't used to these roads and he didn't know how often they

put dirt down. He said he didn't feel it would be an issue if the road was paved as they could get it right down to the pavement when salting. I just wanted to see if you can talk someday about trying to do something about that he said.

Chairman Proulx said they would note his request and the board will have a conversation on it. She said they would never make a promise to pave a road and it has been a long time since they put down any new pavement that she knew of as they are having trouble trying to keep up with the maintenance of the current paved roads. From start to finish they have to go through a lot including the improving the drainage and the road base but I'm not saying it couldn't ever be done she said.

Mr. Johnson asked if Dodge Cross Road is 100% Town owned.

Mr. Vachon said it is Town owned all the way up the hill and over.

Chairman Proulx said she would ask the DPW to make sure they hit the hill area really well with some sand during the next weather events so that it helps the situation in the meantime.

Mr. Vachon suggested they look at putting down some pea stone instead of sand as it will provide better traction and doesn't melt into the ice or wash away when it rains.

Chairman Proulx said the DPW Director would be bringing his proposals for rock crushing, striping, etc. before the board soon and that would be a good time to talk about budgeting for potential improvement to Dodge Cross Road.

Mr. Vachon said the stone would be pounded into the dirt and may help during mud season and suggested they consider using it on hills, dirt roads that get really slick and shaded areas.

c). Recycling Request -Chairman Proulx said she was contacted by Ryan Langley who asked if there were any options where the residents could pay to participate in recycling. She said right now the Town is not recycling except for certain items (corrugated cardboard and metal) and that Transfer Station Facility Manager Pete Spencer has some ideas for recycling in the future. She said Mr. Langley asked if residents could pay extra to keep recyclable items out of the waste stream. She said she expected that Mr. Spencer would be coming before the board before long to discuss his ideas and she told Mr. Langley that would be part of the discussion. Mr. Johnson said part of the initial discussion was looking at charging residents who wanted to recycle at the bag rate and he couldn't recall why it was found to be not feasible at the time but they were going to look into it. He said one reason may have been the inequity of charging the same price for a bag of milk jugs as for an 80 lb. bag of trash.

Chairman Proulx said she interpreted Mr. Langley's e-mail as saying that paying extra to recycle would be an option and wouldn't be mandatory. She said every idea out there will help this board in their decision on how to go forward and she responded that they would take Mr. Langley's idea under advisement.

4). Review of Minutes:

February 15, 2021 – Public Meeting Minutes – No errors or omissions

Motion: (Johnson, second Place) to accept the minutes as written passed 4-0-1 (Place

abstained).

February 15, 2021 – Non-Public Sessions A & B – No errors or omissions

Motion: (Johnson, second Connolly) to accept the minutes as written passed 4-0-1 (Place abstained).

5). Restoration of Involuntarily Merged Lots:

Assessing Clerk Kelly Heon said it has been the practice in many towns to merge properties that are owned by the same owner and was done for the ease of tax billings back in the 1940's and 1950's. She said there is a law that allows people to apply to have their lots restored to their original status and as long as they can prove there was never a request to merge them the Selectmen have to approve it.

She said there is a 16 acre lot owned by Kathleen Langley Harris which was made up of 2 tracts and Ms. Harris would like to restore them to the original two tracts.

Mr. Connolly asked if the Planning Board originally merged the lots.

Mrs. Heon said the Town did it internally but it's not a legal merger that would have been recorded at the Registry of Deeds. The land records would still show them as separate parcels and the Town did this for ease of tax billing so they could send 1 tax bill to the property owner.

Mr. Johnson asked if by doing this they would be creating a non-buildable lot.

Mrs. Heon said yes but it doesn't matter because it was already there. She said there are a lot of existing lots in town where there might be no access and they would still have to follow the building codes, etc. and they wouldn't be able to build on this lot.

Mr. Johnson asked if the owners are aware that they are creating a non-buildable lot with no access and wetland issues.

Mrs. Heon said they are absolutely aware of that and they would either keep it as abutting to their lot or they could sell it to an abutter because it would only have value to an abutter.

Chairman Proulx asked if by doing this the Town can't be held liable for them to come back and say you separated it and created a non-buildable lot.

Mrs. Heon said they are not really separating them because it was never legally merged. We're just recognizing that 2 lots exist and making it correct on our map. All I need is a motion to approve the application as proposed and then 3 Selectmen must sign the application she said.

Motion: (Johnson, second Vachon) to restore the involuntary merged lots pursuant to RSA 674:39-aa for Kathleen A. Langley Harris for lot U02- 083;

Discussion: Mr. Vachon asked why the deed reference has separate books and pages for the 2 parcels when they were originally acquired as one book and page if it wasn't legally merged. Mrs. Heon said the land was originally acquired separately by Bernard and Bertha Liberi and when they transferred them, they transferred them together on one deed and you can transfer multiple properties on one deed. She said she did the research to make the point that they were acquired separately and the Liberi's owned them together and they were abutting so the Town treated them as one parcel.

Vote: The motion passed 5-0.

Mrs. Heon then asked Chairman Proulx to sign the **Notice of Decision** and for 3 Selectmen to sign the application. She explained that the Town doesn't have to inform the abutters that this is happening beforehand but they have to let them know that it happened after the fact so copies of the NOD signed by the Chair will be sent to all of the abutters.

6). Solar Update:

Blue Planet Funding Chief Operating Officer Allen Funk said the company has 3 project sites in Farmington that are all in the same boat which triples the impact for them but he understood the Town wants the Transfer Station project built first. He said the 3 sites include the Town Transfer Station, the former Cardinal landfill site that is owned by the NH Custodial Trust and the sandpit site off of Cocheco Road and Main Street. All of the sites are capable of having 2 megawatt (MW) Alternating Current (AC) for a total of 6 MW's and have a total construction cost of about \$11 million he said.

Mr. Funk said they are working with an investor, Convergent Energy and Power because there is a financial structure with a solar investment tax credit which is 30% of the project value. This is a credit against income taxes and you need to have an investor/financing partner who can use that 30% credit. They don't have that kind of tax liability with the federal government so they needed to find someone who will fund \$12 million and will put \$4 million of that against their tax liability for federal income tax purposes he said.

He said the previous investors stepped aside because of the COVID-19 outbreak and for tax reasons. Convergent came on board in December and they are in the process of reviewing all of the documents and agreements but they are not the real hang-up he said.

Mr. Funk said the real hang-up is working with Eversource/PSNH to refresh their applications from 2 years ago that expired last summer. Some of Eversource's standards have changed in the last 2 years and the inverters that change the DC power from the solar panels to AC power, the 340 watt solar panels are now 400 watt panels and the field design for the re-closer pole that takes the solar plant off the grid to allow work on the lines has changed so it is undergoing Eversource's engineering review process to make sure they meet those standards.

He said they expect that to be completed in early May and they have put a lot of time and money into this and have no intension of abandoning the projects but they have to work with the utility processes.

Mr. Funk said getting the interconnection approval is critical because without it they can't put the power they generate into the grid and would have no method of monetizing their investment. He said once they get the interconnection they will close the financing and move into the building phase and they are already looking into contractor's schedules to build this year. He said an approx. timeframe would be to order the major equipment needed by July 1, begin building on site by the mid-August, complete construction of the solar field in about 2 months, clean up the site and make sure the electrical connections are good.

He said they previously solved all the issues with working on a landfill with the state.

Chairman Proulx asked if they are still current with that.

Mr. Funk said those permits are still valid and are good for quite some time. He said the Environmental Assessment has to be reviewed periodically and was refreshed in December for all of the sites and the Shoreline Protection permit is currently in force.

He said Farmington's Planning Board and Zoning Board approvals don't have an expiration date and in other communities if they have been making a consistent effort over time to move forward that satisfies the need while they continue to seek permits and approvals. But if they need to go back to the Planning Board and get them to formally vote on it they would be happy to talk to the Planning Dept. about it he said.

Mr. Funk said the **Payment In Lieu Of Taxes (PILOT)** agreements expired in 2019 and need to be reviewed and hopefully reapproved at some point. It means we pay a set amount of money for a set amount of time and it's very helpful when financing a project to have a long term agreement at a consistent amount of money he said.

Mr. Connolly asked if all the **NH Dept. of Environmental Services (DES)** permits are all valid.

Mr. Funk said he spoke with Novis Engineering last week and asked specifically about those permits and their response was everything is in good shape and ready to go once they get the interconnection. Then we'll have to come back for a building permit which requires us to be in compliance with the planning and zoning process he said.

Mr. Connolly recalled there was a delay because of some of those permits and asked if they are still valid and when they would expire.

Mr. Funk said he would confirm the permits' status and their expiration dates and send the information to the board.

Mr. Johnson said this has been going on for over 4 years and they had some serious bad luck with the originator of this project as did Blue Planet Funding. He said a lot of the tasks, licensing and permitting issues the company assumed were done were never addressed properly but that is not the Town's problem.

He said the Town has been expecting approx. \$10,000-\$17,000 a year in income which was lost and the energy rates paid to Eversource right now are actually cheaper than what we would have gotten with the power purchase agreement. The other 2 projects aren't our concern but we do have PILOT agreements with them so although it hasn't cost the Town any output of money we have lost income which is a problem especially this year. I understand the issues that have come up but I don't know if I'm going to agree to a renewal or not. This will be the 6th or 7th time we've heard excuses and it gets a little old he said.

Mr. Funk said he looked at things from the board's point of view and saw they are looking for some lease income from a solar farm at the Transfer Station that has not appeared, to get some green energy off the field but didn't get green energy and got whatever Eversource is sourcing for their power and there are as many as 6 PILOT agreements that aren't returning tax revenues

because of the lost the additional value the solar farm adds to the property. He said he didn't know what else could be built on some of these sites and he hoped they would deliver increased value to the Town but in the meantime it is what it is.

Mr. Johnson said Farmington was one of the first communities to sign this agreement and would have had the largest solar farm in the state at that time and now the other communities have passed us and are reaping the benefits of it so there are other options.

Mr. Funk said NH doesn't have the best acceptance rate of solar projects but there are other projects getting done in NH and they would like to be among those but if not it would be within the board's purview to go to someone else. He said he spent a considerable amount of time on the phone with the Town Attorney trying to see if there are some things that could be suggested that would allow the Town to feel better about the current financial situation.

Nothing specific was proposed or negotiated but maybe there is some middle ground that could be achieved. We don't have the projects built, we don't have them financed, we don't have the income from the energy but I understand the position the Town is in he said.

Mr. Johnson said he wanted to make it clear the board has not made any decision yet and has not had any discussions among themselves on this and he wanted to lay the cards on the table.

Mr. Funk said he wanted to make sure that any modification they may agree to is legal because he has had more than one conversation with a town where people have said they could give them money but they would have to give it back if it doesn't get built. He said if they were to enter into some type of modified agreement he would want them to keep the money. At this point I feel like we are inconveniencing you from other opportunities which may or may not be and I'm aware of that we're not the only show in town he said.

He said this was important enough to drive 6 hours from New Jersey to discuss it in person with the board and demonstrate to them that they want to get this done. He asked the board to have their discussion on this and if there are any other questions he would be happy to respond. We think we have the ability to get this done but you can evaluate that he said.

Chairman Proulx said they plan to discuss the options the Attorney has presented to the board. She asked how reliable and committed the investors are to seeing the project thru to the end.

Mr. Funk said Convergent Energy and Power is very reliable and very committed but if something develops with the interconnection that could delay things or if they have trouble reestablishing the PILOT although it wouldn't screw up the deal if it wasn't exactly where it was before it would just cost them money.

He said he was as confident with Convergent as he could be with any investor. He said from past financial dealings with them he knows they are highly motivated to close these projects. They understand what they're doing and why they are in this deal and I'm pretty confident about that. I can vouch for them but you can never vouch for anyone in this business 100% he said.

Chairman Proulx asked how confident he was with hitting the May deadline for the Eversource

review process.

Mr. Funk said their chief technician is very confident about that and that he was over 50% confident but he was not at a 90% confidence level with Eversource. They're not compensated for moving quickly or for giving them approvals. We're putting power into their grid and if they don't feel comfortable with it they won't let us do it it's as simple as that he said.

Chairman Proulx asked if they have given Eversource every piece of information they have asked for.

Mr. Funk said yes and they are waiting for them to sign off on it. This is being worked in with all the projects in the state their engineering team is working on he said.

Chairman Proulx asked if he could anticipate anything else they might need to make a final decision.

Mr. Funk said no as it isn't so different from what it was like 2 years ago and that he thought they will approve the project. He said if the cost has gone up they will have to pay it and they will accept any subtle changes so he didn't see a circumstance where they would say this isn't acceptable and they are not going to do it. It's more a question of trying to get them to do it in the amount of time they are supposed to he said.

He asked the board to contact him if they need more information and thanked them for their time.

7). COVID-19 Update:

a). FEMA Grant Approval - Fire Chief James Reinert said back in October 2020 FEMA put out a notice that they had additional money for the Assistance to Firefighters Grant (AFG) for costs directly associated with COVID and that he applied for the AFG Supplemental Grant (AFG-S). He said 2 weeks ago they received notification they were approved for the grant that will pay 95% of the \$6,355 cost to buy more ENVO Reusable N95 masks and associated accessories and the Town would pay the remaining 5%. He added the masks would be used for COVID and other purposes such as structure fires and salvage situations.

The Chief said he put in for enough funds to outfit all the first responders including the Police Dept. and the accessories and everything was approved so he was seeking permission from the board to sign the acceptance letter and to spend up to \$6,355 and they would be reimbursed \$6,052.38 through the grant making the Town's share of the cost \$302.62.

Mr. Johnson asked if the board had to accept this as unanticipated income.

Chairman Proulx said she was not sure if that applies to grants and she would have to find out.

Motion: (Johnson, second Place) to authorize the Fire Chief to sign the award letter agreement for receipt of \$6,052.38 in federal FEMA money with a 5% in-kind contribution of \$302.62 bringing the total amount to \$6,355 passed 5-0.

b). Election Set Up -Mr. Vachon asked if the Chief was okay with the set up for the elections. Chief Reinert said he provided a basic set up of rows and aisles with some basic numbers and someone else will make the final determination on the set up. He said the election set up

should be all set because of the individual voting booths and he didn't see any spacing issues. Chairman Proulx said they also purchased the air purifier units that kill the virus and the smaller unit is set up in the Town Hall lobby and the larger unit is set up in the gym area. She said they planned to look into seeing if there are any funds available to cover the cost of the units and she asked the Selectmen's Secretary to send the information on the units to the Chief. Chief Reinert said he did not receive it and he would check with the Secretary tomorrow.

8). Schedule for Selectmen at Election:

Chairman Proulx asked Mr. Johnson if Mrs. Johnson had agreed to be sworn in as an alternate for the Selectmen in the event there are not enough Selectmen available for election coverage. Mr. Vachon said he did not see any weather forecasted for that day that would prevent him and Mr. Place from being available for coverage at the polls.

Mr. Johnson said Mrs. Johnson agreed to become an alternate if needed.

Chairman Proulx asked for a vote on the appointment of Mrs. Johnson and Erica Rogers as alternates.

Motion: (Proulx, second Connolly) to approve Elizabeth Johnson as an alternate Selectman for Election Day passed 4-0-1 (Johnson abstained).

Motion: (Johnson, second Place) to appoint Erica Rogers as a Selectman alternate if needed for the Election on March 9;

Discussion: Mr. Connolly asked if Mrs. Rogers just returned from traveling.

Chairman Proulx said yes and that she can't come back to work without a negative COVID-19 test and that it would be in time for the election with a negative test.

Vote: The motion passed 5-0.

Town Hall Photos- Chairman Proulx said Mr. Capello sent them some pictures of Town Hall gym area and he wanted the board to review a possible set up for Town Meeting. She said the black photo with the white stripes across it is the tables on the stage for the dept. heads and the Selectmen, Town Clerk and Town Attorney would be seated at tables on the floor and the Budget Committee would be to the right of the stage on the slightly elevated portion of the floor behind the railings. She said this would give them the whole open area of the floor for public seating and asked if the board was okay with this set up.

Mr. Johnson said it opens up more floor space and it was fine with him.

Mr. Connolly asked where the podium would be placed.

Mr. Johnson it could be between the 2 tables on the floor to the left side of the stage.

Chairman Proulx it could also be placed to the right of those tables. She said they planned to be socially distanced, wear masks, have hand sanitizer available and the air purifiers running and she hoped people would feel comfortable enough to attend and feel they are safe.

Discussion also included the number of dept. heads and Bud Com members expected to attend the meeting, the possible need for another table to properly socially distance the members and the plans for audio/video equipment set up.

Mr. Johnson set a deadline of this Friday at noon to have the TV equipment set up and he would be in on Monday to check it out.

Mr. Connolly asked if that would include wiring the balcony.

Chairman Proulx said there would be a microphone in the balcony but it has not yet been determined if the balcony will be in use.

Consensus of the board was they are okay with the proposed set up of the room.

9). Town Administrator's Business:

a). EPA Follow-up – Chairman Proulx said the board received copies of an e-mail update on the Collins and Aikman Plant site showing the Town that the EPA is still involved in the process. They gave us some approx. dates for completion of the risk assessment (spring/summer 2021) and they know the Town is interested in returning the site to commercial use she said.

She said she didn't understand why they said they never identified a third party responsible for the contamination and that will be a question she intends to pose at some time.

Mr. Johnson said they are saying they don't know of a viable entity that has the money to pay for the remedy.

Chairman Proulx said she remembers the responsible party and that she can't imagine they don't have any money and she intends to question that.

b). Open Bank RFP's – Postponed until after March 5 deadline to receive proposals

c). Rec. Dept. Study Report – Chairman Proulx said the board received the 2020 Recreation Needs Assessment Study Report conducted by UNH and the response data from their surveys. She asked the board to review the information and prepare any questions they have prior to the UNH presentation to the board to be scheduled after Town Meeting.

c). Eversource Abatement Repayment – Chairman Proulx said the Town asked Appraiser George Sansoucy to take a look at the utility's property tax assessments and to go to bat for the Town and they received a packet of information detailing the Bureau of Tax and Land Appeals decision on the tax abatements. She said the final cost to the Town is \$222,287.03. She said that if they hadn't had Mr. Sansoucy argue the point the abatement probably would have been over \$1 million. This is not great but it is a lot better than it would have been had we not done that she said.

Chairman Proulx said there is no negotiation and this is the final amount and they have to pay it. She said they set some money aside in the undesignated fund balance which can increase with the overlay when they set the tax rate in November and they were assured there is about \$1 million in the fund balance as of 2019.

Mr. Johnson said Farmington wasn't the only town to do this and there were about 50 or 60 other towns that did it. He recalled when this issue came up they didn't use the full appraisal value and took a percentage of it because they weren't confident in it and that paid off.

Chairman Proulx then asked the board to vote to pay the abatement to Eversource.

Motion: (Johnson, second Place) to grant the utilities abatement to Eversource in the amount

of \$222,287.03 per the court decision passed 4-1 (Connolly opposed).

d). Board Renewal Applications – Chairman Proulx said they received the following applications for board reappointments:

Rick Pelkey for a 1 year term on the Planning Board.

Motion: (Connolly, second Vachon) to accept Mr. Pelkey's application for a one year term on the Planning Board passed 5-0.

John Aylard for a 3 year term on the Zoning Board of Adjustment

Motion: (Johnson, second Connolly) to appoint John Aylard to the Zoning Board for a term of 3 years passed 5-0.

John Scruton for a 3 year term as an Alternate member

Motion: (Place, second Vachon) to appoint John F. Scruton to the ZBA as a three year alternate passed 5-0.

10). Additional Board Business:

a).Campaigning at the Dump – Chairman Proulx said it is campaign season again and in the past they have allowed campaigning outside the fence at the dump and nothing inside the fence.

Mr. Johnson added that they are not to block traffic or interfere with operations.

Chairman Proulx said she wanted to reaffirm this so that everybody knows what the rules are.

Consensus of the board was to allow campaigning at the dump as per the past practice.

Chairman Proulx said she would advise the Transfer Station Manager of this and who to contact if anyone gives him any trouble.

b). Facility Use Request – Chairman Proulx said Mr. Capello has requested to use the Town Hall to conduct the Town business that the board has asked him to do. She said the Town Attorney contacted each of the board members and they all said they were fine with it but there is the possibility of people seeing him entering and leaving the building so the Attorney constructed a statement they could make publically so that the public is aware of it.

She said there are stipulations as to how this is done and within a few days this may be a moot point anyway. She then read aloud the following prepared statement:

"Our Town Administrator Arthur Capello continues to be on paid administrative leave pending the completion of an external investigation. Select Board Chair Paula Proulx has assumed the primary duties and responsibilities as acting Town Administrator during this time but this has its limitations due to the time required. While on paid status and to ensure efficient and effective Town management Arthur has been requested by the board to perform certain duties and tasks with limitations and working through the board and Paula for those tasks. Arthur has informed us that working from home contains many limitations and makes it difficult and sometimes impossible to do the tasks we assign and he has requested use of the old Town Hall/Recreation building for a limited office space on a temporary basis. This building is closed and is not accessed by the public or any other Town employees at this time."

Chairman Proulx said the board needs to take a vote on the request and the statement contains

the actual motion to be used.

Motion: (Johnson, second Place) I move that the board allow Arthur Capello to use the closed Old Town Hall/Recreation Building solely for an office space related to Town related tasks assigned by this board and/or Chair Proulx and that the same limitations and restrictions currently in place on Arthur remain in place;

Discussion: Chairman Proulx said that she will know each day before exactly the hours Mr. Capello plans on being there, that she will inform the Town employees that may or may not need to go in there and that she and Mr. Capello will coordinate it through the Selectmen's Secretary. This protects Mr. Capello's and the Town's rights until all this is settled she said. She said if this is approved by the board the Town Attorney will inform Mr. Capello of these limitations on Monday night. She said this was also reviewed by the employment attorney and has been approved and she wanted to make a public statement before taking a vote.

Mr. Connolly asked if the janitorial supplies are still stored at the Town Hall.

Chairman Proulx said she would have to check on if they still store supplies there. She said that when that building needs to be cleaned the Custodian does the cleaning at night and anyone needing to enter the building must check with her first to make sure everything is done on the "up and up".

Vote: The motion passed 5-0.

c). Good News on State Revenue! -Mr. Johnson said during their budget planning they anticipated having to cut their expected state revenues by roughly 30%. He said according to the Dept. of Revenue Administration notice and the NH Municipal Association the Rooms and Meals tax revenues have not plunged as much as anticipated so the Town will gain about \$105,000 more than anticipated in state revenues which would be about a \$5,000 decrease from the amount received last year. That would decrease the tax impact from the current 47 cents to about 28 cents he said.

He said there has been no announcement about the Highway Block Grant yet.

d). Auditor's Questionnaire – Mr. Johnson said he completed the questionnaire and it has to be signed by the Chair on behalf of the board. He read the questions and his answers as follows:

Q: Do you have any knowledge of any fraud or suspicion of fraud affecting your entity? **A:** No

Q: Have you received any communications from employees, former employees, regulators or others alleging fraud? **A:** No

Q: Have you identified any specific risks of fraud within the entity? **A:** No

Q: Has the board adopted a universal code of ethics for members and employees to follow? **A:** No. Chairman Proulx said she there is one for Selectmen but employees are not included in it.

Q: Have you or any related party of yours had any interest direct or indirect in any of the following transactions or pending or incomplete transactions since Jan. 1, 2020 to which the Town or any retirement, savings, pension or other similar plan was or is to be a party: 1). Sale, purchase, exchange or lease of property –No; 2). Receiving or furnishing of goods, services or

facilities – No; 3). Transfer or receipt of income or assets- No; 4). Maintenance of bank balances as compensating balances for the benefit of another – No; 5). Any other transactions- No

Q: Does the board formally authorize all disbursements both vendor and payroll prior to the release of funds? **A:** Yes-we sign the manifests.

Q: Describe how the board stays informed of the latest changes in the laws and regulations pertaining to the Town. **A:** Typically the Town Administrator informs us or provides us written documentation of any law changes. Also some members subscribe to the NHMA and get updates on legislative actions. Dept. heads and Town Counsel update us.

Q: Does the board review comparative reports of estimated and actual revenues and appropriations and expenditures? **A:** Yes monthly

Q: What procedure does the board follow in reviewing or using these reports for example does the board normally meet with dept. heads as part of the process and does the board review both revenue and expenditure reports? **A:** We review budget lines and question over spent or under spending of lines or lines which may be drastically under spent. Yes we get revenue and expenditure reports.

Q: Has the board developed a disaster recovery plan in the event of a loss or interruption of IT functions? **A:** Currently- No. Mr. Johnson said he thinks the IT person has such a plan but the board hasn't formally approved it.

Q: Is there a written investment policy adopted? **A:** No

Q: Have you adopted the use of either debit or credit cards by employees? **A:** Yes (provide a copy of the policy)

Q: Does the board have knowledge of any funds or bank accounts not in custody of the Treasurer? **A:** Yes- funds that are in the custody of the Trustees of the Trust Funds.

Q: Has the board approved a fund balance policy in compliance with GASB 54? **A:** Mr. Johnson said he left this blank because he did not know.

Chairman Proulx said she thinks they have one but she wasn't sure if it complies with GASB 54.

Q: Does the board or Town Counsel have knowledge of any crowd funding activities? Mr. Johnson said these are online sites where people could advertise for donations and use them for Town purposes to fund specific projects. **A:** No (they have not done so)

Q: Describe how the board's approval process of vendor and payroll manifests, review of revenue and appropriations reports and general process over board meetings has changed due to COVID. **A:** None of those processes have changed due to COVID.

Consensus of the board was they were in agreement with Mr. Johnson's answers and no changes were needed.

Motion: (Johnson, second Place) to authorize the Chairman Proulx to sign the Board of Selectmen Town Counsel questionnaire provided by Plodzik & Sanderson passed 5-0.

e). Guardrail Update – Mr. Vachon asked if the broken guardrail on Reservoir Road has been

addressed yet.

Mr. Connolly said the broken piece has been removed.

11).Non-Public Session A:

Motion: (Johnson, second Vachon) to enter non-public session under RSA 91-A: 3 II (c)

Reputation passed 5-0 by a roll call vote (Proulx, Johnson, Connolly, Place, Vachon-yes) at 8:15 p.m.

Motion: (Johnson, second Connolly) to come out of non-public session passed 5-0 at 8:37 p.m.

Motion: (Johnson, second Place) to amend the reason to enter non-public session to add (I) legal update passed 5-0 by a roll call vote (Proulx, Johnson, Connolly, Place, Vachon-yes).

Motion: (Johnson, second Vachon) to seal the minutes as disclosure would adversely affect the reputation of a person other than a member of the board passed 5-0 by a roll call vote (Proulx, Johnson, Connolly, Place, Vachon-yes).

12). Non-Public Session B:

Motion: (Johnson, second Place) to enter non-public session under RSA 91-A: 3 II (I) legal advice passed 5-0 by a roll call vote (Proulx, Johnson, Connolly, Place, Vachon-yes) at 8:37 p.m.

Motion: (Johnson, second Vachon) to come out of non-public session passed 5-0 at 8:56 p.m.

13). Next Meeting: Monday, March 8, 2021

14). Adjournment:

Motion: (Vachon, second Place) to adjourn the meeting passed 5-0 at 8:56 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

Paula Proulx, Chairman

Neil Johnson, Vice Chairman

Dave Connolly

TJ Place

Gerry Vachon

To be submitted to the Town's Legal Counsel for review and determination of its legality on the part of the Town of Farmington:

To try and overturn this decision, we've needed to write a petition, obtain a sufficient number of qualified signatures, and then submit the petition to have it added to the 2021 Town Meeting Agenda as a Warrant Article. Smith Court's status will need to be voted on by the Town a **second** time. My question is **WHY?** WHY are WE being made to do this? There is over 60 years worth of official documents and overwhelming evidence that support the fact that the Town voted in favor of accepting Smith Court as a Town own road.

None of the vote results for the 1961 Warrant Articles **can** be **physically** produced. What does that mean for the other 24 Warrant Articles that were voted on that night? Warrant Article 24 concerning Smith Court, has been deemed **null** and **void**, and if this **is so**, and if this **is true**, then the **other 24 Warrant Articles** that were voted on that night **must also** be deemed null and void because their vote results are also missing!

In a situation like this, the governing body should not be allowed to pick and choose which Warrant Articles are ACCEPTED and which ones are REJECTED. Either they are **ALL** accepted or they are **ALL** rejected and needing to be voted on again, just like we have to do on March 10. It is unjust and biased to allow it to be otherwise.

By:

Theresa Riordan
548 Main Street
Farmington, NH 03835

March 1, 2021

To be submitted to the Town's Legal Counsel for review and determination of its legality on the part of the Town of Farmington:

My question to you is *WHY?* Why would the Town of Farmington *continue* to perform all of these actions, for over 60 years after the 1961 vote was taken, *if* the vote result was *anything* other than *in favor* of Smith Court being accepted and designated as a Town-Owned road? The answer is... they *wouldn't* have.

According to the 2007 New Hampshire Supreme Court's decision in the Hersh v. Polonski case, 156 N. H. 511, the Town of Farmington, by their long history of faithfully performing the very actions listed by the New Hampshire Supreme Court of: **opening up or improving a street, repairing it, removing snow from it, or assigning police patrols to it**, has implicitly implied, beyond a shadow of a doubt, that the governing Town body meant to accept Smith Court as a Town-Owned road, **especially** having done so for *over 60 years after* the 1961 vote was taken.

Further proof of this can be found when looking at any current **Town or State map, Property Deed, Town Survey, Priority Level Road Classification List, Snow Removal list**, etc. Smith Court is listed on all of them, and it is **not** *nor has it ever been*, listed, labeled, or classified as a **private road**.

By:

Theresa Riordan
54 8 Main Street
Farmington, NH 03835