

North Berwick Board of Selectmen Minutes March 15, 2022

**NORTH BERWICK BOARD OF SELECTMEN MINUTES
March 15, 2022**

Present: Chairman Galemmo, Selectman Johnson, Sr., Selectman Cowan,
Selectman Johnson, Jr.

Absent: Selectman Hall

Also Present: Dwayne Morin, Travis Rice, Scott Perry, Peter Quint, Charlie Desmond,
Carl Works

Chairman Galemmo opened the meeting at 6:30 pm.

1. PLEDGE OF ALLEGIANCE

2. PUBLIC HEARING – TOWN MEETING REFERENDUM QUESTIONS

Chairman Galemmo opened the PUBLIC HEARING at 6:35 pm.

Chairman Galemmo read the Notice of Public Hearing as follows:

The North Berwick Board of Selectman will hold a Public Hearing on Tuesday, March 15, 2022 at 6:35 p.m. in the Town Hall Conference Room #212 pursuant to 30-A MRSA 2528 (5) on the proposed Zoning Ordinance amendments, Animal Control Ordinance amendments and Statutory Local Liquor Options located at 21 Main Street on the proposed Referendum Questions for the 2022 Annual Town Meeting. The questions to be presented to voters are:

Statutory Local Option Election Questions

Question #1: “Shall this municipality authorize the State to issue licenses for the sale of liquor to be consumed on the premises of licensed establishments on days other than Sundays?”

Question #2: “Shall this municipality authorize the State to issue licenses for the sale of liquor to be consumed on the premises of licensed establishments on Sundays?”

Town Meeting Referendum Questions

Question #3: Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to Enact Drinking Establishment Performance Standards” be enacted?

Question #4: Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to Revise Driveway Definition” be enacted?

Question #5: Shall an ordinance entitled “Proposed Animal Control Ordinance Amendments” be enacted? The Board of Selectmen encourages all interested persons to attend this Public Hearing.

Dwayne indicated that this Public Hearing is just an informational hearing and that the questions have already been set and they will be voted on in April.

Regarding Question #1, Dwayne indicated that back in 1996, the Town allowed for restaurants to sell alcohol on days other than Sunday and at the time it was limited to beer and wine and we had already authorized for the sale of spirits. Last year the State did a complete review and audit of every question that every town in the State of Maine had for liquor licensing and found out of the 485 towns, 400 of them had voted improperly. They then went and passed a law that said every town vote that was made prior to 1984 would be accepted by the State and that passed the legislature last year. So that cleared up all but about 35 towns, North Berwick being one of those towns. Dwayne indicated that that meant the Town would not honor our vote from 1996. Dwayne indicated they went back and petitioned the State and they reviewed our Petition and stated they would now accept our vote of 1996, however the intent of the vote which was to allow for Class-A restaurants to sell liquor, would not be honored because we put the words “restaurants” and not “Class-A Restaurants”. So now they have said that as of June 30, 2022, if the town does not act, the town will not be able to have liquor licenses for Class-A restaurants.

Dwayne indicated the State gave the Town three options, one being we could do nothing and what would happen if we did nothing would be that Johnson’s would lose their license as of June 30, 2022. The second option was that Johnson’s could change their classification from a Class-A Restaurant to just a restaurant however, that has dire consequences for Johnson’s Seafood & Steak. The third option was to have us re-vote on the questions. The state has said there can be no limits anymore such as types of liquor and all establishments. Questions #1 and #2 are questions that came directly from the State to be voted on.

The question was asked what the difference was between a Class-A and a regular restaurant. Dwayne stated it is classified such as courses, silverware, etc. A regular restaurant is similar to a McDonald’s and a Class-A is restaurant such as Johnson’s.

The question was asked if this eliminates the drinking and eating category the town currently has if this gets voted on. Dwayne indicated that this is not changing zoning in any way. There are liquor license standard and then there is the zoning ordinance standards. The zoning ordinance standards are not changing yet, just the liquor license standards. Dwayne explained that if the town is going to allow alcohol to be served and consumed in our town, we have to vote on these two questions to be aligned with the State. The owner of Johnson’s indicated that there have never been any issues with over-drinking at his restaurant.

Dwayne stated that regarding Question #3, we do not currently allow drinking establishments within our community. Our zoning ordinance allows them within certain zones however our liquor laws do not allow for bars within the community. So once Question #1 and Question #2 passes, it eliminates all classifications, so a drinking establishment or a bar can be allowed. Because there were no performance standards in our zoning ordinance as it relates to bars, Question #3 develops performance standards for drinking establishments within our community in the zones that they are allowed. Those zones are basically the industrial and commercial

zones. The question was asked if it was based on property lines or door to door. Dwayne indicated it was door to door. Dwayne indicated that as our zoning ordinance currently sits, we have a line item that says drinking establishments, which is a bar, is allowed in zoning, our liquor laws did not allow it. So, if someone tried to open a bar today, they could not do it in the Town of North Berwick. When questions #1 and #2 pass, then bars would be allowed within our community. Under our ordinance, we have “drinking establishments”, we have “eating establishments” and we have “eating and drinking establishments”. The question was asked about an event space and Dwayne indicated that is not even in our zoning ordinance and is not allowed. The question was also asked if these three establishments were subject to Maine liquor laws and Dwayne indicated they are. The question was then asked how many areas there are in town that will allow for bars. Dwayne indicated that there are two zones – industrial and commercial. Our commercial zone is basically the downtown area and the industrial zones are where Pratt and Hussey are. The question was asked if there was any land for building a bar. Dwayne stated not for industrial. Most of the space that would be available would be downtown but that is limited because of the church that is downtown. The church removes a number of buildings within our downtown area that could be used. *(Update to minutes: There is a provision in the State of Maine Liquor Law that eliminates the 300 foot setback from sensitive areas, i.e. church, in downtown and commercial areas. Therefore, all buildings in the commercial zone could be converted to a drinking establishment under the Zoning Ordinance with Planning Board approval.)*

A question was asked if there could be an event at the park or mill field such as a beer-tasting and Dwayne stated no, that is not allowed because it is on town property and alcohol is not allowed to be sold on town property or serve alcohol on town property. No insurance company will ensure a municipality that allows the sale of alcohol.

The question was asked about receiving all of this information and Dwayne stated it would be sent out to all residents in North Berwick on Friday, March 25th. The information is also on the Town’s website.

The question was asked about breweries and Dwayne indicated that breweries are not a land use item within our zoning ordinance and are not allowed. Under zoning ordinance law, if it is not stated in the zoning ordinance, it is not allowed. If someone wanted a brewery, they would have to get the zoning changed.

Dwayne then discussed Question #4 and stated that back seven years when the ordinance changed because the State of Maine required us to adopt the Mandatory Shoreland Zoning update, the definition of a driveway was included in that update and basically eliminated the length of a driveway. Before this, there was no limit on driveways. Somehow, our old definition got dropped and the state definition got put in which then limited the driveways to 500 feet. We want to eliminate that and put it back to the way it was which will have no limitations except in the shoreland zoning.

Dwayne stated that regarding Question #5 will change our Animal Control Ordinance to require a dog’s owner to pick up feces left by the dog on public streets, sidewalks and publicly owned property.

Chairman Galemмо closed the Public Hearing at 7:07 p.m.

3. REVIEW AND APPROVE MINUTES OF MARCH 1, 2022

Selectman Cowan motioned to approve the minutes of March 1, 2022 as amended. Selectman Johnson, Sr. seconded the motion. VOTE: 4-0

4. PUBLIC INPUT

N/A

5. UNFINISHED BUSINESS:

A. COVID-19: ARPA Funding Review

Dwayne indicated there is no new news regarding the ARPA funding at this time.

B. FY23 BUDGET: Budget Committee Review Update

Dwayne stated that the Budget Committee completed their budget review and it basically came out as they thought it would. There were a few things that worked out to our advantage. The first being a calculation error, our budget is down to less than a penny increase. Today, Dwayne received more good news. In the 2023 Projected Municipal Revenue Sharing report, Dwayne had budgeted \$290,000.00 in revenue and he stated that we are now projected to receive \$382,250.56 in revenue sharing, which is \$91,000.00 above of what Dwayne projected. He stated we are now at a mill rate that is lower than last year by about ten cents on the town's side of it.

C. FIRE DEPARTMENT: Cascade System Update

Dwayne stated that they were able to obtain the cascade system from the Mutual Aid system. It is up at the substation. The cascade system previously ran on a single-phased motor and we actually have that motor on our old cascade system and are hoping that we can take our single-phased motor and get it to work. They will be working on that.

D. FY20 FORECLOSURES: Quint Property Installment Contract

Dwayne stated that he has had an opportunity to speak with Mr. Quint and indicated that there is a Land Purchase Installment Contract which Mr. Quint would like to sign in regards to his property which the Town foreclosed on recently and pay off the outstanding taxes due the Town of North Berwick. There is a balance owed of about \$5,000.00 and Mr. Quint has requested that he make a down payment of \$2,500.00 towards the balance, and then \$250.00 per month for the next twelve months to pay off the balance of the three years in back taxes.

Selectman Cowan inquired if this would be manageable while also paying the current taxes owed. Dwayne stated that this would bring him current and Mr. Quint indicated that he is comfortable with this arrangement and this is manageable for him.

Selectman Cowan motioned to accept the payment arrangement of Mr. Quint. Selectman Johnson, Jr. seconded the motion. VOTE: 4-0

Reminders: Next Board of Selectmen's Meeting – April 5, 2022 – 6:30 pm

6. UNFINISHED BUSINESS:

A. TOWN MEETING: Sign Warrants

Dwayne indicated there were numerous warrants that need to be signed. The Board has already voted on the warrants for the town meeting; however, it is in the final stage so there needs to be a vote to sign the warrant for the business meeting and the five questions for town meeting.

Selectman Cowan voted to sign the warrants for this meeting and the warrants for the town meeting. Selectman Johnson, Jr. seconded the motion. VOTE: 4-0

Dwayne then indicated that the Board needs to vote for the ballot clerks for the town meeting. Christine Dudley has proposed Sue Caler, Joanne Foster, Lauren Sartori Hobgood, Debra Bodwell and Kaylyn Bell to be the Ballot Clerks for the April 9, 2022 Town Meeting.

Selectman Johnson, Jr. motioned to accept Christine Dudley's recommended Ballot Clerks. Selectman Johnson, Sr. seconded the motion. VOTE: 4-0

B. ZONING ORDINANCE: Request from Citizen for Board Consideration

Dwayne indicated that he recently received an email from Cheryl Hoffman, who lives near a gravel pit that is being proposed on Stub Marsh Road. This gravel pit has received a significant amount of opposition. Cheryl is part of that opposition and one thing that she is requesting from the Board to look at is to change our zoning ordinance to require two public hearings on proposed projects.

Dwayne's concern about this is that the zoning ordinance requires that the planning board make a decision and the public hearing is the start of that decision timeframe. The public hearing is always held at the beginning of the project. Once the Planning Board gets the application, they must hold a public hearing and then they have 60 days from that date to make a decision on that application. If a second public hearing is held halfway through the review of a project, what public hearing date are you going to use for that decision making process? Dwayne said there is a cost, and how do you go through a project that lasts a long period of time and then say it cannot be approved because we are going to do another public hearing.

Dwayne indicated that the opposition is very high regarding this gravel pit, an attorney has been hired, they have all written letters and attended the meetings. Dwayne stated there is an average

of five letters per week received from the neighbors of this gravel pit. The public comment period ended 90 days ago. The whole idea behind the public hearing is when the public is presented with what the project is. Chairman Galemmo stated if it is an allowable use within a zone, other than putting conditions on it, they would have to accept it eventually. Dwayne did say that our ordinance allows for accessory use. What needs to be looked at is what does “accessory” mean under our ordinance. Selectman Cowan inquired how it is actually defined and Dwayne stated it is very clear what an accessory use. It has to be incidental and subordinate to the primary use.

Dwayne stated the question before us tonight is about allowing two public hearings and Chairman Galemmo stated he did not see a need for a second public hearing and believes 99% of what the Planning Board deals with would not even warrant it. Selectman Cowan agreed, stating it would be doubling the cost. Selectman Cowan stated one of the biggest arguments against holding two public hearings is that is just punitive to an applicant and believes the cost burden is not fair. The Board agrees that at this time, they are not planning on acting on this request.

C. ROADS: Nowell Street Turn Around

Dwayne stated that when we plow Nowell Street, the snow is plowed on someone’s property since there is no turn-around at the end of that street. There is a walking trail at the end of Nowell Street also. The snowplow has to turn around in someone’s driveway each time they plow the street. The Mason’s, who own the property, are in the process of applying for a secondary house on their property. During that process, they were looking things over and found originally that maybe there was not enough road frontage. He stated what they were talking about doing was seeing if the town would allow them to extend Nowell Street so that they could gain their frontage. Dwayne indicated he told them he would not necessarily be opposed to that, however if it is extended, we would want a turn around there. It has been determined now that they have five feet more road frontage than they actually need and they are getting that certified by a land surveyor. Dwayne did mention a turn around at the end of Nowell Street and the Masons stated they did not have a problem with giving the town the land to provide a turn around if the Town built the turn around. Dwayne has now come up with two options. The first being to extend the road 50 feet and put a 50x90 turn around and the second option is to basically go where the road ends now and put a turn around at the end of the road there. He stated there is a brook there so they need to determine where the turn around can go so as not to disrupt that. Selectman Johnson, Jr. asked if there was going to be parking there and Dwayne stated no, it was just going to be a turn around. Chairman Galemmo asked which one of the two options would be better and Dwayne stated they are both equally good. The only reason one would be better than the other is because of where the brook is. It is in the preliminary stages and they need to physically go look at all of this.

Selectman Cowan motioned to accept Jennifer Mason’s gift of land for the additional space for a turn around on Nowell Street and will explore all of the options to make a decision at a later date. Selectman Johnson, Sr. seconded the motion. VOTE: 4-0

D. 130TH LEGISLATURE: Discuss LD 2003 and Potential Effect on Town

Dwayne stated that this piece of legislature came out of a blue-ribbon committee that was supposed to be looking at affordable housing within the State of Maine. What came out of it was this piece of legislature, which is probably the biggest assault on home rule authority that we have ever seen in the State of Maine and is a one size fits all approach. It says from Kittery to Madawaska, this is the approach that works and removes all the towns' ability to zone their own towns. It is sponsored by the Speaker of the House who is pushing this. Chairman Galemme stated that what bothers him about this is the wording that states we cannot limit the number of permits.

Dwayne stated there are three things that trouble him about this. The first one is that it removes all growth caps within the State of Maine so all of our growth cap information becomes null and void if this passes. The second part is that it allows for any lot in any district that allows a single-family home, that you can put four units on it, without any additional land. Under our zoning now, a half of an acre of land is required to put a single-family house on. This will say that a four-unit building could be put on any lot, in any zone, in any town. Dwayne stated developers will use this to find a way to maximize their profits. Selectman Cowan stated this would impact the school budgets as well. Dwayne stated this is not going to create affordable housing but mass chaos, especially in southern Maine. The third part is that they have created an ADU (accessory dwelling unit) so every property that has a single-family house on it can now have an ADU with no limits whatsoever on the size of an ADU.

Dwayne indicated he was going to contact the legislature about this to state his opposition. Selectman Cowan suggested putting this information on our website to alert the people of this.

E. SANITARY DISTRICT: Rate Increase

Dwayne indicated the Sanitary District will be holding a public hearing as they are going to be increasing their rates this coming year. They have not had a rate increase in a couple of years. It is going to increase residential by five cents a day or \$4.58 per quarter. They are going from 5.6 cents per cubic foot to 5.9 cents.

7. OTHER BUSINESS:

The State released their plan for what is going to happen for road projects for the next year. There are two things happening in North Berwick. One is the new rail. Dwayne has received information where it is going, which is from Wells to Route 4. In North Berwick, there will now be a secondary rail that will run through our Town, across Lower Main Street to Route 4. It will be 6 miles.

The other thing that they are going to do is pave Route 4 from the Mary Hurd School to the Sanford Rotary.

8. REVIEW AND APPROVE WARRANTS AND CORRESPONDENCE:

Warrant:	March 8, 2022	- \$ 29,584.57
Warrant:	March 15, 2022	- \$567,863.17

Selectman Johnson, Jr. motioned to approve the Warrant of March 8, 2022 in the amount of \$29,584.57 and the Warrant of March 15, 2022 in the amount of \$567,863.17. Selectman Cowan seconded the motion. VOTE: 4-0

9. Adjournment:

Selectman Johnson, Sr. motioned to adjourn the meeting at 8:35 p.m. Selectman Cowan seconded the motion. VOTE: 5-0

Respectively Submitted,
Jennifer Berard, Stenographer

Original to Town Clerk

Chairman: Charles Galemmo

Selectman: Jonathan Hall

Selectman: Michael Johnson, Jr.

Selectman: Wendy Cowan

Selectman: Michael Johnson, Sr.