

MINUTES OF SELECTMEN'S MEETING
Hope Board of Selectmen
Tuesday, May 14, 2019
6:30PM
Hope Town Office

Board Members Present:

- Brian Powers Jr., Dick Crabtree, Wendy Pelletier, Mike, and Sarah Ann Smith

Others Present:

- Samantha Mank, Benjamin Blackmon, Regina Rooney, Beth Gindel, Harold Mosher, Thomas Ingraham, Grace Bogard, Ray Gilhooly, William Bentley, Ellie Goldberg, Mary Ireland, S. Willow hall, William Huntington, Randy Mercer, Chris Pinchbeck, Cameron Pinchbeck, Jim Guerra, Elizabeth Tibbetts, Matthew Winston, Langley Willauer, Bruce Haffner, David Hall, Bill Jones, Hilda Livingstone, and Joe Curll

Call to Order:

- The meeting was called to order at 6:32PM by Brian.

Public Comment:

- None

Minutes:

- Dick made a motion to accept the 4/23/19 minutes. It was seconded by Mike.
Motion passed 4-0-1 (*Wendy*)

Administrator's Report:

- The Library Staff sent out a survey and request for volunteers. One of the comments that was returned, was that some volunteers may be willing to work during hours when the Town Office is closed, such as a Saturday or perhaps some evenings. The Library Staff would like to know if the Selectmen would allow the Library to be open at times that the Town Office is closed.
- I attended a meeting last week regarding the ambulance contract. Butch really wanted a multi-year contract. However, the Towns of Camden and Rockport have to have a Town meeting vote for that. A new one-year contract has been drafted. There are some different stipulations in the contract regarding having meetings to approve an ongoing contract with NEMHS. At least 3 of the Towns are putting this item on the agendas for the next Selectmen's meeting. There will be 2nd interviews conducted tomorrow evening for the MCSW Facility Manager position. It has been narrowed down to 3 candidates. Hopefully the Board of Directors will be able to make a choice from these candidates.
- Union Chemical has been listed. All of the information has been posted on our website. I also sent it out in an email blast as news and announcements.

- The Planning Board will be hosting a Public Hearing regarding the changes to the Land Use Ordinance and the creation of the Shoreland Zoning Ordinance on Thursday, May 23, 2019 at 6:30PM. This Public Hearing is required by law before it can be voted on at Town Meeting.
- I met with Andrew from Cordija regarding our energy audit and engineering analysis. He said that all of the data has been collected. Now they need to plug in the formulas and calculations to get a report ready. He said that they expect to have the completed report ready no later than May 30th. I did push a bit and said that we need that report in order to proceed to the next steps of the project. He said that he would try to get it out sooner, but really wanted to stick by the May 30th deadline.

New Business:

- Appointments to Cemetery Committee: Dick made a motion with thanks, to appoint Michael True, Amy Froehlich, and Cindy Della Penna to the Hope Cemetery Committee. It was seconded by Sarah.
Motion passed 5-0
- Letter of End of Service for outgoing Sexton, Jan Campbell: The Selectmen reviewed and signed a letter thanking Jan Campbell for her service as the Town's Sexton and acknowledging her end of service.
- Award Accounting Services Bid: Only one bid was received for Hope Accounting Services. The bid was from Runyon, Kersteen, and Ouellette. Mike made a motion to accept and award the bid to RKO. It was seconded by Sarah.
Motion passed 5-0
- 2019 Personal Property Taxes - 36 M.R.S. 105 §760-A Minor or burdensome amounts: Sarah made a motion to remove \$4,194.05 of the 2019 personal property taxes off of the town books as a minor or burdensome amount per 36 M.R.S. 105 § 760-A. It was seconded by Dick. **Motion passed 5-0**
- Quit-Claim Deed for Tax Acquired Property (Map 21 Lot 020): The former owner of property that was acquired by automatic foreclosure for nonpayment of taxes, has paid all back taxes in addition to current taxes and associated fees. Sarah made a motion to sign the quit claim deed. It was seconded by Wendy.
Motion passed 5-0

Old Business:

- True Park Deed: As a means to begin the discussion, Dick made a motion to conclude that the restrictive covenants in the deed for True Park does not prohibit building a solar array to pay for or offset the cost of electricity to municipal buildings. It was seconded by Sarah. Dick began the discussion by saying that he has no desire to influence any one else's opinion. He only wants to state for the record by reading into the record the following:

The day has arrived when we, the current Selectmen, of the Town of Hope and present-day Trustees of the gift of True Park to the Town of Hope must decide if an electricity generating station can be constructed on that property.

Before addressing that issue, I would like to express my personal thanks to the True and Bresnahan families for their extraordinary generosity. The Town of Hope is truly blessed to count them among their citizens.

I wish this issue was not before us. I am not a fan of restrictive covenants on land transfers. I believe that land is a resource to be used for the benefit of the current owner within the rules and regulations established by the then current society not by previous owners or societies. However, that is not where we find ourselves. We are the Trustees of a gift of land with perpetual restrictive covenants and as such it is we who must decide the boundaries of those covenants.

The question is how do we decide? Not we, nor anyone else has any idea what was in Mr. True's mind when he made this very generous gift. All we have are his words and the common meaning of those words expressed in the deed and the two deliberative letters to Mr. Leadbetter. It is those words and those words alone that must inform and determine my decision.

Though it is a very generous and civic minded act that that Mr. True's descendants are willing to say that they have no objection to a solar array on True Park property, that does not influence my decision. The property was and is not theirs to give or expand the meaning of words of Mr. True's gift. The property was Mr. True's to give. The terms under which it was given were Mr. True's terms alone. The words of the deed were Mr. True's words alone and our only consideration, as trustees of those words, are those words alone. To illustrate the logic of this reasoning, place yourself one-hundred years into the future and faced with this same question. The then living descendants of Mr. True opine as to what their great, great grandfather, a man they never knew, meant when he wrote those words. Obviously, they could not know and that is why Mr. True's words alone must be controlling.

Some have expressed the opinion that Mr. True's use of the phrase "in the best interests of the Town of Hope" gives the Town rights, beyond the common meaning of the restrictive words, so long as it is in the best interest of the Town. The evidence suggests that this cannot be the case. In his deliberative correspondence with Mr. Leadbetter, Mr. True specifically excluded certain things that would clearly be in the best interest of the Town but apparently not consistent with his wishes for the property. In his letter of August 21, 1996, Mr. True states in part "...nor should the property be used for storage or have maintenance facilities for the equipment or property of the Town of Hope". Certainly, structures that would benefit the people of Hope but not structures "for people to use" as Mr. True indicated in that same letter.

Others have suggested that because Restrictive Covenant 3 in the deed uses the phrase "such as" in describing the types of structures that are permissible on the property this somehow expands the permissible structures so long as they are "for the benefit of the people of Hope". Again, this cannot reasonably be the case. Mr. True, in his deliberations with Mr. Leadbetter specifically excluded certain structures that would clearly benefit the people of Hope. In addition, in this case, we are talking about an electric generating station. Would anyone here argue that a coal fired, oil fired, gas or nuclear fired electric generating station would fit with Mr. True's words or intent? I think not. It is the purpose of the structure that is in question, not the fuel source. Once we stray beyond Mr. True's words we are in the ether and no one knows what the controlling factors are.

Also, in that same letter of August 21, 1996, Mr. True stated "The property is given to the Town of Hope with the idea that it will mainly be developed as a park and recreation area for people to use. Sometime in the future and if it will benefit the people of the Town of Hope and others, the town may want to build or provide a site or sites for a structure or structures such as for the Hope Historical Society, a town library, and/or a community building". Each of these structures are for people to use and enhances a sense of community in the Town of Hope. It is an unreachable stretch, for me, to conclude that an electricity generating facility meets the criteria expressed by Mr. True or the words used by Mr. True.

It is obvious that Mr. True thought about the words he would use as evidenced by the deliberative correspondence with Mr. Leadbetter. Mr. True could have chosen less restrictive words, but he did not. He chose the words found in the deed conveying the property to the Town of Hope. The Town could have rejected the very generous gift as too restrictive, but it did not. The Town accepted the gift with the restrictive words and in doing so agreed to live by and honor those restrictions. The Town did not agree to live by and honor those words so long as it was convenient. The Town agreed to live by and honor those words, period. Not what we think he might have meant, not what we wish he meant, not what he might have said were he alive today but what he did say with the words he used when he was alive and made the gift.

He said, "the property is to be used as a park and recreational area" "for people to use". By excluding structures that were not for people to use and expressly including structures that were, he made his intent clear.

This is not about climate change or carbon footprint or today's perceived solution, a solar array. This is about the purpose and the words of the gift. For better or worse, it is ours, as present-day trustees of those words, to determine if an electricity generating station fits within the bounds established by those words. What we decide here today will have impacts well beyond the immediate question of a solar array. Sometime over the next hundred or more years other projects will certainly come along to test the boundaries of these words and this decision will have precedential value. If we expand the meaning of these words it will be easier both ethically and legally in each successive instance to expand them further to the point where, eventually, they might have no meaning at all.

Though I wish the restrictive covenants did not exist and do not believe that it is good social or economic policy for them to exist, they do exist, and it is not my place to expand them beyond the common meaning of the words. Try as I may, I cannot conclude that a structure whose purpose is to generate electricity is consistent with the purpose of the gift or its restrictive covenants.

For me it is not a matter of law but of principle. As I have analyzed the issue, the words of Mr. True and the promise we made when we accepted this very generous gift are the controlling factors. Others may analyze the issue differently and I will respect their opinions. As it should be the majority of this Board will make the controlling decision.

After Dick read his statement, Wendy said that she agrees with Dick's evaluation. In her opinion she can not see the usage fitting with this piece of property as the deed restrictions are currently written.

Sarah said that she too wishes that specific examples had not been given. Sarah then read some excerpts from the restrictive covenants which she believes leaves room to interpret the meaning as allowing structures that benefit the people of Hope. She went on to say that since its founding the park has been used for recreation and there are no other plans for the property. She said that from all reports, Mr. True's intent was open to possibilities for the future and the deed is not an exhaustive list of structures. She doesn't think that a solar array is even a structure, it's more like sign posts with panels attached to them, they are easily removed. She said that she respects everyone's opinion here but, she feels that the way Dick is reading it is unduly restrictive. She believes the use of a solar array is in keeping with the intent of the deed.

Brian said that this is an issue that has kept him awake at night. He said that he has exhausted all of his resources including asking his mother. He sought advice from a real estate attorney who said, in a criminal case, a person can be guilty of something but get away with it on a technicality. The attorney told him to follow his gut and to do what he thought was morally right. So, he went to see Ron Leadbetter and spoke with him for a little more than an hour. Mr. Leadbetter told Brian the story of how True Park

was created. He and Tom Ford looked out the window over at the land and said that would be a great place for a ball field. Years earlier, the school had asked to purchase the land to build the school there, but Mr. True declined. Mr. Leadbetter told Brian that Mr. True liked things to be simple. Mr. True's main objective was to give a piece of land that was good for the Town but also kept big businesses from coming in and making a profit on it. Mr. Leadbetter believes that Mr. True would be very upset at how complicated this has become. A lot of people helped make True Park happen. Ron Leadbetter donated lots of money – although he didn't actually give the land, it was a collaborative effort. Mr. Leadbetter told Brian that he knows that Mr. True would absolutely be in favor of a solar array. His intentions may not have been as literal as the words on the deed.

Sarah said that she doesn't think anyone in this room wants a commercial enterprise going into the park. She acknowledged that perhaps something should be written into the record stating why the Selectmen made their decision in order to prevent opening up a way to slide down a slippery slope.

Dick called for the vote. Repeat the motion: Dick made a motion to conclude that the restrictive covenants in the deed for True Park does not prohibit building a solar array to pay for or offset the cost of electricity to municipal buildings. It was seconded by Sarah.

Motion passed 3-2 (*Dick, Wendy*)

- Additional Comments: David Hall wanted to thank the Selectmen for all of their considerations and time on this issue.

Bill Jones said that other than Ron Leadbetter, there was another person that talked to Mr. True about this and that was himself. Bill Jones and William True were friends and talked about the park. Mr. True was very attached to his land.

Chris Pinchbeck thanked everyone. He then asked for an update on the energy audit. The Town Administrator referred to the Admin Report. Chris also wanted to know the status of Rick Bresnahan's Letter of Intent. The Town Administrator explained that the letter of intent was shared during a workshop where no action was taken by the Selectmen. The issue of the deed needed to be resolved prior to moving on to the letter of intent. It will be on the agenda for the next Selectmen's meeting.

Suspend as Board of Selectmen/Convene as Board of Assessors':

- Sarah made a motion to suspend as the Board of Selectmen and convene as the Board of Assessors' at 8:09PM. It was seconded by Dick.

Motion passed 5-0

- Abatements and Supplements:

- Sarah made a motion to grant an abatement to Holly and Brian Underhill for fiscal year 2017 in the amount of \$178.16 and, fiscal year 2018 in the amount of \$193.88 and, fiscal year 2019 in the amount of \$210.91. It was seconded by Dick.

Motion passed 5-0

- Sarah made a motion to assess a farmland withdrawal penalty in the amount of \$2,560.94 to Ronald and Sonja Howard. It was seconded by Dick.

Motion passed 5-0

- Dick made a motion to assess a farmland withdrawal penalty to Gwen Brodis in the amount of \$165.52. It was seconded by Sarah.

Motion passed 5-0

Adjourn as Board of Assessors'/Reconvene as Board of Selectmen:

- Sarah made a motion to adjourn as the Board of Assessors and to reconvene as the Board of Selectmen at 8:18PM. It was seconded by Dick.

Motion passed 5-0

Other Business:

- Beth Gindel gave an update of the walk-through of the Morey Hill Cemetery she did with Sarah. The cemetery is needing quite a bit of attention. Sarah suggested having a community clean up day in which residents could assist with clearing out the debris and brush. They suspect there may be some unmarked graves as well.

Review & Sign Warrants:

- The Selectmen reviewed the warrants. Dick made a motion to approve and sign warrant #'s 76, 77, 78 and 79. It was seconded by Sarah.

Motion passed 5-0

Adjournment:

- Dick made a motion to adjourn at 8:31PM. It was seconded by Mike.

Motion passed 5-0