

**BOARD OF SELECTMEN
MINUTES OF MEETING
FEBRUARY 22, 2010**

Selectmen present: Rosendel Gerry, Chairman, Stacey Parra, Vice-Chairman, H. Bob Plausse, Cathy Hardy, and Jason Trundy

The meeting was called to order by Chairman Gerry at 6:00 p.m. At the request of Chairman Gerry, a moment of silence was observed in memory of two long-time Lincolnville residents, Edgar Allen and Kenny Hall.

The quote of the day was read by Selectwoman Parra.

1. Citizen's Forum:

Paul Crowley, of Tanglewood Road, asked the Board if any of them had traveled Tanglewood Road lately. He explained that the road is saturated, very soft, has deep ruts, and is impassable. He asked what the Town is doing to bring it up to Town specifications.

Town Administrator Kinney responded by saying in the short term, Road Commissioner Bernard Young today had driven around to inspect Lincolnville dirt roads, and they agree Tanglewood Road is a mess. Road Commissioner Young will be "hitting the worst of the worst tomorrow in some efforts to improve them in the short term. In the long term, there will be discussions with Knud Hermansen to create an RFP for surveying services in order to determine where the road is or is not located; so the Town is working on Tanglewood Road, slowly.

2. Administrator's Report:

David Kinney, Town Administrator, reported:

- The Fire Station project has gone out to bid. Approximately 20 contractors have purchased plans; the deadline for submitting a bid is March 2, 2010, at 4 p.m. Work will not start until May.
- Jen Brooks, of the Eastern Maine Development Corporation, is in the process of compiling data in response to Selectwoman Parra's question about how many Lincolnville businesses would be affected by Waldo County's refusal to contribute to EMDC.
- Since the forecast predicts several days of rain, Town Administrator Kinney strongly urges residents with ice houses on lakes and ponds to remove them as soon as possible.
- The Winter Carnival was a fun, successful event. He thanked the organizing ad hoc committee, Lindy Pendleton and the Snowmobile Club for providing rides at the event, and Janis Kay from Surroundings for providing a gift certificate to the winner of the chili contest, Maureen Kremin.

Chairman Gerry had received word from a resident that the Board of Selectmen's agenda had not been posted for two or three weeks on the Town's website. Town Administrator Kinney suggested the resident hit "refresh" on his/her computer and/or call him at the Town Office if

they have continued problems getting the agenda, as it has been on the website. There have also been past server issues for some residents, depending on carriers, so that may be entering into the resident's inability to access information. (*Correction made March 8, 2010 by Chairman Gerry: It was the cable station, not internet, that did not have the Selectmen's agenda.*)

3. Meetings & Announcements:

Town Administrator Kinney read the meetings and announcements from the agenda. Selectwoman Hardy questioned if Room B5 would be large enough for the upcoming Planning Board meeting on Wednesday, February 24, as she thinks there will be a big turnout for that meeting. Town Administrator Kinney will check the availability of other LCS meeting rooms.

4. Upcoming Community Events:

Chairman Gerry announced that this Saturday, the Runner Sled Nationals will be held in Montville. This race is for metal runner sleds only.

The Camden Hills Regional High School Boys Basketball Team will play in the State basketball finals on Friday, 9 p.m., at the Bangor auditorium.

Selectman Plausse announced the funeral service for Edgar Allen will be held on Saturday at 1 p.m. at the church at Lincolnville Center.

5. Meeting Minutes:

Motion by Plausse, second by Trundy, to approve the minutes of February 8, 2010, as written. Vote 5-0.

6. FY 11 Budget Meetings Follow-up:

Camden First Aid Association: Julia Libby was present to answer any questions the Board had regarding the Association's request for a \$7,500 stipend in the FY11 Budget. She explained they anticipate \$844,000 in expenses and \$898,000 in income, but cannot know if there will be additional State cutbacks in reimbursement. Lincolnville is the only town serviced by the Association that has four first-responders living in Town. Warren tried putting ambulance service out to bid and found it to be very expensive. Selectman Plausse felt the Town received excellent service from the Association for their requested stipend.

Harbor Float: The Harbor Master has a request in the FY 11 Budget to fund a capital improvement of an additional harbor float, which would be used to connect a series of floats. After that Budget meeting, Gary Neville, Lincolnville Boat Club member/spokesman, said the Boat Club may have a float available for sale. Upon inspection, the Harbor Master felt that float was wider and shorter than needed, but it was "semi-workable." The cost for project would be \$4,500; \$1,500 from this year's Harbor budget, and \$3,000 from the FY 11 Budget.

Selectwoman Hardy expressed concern for float renovation costs and will speak to Gary Neville before the Board's meeting tomorrow night to see what direction the Boat Club float talk is headed. She would like to see a cap on what is spent on the float.

Paul Crowley expressed his view that the Town does not charge enough for moorings; he pays \$600 for a mooring in Camden. Use of the limited number of mooring spaces, with parking privileges, belongs to an exclusive few, and he doesn't feel taxpayers should subsidize services for those not paying their fair share.

Selectman Plausse would like to revisit mooring fees.

7. Land Use and Development Fee Schedules:

Motion by Plausse, second by Parra, that the Board approve and adopt the proposed Land Use and Development Fee Schedule dated February 19, 2010, not including the flat fees for the tree cutting and shoreland permits.

Discussion: Town Administrator David Kinney explained there is a combination of three distinct issues under this agenda item, but they are also interlocked. He suggested the Board take each issue in sequential order, rather than bouncing from issue to issue, which would get very confusing.

Frank Therio, Code Enforcement Officer, was asked by Selectwoman Parra to address his two proposed fee schedule changes first. Code Enforcement Officer Therio explained that the paragraph at the beginning of the Fee Schedule (Projects excluded from permitting requirements include: reroofing an existing structure; repair of masonry; repair of chimneys; exterior painting; installation or replacement of exterior siding on an existing structure; and landscaping activities.) has not been ratified as part of the Land Use Ordinance, which is why he the Board of Appeals could not uphold his decision at a recent meeting. Frank Therio is proposing that the Board have that paragraph added to the Land Use Ordinance. As it now stands, Lincolnville residents doing minor work to their homes now require a building permit.

Town Administrator Kinney explained in the Selectmen's packet there is a Fee Schedule marked "Draft Dated February 19, 2010" which omits the offending language. Because there is no backing for this paragraph within the Ordinance, it should be stricken from the Fee Schedule. He went on to explain that the Planning Board recommended that the fees on the Fee Schedule remain the same. Beyond that, the CEO recommended two additional fees; one for tree cutting and one for shoreland permits. Those fees do not show on the Fee Schedule marked "Draft Dated February 19, 2010."

CEO Therio explained he is recommending those two fees because those permits are required by the Land Use Ordinance. If permits are required, they should be tracked, otherwise what is the point of the permit? Tracking is an additional cost to the Town. He explained that Lincolnville's tree cutting permit language mirrors the State's, which he administratively applies primarily to the Resource Protection, Resource Conservation, Stream Protection, and

Shoreland Zones. A State tree harvesting permit may be required outside those four zones, but he focuses on those four zones. Other factors, such as top soil disturbance, acreage, zones, contribute to the permitting requirement. In the shoreland zone, removing one tree within the 100-foot buffer could be in violation of the Shoreland Zoning Ordinance.

Town Administrator Kinney felt these Land Use issues are so “muddied,” that it would be prudent to deal with the paragraph elimination from the Fee Schedule first before adding on new fees. The Land Use Ordinance needs to be cleared up before it can be determined what goes into the Fee Schedule.

Paul Crowley expressed his view that people want to be left alone by government; they don’t want to be nitpicked with all kinds of permits. Extensive regulations have been prohibitive for subdivision projects, traditional business expansion, sustainable agricultural businesses, etc. He urged the Board to take radical action by reducing all fees for the next year for Land Use activities.

Vote 5-0.

Town Administrator Kinney continued the discussion by saying if the Board felt the paragraph dealing with exclusions from permitting for routine repairs (which was just taken out of the Fee Schedule by the previous vote) is appropriate so residents are not charged for routine repairs, that paragraph should be included in the Land Use Ordinance

Motion by Parra, second by Plausse, to include a version of the paragraph (Projects excluded from permitting requirements include: reroofing an existing structure; repair of masonry; repair of chimneys; exterior painting; installation or replacement of exterior siding on an existing structure; and landscaping activities.) in the Land Use Ordinance. Vote 5-0.

Town Administrator Kinney will see that the necessary amendment is prepared to present to voters regarding the fee permit exclusion paragraph.

Andy Young, of Cobbtown Road, thought it was a great idea to add that language to the Land Use Ordinance, based on the recent advice of the Town Attorney, but questioned why the Board could not adopt the zero fee schedule. Town Administrator Kinney thought that if there is explicit language in the Ordinance requiring a permit, and you can’t just waive a “magic wand” and say zero. But he did think a change could be made to the fee schedule, increasing the low end of the cost. He felt the process could be moved along in a more timely fashion than the June Town Meeting.

Kathryn Piotti asked for clarification: even if the fee schedule was changed to zero, would residents still need to come to the Town Office to get a permit? Town Administrator Kinney said they would.

Paul Crowley explained that Legislature has mandated that towns over a certain size adopt a standard building code (International Residential Building Code), which has a \$5,000 threshold for permits. He said it would seem sensible to adopt figures that are harmonious with the standard code.

Board members supported the idea of setting the bottom limit to \$5,000, but Selectwoman Parra voiced concern about the loss of revenue by increasing the threshold, as well as the loss of paper trails for assessing purposes.

Andy Young asked what gives the Board the authority to set fees. Town Administrator Kinney responded by saying the authority is delineated in the Land Use Ordinance, in other ordinances, by State statutes, and by the voters. Mr. Young also asked if the Board could set limits for specific repairs; i.e. anything over \$100,000 for roofing work would require a permit or anything over \$100,000 for siding would require a permit. Town Administrator Kinney didn't know if you could or could not do that, but didn't encourage the Board to do that. He felt "it's either a building permit or it's not a building permit; it's not a building permit for a shed versus a building permit for an addition my house." Andy Young knows there are many people who aren't bothering with getting a permit.

Paul Crowley stated the Town of Brooklin does not require building permits unless the building is in the shoreland zone, and doesn't think anyone would complain if the threshold was raised to \$10,000.

Selectwoman Parra pointed out if they changed the threshold from \$500 to \$10,000, it would be in violation of the Land Use Ordinance, which specifically says \$500. Town Administrator Kinney said the Ordinance requires a permit, but the fee is based on the value of the project. If the Board chose to not require any fee, then a permit would still be needed and the residents of the Town would be paying for the cost of staff to issue the permit, even though the user of the permit wouldn't be paying a fee.

Motion by Parra, second by Plausse, to reconsider the motion to approve the Draft Dated February 19, 2010, for the Land Use Fee Schedule. Vote 5-0.

Motion by Parra, second by Plausse, the approve the Draft Dated February 19, 2010, with the proposed change on direct cost of construction, eliminate the first line of \$500 to and including \$5,000 fee, and the second line move to \$10,000 to and including \$100,000, with that fee remaining the same. Vote 5-0.

Motion by Parra, second by Plausse, that the Board propose to the Land Use Committee that they revise the section of the Land Use Ordinance that requires a permit at \$500 and make that \$10,000.

Town Administrator Kinney reminds the Board that this will have revenue implications, and with a \$300,000 shortfall in revenue versus expenses, the loss will have affects on services or increasing other revenue sources. The difference in changing the fee schedule as opposed to

changing the language in the Land Use Ordinance is that changing the fee schedule is for a specific period of time, whereas changing the Land Use Ordinance is in perpetuity until the Land Use Ordinance is changed again.

Paul Crowley said the Board had earlier discussed spending \$1,500 for a float for facilities not open to the general public. He felt the \$800 in income from the \$10 permits costs the Town much more in staff time to issue/track permits.

Selectwoman Parra withdrew her motion. She agreed there should be a permit for a paper trail.

Town Administrator Kinney then brought up the final Land Use topic for tonight regarding the Board of Appeals recent decision to overturn the Code Officer's interpretation of the Ordinance regarding completion of a structure. A resident has Typar on his structure, not siding, which the Board of Appeals interpreted as not complete. The resident's permit had expired and the CEO is working with the resident to comply with the Ordinance. However, there are numerous structures in Lincolnville that also do not have completed exteriors. To force them to comply with this recent ruling would place an administratively burdensome load on the CEO, and the CEO is seeking guidance from the Board if he should actively be enforcing this new interpretation on other residents.

CEO Therio addressed points in a memo he had written to the Board; points he felt needed clarification in the Land Use Ordinance regarding this issue. He feels this is a huge issue which needs thoughtful consideration. He legally has to go after this one resident for an incomplete structure, but there are many in Town that fall into the same category.

Selectman Trundy expressed his view that this issue is much too complex for the Board of Selectmen to solve in one evening. He thought the Land Use Committee should be charged with tackling this issue, getting public input, and coming back to the Board with recommendations.

Ms. Piotti agreed it was a huge issue and suggested the Board not ask the CEO to go after additional incomplete structures, unless a neighbor complained.

Other Board members agreed with Selectman Trundy, but asked how this affects Mr. Carpentier (the resident in violation) now. CEO Therio explained that if Mr. Carpentier applies for a building permit, he would have three years to finish the structure. Mr. Carpentier, on principle, does not want to get another building permit. If he does not get a permit within 30 days, the next step is Superior Court; Mr. Carpentier can appeal to Court. The CEO sympathizes with Mr. Carpentier, but doesn't have any choice but to adhere to the Board of Appeal's decision.

Andy Young says this issue goes way beyond siding; it's opening a huge can of worms. The Land Use Committee needs to address this. He also referred the Board to the enforcement section of the Ordinance; the Town can enter into a consent decree if a resident was misinformed by a Town official.

Town Administrator Kinney again brought up Mr. Crowley's comment about the building code that has been mandated by Legislature. Lincolnville is slightly over the population size where we will need to issue occupancy permits, and in order qualify for an occupancy permit, you will have to meet the building code which requires that the building be finished.

Mr. Crowley also pointed out that communities can adopt exceptions to the International Building Code, as some communities have already done. Camden has the Code due to its larger population, but there's no enforcement. He suggested the Town needs a new committee comprised of business and construction trades people to tackle this issue because the current Land Use Committee members are "affluent environmentalists with no construction experience."

Board members briefly discussed the size of the Planning Board. Selectwoman Parra read from the Charter, stating the Planning Board is comprised of five regular members and two alternates. Perhaps an ad hoc committee could be formed to work with the Land Use Committee, whose members are already very familiar with the Ordinance. Town Administrator Kinney encouraged the Board to address the Land Use issues at hand tonight on the agenda, and then create a plan/goals on how the Board wants to address additional Land Use issues. In the meantime, it would be helpful to the CEO to receive their guidance on enforcement of incomplete structures.

Motion by Parra, second by Hardy, that the Code Enforcement Officer not pursue driving around Town looking for Typar/Typar paper.

Discussion: Selectman Trundy feels the CEO has discretion not to actively pursue violations.

Selectwoman Hardy withdrew her second. There being no other second, the motion failed.

Motion by Parra, second by Plause, for the Board to meet with the Town Attorney to discuss the Board's legal options and possible Land Use charges. Vote 5-0.

Board members voiced views that the public needs to attend public hearings and participate in the process. They should focus on the two major problems at hand and then do a big Land Use overview. Andy Young would like an ad hoc committee to focus on the International Building Code, which will have a big impact, before making lots of little changes to the Land Use Ordinance. Andy Young and Paul Crowley will get names of people willing to serve on an ad hoc committee.

8. Hawking and Peddling License Application – Roger LaRouche at 2164 Atlantic Highway:

Roger LaRouche was present to explain his Hawking and Peddling application to sell food from a mobile trailer at 2164 Atlantic Highway; he does not own that land, but has the owner's permission to use it. He will have a porta pottie available on site. The season will run from April to October.

Town Administrator Kinney explained that a hawking and peddling permit is aimed at door-to-door sales, like magazine subscription sales; this business will be located in one place and should be directed to the Code Enforcement Officer/Planning Board.

After listening to Mr. LaRouche's plans for this seasonal business, Board members agreed it is not in their jurisdiction to approve this as a hawking and peddling business. Town Administrator Kinney said the Code Enforcement Officer would be in the office tomorrow from 6:30 a.m. to 3:30 p.m. to assist him. Mr. LaRouche questioned why he was told by the Town Office to submit this permit; Board members asked Town Administrator Kinney to find out why Mr. LaRouche was given the wrong permitting information.

Motion by Parra, second by Plausse, to deny Mr. LaRouche's Hawking and Peddling license application on the grounds that the proposed activity is not itinerant vending, that he be refunded his license fee, and that Mr. LaRouche be referred to the Code Enforcement Officer and/or Planning Board for the applicable land use permit. Vote 5-0.

10. Board/Committee/Commission Appointment(s):

Motion by Plausse, second by Parra, to appoint John Stephens to the Planning Board as an alternate member with a term expiring in June, 2010. Vote 5-0.

11. Application for Utility Pole Location:

Motion by Parra, second by Hardy, to approve the Location Permit for a Utility Pole on Youngtown Road, as described in Work Order #1000318085. Vote 5-0.

12. Request for Proclamation of Silver Star Banner Day:

Motion by Plausse, second by Parra, that the Lincolnville Board of Selectmen, in appreciation of The Silver Star Families of American and their commitment to our wounded Armed Forces members, declare May 1st "Silver Star Banner Day" and authorize the Chairman of the Board of Selectmen, on behalf of the Board, to issue a resolution stating such. Vote 5-0.

13. Appointment of Election/Ballot Clerk:

Motion by Parra, second by Hardy, to appoint the following as Democratic Election Clerks for the next two years (February, 2010, to February, 2012):

Betty Johnson	Elaine Huber-Neville	Peggy Smith
Robert Johnson	Bradford Knight	Leroy Underhill
Wallace O'Brien	Susan Libby	Richard Glock
Diane O'Brien	Ron McIntyre	Janice Kay
Lesley Devoe	Terry Moulton	Joan Richardson
Margaret Miller	Margaret Rice	Karen Ruth
Jeanne Hollingsworth	Corelyn Senn	Richard Grant

Vote 5-0.

Motion by Parra, second by Plausse, to appoint the following Republican Election Clerks for the next two years (February, 2010, to February 2012):

Vicki Eugley	Richard McLaughlin	Cheryl Roberts
Fred Heald	Dorothy McLaren	Jill Sprague
Richard Koski	MaryLou Overcash	Carol Underhill
Henry Lang	Bradford Payne	Rosemary Winslow
Jan Lyle	Janet Plausse	Robert Walker
Sheila McFarland	Jeanette Wootton	

Vote 5-0.

14. Rules of Procedure – Public Hearing Agenda Location:

Selectman Plausse withdrew his request to change the Selectmen's Rules and Procedures to have public hearings at the beginning of a meeting. Selectman Plausse realized the January 25th meeting was a unique situation, having a special town meeting and public hearing scheduled during the same evening, which rarely happens.

Selectwoman Parra expressed her view that she felt 7 p.m. was the earliest time public hearings or special town meetings should start in order to give residents time to get to the meeting.

Motion by Parra, second by Hardy, that the starting time for public hearings and special town meetings should be 7 p.m. Vote 5-0.

Town Administrator Kinney will bring the revised Rules and Procedures, incorporating this new motion, to the next meeting.

16. Treasurer's Warrant(s) – Approve and Sign: *(taken out of order)*

Motion by Parra, second by Plausse, to approve the Treasurer's Warrants. Vote 5-0.

15. **Annual Performance Evaluation of the Town Administrator – Possible Executive Session – Personnel Matter – Title 1 MRSA Section 405(6)(A):**
Motion by Parra, second by Trundy, that the Board of Selectmen enter into executive session for the purpose of conducting the annual performance evaluation of the Town Administrator pursuant to Title 1 MRSA Section 405(6)(A). Vote 5-0.

Upon returning to open session:

Motion by Parra, second by Plausse, to come out of executive session. Vote 5-0.

17. **Adjourn:**
Motion by Parra, second by Plausse, to adjourn the meeting. Vote 5-0.

Respectfully submitted,

Diane Bacon
Administrative Assistant