

MINUTES OF SELECTMEN'S MEETING
Hope Board of Selectmen
Tuesday November 26, 2019
6:30PM
Hope Town Office

Board Members Present:

- Brian Powers Jr, Sarah Ann Smith, Wendy Pelletier, and Bruce Haffner

Others Present:

- Samantha Mank, Chelsea Summers, Clarence Keller, John Monroe, Beth Gindel, Langley Willauer, Terri MacKenzie, Barbara Karp, Rudy Karp, Susan Longley, DW Dowling, Ruth Ann Dowling, Gwen Brodis, Barbara Bentley, Ellie Goldberg, Hilda Livingstone, Larrain Slaymaker, Mary Moran

Call to Order:

- The meeting was called to order at 6:37PM by Brian

Public Comment:

- None

Minutes:

- 11/12/2019 meeting: Sarah made a motion to accept the November 12, 2019 minutes. It was seconded by Wendy.
Motion passed 3-0-1 (Bruce)
- 11/20/19 meeting: Sarah made a motion to accept the November 20, 2019 minutes. It was seconded by Bruce.
Motion passed 3-0-1 (Wendy)
- 11/5/19 meeting: There are not enough members of the Board of Selectmen who were present at the 11/5/19 meeting to vote. These minutes will be tabled until the next meeting.

Town Administrator Report:

- The hiring of the new bookkeeper has been almost completed. Waiting for background and credit checks to come back. He will be at the December 10th Selectmen's meeting for the official appointment and the first day of work to begin December 11th.
- There were no bids received regarding the plumbing, insulation, or construction for the Town Office or the South Hope Fire Station. I am planning on simply asking three companies to come and give me a quote and hopefully we will be able to have that done within the next couple of weeks

- The heat pumps have been installed at the Town office. A lot of the solar work has been handled. We are waiting on CMP to put a pole in so that electricity can be hooked up. Rick is going to find out if we need to wait for the solar array to be online before operating the current heat pumps or if it's going to go ahead and get hooked into the existing electricity now.
- There's going to be a countywide EMS meeting in December. All of the towns are being asked to send representatives. I will be attending and hopefully Clarence will also be able to go.
- Met with Rick Manning from Lincolnville Telephone to discuss broadband options for the town of Hope. He said that their goal was to have Hope completely online within the next five years but that there are ways that we can help speed that up.

New Business:

- Sign Cemetery Deed – Beth Gindel: Beth brought a deed for a cemetery plot that was recently purchased. Each deed needs to be signed by a municipal officer. Brian signed the deed.

Brian asked if there were any updates regarding the gravestone situation. He asked if there was any state funding available in a case such as this, where there is no stone or marker for the deceased? Beth explained that there is only money if the deceased was a veteran. Otherwise, the local municipalities have to cover the cost. Beth said that she's really trying to make sure that all graves are marked and acknowledged as having remains in them. Brian asked Beth to research different stones and costs and to bring those options to the Selectmen. Brian further commented, "The work Beth has done in less than a year is unbelievable. She is exactly what the Town of Hope needed."

- Fire Truck Repair – Fire Chief, Clarence Keller: Clarence reminded the Selectmen that the degradation of the pump on the pumper truck was a possible issue earlier this year. That pumper truck has since failed the pump test. It still pumps water, but it is below the specification requirement. Clarence said that the Town could have an extreme liability if anything were to happen while using this truck. He has taken the truck out of service as a front-line pumper. The truck is nearly 20 years old now. Clarence is seeking input on what to do next. At some point the truck tank needs to be repaired and refurbished. The estimated cost for the work is between \$18,500 and \$19,500. This will completely overhaul the pumper and will put the truck back in the service almost like a new truck. The approximate cost of a new truck would be around \$40,000. Clarence is looking for direction in terms of how and when to move forward. The money is not in the current budget. He reiterated that the truck is currently out of service.

Brian asked for some clarity as to what the specifications call for. For example, is the truck pumping at 90% or 80% and is there a law that requires the Town to remove this

truck from service? Is there any reason while why a truck that is still pumping couldn't be used just because it is slower?

Bruce asked how many pumpers the Town currently has. Clarence explained that the Town has two pumpers, because the Town has two fire stations. Right now, one is out of service. Clarence said that he thinks that we are at a greater liability by sending a truck that is known to have failed the annual spec. test than we would be if we did not send any truck at all. Bruce asked who makes these decisions and Clarence told him that it is the Town that makes the decision. Bruce then replied that the decision to take the truck out of service needs to be reversed because we actually have two working trucks. He said that he believes it would be more important to have a truck spraying water to put the fire out then to have a functioning truck deadlined.

Clarence said that as long as this remains under his command, the truck would remain out of service. He did however, say that there was a way to overcome this by having a temporary pumper truck during the time ours is out of service. Camden Fire Chief, Chris Farley has offered a truck for the Town of Hope to use while ours is down. There would need to be some degree of training for our firefighters before we could use the borrowed truck including some driver training.

Sarah asked if we actually needed to borrow a truck or could we receive the same help by using mutual aid. Clarence explained that mutual aid would still come but it does come with a time delay and having a truck local is much faster in case of a fire.

Brian said it would make sense if we figured this all out during our budget season. In the meantime, could we use a borrowed truck and what would the cost be?

Clarence said that he doesn't have any specifics. But Audra, Camden's Town Manager, contacted our mutual Town Attorney to make sure there weren't any red flags. The Town of Hope will have to cover the insurance and name Camden as the additional insured then Camden's Manager and Hope's Administrator would sign a formalized agreement.

Wendy wanted to know approximately how much time Hope would be looking at borrowing a truck from Camden and what would the timeframe for the actual repairs be? Clarence said that once it got into the shop that will take about three weeks.

Bruce wanted to know how often we need or use to pumper trucks. Clarence said the main reason is for our Town's residential insurance rating. Currently the Town of Hope has a class 9 rating. We operate out of two fire stations so that the whole town is covered. Each station is required to have at least one pumper truck. The ISO rating has a significant impact on our resident's personal homeowners' insurance. The pumper truck requirement is based on road miles.

Brian asked what other towns do if they don't have more than one pumper truck. Clarence explained that a pumper truck is needed in a 5-mile radius or the insurance rates will be affected. Mutual aid fire stations would help keep the rates down though.

Bruce said, “if we are going to do something then it needs to be before July. Let’s just have a special meeting and get it fixed now. Everything else is just mickey mousing it.”

Sarah wanted to know how long we had to fix the truck before the insurance rating is affected. How long can we be without a truck before our ISO changes, because 7 months is a long time.

Wendy said that she was leaning more towards borrowing a truck from Camden and wait until we can budget for the repairs.

Sarah asked if Clarence was sure that once we repair the pumper truck that it will actually work. She is concerned about wasting taxpayer money. Clarence said that the projection is that the pump repair would or could last an additional 10 years. We don’t have a public water supply and we depend on lakes and ponds for our water. The water quality could have silt and sand in it which could cause more wear and tear on the pump.

Sarah said she was leaning toward having a special meeting. Brian said that he would like to know if and how long we can borrow a truck from Camden what is the timeframe. Once we know the timeframe then we would know if or how soon we would need to have a special town meeting. He asked Clarence to bring back the information to the next meeting that way all of the Selectmen would be present, and we can make a more informed decision.

- Road Commissioner Update – John Monroe: John told the Selectmen that everything was going fine. The paving went well, and they did an outstanding job. It is a very good company to work with.

Our plowing contractor has already been out sanding 9 times just for the month of November. We have already used approximately 1/3 of our sand and there are more storms expected. Despite having the minor storms, everything is going along pretty smoothly though. There is a new plow truck driver on the north side of town this winter. Hopefully this will reduce the number of complaints about the plowing and sanding.

John suggested putting the plowing and sanding out to bid earlier this season perhaps in February, that way it was easier and can be budgeted more accurately.

- NEMHS Ambulance October Report: Everything seems to look good. There is nothing out of the ordinary. The Selectmen reviewed and accepted the report.

Old Business:

- Update Knox County Fish & Game Association Shooting Range Complaint: Larrain Slaymaker immediately stood and announced that she had handouts for everyone. She then went to a small table that had several documents on it and began to give her presentation. She thanked everyone for coming out tonight and said that she was speaking

not only for herself but also for the people who could not be here tonight. She said the reason we are all here tonight is to balance the rights of the neighbors and try to find a middle ground. Larrain gave some background history of the range and said that she has lived in her home for 40 years. The range is now open 7 days a week, 12 months a year. She said, “the type of weapons that are being used has changed. Many of us in this room have lived here for many years and we can attest to this.”

The noise travels and we have an aerial photograph to show how the noise travels over the lake. Larrain said that she has received threatening gestures as she has walked by the range and that this is not conducive to being anywhere near there.

Larrain passed out calendars that had marked days on them that were shooting days. She also noted that on some of the days, people were not around to mark the calendar so the actual number of shooting days could be higher.

In 2017, There were 146 shooting days. In 2018, there were 194 shooting days. In 2019, there were 171 shooting days so far and she noted that we had a wet spring which could have caused less shooting earlier in the year.

She said that the range is exceeding the Town’s noise ordinance and she has recordings and data to back that up. She said that the range does not meet best practices and the range has demonstrated that they are not good neighbors. People asked them to not shoot so that a wedding could take place at the lake without the backdrop of gunfire. The range refused.

There are implications to not regulating the range better. Quality of life, liberty, and a pursuit of happiness are not available to those living by the range. The range is a harm to public safety. Larrain told a story of a bullet whizzing by someone who was working on their own roof. She further stated, “most likely, many of the people who use the range are outsiders and aren’t even from Hope. These outsiders are taking advantage of Hope.” They have to be affecting property values. Larrain said that she tells people to not rent any property on Alford Lake because of the range. Larrain did warn the Selectmen that they need to look at the liability to the Town and the local implications to the Selectmen are significant. The Selectmen will be held accountable. The Town needs to make the facility meet best practices. Larrain went on a said that there is a time window. She said that there was a three-year window and then we will have no recourse of action once that time is past, it will be game over. Larrain ended by saying thank you for listening.

Ellie mentioned that the statute was passed in 2016 and Larrain came to the Town in 2017. Therefore, the clock has stopped. “We have asked for an Appeals Hearing and at the last meeting we were told there would be a conversation with the Town Attorney. We are wondering what is happening with this.”

Bruce commented on the decibel levels that were recorded, he said that they’re in the hundreds not merely at the 75 decibels any time of day. He commented that it is well

above our noise ordinance. Larrain commented that law-enforcement groups come in and when they train, they are loud, and they are constant. Bruce responded with saying, “the Special Ed budget is up \$100,000 this year. Our youth are troubled. It was probably because of violence. The kids at the school can hear the gunfire at the range and it could be affecting our children.” Larrain also said that we are all affected. When the land values are lowered, then the Selectmen will have less money to play with. She also noted that the NRA has money available that the range could probably use the help with sound mitigation. The range has never been held accountable.

Brian stated that this was a good Segway to hand the conversation over to the Town Administrator who has been in contact with the Town Attorney and has spent a fair amount of time on this subject.

The Town Administrator read an email aloud from the Town Attorney:

Hi Samantha

As we discussed, you as CEO have discretion to issue a Notice of Violation. If you see no violation of an Ordinance, you would do nothing. Your decision on prosecuting a land use violation must be free from all political influence, including from the Select Board. Thus, to the extent that the petitioner’s wish for the Select Board to hold a hearing is to pressure the land owner from conducting certain uses on the property, such a Select Board meeting would be unlawful. (Note: I did not see a definition of “expansion of use” or “change of use” in the Hope Land Use Ordinance.) Also, I am not clear if the use is permitted, or a legally non-conforming use. If it is a legally non-conforming use, I may have a few more thoughts – please advise about that. We could then talk in more detail about applying section 2.3 of Non-conforming uses, to the facts.

To the extent that the petitioners want the Select Board to hold a “public hearing” for some other purpose about the uses on the property, I have no idea what that hearing would entail, as the Select Board has no authority to call a land owner into its chambers and just start some kind of questioning. The Select Board should not schedule a public hearing.

In a more general way, it is true that certain uses on private property can prompt the initial (political) discussions about changes to land use ordinances within a Town. However, proposed amendments to land use ordinances are reviewed by the Planning Board as the “municipal reviewing authority,” and generally not the Select Board, unless there is a Charter provision or Ordinance that also requires a Select Board hearing. However, even before a proposed land use ordinance amendment is reviewed by the Planning Board, it is usually considered by the Select Board, and then after the Select Board defines the scope of the proposed land use amendment, it is then sent to the Planning Board for review. This make sense as the Select Board is essentially a gate-keeper for proposed Warrant Articles, and thus it is the originating body of an idea for land use amendment which is then sent to the Planning Board for hearings.

I am not aware of any way that the Zoning Board of Appeals would have jurisdiction to review an abutter’s complaints about land use on a next-door property. That is a Code Enforcement issue, and you have already advised that you see no land use violation.

The State of Maine has pre-empted the Town’s authority to regulate noise of shooting ranges. This is not surprising, after all the nature of a shooting range is one whereby the typical maximum decibel reading as measured from a property line will be violated. I attach 30-A MRS 3011. This statute prohibits a Town from setting noise level limits of a shooting range that existed prior to September 1, 2016. This prohibition does not apply, and thus Hope may regulate the noise level of a new shooting range, or to shooting ranges that demonstrate a “substantial change” in use, if established after September 1, 2016.

As for a “substantial change” in use, that term is not defined in the attached statute. By way of example, I would say that an “archery range” that had never used live ammunition but then began using rifles on a daily basis, would constitute a “substantial change.” I did not find any case citing to the attached statute, so I cannot give you much by way of predicting how a Court will define such a “substantial change.” Clearly the Town cannot regulate noise from historic shooting that has occurred on a “regular basis”, as referenced in subsection 2 of the attached statute.

Finally, there is a statute that limits the ability of a private action by one land owner against another for shooting range “nuisance” allegations, and I attach 17 MRS 2806. This does not concern you or the Select Board. It demonstrates the State’s protection of existing shooting ranges from a neighbor who recently purchased land abutting a shooting range who does not want the use to continue.

I hope this helps.

Thanks.

Bill

Then, Samantha said she was prepared to make a finding regarding any code enforcement involvement with the range. She read aloud her decision as CEO regarding the shooting range:

In careful review of the Hope Land Use Ordinance and communication with the Town Attorney as well as feedback from the Maine Municipal Associations legal team, I have officially made the following conclusions. As the Code Enforcement Officer for the Town of Hope, it is my responsibility to ensure that the Land Use Ordinance is followed to the best of my ability.

As the Code Enforcement Officer, I am solely responsible for determining what projects require a permit and which projects do not. The Land Use Ordinance clearly explains what circumstances require a Site Plan Review as well Planning Board oversight. The Code Enforcement Officer informs the Planning Board when that need arises. Individual residents or groups of residents may not solicit the Planning Board for items that have not properly been routed through the Code Enforcement Officer first. Doing so, may compromise the Planning Boards ability to review project content objectively. Minimally, it may give an appearance that the Planning Board is not objective or shows partiality in certain cases. The Board of Appeals exists for two purposes. The first is for a “Special Exceptions” permit. This is needed to obtain a variance prior to the Planning Board reviewing the case. The second is to review any decision officially made by the Code Enforcement Officer or the Planning Board. In this particular case, until this moment, there have been no decisions made by the Code Enforcement Officer or the Planning Board with regard to the shooting range. As such, asking the Appeals Board to hear a case is inappropriate and beyond their scope. After tonight, you may request an Appeals Hearing. But it will only be limited to the complaint and whether or not my findings are legally correct or not and may not be used as a way to have a public information session.

It is not appropriate to have the Board of Selectmen be a part of Land Use issues. There is a separation of these responsibilities for a reason. The Town Attorney has advised against the Selectmen from holding a hearing on this matter.

- Knox County Fish & Game Association has been a legally existing organization since 1925.
- I could only find ordinances relating to Land Use dating back to 1973.
- The Town of Hope does not have any Ordinance regarding shooting ranges.
- Knox County Fish & Game Association does fall under section 2.3 of the Land Use Ordinance. 2.3.1 is the “Grandfather Clause” which states: “The use of land or structure, lawful at the time of adoption or amendment of this Ordinance, may continue although such use does not conform to the provisions of this Ordinance, except as provided in Subsection 2.5, below.” LUO 2.5 is the only exception in the Grandfather Clause. Subsection 2.5 states: “Projects not within the scope of Section 2.3 may be approved by the Board of Appeals. A non-conforming aspect of a lot, structure or use may be changed such that it is less non-conforming or no more non-conforming than the existing situation. In making its determination, the Board of Appeals shall apply the standards of Section 2.3.

•Expansion and extension of land use in area and or in function is grandfathered by LUO 2.3.1. Under Non-Conforming Uses section 2.3.4 states: “2.3.4. Expansion of Time

A nonconforming use, including a nonconforming outdoor use of land, shall not be extended or expanded in area or function.” {This is grandfathered. See the section in its entirety for complete context}

•Because the Knox County Fish and Game Association was a legal organization operating in the Town of Hope, prior to any Land Use Ordinance (that I can find), it is not subject to the Expansion of Time section listed above. Therefore, the outdoor use of land, may be extended or expanded in area or function.

•The range at Knox County Fish & Game Association, is a “sporting shooting range.” Ranges are either sport or non-sport ranges. A sport range is specifically shooting at items, or targets that are not alive. A non-sporting range is a range with living targets such as animals.

•Section 5 of the Hope Land Use Ordinance explains that Land Use Standards shall govern the issuance of all permits. In reviewing permit applications submitted pursuant to this Ordinance, the Code Enforcement Officer or the Planning Board shall consider land use performance standards and make written findings that each applicable standard has been met prior to issuing final approval and/or the permit. In all instances, the burden of proof shall be upon the applicant. KCF&G has not requested any permits regarding hours of operation, or maintenance of the facility, or any extended or expanded use of the land (which does not violate the Shoreland Zone Ordinance) because it has continued, uninterrupted use of the land and a permit is not required in accordance with section 2.3.1.

•Noise Section 5.3.21.1. “Noise shall not exceed 75 decibels between the hours of 8 a.m. and 9 p.m. or 50 decibels between the hours of 9 p.m. and 8 a.m., as measured at lot lines at a height of at least four (4) feet above the ground surface in accordance with the “American Standard Method for the Physical Measurement of Sound” (ASTM E1014-12).” 5.3.21.3. “A person or business making a noise complaint must provide the Code Enforcement Officer with adequate evidence of a violation to allow the Code Enforcement Officer to properly issue notice of the alleged violation to the person or business against whom the complaint is made. Any person or business receiving notice of an alleged violation shall be entitled to submit evidence which rebuts the allegation. The Code Enforcement Officer shall ultimately have the authority to determine whether a violation has occurred.” Maine Law prohibits municipalities from making any ordinance that limits or eliminates shooting activities that have occurred on a regular basis at the range prior to the enactment date of the ordinance. (See handout) 30-A M.R.S. §3011. This law went into effect in 2016.

•17 M.R.S. §2806 (see handout) is a Maine law that discusses the acquisition of property near a shooting a range. A provision of this law also indicates that if a range has a substantial change in the use of the range after the property has been acquired, then a person may bring a nuisance claim if it is done within 3 years of the beginning of the “substantial change”. The questions I must then answer are:

1. Is KCF&G subject to this law?

2. If so, when did the 3-years begin and when is the time limit up?

3. What constitutes a substantial change in use?

A.) {Answer to Q-1} It is my finding that the Hope LUO doesn’t prevent a nuisance action from being brought against KCF&G. Therefore, I believe KCF&G is subject to 17 M.R.S. §2806 should a reasonable action be brought against the organization.

B.) {Answer to Q-2} There are several letters dated as early as 2010 in the Town’s records that indicate complaints had been sent to the Maine DEP regarding environmental impacts to the wetlands. There were reports of increased gun fire and even complaints of semi-automatic gunfire on a regular basis. There are google earth photos depicting an increased amount of land being used. In this same letter, the writer acknowledges that the Town of Hope did not have a Land Use Ordinance at the time the range came into existence. Therefore, it is my finding that IF there was a substantial change in use, the time limit given in the Maine Statute has more than passed.

C.) {Answer to Q-3} It is my finding that the KCF&G Shooting Range has not had a substantial change in use. It has been an established shooting range for many years and continues to operate as a

shooting range. Change of Use is defined in the Hope Land Use Ordinance as the following: "LUO 8.4.1.6. Change of Use. The change of any premises from one category of land use to any other land use pursuant to Section 4, Schedule of Uses." The range has not changed from the category of a range to a different category.

I have also received complaints about trees being cut down without a permit. The implication is that with the trees removed, a sound barrier has also been removed. KCF&G owns 90.92 acres of property. There is no requirement to obtain a permit for tree removal unless, the tree removal occurs within the shoreland zone, or is greater than 5 acres of cutting.

To this end, what recourse does a resident have when they feel tortured by never ending gunfire? This is a difficult question to answer. The best solution would be for the shooting range to work cooperatively with the residents in noise mitigation.

It is unfair to ask a business to not be available to its members during open times. With that said, how to take steps forward may not come easily.

The range has already expressed that it will be planting some trees and would do cost effective measures to help offset some of the sound, although there is no requirement for them to do so.

The residents could move to civil litigation if they wanted.

Chelsea suggested perhaps legislation could be introduced that would require real estate agents to disclose that a range was nearby before a home has been purchased.

Sarah commented that the best way to effect change is to lobby Bill Pluecker and other legislators to change the law. Brian said we are going to follow the advice of the town attorney. Our town attorney has told us to not have a meeting.

A lot of discussion back-and-forth ensued.

Barbara Bentley commented that when she was on the Board of Appeals, it showed her that if it isn't in an ordinance to enforce, then the hands of everyone are tied. You cannot enforce something that is not there.

Sarah said that she would welcome input as we are going through and updating Town ordinances and policies.

Other Business:

- None

Review & Sign Warrants #'s:

- The Selectmen reviewed the warrants. Sarah made a motion to approve and sign warrant #'s 44, 45, and 46. It was seconded by Wendy.

Motion passed 4-0

Adjournment:

- Sarah made a motion to adjourn at 9:06PM. It was seconded by Bruce.

Motion passed 4-0