

# TOWN OF ORFORD

Board of Selectmen

Meeting Minutes

March 8, 2023

MEMBERS PRESENT: John Adams, Chase Kling

OTHERS PRESENT: Esther Dobbins-Marsh, Terry Straight, Steve Williams, Charlie Smith, Shawn Garran

## Call Meeting to Order

The meeting was called to order at 5:30 p.m.

## Approval of Minutes

*Motion made by Adams, seconded by Kling to accept the minutes of 02/23/2023 (as amended)*

*Motion Passed 2/0*

## Reports

- A. **Fire Department** – Chief Straight presented his February report to the board. The department responded to 17 calls for service (4 medical, 3 fire and 10 mutual aid calls), for a total of 27 calls YTD. (in 2022 there were 12 calls YTD). The department held a CPR training, and a meeting to critique of the fire In Fairlee and to do truck & equipment checks. Currently the department has 17 members. Two ice rescue suits were purchased to allow for responding to water/ice rescues (the department has 3 members certified for ice rescues). Trucks have been taken to Ossipee for radio reprogramming and upgrades. Straight reported the forestry truck had a seal cord let go creating a large bubble in one of the tires – being all wheel drive all 6 tires had to be replaced. When driving the truck to Pete’s Tire the tire blew and Sabil & Sons had to tow the fire truck to Pete’s. Kling asked Straight about the mutual aid call that the Orford fire department responded to in Grafton, NH. Straight said there was a structural fire in Grafton, with a burn victim and the Grafton fire department was asking for assistance from any town that could respond as their members had been on the scene for most of the night into early morning. Kling asked if Orford should have gone that far away as it leaves Orford vulnerable if there had been a serious event in Town. Straight said he had other towns on notice to cover Orford for any event that may have occurred, and mutual aid is designed towns to assist other fore departments when needed.
- B. **Highway Department** – Williams discussed recent activity with the highway department. During the storm earlier in the week, truck #3 got stuck and Sabil & Sons was called to lift the truck out of the ditch and back onto the road. This prevented the spinner from being damaged, and allowed the truck to continue on plowing. Williams asked if the plow routes per truck can be revised? Once the Town received the 6-wheel and 10-wheel trucks he’d like to revise so the trucks are being utilized in the most efficient way. He also mentioned there are several roads with trees close to the road that may need to be removed, or cut back. Currently the truck plows are hitting the trees and the new larger

trucks will hit even harder. The Selectboard said the highway department should tag the trees in question, the Town can notify the property owners. A form will be generated for property owners to give permission to the Town to remove the trees. Williams asked Kling to inspect junk steel that's been accumulated at the garage to determine it makes sense for the highway department to reuse or not. Williams asked the Selectboard about the possibility to keep the old police cruiser for the highway department to use for picking up supplies and delivering other trucks to repair shops. The Selectboard will address after the Annual Meeting to analyze if it will be cost effective to keep for limited use, or to sell.

**C. Recap of committee meetings attended by Selectboard members**

- a. Road Committee – Kling reported the Road Committee will meet on March 9<sup>th</sup>. Smith was at the Selectboard meeting and Adams asked him to clarify the situation around the donated fabric he obtained for the Town. Smith said the fabric can be installed on a road designated by the Selectboard. Smith will monitor the fabric, and if performs well, he's hoping the Town will use for future projects.
- b. UV Ambulance – Adams attended their monthly meeting – Alan Beebe has agreed to return as their director.

**Old Business**

**A. Update of Outstanding Projects**

- a. Archertown Bridge at Jacobs Brook – DuBois & King are still working on the final design – they hope to have the design available for the Selectboard to review by the end of March.
- b. Mousley Brook Culvert Project – Adams is still communicating with DuBois & King regarding replacing the culvert or installing a bridge.
- c. Clough Brook Culvert project – Dobbins-Marsh will follow up with Paige Excavation regarding the status of this project.
- d. High Bridge Road Bridge project – The State of NH sent the Town information on the State Bridge funding opportunity for this bridge. The total project is currently estimated at \$1,442,400 with the Town being responsible for 20% (\$288,480) The project will be scheduled for construction between 2027 and 2032. At this time the Town is only stating we are interested in applying for the bridge aid, however, this doesn't lock us into this project.  
*Motion made by Adams, seconded by Kling to indicate to the State of NH that Orford is interested in applying for bridge aid funding for the bridge project #087/108 Motion Passed 3/0*
- e. Culverts – Kling asked how the Selectboard felt about asking the Conservation Commission to take on the completion of Wetland Applications. With several culverts needing replacing this year, it would be good to have someone local to complete this process. Dobbins-Marsh will reach out the Commission with this request.

**New Business**

- A. Prepare for Annual Meeting** – the Selectboard will set up the voting booths around 1:00 pm on March 14<sup>th</sup>. Board members did not feel the need to have additional information on hand for the meeting. Steve Williams, Road Foreman, Chief Jason

Bachus and Engineer Erin Darrow will be at the meeting to answer questions that pertain to any articles for their projects and/or departments.

**B. Review of received “Notice of Intent to Cut Wood” – none received**

**C. Correspondence**

- a. UV Lake Sunapee Regional Planning Commission – they would like to discuss with the Selectboard about stormwater management. A list of questions was submitted for the board to review prior the meeting. The Selectboard agreed to set up a work session to review the questions prior to meeting with Olivia from UVLSRPC.
  - b. Public Works membership application – the Selectboard agreed to add Steve Williams, Road Foreman as the applicant.
  - c. Library Consultant Report – The Orford Free Library responded to the consultant’s report and are not in favor of using the building at 485 Route 10 as the Town Library, as it doesn’t provide adequate space, especially on the lower level.
  - d. NH Motor Transport Association (NHMTA) application – in order to join the NHMTA to access drug & alcohol testing, we need to submit an application and fee of \$498. *Motion made by Kling, seconded by Adams to enroll in the NHMTA program for the drug & alcohol testing program. Motion Passed 2/0*
  - e. Subpoena for Documents for the State of NH vs 3M Company – the Town received an email from the Town Attorney, Christine Johnston. They are preparing a motion to quash this subpoena for several other towns and want to know of Orford wants to be part of this process. *Motion made by Adams, seconded by Kling to support Attorney Johnston’s recommendation to join the motion being prepared. Motion Passed 2/0*
- D. **Other** – Adams reached out to Christine Johnston, town attorney, to clarify the process of reappointing the fire chief following the annual meeting. Per Attorney Johnston-” There are no NH Supreme Court cases definitively explaining whether a Selectboard needs to have “cause” to not reappoint an appointed fire chief for a new term. However, taking the various laws and court decisions we do have together, it seems quite likely that the answer is no, and that the Selectboard can simply choose to appoint a different person for the next term. You have noted that an appointed fire chief can only be removed during his or her term “for cause” under RSA 154:5, II, but that the statute says nothing about whether cause is required to deny reappointment to a new term. The law does seem to anticipate that a new person will be appointed to a local position now and then, because RSA 41:3 provides that all town officers “shall continue in office until...others shall be chosen or appointed and qualified in their stead....” An earlier version of this statute (which said substantially the same thing) was cited in a 1924 NH Supreme Court opinion which held that an appointed municipal board member whose term expired was entitled to continue to hold office until their successor was appointed. Attorney General v. Bond, 8 NH 269 (1924). This is called a “hold-over” and it does not mean the person is automatically appointed to a new term; it merely means that someone needs to be in the position if there happens to be a gap between the end of the term and the time when the next person can step in. In 2015, the Strafford Superior Court ruling in Varney v. Town of New Durham dealt with this exact situation. The New Durham fire chief was appointed for a 3-year term. When his term ended, the Selectboard did not appoint anyone new, and the chief continued to serve for the next 5 years. When the Board

appointed a replacement, the chief argued he could only be removed for cause. However, the court agreed with the Town that once the term was over, the chief continued to serve only as a hold-over until someone was appointed by the Board to a new term (either the current chief or someone new). The failure to appoint someone did not mean the chief was automatically appointed to a new term. In the current situation, we don't have a hold-over issue, but those cases are useful because they illustrate that an appointed official's term can legally expire and they can be replaced by someone new without a formal removal proceeding. If that is the case, then it should also be true that any protections from removal that would apply during the term do not apply when their term expires. In summary, I believe that the Selectboard should be free to appoint someone new when the current appointed fire chief's term ends, and that no "cause" or formal removal proceedings should be necessary."

### **Manifests, Payroll and Accounts Payable folders**

The manifest, payroll and accounts payable folders were reviewed and signed where necessary

### **Non-Public Session**

*A motion was made by Adams, seconded by Kling to enter into non-public session under RSA 91-A:3, II(a) for personnel matters at 7:30 pm. A roll call vote of member's present was taken with a decision in the affirmative*

*The Board resumed the regular meeting at 7:43 pm. A motion was made by Adams, seconded by Kling to seal the minutes of the nonpublic session. Motion Approved.*

### **Adjourn**

*Motion made by Kling, seconded by Adams adjourn the meeting. Motion Passed 2/0*

The meeting adjourned at 7:45 pm

Respectfully Submitted,

Esther Dobbins-Marsh