

Minutes of the Westmoreland Selectmen's Meeting

Thursday, May 2, 2023

BOARD MEMBERS PRESENT: Frank Reeder, John Snowdon, and Bill McGahie.

1. The meeting was called to order at 1 pm by Frank Reeder
2. Approval of Minutes: April 20, 2023. Motion was made by John Snowdon, seconded by Bill McGahie to accept the minutes as printed. Motion passed 3-0
3. Accounts Payable: Motion was made by John Snowdon, seconded by Bill McGahie to approve Manifests for: General Fund \$206,878.85 and Fire Station \$2,097.28 Motion passed 3-0.
4. Old Business
 - A. Zoning Clerk
 - Peter Remy - cannot have hearings without a clerk. No one currently on the board wants to take on the responsibility.
 - 2 hearings currently pending.
 - Zoning and Planning clerks have responsibilities greater than other boards, and minutes have to be precise in case they ever need to be used in court.
 - Reeder - position currently per diem \$50 per hearing. Need to look into paying both Planning and Zoning Board Clerks as part time positions. Town Administrator to ask other towns what they are paying clerks to establish a base. Will need to discuss further to find money needed to pay.
 - Will need to contact the Municipal Association to determine the legality of not having hearings.
 - B. Sullivan County Attorney Marc Hathaway called last week to inform Selectboard that the Department of Corrections has asked the Court to allow Cindi Adler's release back into the community. She has exhibited good behavior while incarcerated and has completed all counseling sessions as ordered by the court.
 - C. Title search for well rights - Search of deeds for any property that may have any rights to well on land where the new fire station is to be built concluded that no property was granted rights to the well. The well will be capped.
 - D. Harvey Pond Dam
 - Pond has breached banks
 - NHDES thinks pond man made. Pond is on the town maps since Town established in the 1700s. Harvey Pond Embankment was constructed in the 1920s potentially due to the road.
 - Pond has grown to be about 2x original size.as grown
 - Town to determine who owns the pond. Not in the state registry as State owned. Tax maps show dotted line around pond
 - Earthen dam is still holding, but weakened with damage and decay.
 - Beavers are currently filling a culvert just down from the dam. Motion was made by John Snowdon, seconded by Bill McGahie to hire a trapper to trap beavers. The trapper would have to obtain property owners permission. Motion passed 3-0

- E. Zoning Violations -Reeder - recommend adopting NH Municipal Association policy for zoning violations. (Attached)
- 1 - Communication about violation informal. 10 days to response
 - 2 - Warning letter (sent certified with return receipt) informs the landowner of the possibility that fines will begin to accrue under RSA 676:17 – 30 days to comply
 - 3 - 2nd letter formal violation – Westmoreland Ordinances SECTION 7:02 Penalties and Remedy for Violations Every person, persons, firm, or corporation violating any of the provisions of this Ordinance may be subject to a fine by the Board of Selectmen of not more than one hundred dollars (\$100.00) for each day of said violation, plus any legal costs resulting in the enforcement of said violation.
 - 4 - Court
- Motion was made by Frank Reeder, seconded by John Snowdon to adopt NH Municipal Association’s Zoning Violation Policy with discussed timeline and fines. Motion passed 3-0

- F. Sean Laine sent a letter as 1st communication outlining zoning violation. Has not complied. 2nd letter to be sent with a fine of \$50 per day if the storage container is not removed within 30 days.

- G. Fire Station - Harry Nelson
- Moving out of the Fire Station May 16th.
 - Monthly meetings, 3rd Tuesday 8pm to be held at the Town Hall
 - Town Hall was disconnected from the fire station well and put back on the old well with a new pump temporarily. Town Hall water being tested for drinking safety.
 - CPR classes offered by Cheshire EMS and Westmoreland Fire on May 27th full with over 30 people signing up. Next class date to be determined

5. New Business

Signature Approval was given for the following:

Payroll 5/2/2023	Eversource Letter	Trustees of TF \$1500.00
Payroll Taxes 5/2/2023	Service Appreciation Letter	NH Criminal Records \$25.00
Timber Tax Warrant	Healthtrust \$6455.38	
Cemetery Deed	NH Retirement \$2349.47	

- A. Motion made by Frank Reeder and seconded by Bill McGahie to accept donation per RSA 31:19 for the Town Common Gazebo Fund in the amount of \$6500. Motion passed 3-0
- B. Motion made by Frank Reeder and seconded by John Snowdon to accept donation per RSA 31:19 for the Emergency Management Expendable Trust Funds in the amount of \$1500. Money donated to be used in lieu of Town Funds per donor’s request to establish the Emergency Management Expendable Trust Fund Motion passed 3-0
- C. Motion made by Frank Reeder and seconded by John Snowdon Per RSA 31:19, to expend funds from the Westmoreland Veteran’s Memorial Fund in the amount of \$4,409.75 to order bricks for the walkway. Motion Passed 3-0
- D. Complaint Letters

1. Great Meadow Ferry Road deer fence too close to the road - No ordinance about fences. Road agent said the fence is at least 15 feet from the road and not an issue with plowing or road maintenance.
2. Great Meadow Ferry Road excessive gravel deposited on lawn from plowing. Request to help remove. Road Agent to work with home owner
3. London Cross Road - excavation work on Larkin Construction Property leading to approx 6-8' dike on north side of property. Dike not on site plan and no NHDES permit issued. - Bill McGahie to work with the Zoning Administrator to see what is/isn't on site plan. If it is determined the property owner is in violation McGahie will discuss the issue with the property owner. Road agent does not feel the town road will be impacted.

6. Correspondence

NHDOT - Red Listed Bridges (see attached)

7. A motion was made by Frank Reeder, seconded by John Snowdon to enter into a non-public session per RSA 91-A:3,II(c) at 2:25pm. Motion passed 3-0.
8. A motion was made by John Snowdon, second by Frank Reeder, to seal the non-public session minutes and return to public session at 2:45pm. Motion passed 3-0.
9. The meeting was adjourned at 2:48pm

Respectfully submitted,
Jodi Scanlan
Town Administrator

<p>NEXT MEETING TUESDAY MAY 16, 2023 6:00PM MINUTES ARE INITIALLY POSTED AS UNAPPROVED SELECTMEN SIGNATURES DENOTE APPROVAL</p>

BOARD OF SELECTMEN

Frank Reeder, Chairman

John Snowdon

William McGahie

what will occur is that the community's attorney will submit an affidavit of attorney's fees explaining the legal costs incurred in the case, and attach a copy of the invoices that were submitted to the community to validate the expenses.

II. Informal Enforcement

Assuming that the violation is not an emergency situation (i.e. something that poses an imminent threat to the public safety, health or welfare), the community should provide the landowner with at least one notice of the problem, in the form of a warning, and provide an opportunity to cure prior to assessing fines and threatening to file a lawsuit. This step is up to the discretion of the local official, depending on the seriousness of the violation, and how likely the violator is to respond. It may include telephone calls, personal visits, etc. The enforcement official should use this process to lay the groundwork for a possible prosecution by: (1) developing a complete, good faith response to any defenses the alleged violator raises, and (2) keeping careful written records of any conversations or correspondence with the alleged violator for use as admissions or proof of facts.

If informal discussions with the landowner do not solve the problem, the code enforcement official should send a written notice of warning, informing the landowner of the particular violation and what needs to be done to remedy the problem. A reasonable period of time should also be given for the landowner to cure. Although the letter should not assess fines, it should inform the landowner of the possibility that fines will begin to accrue under RSA 676:17 should the violation not be cured in a timely manner.

As with any formal notices, the community should send its letter certified return receipt requested and first class. The first class mailing is used because people frequently will not sign for certified letters, which can jeopardize notice. If a first class letter does not get returned for a wrong address it is presumptive evidence that the landowner received notice of the violation. See *In re City of Concord*, 161 N.H. 169, 173-74 (2010). The key here is that notice, reasonably calculated to reach the defendant landowner, is provided concerning the violation, and the landowner is given the opportunity to resolve the problem. See *id.*

If the landowner, despite receiving a warning of the zoning violation, elects not to cure the problem and come into compliance, the community should then send a second notice that formally finds the landowner in violation of the ordinance, and assesses civil fines running from the date of the letter (remember that under RSA 676:17, if each day a violation continues is considered a separate offense and subject to a larger fine). Under RSA 676:17, 1 (b) the potential for a civil penalty begins to accrue "after the day on which the violator receives written notice from the municipality that he is in violation..." As with the first "warning letter" this notice should be sent via certified and first class mail. If this type of service does not work, personal delivery may have to be made, and proved. Further, depending upon the court that the community chooses to utilize for prosecuting the lawsuit, this second letter can be captioned as a *Cease and Desist* order or *Notice of Violation*. It is recommended that in order to avoid confusion, the term "Cease and Desist Order" should not be used on this formal unless the procedure under RSA 676:17-a is intended to be used (See Chapter Three, Section I, below). However, the use of this term does not constitute a legal defect.

III. Administrative Enforcement of Ordinances (RSA 31:39-c)

Two lesser-known options for enforcing local ordinances can be found at RSA 31:39-c and RSA 31:39-d. Both these statutes are designed to assist municipalities in enforcing their