

**- PUBLIC MEETING -
Hope Select Board
Meeting at 6:30 p.m.
Tuesday, March 9, 2021
Zoom**

-AGENDA-

If you would like to PARTICIPATE in the meeting, then please attend via Zoom.
This meeting may be attended via Zoom: <https://zoom.us/j/5851802397>
Meeting ID: 585 180 2397

If you would like to WATCH the meeting, then please attend via livestream.
This meeting may be livestreamed: https://townhallstreams.com/towns/hope_me

Call to Order:

Agenda Adjustments/Approval:

Public Comment (*Please limit comments to 2-3 minutes*):

Minutes:

- February 23, 2021:
- February 26, 2021:
- March 4, 2021:

Warrants:

New Business:

- Resignation from Planning Board – Lewis Merrifield:
- Set Town Meeting Date:

Old Business:

- Town Policies – 2nd Reading:
 - Wage, Hour, and Accurate Reporting Policy:
- July 14, 2020 Ballot Box Findings:

Other Business:

Town Administrator Report:

Adjournment:

MINUTES OF SELECT BOARD MEETING

Hope Select Board

Tuesday, February 23, 2021

6:30 PM

Via Zoom

View the meeting in its entirety at

https://townhallstreams.com/towns/hope_me

Board Members Present:

- Sarah Ann Smith, Brian Powers Jr., Thom Ingraham, and Amy Gertner

Others Present:

- Samantha Mank

Call to Order:

- The meeting was called to order at 5:32 PM by Sarah.

Executive Session:

- Thom made a motion to enter executive session pursuant to 1MRS §405(6)(A)(1). It was seconded by Amy.

Motion passed 4-0

- Exited executive session by consent at 6:24 PM

Board Members Present:

- Sarah Ann Smith, Brian Powers Jr., Thom Ingraham, Bruce Haffner, and Amy Gertner

Others Present:

- Samantha Mank, Amy Powers, Paul Smith, Margaret Morse, Juanita Hunt, Dan Dunkle, Dick Crabtree, Ellie Goldberg, Caleb Lincoln, Ari Meil, Molly Luce, and John Monroe

Regular Meeting Call to Order:

- The regular meeting was called to order at 6:31 PM by Sarah.

Agenda Adjustments/Approval:

- Thom made a motion to accept the agenda as written. It was seconded by Brian.

Motion passed 5-0

Public Comment:

- None

Minutes:

- February 9, 2021: Brian made a motion to approve the February 9, 2021 minutes as edited. It was seconded by Thom. Thom wanted the email that was sent to the Select Board by Harold Mosher regarding Langley Willauer as the chair of the planning board to be included in the minutes. Comments made by Juanita Hunt and Sarah were added to the minutes.

Motion passed 5-0

Town Administrator Report:

- Hope School Committee member, Sarah Gilbert, was appointed to be a judge. She tendered her resignation from the School Committee. Per Maine law, the School Committee had 30 days to appoint another person to fill the vacancy. During an emergency meeting on Thursday, Feb. 11th, the School Committee appointed Lori Perez for the remainder of this year until June 30th. The vacant seat will be voted on to be filled by secret ballot during the June 8th election.
- Bill Pearse has confirmed that the “proposed” budget schedule will work as none of the budget committee members have indicated it would not work. Bill would really like to be able to meet in person for the budget presentations. I contacted Danielle Fagonde who has said that we may use the school gym for the Select Board and the Budget Committee joint budget presentation meetings. The public will be invited to watch/participate remotely.
- The first budget presentation is March 11th. I plan on working with Tina beginning on Wednesday and making the budget books available to you and the Budget Committee by Friday, March 5th.
- Both of the new employees have started their jobs. David and I have been spending a lot of time training them. There some online trainings that will be available in the near future and hopefully there will be room to get them a seat.
- Received a call from Rick Bresnahan asking to have Michelle Fong replace Ellie Goldberg on the Roads Advisory Committee. The RAC is an agenda item under old business.
- All of the 2019 real estate taxes have been paid and there were no automatic foreclosures for that year.
- There are 18 real estate 2020 accounts totaling \$33,413.45. This is the same number accounts, but the dollar amount is reduced by \$81.40 from two weeks ago. Unpaid 2020 real estate taxes will automatically foreclose on February 10, 2022 if the accounts are not paid in full.
- There are 991 RE accounts for 2021, totaling \$1,504,158.02. The number of accounts has decreased by 10 and the amount owed is \$10,998.67 less than the last report. The second half of taxes are due on April 30, 2021.

New Business:

- Appointments to Board of Appeals: Thom made a motion to appoint John Jensen and Brad Boyd to the Appeals Board. It was seconded by Brian.

Motion passed 5-0

- NEMHS January Activity Report: Sarah gave an update on what is happening with the ambulance steering committee. She said that this was originally an initiative started by Camden and Rockport and they have allowed Hope and Lincolnville to begin taking part in this committee. She said that she thinks they are very close to having recommendations for the new contract.

For the budget planning part of this, the fire department can have their firefighters become EMTs and they can function as first responders. She hopes to have additional guidance prior to the actual budget time. The NEMHS appears to be in compliance according to the January report.

- Town Policies: Wage, Hour, and Accurate Reporting Policy: Thom offered some minor comments regarding the first reading of this policy. He suggested using more generic terms for the town office hours and the employees work hours. This would eliminate the need to have a policy change if those items were to change from time to time. The Select Board decided to wait for the edits on a second reading until the next meeting before taking action.

Old Business:

- Update Amending the “Retail Marijuana Establishments and Retail Marijuana Social Clubs Prohibition Ordinance” – Seth Haskins/Botany: Amy has been in touch with Ari and Samantha’s been very helpful in explaining how the process works.

Sarah asked all of the Select board if they were OK with her sending the stop-gap language to the town attorney. All of the Select board agreed.

They Select Board also considered moving the Town Meeting to a later date in order to make sure that school was out for the summer break so that the makeshift classrooms could remain in place until the end of the school year.

- Roads Advisory Committee Clarity on Charge: Sarah said that she thought it was clear that it was the Select Board’s intention that the snowplowing would be included in the work that the Roads Advisory Committee was doing.

Thom agreed, and said that he thought the original charge included everything dealing with roads. The Select Board unanimously agreed that anything dealing with roads including snowplowing was open for the RAC to look at.

Rick Bresnahan asked if Elli Goldberg could be removed from the Roads Advisory Committee and have Michelle Fong appointed in her place. Thom made a motion to appoint Michelle Fong to the Roads Advisory Committee replacing Elli Goldberg. It was seconded by Amy.

Motion passed 5-0

- July 14, 2020 Election: Bruce submitted an FOAA request and shared letter from an attorney Joseph Baldacci. Sarah forwarded the letter from Mr. Baldacci to Kristin Collins who addressed the matter. Sarah read the letter from Ms. Collins who works for Preti Flaherty Law Firm which specializes in municipal law. Sarah the following letter:

RE: Access to Ballots / Tally Sheets After Election

Dear Select Board members:

The Board has engaged me to review legal issues related to whether Town officials may access and view the contents of sealed ballot boxes more than 30 days after an election. I understand that there were several discrepancies noted in the tallies submitted by ballot counters following the July 14, 2020 municipal referendum election. There were 25 ballot questions on the referendum ballot. Although the majority of the questions showed tally counts totaling around 500 votes, tallies for certain individual questions ranged from 463 total votes to 548 total votes.

This has led the Select Board and some members of the public to question whether there were irregularities in the counting process that led to these discrepancies in the tally. The question has been raised as to whether the Board or other Town officials might be able to access the ballot boxes (in which tally sheets were sealed) to review whether mistakes were made in the counting process. I understand that the goal is not to alter the results of the election but more to understand what happened so that procedures might be improved in the future.

Access to Sealed Ballots

Ballots are not public records. Title 21-A M.R.S. § 22(2) provides that, “[o]fficial ballots, whether in paper form or in an electronic or image format, are not public records and may be inspected only in accordance with this Title.” This and other Title 21-A provisions pertain to municipal ballots as well as state ballots. 30-A M.R.S. § 2501. At the close of the polls, ballots are to be placed in a sealed container, and that container must remain secured. 21-A M.R.S. § 698(2-A), (6). The containers must remain sealed for at least two months after the election. After two months, they may be transferred from the official security containers to other containers by the clerk (with supervising witnesses) or destroyed. 21-A §§ 698(2-A); 23.

The only statutory processes by which ballots may be viewed are inspection and recount, each of which must be requested within five business days after the election. 30-A M.R.S. §§2532; 2531-B. These statutes interact in a way that, in my opinion, makes it clear that ballots are to remain sealed and confidential, accessible only to the clerk for the purposes of transferring to a different storage container or for destruction, and not for any examination. Interestingly, even where photocopying is allowed during an official recount, the photocopy is not a public record. 21-A M.R.S. § 737-A(7).

I have reviewed the letter by Atty. Joseph Baldacci dated February 9 on this subject. He cites *Opinion of Justices*, 130 A.2d 526, 532 (Me. 1956) as support for a conclusion that ballots are public records subject to public inspection under the Freedom of Access Act (FOAA). Atty. Baldacci's excerpt from the *Opinion* is a quotation of a then-valid statute, "Section 39, Chapter 5." Title 21-A now contains all pertinent statutes regarding election procedures and contains no similar language. Two other caveats are worth noting regarding this *Opinion*. First, the cited language indicates that ballots are to be stored as "public records," but this does not necessarily indicate that the public is intended to have access to them. Second, Maine's FOAA was not enacted until well after this 1956 *Opinion*. So, the term "public records" did not have the same connotations in 1956 as it does today. I do not find the *Opinion* persuasive on this point. Notably, we were unable to find any more recent case holding that ballots were subject to inspection or copying except under the statutory processes, even in cases of suspected error or malfeasance.

There is no blanket allowance under Maine law that confidential records may be obtained by court order. The FOAA provides at 1 M.R.S. § 409 that a person aggrieved by a refusal or denial of a request to copy a record may appeal to the Superior Court. However, the appeal would need to be based on a violation of the FOAA, e.g., it would have to assert that a public record was not provided. Since ballots are not public records, a court would almost certainly uphold any denial of a request to inspect them.

While the contents of ballots might come into play in a challenge to the results of an election, and thus potentially subject them to inspection on court order, no challenge of the July election results has been filed. Such a challenge would not necessarily be untimely at this point; however, I would still find it unlikely that a court would allow inspection of ballots where the plaintiff did not avail itself of the formal inspection or recount procedures.

Access to Tally Sheets

Procedures related to tallying and tally sheets are contained within 21-A M.R.S. § 695. Each counting team is to produce two tally sheets for each lot of ballots that are in complete agreement as to the count for each question. One of the tally sheets is to be wrapped around the lot of ballots; the other is to be given to the moderator for use in completing the election return.

In this case, the Section 695 procedure was not followed in that both tally sheets were placed with the ballots after reporting the totals to the moderator, and were ultimately sealed in the ballot boxes.

We have not found any statutory provision suggesting that the tally sheets are confidential or otherwise exempt from the FOAA. As such, my conclusion is that the tally sheets are public records subject to inspection by Town officials as well as members of the public. I see nothing in the law that would prohibit the Clerk from removing the tally sheets when, following proper protocols as set forth in Sections 698(2-A) and 23, she prepares the ballots for transfer or destruction. Examination of the tally sheets may provide some indication of what may have gone wrong during the counting process, if anything.

Conclusion

While I would tend to agree that the election results indicate that errors may have been made in the counting process, I do not believe there is any legal ability to access the ballots to compare them to the posted results. I do believe there is legal authority to access the tally sheets to see if they demonstrate whether or how errors may have been made in the counting process.

At this point, six months past the election, my advice is to proceed with reliance on the election outcome. The information you may glean from tally sheets should be used as guidance to ensure against errors in the future, but probably could not be used to change the results of the election.

However, if you do find evidence of extreme errors on the tally sheets, those issues should be brought to legal counsel for a more specific evaluation.

I hope this is of help. Please contact me if you require any further clarification.

Sincerely
Kristin M. Collins

After reading the letter she stated, “We cannot look at the ballots.” Sarah then suggested that the Select Board authorize preparing and sending the ballots for destruction and to make copies of any tally sheets and place one copy with the ballots and one copy to be made available for public review as required by law.

Brian made a motion to accept the recommendation from Kristin Collins with the caveat that David Herrick is the Clerk in charge of the process for opening the ballots copying the tally sheets sealing them appropriately and preparing them for destruction.

Bruce made a comment that the last paragraph from the Collins letter clearly says that if there were severe discrepancies then the ballots could be looked at.

Thom said that in his mind he would like to have a number of people “witnesses” present. He said, we should be inviting Dan Dunkle and the other election clerks who signed off on the tally sheets should be present.

Thom then re-read the last sentences of the Collins letter. He reiterated that he thought the July election was not managed well so he wanted to know what was meant by “Extreme Errors”. He suggested contacting Ms. Collins and asking her to define what extreme errors means. He would like to have extreme errors defined before moving forward.

Bruce said he has fought a long and hard battle regarding the roads and snowplowing. He commented that the roads budget was one of the most important and interesting items on the ballot. He said, “We need to investigate the disappearance of 150 ballots. 150 missing ballots is a big stain on the Select Board.”

Brian reminded everyone that the Select Board had already taken a vote and approved to follow the advice of attorney Collins. He explained that his interpretation of the last sentences of the Collins letter is that if there is a problem with the tally sheets then those tally sheets should be investigated.

Thom asked if these questions could be sent back to Kristin Collins and to find out some guidance on what extreme errors really means.

Brian also reminded the Select Board that the person who would tell us whether or not there is an extreme problem or not would be David Herrick. He went on to say Town Clerks know about these kind of things, not Town Administrators, not Select Boards, but Town Clerks. Brian followed that comment up with saying he trusted David.

Thom agreed and seconded Brian’s motion.

Bruce said he wanted to make an amendment that the ballots are not destroyed until the tally sheets are inspected. Amy agreed.

After much discussion the vote was called.

(The entire discussion can be viewed at https://townhallstreams.com/towns/hope_me)

Motion passed 5-0

Other Business:

- None

Warrants #'s 64, 65, & 66:

- The Select Board reviewed the warrants. Bruce made a motion to approve warrant #'s 64, 65, and 66. Thom said that he would have to abstain from voting on the warrants because he didn’t have time to review them. The motion did not receive a second. **Motion failed.** Dick said that Board members couldn’t just abstain from voting without acceptable reasons. He stated that abstentions can only be made for a conflict of interest.

Brian made a motion to approve warrants 64 & 65 but not 66 since no one from the School Committee had signed the warrants. It was seconded by Amy. There was no

proviso made for warrant #66.

Motion passed 4-0-1 (*Thom*)

Adjournment:

- Brian made a motion to adjourn at 8:09 PM. It was seconded by Bruce.

Motion passed 5-0

View the meeting in its entirety at
https://townhallstreams.com/towns/hope_me

DRAFT

MINUTES OF SELECT BOARD MEETING

Hope Select Board

Friday, February 26, 2021

4:00 PM

Via Zoom

View the meeting in its entirety at

https://townhallstreams.com/towns/hope_me

Board Members Present:

- Sarah Ann Smith, Thom Ingraham, and Amy Gertner

Others Present:

- Samantha Mank

Call to Order:

- The meeting was called to order at 4:04 PM by Sarah.

New Business:

- Review, Approve, & Sign School Payroll Warrant # 66: Warrant #66 is the school's payroll warrant for the teachers and the spending support staff. Sarah briefly explained the process for approving all school warrants. In a school union, the Town holds all of the money for the school. In order, to release funds for the schools use, the school creates a warrant and the superintendent and members of the School Committee must sign it stating they have reviewed the expenditures and they approve noting that they are only spending money that was approved by the voters and that there are no overages. Once the School Committee signs, it then is given to the Select Board to make sure each warrant contains the requisite number of signatures, then the Select Board will sign authorizing the release of money. In this instance, none of the School Committee had signed the warrant so it was illegal for the Select Board to sign or release the money.

The Town Administrator explained the difficult position the Select Board is put in when the School Committee doesn't sign their warrants.

It is not legal to not fund the payroll for teachers and staff who have already worked the hours. It is also not legal to release the money without proper signatures. By not releasing the money, the Town runs the risk of having insufficient funds – not the school but, the Town. The Select Board has to decide which situation is in the best interest of the Town. Of course, the best solution is the have a working system that allows the School Committee time to sign warrants prior to be given to the Select Board.

Thom made a motion to approve and sign Warrant # 66. It was seconded by Amy.

Motion passed 3-0

- Accept Resignation of Select Board Member, Amy Gertner: Sarah said that it is with great regret that she received Amy's resignation effective two weeks from today. Sarah said that she is really sorry to see Amy go. Sarah told Amy that she was a smart woman, with a voice of calm and reason. She went on to say that when the things that are pressing in her life right now ease up, Amy would make a great addition to any board or committee in town.
- Thom made a motion to accept Amy's resignation with regret. It was seconded by Amy.
Motion passed 3-0

Adjournment:

- Thom made a motion to adjourn at 4:13 PM. It was seconded by Amy.
Motion passed 3-0

View the meeting in its entirety at
https://townhallstreams.com/towns/hope_me

MINUTES OF SELECT BOARD MEETING

Hope Select Board

Thursday, March 4, 2021

5:30 PM

Via Zoom

View the meeting in its entirety at

https://townhallstreams.com/towns/hope_me

Board Members Present:

- Sarah Ann Smith, Brian Powers Jr., Bruce Haffner, and Amy Gertner

Others Present:

- Samantha Mank & Dan Dunkle

Call to Order:

- The meeting was called to order at 5:37 PM by Sarah.

Agenda Adjustments/Approval:

- Brian made a motion to approve the agenda as written. It was seconded by Amy.
Motion passed 4-0

New Business:

- Accept the Resignation of Select Board Member, Thomas Ingraham: Amy made a motion to accept Thom's resignation. It was seconded by Brian.
Motion passed 3-0-1 (Bruce)
- Set date for Special Election for vacancies on the Select Board: The Town Administrator provided the soonest dates that a Special Town Meeting Election could take place, which was March 30th.

Bruce said that having the election that quickly would not allow enough time for anyone who wanted to take out papers. It takes time for people to actually hear about or someone could be out of town and missed it.

Brian agreed and suggested something in mid to late April and avoiding the April school break.

Brian made a motion to make nomination papers available immediately and that the deadline would be the same as that for the June 8th election and to hold a Special Election to fill the two vacancies on the Select Board on Tuesday, April 27, 2021. It was seconded by Amy.

Motion passed 4-0

Executive Session:

- Pursuant to 1 M.R.S. §405 6(A)(1) Town Administrator Annual Performance Evaluation and Contract: Brian made a motion to suspend the regular meeting and to enter into

executive session pursuant to 1 M.R.S. §405 (6)(A)(1). It was seconded by Amy.

Motion passed 3-0-1 (Bruce)

At this time, Bruce, who had recused himself, and Dan Dunkle left the meeting area.

Brian made a motion to exit executive session at 6:58 PM. It was seconded by Amy.

Motion passed 3-0

Sarah called Bruce so he could rejoin the Select Board meeting.

Those in attendance included Sarah, Brian, Bruce, and Amy

Others: Samantha, Langley Willauer, Nancy Ford, Ellie Goldberg, Susan Longley, and Dick Crabtree

- Action as result of Executive Session: Bruce said he had gone through the tally sheets and that he has discovered six missing tally sheets. He said it was a botched election. He said that he could make any tally sheets match up to anything.

Sarah told Bruce that the tally sheets and ballots were not on this agenda and that it would be talked about in a different meeting.

Brian made a motion to approve and sign the Employment Contract with Town Administrator, Samantha Mank after completing her annual evaluation. It was seconded by Amy.

During the discussion part of the motion, Bruce asked to have the contract published for the Town to see. He told the remaining Select Board members that they were making a mistake.

Langley also asked to make a public comment. He said that there are 67 missing ballots. He went on to say, "That woman was responsible for the election." He proceeded to recount his recollection of how the ballots were packaged but said they were scrambled when the box was opened.

Bruce commented that Amy had resigned and shouldn't even be here or voting. Sarah reminded Bruce that her resignation isn't effective until March 12th.

Bruce also stated that the contract is not on the agenda and therefore the Select Board cannot vote it. He read the agenda aloud to everyone. Although, he read the section that read: "Action as a result of executive session," he still didn't agree that it was the agenda.

Bruce wanted to have the Maria Fox report as well.

After the discussion, the vote was called.

Motion passed 3-1 (Bruce)

The three members of the Select Board who were present and the Town Administrator signed the contract.

Adjournment:

- Brian made a motion to adjourn at 7:14 PM. It was seconded by Amy.

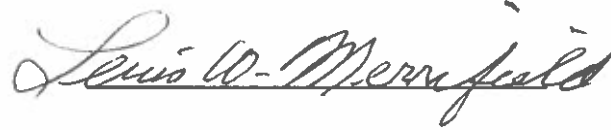
Motion passed 4-0

3/1/2021

To Town Administrator, Select Board, Chair of Planning Board

Do to the circus back in town I am resigning as a member of
Hope Planning as of 3/1/2021

Lewis W. Merrifield

A handwritten signature in cursive script that reads "Lewis W. Merrifield". The signature is written in black ink and is positioned below the printed name.