

**North Berwick Board of Selectmen's Minutes: May 20, 2008**

**NORTH BERWICK BOARD OF SELECTMEN MINUTES MAY 20, 2008**

**Present:** Chairman Danforth, Selectman Whitten, Selectman Bourbon, Selectman Folsom and Selectman Drew.

**Also Present:** Lawrence Huntley (CEO), Kathryn Harrison, Craig Skelton (Town Assessor), Jason Claffey (Foster's), Meredith Norris, Greg Norris, Della Maher, Dennis Maher Robert MacDonald, Lincoln Harrison and Dwayne Morin.

Chairman Danforth opened the Board of Selectmen Meeting at 6:30 p.m.

**1. Pledge of Allegiance**

**2. Review and Approve Minutes of May 6, 2008**

Selectman Folsom moved to accept the Minutes of May 6, 2008 as corrected, Selectman Drew seconded the motion. Vote, 5-0

**3. Public Input:** No Public Input

**4. Unfinished Business:**

**A. Butland Property:** Update on Progress

Dwayne explained that since the last meeting there have been a few occurrences that he wants to keep the Board aware of. Mr. Stone is no longer involved. Mr. Butland told Dwayne that the toilet is not broken but that the water pipe was broken.

Dwayne spoke with cleaning companies and they recommended that the urine and fecal matter be dumped down the toilet into the septic and that the septic system be pumped out and then filled with sand. Dwayne informed the Board that Hussey Septic would be pumping the tank on May 21, 2008. Dwayne will be at the property to make sure that this is done correctly and that the toilet and septic are working correctly.

**B. Parks and Rec. Commission: (moved)** Lincoln Harrison Application (Postponed From 5/22/08)

Selectman Folsom moved to accept Lincoln Harrison application to the Lands Park and Recreation Commission, Selectman Whitten seconded a motion. Vote, 5-0

Lincoln Harrison would like to remove the historical building chimney on Meeting House Road. He will ask the members of the Historical Society to meet with the Board of Selectmen to discuss the removal of the chimney.

Dwayne explained that Kristie, Parks and Recreation Director and the Parks and Recreation Commission sent over a North Berwick Parks and Recreation Coaching Policy. They are trying to create an all encompass Coaching Policy.

As of April 7<sup>th</sup>, 2008 the North Berwick Coaches Policy is as follows: All coaching applicants for any sport or program will need to turn in a coaches application. All applicants will be subject to a full background check, as well as, a reference check. After that is completed the applications will be brought to the Recreation Commission for review. Together with the Recreation Director they will choose the coaches to fill the necessary openings within the sport or program. The coaches will be notified if they have or have not been selected by either mail or phone. All decisions made by the Recreation Director and Recreation Commission are final.

**C. Commitment FY08: (moved)** Norris Abatement

Greg Norris read into the record:

I appreciate very much the Board's careful, thoughtful, and patient consideration of the proper fee to assess for out lot's removal from tree growth. I regret being unable to attend the May 20 meeting, due to an absolutely unavoidable business meeting in Alabama the same day. Dwayne recommended that I summarize my thoughts for the evening to you in a letter, which I am pleased to concisely do

The situation and nature of our proposed remedy and solution, all were captured clearly by our Assessor, Mr. Skelton at the close of the last meeting, when he used the analogy of traffic violations. As we all know, ignorance of the law is no excuse. And as we also know, judges waive fines when a driver brings the court a photograph demonstrating inadequate signage.

I will do my best to summarize, in words, the ways that Maine's guidance, (its "signage") for resident notification of land use change was inadequate at the time of our closing, and that this

clearly lead to the procedural error. I also hereby offer my time and effort and energy and creativity to work with our Assessor, our state representatives, SWOAM (the Small Woodland Owners Association of Maine.), and the State government, reporting quarterly on progress to the Town Manager and the Board of Selectman, to recommend changes to the language or issuance of simple procedural guidance to towns and landowner, in order to prevent future procedural errors in our town and the state as a whole.

The law on tree growth requires, as we knew then and now, that landowners ensure that the town is “notified” when any portion of their land is being removed from the tree growth plan. I looked up notified in the dictionary: “To give notice of, to make known, to inform.” The law did not specify *written* notification. Neither the landowner nor the town officials were clear about whether written notification was required, nor what level of “formality “or finality” is required in such notification.

Meredith and I understood that we had achieved all required notification prior to closing on our property. We surely would not have closed without it! We understood this because first, Meredith called the town office, spoke with the Assessor, and asked what were the required steps to remove our lot from tree growth, because were doing so. Later in the process, our Real Estate Agent went to the town office specifically on the topic of fees to be paid for removal of our lot from tree growth, spoke with the Assessor, and brought us back a printout from him, showing what our removal fees were (less than \$2000) under the assessment of the land at that time.

Our understanding was clear at that time: we and the Realtor had “made known, had informed” the town of our intent to remove the land from tree growth. He in turn informed us what our fee liability was, and we were prepared to pay it at closing or afterward. Nowhere was there any further guidance from the state nor town stating that we must give written or any more formal notice of the land use change prior to closing.

It is very instructive to note that the law’s language has been updated since our closing. It was updated on November 29, 2007, to replace the September 2003 revision, in order to address what were at that time some identified lacks of clarity in the law. The group SWOAM suggested some of the changes to the language, to help avoid problems of unclarity, which it said had “tripped people up and continue to cause problems for those that meet all the intents of the law.” (Please see the testimony of SWOAM’s Executive Director Tom Doak, dated March 1, 2007, posted at <http://www.swoam.org/advocacy/1d736.shtml>).

The newest language is now found at:  
<http://www.maine.gov/revenue/forms/property/pubs/bull19text.htm>.

One of the revisions addressed a concern of SWOAM noted above, by requiring that “if the sole reason the land does not meet the requirements of this classification is that the owner failed to file the sworn statement required under section 574-b, subsection 1, the assessor shall provide the owner with written notice by regular mail of the deadline to file the sworn statement and permit the owner at least 60 days to respond to that notice.”

This modification addressed a related reporting technicality that had been “tripping up” landowners, and provided them with the 60-day written notice from the Assessor.

I suggest, in closing this letter, that:

- a) We understood, based on Meredith’s phone call with Mr. Skelton and the follow-up print-out obtained by our realtor from him and given to us, that we had achieved sufficient notice prior to closing.
- b) The fact that this degree of notice was not deemed adequate by the assessor, together with inspection of the older language itself, both demonstrate that the law was not clear about what form of notice was required by landowners prior to closing.

This was a case of “inadequate signage.” By direct analogy to traffic violations in cases of branch-covered signs, it gives the judge (the Board of Selectmen) the right and responsibility to set the proper fine, and to direct responsible parties to remedy the improper signage. I volunteer my efforts to work with all relevant parties, to remedy the signage, and to keep the board informed of progress on a quarterly basis.

I will be very grateful to the board for its patient and wise consideration of this matter.

Dwayne asked to make a clarification of the testimony of Tom Doak. The testimony related to specifically to a ten year plan for tree growth. Is that people in tree growth had not submitted their ten year plan. The towns would automatically remove them without giving them any notification. The clarification that was made in tree growth this year related specifically only to their ten year plan, it had nothing to do with withdrawing from tree growth, specific to someone who hadn’t filled a ten year plan. What they added to it was to allow the town to give a 60 day notification. The town just went through that, we actually gave people 180 days notification.

Craig Skelton (Town Assessor) read into the record:

I would like to recap the facts presented at the last Abatement Hearing, which can be summarized by saying that I do not believe the property owners “...certified to the assessor that a portion of their land was no longer classified under the Tree Growth Law.” Mrs. Norris had stated that she believes she did instruct me to remove the portion of their land that was sold and therefore believes that they were in compliance with the requirements of the law and the lesser penalty should apply.

My first correspondence sent to the Norris’s was dated October 9, 2007. This notice and a copy of Bulletin 19 published by the Maine Revenue Services that was in effect at that time was sent to 40 property owners where Management Plans were due for compliance re-certification. In paragraph three the letter stated... “A Tree Growth Penalty may be necessary for any land not remaining in the program and an updated sketch will need to be submitted. Mrs. Norris indicated at the last meeting that she spoke with me and the subject of updating the map was discussed at that time, yet no map had been provided to me. Receipt of an updated map prior to the actual sale of the land would have been closer to actual certification of removal than her alleged verbal request.

Other than having been contacted by the real estate broker who requested an estimate of penalty for removal, I was not aware an actual sale was going to take place. Property owners have requested estimates in the past on the basis that they were thinking of selling some land and in the final analysis, did not actually do so. For me to have calculated the initial penalty, I have to believe that the prior conversation Mrs. Norris indicates we had must have been basic information gathering on her part rather than actual instruction to remove the property since the later brokers contact with me was a request for a penalty estimate. Wouldn't it be difficult to believe that a "request to remove" was given before an estimate of penalty was sought?

Ultimately, the sale of that property came to our attention when the deed dated November 7, 2007 was forwarded to the Town from the registry of deeds.

According to Donald J. Mansius, Director of Forest Policy & Management... who spoke recently at an assessor educational meeting, "...Landowners are responsible for compliance with requirements of Tree Growth Tax Law."

As an agent for the Assessors, I have and will continue to attempt to educate taxpayers of what is required of them however; my action or inaction does not alter a landowner's responsibility to comply with the requirement of the law.

The State recently updated Bulletin 19 at the request of a group called Small Wood Lot Owners of Maine. It was founded that some towns were removing property from the tree growth program due to failure on the part of property owners to comply with the 10 year re-certification requirement. The revision to the Bulletin was issued on November 29, 2007, which occurred after the Norris's sale of property.

If you review the context in which Small Wood Lot Owners Association requested a change, there was a belief that entire parcels were being forced out of the program and then being assessed penalties. The required 60 day notice in the revised Bulletin applies to a property owners failure to file a sworn statement which when you read the bulletin is referring to the application used to place property in the program.

The circumstances of the Norris's removal was not because of any failure to comply with the 10 year re-certification requirement for the entire parcel, yet was due to a change in use of a portion of the property sold as a house lot.

The question before you tonight is whether you believe that the property owner did or did not "...certified to the assessor that a portion of their land was no longer classified under Tree Growth law" and that certification occurred before the sale of the house lot that triggered the higher penalty.

Dwayne stated to the Board, was the Norris's information that they provided to the assessor sufficient enough to set the fair market value at what it was at presale. The tree growth penalty is very clear that the penalty has to be based on fair market value, was the notification sufficient enough to satisfy a presale penalty.

Selectman Whitten moved that the abatement request 14 of owner Gregory and Meredith Norris be denied, Selectman Folsom seconded a motion. Vote, 5-0

#### **D. Old Fire Truck:** Update

Dwayne stated that Mr. Day had been in his office and he had explained to Mr. Day that that the Fire Chief needs to inspect the old fire truck. Mr. Day would like the town to take back the old fire truck because he is not receiving any help restoring it. Dwayne asked Mr. Day to get the truck uncovered and the town would pick it up, but he still needs to contact the Fire Chief. Dwayne has not heard from the Fire Chief so he does not know whether Mr. Day has contacted him at this time.

Dwayne will try to contact Mr. Day again.

**Reminders:** Next Board of Selectmen's Meeting-June 3, 2008-6:30 p.m. Municipal Building

#### **5. New Business:**

##### **A. Code Enforcement: (moved)** Discussion on Fines for Zoning Violations

A letter was given to the Board of Selectmen from the Code Enforcement Officer: The letter is as follows:

Over the past few years, there has been a steady increase in the number of construction projects that are started without first obtaining a permit, It has been my policy, that the property owner only get the permit after the fact and not pay a fine, but this does not seem to decrease such activity.

As I reviewed Article 6.7.2 of the North Berwick Zoning Ordinance, which states "Any person, firm, or corporation being the owner or having control of any building, land use, or premises who violates any provisions of this Ordinance, shall be guilty of a misdemeanor and shall be fined not less than \$50.00 nor more than \$500.00. Each day such violation is permitted to exist after notification shall constitute a separate offense, amount of fine shall be set by Municipal Officers. All fines collected hereunder shall inure to the Town of North Berwick"

This, in effect, requires the Board to review each violation and set the fine.

As I intend to be more proactive in this matter, I would like the Selectmen to consider this Article, and set a fixed rate of \$100.00 for each violation. This would allow the Code Enforcement Office to add this amount to the post acquired permit, and not take valuable time at each Selectmen meeting.

Selectman Drew moved at accept the discussion between Dwayne and Larry accept a \$100.00 for each violation per day, Selectman Whitten seconded a motion.

The Board had some discussion on the subject and Selectmen Drew withdrew his vote.

Selectman Bourbon moved that \$100.00 penalty be assessed to each Ordinance violation and for the \$100.00 fine to begin accruing at the conclusion of the first business day following notification with receipt received, Selectmen Whitten seconded a motion. Vote, 5-0

**B. Capital Improvement Plan:** Review Updates to Road CIP for FY09

Dwayne updated the Board of Selectmen on the North Berwick Road Capital Improvement Plan Update-2008

Dwayne and Mike have inspected the roads in town and have put together a road list.

Reschedule roads repair for 2008 due to winter damage:

- Beech Ridge Road from the culvert to Governor Goodwin Road
- Valley Road from Boyle Road to Morrells Mill Road

Dwayne proposed dropping two roads from road schedule:

- Portland Street
- Sid Hall Drive

Dwayne asked Mike for a 5-year plan for the Board to review.

The town will start Madison Street on May 28, 2008.

Selectman Bourbon moved to approve Linscott Road, Canal Street, Valley Road, Beech Ridge Road, Nowell Street and if time and finances are available Sid Hall Drive, Selectman Drew seconded a motion. Vote, 5-0

**C. MMA:** Executive Committee / LPC Nominations

Dwayne asked if a member from the Board was interested in serving on the MMA Committee or the LPC.

North Berwick's LPC is Barry Abbott, his term ends this year.

**D. ZBA:** Membership Application: Louis Thibodeau

Louis Thibodeau will meet with the Board of Selectmen at the June 3, 2008 meeting.

**E. Minuteman Press:** Business and Telephone Directory proposal

Minuteman Press asked if the Board would be interested in paying for the postage to mail out a phonebook with only North Berwick phone numbers listed. If the Board decided not to pay the cost did not mean that Minuteman Press would opt not to publish such a phone book

Board of Selectmen opted not to participate in paying the postage on the Minuteman Press Project.

**F. Fuel Bids:** Results of Oil and Diesel Bids

Dwayne explained to the Board that the Town received their fuel bids: the fixed price was \$4.09 for number two fuel, the diesel fuel was \$4.295. The Town accepted a rack plus a margin, which allows a fixed price through negotiation with that company. The Town and SAD#60, will have the same fuel suppliers; Webber oil for number two fuels and Dennis Burke for all diesel fuel.

**G. Great Works Land Trust:** Trails on Town Owned Land

Dwayne explained to the Board that the Great Works Land Trust will be having the Conservation Corp. Kids come in for two weeks. They would like to create a loop trail that would cross on to the towns property then circle back onto Great Works Land Trust land.

Selectman Bourbon moved to approve the Great Works Land Trust to spruce up or create paths and to go on to Town owned property (Map 10, Lot 4-7), Folsom seconded a motion. Vote, 5-0

**8. Other Business:**

Dwayne updated the Board that through the Maine Municipal Association all elected officials will have to be certified of Freedom of Information by November 2009.

Dwayne updated the Board that he is moving forward on Janet Belmain's replacement.

**9. Review and Approve Warrants and Correspondence:**

Warrant: May 13, 2008 - \$10,883.27

Warrant: May 20, 2008 - \$400,128.36

Selectman Whitten moved to accept the Warrants of May 13, 2008 for \$10,883.27 and May 20, 2008 for \$400,128.36, Selectman Folsom seconded a motion. Vote, 5-0



**10. Adjournment:**

Selectman Drew moved to adjourn at 10:15 p.m., Selectman Folsom seconded a motion.  
Vote, 5-0

Respectively Submitted:  
Anita Lambert, Stenographer

Original to Town Clerk

Chairman: Paul Danforth

Selectman: Anne Whitten

Selectman: Anthony Bourbon

Selectman: Elaine Folsom

Selectman: Gregg Drew