

NORTH BERWICK BOARD OF SELECTMEN MINUTES

MARCH 21, 2023

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

Also Present: Dwayne Morin, Mark Rouillard, Ann Stewart, Susan Jackson, Marian Cunningham, Jeff Lapointe, Mark Cahoon, Michael O'Connor, Patricia O'Connor

Chairman Galemmo opened the meeting at 6:30 pm.

- 1. PLEDGE OF ALLEGIANCE**
- 2. PUBLIC HEARING – 6:35 PM – OSCAR HOULE CONSENT AGREEMENT**

Chairman Galemmo opened the public hearing and read into the record the Notice of Public Hearing as follows:

Town of North Berwick

NOTICE OF PUBLIC HEARING

Consent Agreement Between Town and Oscar Houle Regarding Illegal Junkyard and Automobile Graveyard

March 21, 2023

6:35 P.M.

The North Berwick Board of Selectman will hold a Public Hearing on Tuesday, March 21, 2023, at 6:35 p.m. in the Municipal Building Room 212. The purpose of the Public Hearing is to seek input on the proposed Consent Agreement between the Town of North Berwick and Oscar Houle regarding the illegal junkyard and automobile graveyard located on his property located at 409 Valley Road.

The North Berwick Board of Selectman encourages all interested residents to attend this Public Hearing.

Dwayne gave the background of Mr. Houle's illegal junkyard and automobile graveyard and stated that in the Spring of 2022, the CEO issued a Notice to Mr. Houle and after unsuccessful repeated attempts to allow him to clean up and bring his property into compliance,

the Town drafted an 80K proceeding which the Board approved back in December of 2022. Since then, Mr. Houle has agreed to sign a Consent Agreement for the Judge's signature which would then allow the Town to step in and be able to clean up the illegal junkyard. Mr. Houle will be responsible for all clean-up costs as well as legal costs.

Chairman Galemmo closed the public hearing regarding this issue as there were no public comments or input.

3. PUBLIC HEARING – 6:35 PM – REFERENDUM QUESTIONS FOR 2023 ANNUAL TOWN MEETING

Chairman Galemmo opened the public hearing and read into the record the Notice of Public Hearing as follows:

Town of North Berwick NOTICE OF PUBLIC HEARING

Referendum Questions for Annual Town Meeting

March 21, 2023

6:35 P.M.

The North Berwick Board of Selectman will hold a Public Hearing on Tuesday, March 21, 2023, 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, Subdivision Ordinance amendments and Littering Ordinance located at 21 Main Street on the proposed Referendum Questions for the 2023 Annual Town Meeting. The questions to be presented to voters are:

Town Meeting Referendum Questions

Question #1: *Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to Amend Shoreland Zoning setback from 100 feet to 75 feet” be enacted?*

Question #2: *Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to amend Recreational Vehicles to require a permit for use as a dwelling for more than 90 days and no more than 120 days” be enacted?*

Question #3: *Shall an ordinance entitled “Proposed Zoning Ordinance Amendments to enact Solar Energy Performance Standards” be enacted?*

Question #4: *Shall an ordinance entitled, “Ordinance amending the North Berwick Zoning Ordinance to expand areas in and near the Residential 1 Zone where industrial uses will not be permitted and to make conforming changes to the Zoning Map,” be enacted?*

Question #5: *Shall an ordinance entitled, “An Ordinance Amending Section 6.3 and 8.3 of the Subdivision Ordinance to require the submission of a proposed subdivision plan in a format acceptable to the York County Registry of Deeds” be enacted?*

Question #6: *Shall an ordinance entitled: “Town of North Berwick Littering Ordinance” be enacted.*

The North Berwick Board of Selectman encourages all interested residents to attend this Public Hearing.

Dwayne indicated that this Public Hearing is an informational public hearing only and what is being presented can not be changed as these questions are going to the voters of the Town of North Berwick at the Town Meeting in April. Dwayne stated that all of this information can also be found in the Eye of North Berwick Newsletter which has gone out in the mail.

Regarding Question #1, Dwayne stated that the reason the Planning Board is presenting this question as a change is to amend the Shoreland Zoning minimum setback from 100 feet to 75 feet to be consistent with current Maine Department of Environmental Protection Standards developed for Shoreland Zoning.

Regarding Question #2, Dwayne stated that the intent is to require a permit for the usage of a Recreational Vehicle as a dwelling and not located within an RV park for more than 90 consecutive days or more than 120 days in a calendar year. Recreational vehicles are not allowed to be used as permanent residences in our community.

Mark Rouillard inquired if this relates to only seasonal. Dwayne indicated it is not seasonal and this ordinance will allow the 90 or 120 days to be utilized any time of the year. A question was presented asking if after the time restraint was up, could they just apply for another permit and Dwayne indicated they could not, they would have to wait until the subsequent calendar year to utilize another permit.

Regarding Question #3, Dwayne indicated that this is to adopt performance standards for the siting and development of Solar Energy Systems as there are none at the present time. Dwayne indicated that the Town has already approved two solar projects, but the Planning Board put together some performance standards that will allow the town to review solar energy projects. The majority of these standards were tailored off from the City of Sanford. There are three different categories which apply. The first is residential solar which basically is for your home and that is specific to a person’s home. The second is a commercial solar system which is called a CSS. This would be for a commercial entity such as a store, farm, etc. This cannot be put on a property and then sold elsewhere, it has to be specific to that property. The third one is called a Utility Solar System and that would be something similar to what is on Route 4 or off from Coffin Lane. Those would be allowed in all zones as a conditional use with the exception of farm & forest. There is a large number of criteria that is established for both commercial and for utility systems and this is a guideline for the Planning Board as they review those through the conditional use process.

Jeff Lapointe asked, along with the guidelines, if this would absolutely allow the utility solar system to be considered conditional use for all zones except farm & forest to which it does not presently. Dwayne stated that right now, it is allowed in every zone in the Town of North Berwick. Jeff asked if the moratorium is defeated if it would change that. Dwayne stated it would not. Dwayne stated that right now, the utility solar farms fall under what is called the essential services definition and utility definition. This would supersede that definition. If this is defeated, it is allowed in every zone with no standards whatsoever. Jeff asked why industrial was not defined. Dwayne indicated there is no such thing as industrial solar. The Planning Board presented private, commercial and utility. Jeff asked if the town is being less restrictive than the state. Dwayne indicated they were not. The state actually has no standards.

Mark Rouillard asked to define essential services because everyone has power right now. Dwayne indicated that when looking at the zoning ordinances, there are definitions that define a use. When one looks at a definition, they have to look how the definitions are formatted. Under our ordinance, essential services are defined as a utility and Dwayne indicated this definition has been in our ordinance since 1978. The definition is as follows:

“Essential Services: the construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for furnishing of such services.”

Patricia O'Connor indicated that she feels there is very little about forest land and is wondering that if that is something that was considered as it seems the ordinance is deficient in that respect. Dwayne stated that the Planning Board opted to put the language that is there in their proposal and it can be amended in the future. Michael O'Connor asked if it was true that the town has an industrial zone. Dwayne stated that it is. Michael asked if the industrial zone definition talks about large projects. He stated that commerce to him means going to the pizza shop, Cumberland Farms, etc. as you are in and out to buy something from them. He feels Industrial means Pratt & Whitney. Dwayne read the Town's Industrial definition as follows:

“A building or group of buildings in which three or more different firms or businesses are located...”

Dwayne stated that there is also a list of land uses that attribute to industrial uses. When one is looking at a zoning ordinance, it is not just looking at the definition, it is also looking at what is permitted within each and every one of those zones. There are different land uses that are allowed within those zones.

Mark Rouillard asked what the benefits are to the Town for this current proposed solar project. Dwayne stated the Town receives absolutely nothing from these projects. The state has taken away all ability for the Town to tax solar farms. Dwayne explained that the State of Maine

Governor has stated that it is the State's goal to have fossil fuels removed from the state by 2030 and to utilize alternative energies in place of those. That is the stated goal of the Governor of the State of Maine. Dwayne also stated that her last State of the Union address, she directed the Commissioner of Energy to move it up to 2030 from 2035. When this was created, they took away the taxation power from municipal governments for those projects.

The question was asked about decommissioning and Dwayne stated that within the solar standards, there are decommissioning bonds for each project.

Dwayne indicated that everything trickles down hill and that the federal government is seeking alternative fuel services and alternative energy sources. The two major ones they are promoting are solar and windmills and that is why if a person installs solar at their home, they receive \$7,500 back from the federal government. Right, wrong or indifferent, that is what is going on. There are large amounts of credit incentives for companies to create alternative energy sources. There a significant amount of solar farms that have been installed throughout the State of Maine over the last few years. The State is pushing hard for community solar. Now these companies are looking to put them in small communities and the towns do not have guidelines available and that is why the Planning Board has presented these guidelines at this time, so that the Town can have something to go by. He stated again, that these regulations can be amended or added to later on.

Ann Stewart indicated that the current solar project was put before the Planning Board in January and asked whether this gets put through or not, do they still get to do what they want to do on Oak Woods and Valley Road. Dwayne indicated they can because they applied under the current zoning standards so they would be reviewed under the current zoning standards, not the new standards. Ann stated they were in the middle of a residential area and asked how they could stop it. Dwayne indicated this is the wrong venue, and they need to go in front of the Planning Board as they are going to be reviewing that project under the conditional use standards. Dwayne stated again, that things happen that people do not like but if the laws allow them, then unfortunately they happen. If as a community, and do not want something, they need to make sure the laws are written as such as to not permit them. Dwayne stated that as it currently sits, our laws do not not permit them. Ann stated that several people went in front of the Planning Board and the Planning Board could not answer many questions presented to them.

Dwayne indicated this is the stated policy for the State of Maine and it is also the stated policy of the United States. Our federal government is proposing these as well. Jeff Lapointe stated as it relates to law, this is our chance to put forth standards but he does not see anything in the proposed standards that prevent clear cutting in neighborhoods. Dwayne stated there are already timber harvesting standards within our community. One person's definition of a clear cut is not necessarily what the law states is a clear cut.

Dwayne explained that this is the first attempt by the Planning Board to establish solar standards. They can always be amended at a later date. Some part of our Zoning Ordinance seems to get changed on a yearly basis within our community. We have to have some laws on the books for at least something to happen and for it to be reviewed. Selectman Cowan stated that if this is voted down, then it would definitely be allowed in all zones as it is currently.

Dwayne explained that within these standards, there are prohibitions and things that are not allowed. The solar standards that are being voted on in April give more guidelines to the Planning Board to not allow things that are currently allowed. The Planning Board will have leeway to impose or not impose things. Right now, the Town has nothing to go by and that is why the Planning Board presented this. The Town has to start somewhere and when the Planning Board first started looking at this which was back in August of 2022, they looked for some guidelines in other communities. Dwayne stated that there are 486 communities in the State of Maine and the Board found approximately 4 that had solar standards in place. They then took pieces from each of those and created this proposal.

Mark inquired if there were any guidelines on endangered species. Dwayne stated that is not a provision of the Town as that is handled on the state and federal levels. Vernal pools fall under the same state and federal levels. All reviews are passed through those levels.

Mark Cahoon, who is a member on the Planning Board, stated they were left wide open with solar fields and they did not have an ordinance. He stated this was put together so we would have an ordinance to protect them and it can be amended and he welcomes any suggestions from the Town's people regarding changes or amendments. He also stated that this is a first start and at least this covers farm and forest. He indicated there are federal laws out there that can be used also.

Michael O'Connor indicated that they are collecting signatures for a six-month moratorium to be presented on utility scale solar projects for the very reason to give time to develop a solid set of regulations with a lot of citizen input. He asked if they do in fact collect a sufficient amount of signatures and this is turned in within the appropriate timeframe, will there be a six-month moratorium vote and will that six-month moratorium be on the ballot for town meeting. Dwayne stated that there will be no vote on April 15th regarding a six-month moratorium. He stated that North Berwick is not a council form of government but we are a town meeting form of government. Two things must be done in order to do a moratorium. First the language has to meet the criteria for the State of Maine. The way legislation works, is the towns can only do what the state allows them to do. There is legislation that allows towns to do certain things and for moratoriums, they are allowed to do them for two specific purposes and whatever is presented, the language has to meet one or the other of those purposes. Dwayne indicated that there is also a time restraint. Our ballots are already printed, and in order to do a vote at Town Meeting, there has to be public comment period and there has to be public hearings. So even a moratorium cannot be addressed by the Board of Selectman. They are not a council form of government. The only government that can impose a moratorium is actually the legislative body of our community which is our town meeting. The Town Meeting is 3 weeks away and there is no way a petition can be submitted now for town meeting. The ballots have to be 45 days before vote and we are only currently 21 days away from town meeting. Chairman Galemme also advised that the whole thing would have to be registered with the Town Clerk, a Petition would have to be given from the Town Clerk, that has to be signed.

Patricia O'Connor indicated they did go to the Town Clerk but they were not told that they were out of time which is very unfortunate given the fact that they believed they were going to have a voice. Dwayne indicated that it is not true and that someone was told. Unfortunately,

no one came and talked to him about this. Dwayne did state that he admires the people's passion regarding this but understand that government has to move according to the processes in which they have to follow. Patricia O'Connor wished she had been told that last week. Dwayne indicated that an entire packet was given to the person who picked up the Petition which explained the entire process and they were told that they may want to seek legal counsel to assist them on that matter. Selectman Cowan indicated that the moratorium has to be written very specifically using a certain format and it is her understanding that that did not happen. Dwayne indicated that what has been submitted thus far was not in a correct format. Patricia indicated that this is all unfortunate because a large amount of people thought they had a chance to have a voice and stop this project but in fact, that is not the case.

Dwayne did state that if a Petition is submitted that meets all the legal requirements, which includes the required number of signatures, the oaths of the people collecting the signatures and the moratorium language is in proper legal form, then the Town would be forced to hold a special town meeting. Dwayne also explained that there are two requirements of a moratorium, one is if it is going to be a burden on the facilities or if there are no ordinances in place to address it. He stated we are now putting ordinances in place to address this on April 15th. Patricia O'Connor stated she respects what the Planning Board has done thus far and support what they have done, although she feels things need to be added. She stated that now she understands the moratorium is not going to fly if we do not have an ordinance but if we do not have an ordinance, then we do not have any standards to judge things in the future so they are basically in a catch 22. Dwayne indicated that the project they are trying to stop is already in the pipeline and a moratorium would not stop that. Patricia O'Connor stated they can take all the information they have and make a decision accordingly regardless. Dwayne stated they could and they have a great amount of latitude under the conditional use standards to condition a project.

Michael O'Connor asked if there were any other applications for utility scale solar farms that are in the pipeline that are not going to be affected by these regulations. Dwayne stated as of right now, there are no other applications that have been submitted to the Town nor have there been any talk of any. He did state as of two years ago, CMP told them that both of their stations in our community would only allow two solar farms in North Berwick. They have since upgraded the power stations to allow more solar primarily because when the governor stated she was going to push for solar, CMP had to upgrade their power stations and were given ARPA money to do that. Dwayne does not know specifically how many. He did state that the current project before the Board was told they could not apply until they had a connectivity agreement with CMP and they did get one before they presented their application.

Michael O'Connor stated he just did not want to see North Berwick turn into a solar ghetto and especially since they cannot collect taxes from them. The only ones benefiting from these are the companies putting them in, not only from selling solar to residents but also from all the government subsidies. Dwayne stated he did not disagree. Selectman Johnson, Jr. stated those are concerns for the state representatives and the residents need to be talking to our federal representatives and federal senators because that is where energy policy is generated. North Berwick has zero effect on policy making unfortunately. Dwayne stated that the gravel pit on Route 4 that has a solar farm on it is 38 acres of land that has \$17 million of infrastructure on it

and that has basically been removed from the town's tax rolls. He stated that the bill that was proposed to promote community solar in our state was two legislatures ago and they were originally going to only make residential and commercial solar fields tax exempt but unfortunately at the last moment they decided to make everything regarding solar tax exempt. That was not the original intent.

Dwayne ended by stating that if the residents have ideas that they want the Planning Board to consider for next round of changes, please submit them for consideration. Chairman Galemмо stated that the littering ordinance was suggested to the Planning Board by the third grade class at North Berwick Elementary School and now it is up for vote.

Regarding Question #4, Dwayne indicated that the intent was a request from a citizen to remove property from Industrial Zone as it was always intended to be utilized as a single-family residence and one of the parcels is actively being utilized as a single-family residence as a non-conforming use in the current Industrial Zone. The change of the Zone would make it a conforming use and allow property owner to make single family improvements on the property. The Planning Board determined the moving of the Residential I zone line would accomplish this request and be in compliance with the Town's overall Land Use plan.

Regarding Question #5 the intent is to place into ordinance the requirement that submissions for recording of plan must be in a format acceptable to the York County Registry of Deeds.

Regarding Question #6, the 3rd grade class at the North Berwick Elementary School requested that the Board of Selectman look into putting a littering ordinance in place within our community and this will provide penalties for people who litter and protects the town from roadside littering.

Chairman Galemмо closed the public hearing at 7:38 p.m.

4. REVIEW AND APPROVE MINUTES OF MARCH 7, 2023

Selectman Cowan motioned to approve the Minutes of March 7, 2023, as written. Selectman Johnson, Sr. seconded the motion. VOTE: 5-0

5. PUBLIC INPUT N/A

6. UNFINISHED BUSINESS:

A. BERWICK GUN RANGE: Discussion of Gun Range Activity

Dwayne indicated he is keeping this as a standing item for the time being. He stated there was an article in the Portland Press Herald Sunday Telegram. Dwayne has not been notified of any updates which he will receive from the Town of Berwick.

B. HOULE CONSENT AGREEMENT: Discussion Following Public Hearing Comments

Dwayne asked the Board to authorize moving forward with an 80K and enter into a consent agreement with Mr. Houle.

Selectman Cowan motioned that the Town enter into a Consent Agreement with Mr. Houle. Selectman Johnson, Jr. seconded the motion. VOTE: 5-0

C. BAUNEG BEG HILL PROJECT: Grant Awards

Dwayne indicated that finally, after two years since we submitted our application, received approval on the Land and Water Conservation Grant. This was initially approved by the State, however, the National Park Service required additional information to grant approval. Dwayne stated that we were approved for \$180,975.00. This is in addition to the \$181,700.00 approved for the Land For Maine's Future program. The GWRLT also met with Mr. Thompson and received an extension on the P&S agreement that was set to expire on March 31, 2023 until September 29, 2023 in order to protect the sale of the land. There are several more steps to take and probably will not receive any money until September.

D. GENERAL ASSISTANCE: Sign GA Ordinance Cover Page

Dwayne indicated that when we approved the GA ordinance changes last year, the State sent us the wrong form to sign. They are requesting an updated signature form be completed.

Reminders: Next Board of Selectman's Meeting – April 4, 2023 – 6:30 P.M. - Room 212

7. NEW BUSINESS:

A. PETITION: Review Petition Submitted To Town Clerk Regarding Solar Project

Dwayne indicated that on March 8, 2023, a petition containing 88 signatures were presented to the Town Clerk. The petition is a request for a moratorium on consideration of site/plan conditional use application. Of the 88 signatures, 7 were invalid as they were not registered to vote in North Berwick and 3 were invalid because they were scanned signatures and not originals. In addition, the petition lacks the notarized circulators Oaths as required under Title 21-a MRS 902 and 903-A. The petition submitted does not meet the legal standard for consideration by the Town as far as signatures, oaths, and language. Dwayne stated he would question the validity of the petition content since it seeks to stop a specific application that was

applied for under the Zoning Ordinance which the petitioners do not favor. Under the State of Maine laws, a moratorium can only be created for 2 reasons and those reasons are:

A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area.

Dwayne stated he would question that the language of the petition meets these criteria as it is specific to one project before the Planning Board and would be requesting that the Board of Selectmen ask legal counsel to opine on this issue. This project is already in the pipeline and the rules cannot be changed once submitted.

Dwayne stated that he was misquoted as “discouraging” them from going forward with the moratorium which is not what he said at all. He actually admires their passion. The rules just need to be followed and he indicated to them, he wishes they had come to talk to him or staff from the beginning.

Dwayne also indicated that the moratorium presented was tailored after South Berwick’s moratorium language and they are a counsel form of government and not a Town Meeting form of government like we are here in North Berwick. He stated that he spoke to the resident presenting this petition and was told that person was collecting additional signatures to present the petition to the Town for consideration and again, he thinks it will be prudent for the Board to have legal counsel opine on the content of the petition and whether it would be legal to move forward with a town meeting vote on the soon to be submitted position.

B. FIRE DEPARTMENT: Review Request From Chief Regarding Repairs to Engine

Dwayne indicated that an unexpected maintenance issue has come up with the needed repair of Engine 1 which will overspend the Fire Department budget by \$2,560.00. Unfortunately, it would not have been an issue, however we had to purchase tires for the utility in early winter which cost \$2,600.00. The Chief is asking for permission to repair the NOX sensors on Engine 1 in the amount of \$2,560.00.

Selectman Hall motioned to approve the use of \$2,560.00 from the Undesignated Equipment Fund to repair Engine 1. Selectman Johnson, Sr. seconded the motion. VOTE: 5-0

8. OTHER BUSINESS

A. York County Budget Committee Opening

Dwayne stated that there will be a meeting on April 12, 2023, for the County Budget Committee caucus to select members of the budget committee. Our region, District #1, needs to elect a member from the Public to serve and represent the area.

B. Mower

Selectman Johnson, Sr. stated that a concerned citizen in Town was questioning the purchase of a new mower and had heard those particular mowers tipped over. Dwayne indicated that he has done research on these mowers and gave assurances that this particular mower is made specifically for the machine we have and is durable and safe and several other towns utilize this exact mower.

9. REVIEW AND APPROVE WARRANTS AND CORRESPONDENCE:

Warrant:	March 15, 2023	- \$ 13,769.87
Warrant:	March 21, 2023	- \$694,916.71

Selectman Hall motioned to approve the warrant for March 15, 2023, in the amount of \$13,769.87 and the warrant for March 21, 2023, in the amount of \$694,916.71. Selectman Cowan seconded the motion. VOTE: 5-0

10. ADJOURNMENT:

Selectman Johnson, Sr. motioned to adjourn the meeting at 8:21 pm. Selectman Hall 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.