

TOWN OF ORFORD

Board of Selectmen

Meeting Minutes

April 12, 2023

MEMBERS PRESENT: John Adams, Jen Carter Chase Kling

OTHERS PRESENT: Esther Dobbins-Marsh, Janice Follensbee, Terry Straight, Steve Williams, Charlie Smith

Call Meeting to Order

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

Approval of Minutes

- *Motion made by Adams, seconded by Carter to accept the minutes of 03/22/2023 (as amended) Motion Passed 3/0*
- *Motion made by Adams, seconded by Carter to accept the minutes of 03/29/2023 (as amended) Motion Passed 3/0*
- *Motion made by Adams, seconded by Carter to accept the minutes of 04/05/2023 (as amended) Motion Passed 3/0*

Reports

- A. **Fire Department** – Chief Straight presented the departments activity report for March 2023. There was a total of 12 calls (YTD = 39 compared to 2022 YTD of 21). The calls consisted of 8 medical calls, 3 fire calls and 1 mutual aid call. The department held a relay-pump training, a communications training, and completed equipment and truck checks. The phone system at the station has been moved over to Topsham Communications. The change was implemented primarily due to the internet speed at the station. The Fire Department has one new member who's certified.

Chief Straight addressed two complaints filed by Janice Follensbee regarding not having access to the Orford, NH Fire Department Facebook (FB) page. The complaint was made because Follensbee was blocked from the FB page and claims this is a First Amendment Right violation (as she can't view or comment on the page), and also removes her access to health and safety information that is reflected on the FB page. Carter stated as the Town doesn't have Social Media or a policy on Social Media, she considers this a personal FB page. Kling feels when a department head has a FB page and shares information pertinent to Town residents, a normal reasonable person could assume it's an official Town FB page.

The Town Attorney provided the following opinion to the question - Is there a regulation that states how to handle social media for Town Departments?

Unfortunately, there is no one general rule or regulation about how social media must be handled. Towns have different divisions of authority on this and who is in charge of what. However, there are some legal constraints on how a department or town-wide Facebook or other social media account can be handled.

First, it is very important to be clear about which sites/accounts are “the” official place where the Town posts things, such as notices of meetings. We very strongly suggest that these official locations be carefully controlled by the Town and that no one other than Town officials or employees be permitted to post things. For example, the official Town website should be the place where absolutely anyone can go to see official notices, documents, etc. If there are other, secondary sites or accounts that are used for specific departments, they really should say on the home page that they are not the place for official notices, and direct people to the one Town website. This way, you can be clear about which places count as official posting locations under RSA 91-A and other statutes. With respect to the specific complaint here, there might actually be a problem if the Facebook account is the “official” place for people to get information and one specific member of the public has been blocked from seeing it. The way to handle that is to establish by policy that “official” information will always be available on the Town’s website; that way, it won’t matter whether anyone is unable to see it on Facebook because that would be a secondary location.

Second, if there are separate Facebook or Twitter accounts for specific departments, it is important to understand that, if it is opened up for the public to post on it, it becomes some kind of “public forum” which triggers people’s First Amendment rights to free speech. The level of control you can have over what people post depends on what kind of public forum it is. If it is a “general” public forum, this means people can say whatever they want to say if it is of any public interest. You don’t need me to tell you that this usually doesn’t end well. On the other hand, if it is a “limited” public forum, this means that the government has opened up an avenue for speech about certain limited, enumerated topics, but not all topics of public interest. For example, a Fire Department Facebook page might have a posting policy which says that posts must be limited to subjects related to the Fire Department, its operations, employees and programs, and says that any post which is not related to those subjects will be removed. (Boards of Selectmen sort of do the same thing at meetings when they open up the floor for public comment but say it is limited to items that are on the agenda at that night’s meeting. Totally allowed.) HOWEVER, that is really about as limited as it can be; if people want to post only negative things about the Department or employees, and do nothing but complain and antagonize, it generally has to be allowed if it is related to the subjects that are allowed. The government can’t say “no negative comments.” (Trust me. School boards have paved the way for everyone on this and courts have already made up their minds on this subject.) The reason is that the government can’t control the content of the speech within those topics (except if it does something to incite immediate violence, like “let’s burn down that guy’s house at 9pm tonight”). There are municipal Facebook pages that have policies which say no obscenity, defamatory content or threats will be permitted, but results on trying to enforce those limits have been mixed.

Third, in many cases, unfortunately, the only way to maintain a Facebook or other account is to disable public comments and posts altogether. This IS permitted. Either everyone in the public can post, or no one can; there really isn’t any permissible place in between.

The Selectboard discussed if the Fire Department uses a FB page to share important health and safety information, it should be available to everyone. However, until a policy is established, the Selectboard want to make sure what the Town is doing is complies with the legal opinion. FB pages will be open to all (no blocking) to be able to view the

information on the page. The Town will look into creating its own Social Media account, and the Town will be the administrators with department heads given the ability to post information on these pages. For current FB pages, if the FB page references "Town of Orford" it will be considered a town FB page until a policy is put in place, even if it's a personal page.

Moving forward, the board requested Chief Straight add a statement that the site is not an official Town FB page and request there be no restriction for viewing the content of the page. Straight said consider it done for the Fire Department page. The Town will communicate with other departments (EMD, Orford Historical Society, and Police Department) to follow this same process.

Follensbee would like the complaints be officially read into the minutes (the complaints were entered into the minutes at the meeting of April 5, 2023, and the minutes reflect the complaint in full). Follensbee feels on the Fire Department FB page Straight is acting as the Fire Chief and that falls under the Selectboard domain. The NH ACLU web site said that FB pages that represent a municipality are open to be viewed by all, therefore, being blocked is a violation of her 1st amend rights. She believes several others have been blocked as well. This also applies to her being blocked from viewing health and safety information that provided on this FB page, and if there's an emergency in Town, unless told by someone else, she and her family would not be aware of the event that could severely impact them.

To summarize, access will be allowed for all to the Orford, NH Fire Department FB page, no comments will be allowed, and Fire Department members will still be allowed to post to the page.

- B. **Highway Department** – Road Foreman Williams asked if it's ok for him to post information on the UV Roads and Conditions FB page which is used by highway department all over the state to post information impacting road conditions. The Board agreed he could continue posting updates to the page. He presented the gravel report to the board which detail the amount of $\frac{3}{4}$ " crushed stone being used by road and by month. The board discussed the Highway budget for gravel, shop supplies and fees. There is a stockpile of gravel in addition to what's been used. The line item for fees includes the fee to join the NHMTA which will administer our drug testing. Shop supplies will be reviewed by Williams and Dobbins-Marsh to see if anything should be re-classified. Upcoming work for the Highway department will include ditching and clearing out culverts (which will allow Williams to identify if a culvert needs replacing or not), and road grading. Williams was asked what the plan is for emergency vehicles on the Archertown Road when the Archertown Road Hill project is underway. The road will be closed when culverts are being replaced, but otherwise, one side of the road should remain open.

The Board reviewed the estimate from Innovative Surface Solutions for Pro Guard Mag at a cost of \$1.18 per gallon. Williams has also requested an estimate from another vender, and will present the estimate to the Board. Williams also mentioned the 10-

Wheel truck chassis should be available soon, then will be sent to Viking to add the plow package

C. Update on Committee Meetings attended by Selectboard members

- **Road Committee** - The Selectboard agreed to invite the Road Committee to attend the Selectboard meeting on April 26th to discuss projects for the committee to work on, including but not limited to the paving plan update.
- **Planning Board** – Kling asked Straight about the status of the Mt. View application. Straight said he was not prepared to discuss at the meeting, but the Planning Board did vote to approve the application, and will provide data to the Selectboard to formally request the Selectboard to act on the application.

Old Business

A. Update of Outstanding Projects

- **Archertown Bridge at Jacobs Brook** – the Board received the revised cost analysis for the project from DuBois & King. The revised construction cost is estimated at \$1,539,000. The Board also needs to approve the design previously submitted which will allow D&K to submit to the State of NH DOT for review and approval as well.
- **Clough Brook Culvert (Orfordville Road)** – Paige Excavation is looking at late July, early August to start the culvert replacement.

B. Policies – Adoption – Meeting Notices, Agenda and Minutes policy – the Selectboard reviewed the revised policy and agreed with the changes. *Motion made by Adams, seconded by Carter to accept the policy as amended. Motion Passed 3/0*

New Business

A. Schedule quarterly meeting with the Road Committee to create project list – discussed during the Highway Report section

B. Schedule Employee Reviews – Carter will review the Employee Review forms to be used for Employee Reviews. They should contain a section for supervisor and/or co-worker's comments.

C. Budget vs Actual Review – Adams asked if the Police Department prosecution line item reflects a one-time annual payment? It does. The Selectboard discussed the line item for the landfill closure and if the Town should request reimbursement from the Dump Closure CRF, as suggested by Chris Crowley, Trustee. *Motion made by Adams, second by Kling to request reimbursement for the landfill testing from the Dump Closure CRF for the 2023 expense. Motion Passed 3/0*

D. Complaints

- **Prettyman Road Class VI** – a complaint was received from Paul Griffin regarding the condition of the Class VI section of Prettyman Road. Kling said it's time to invite Tiffany Vance to a Selectboard meeting to discuss her plan for summer work to the road. The Board would like her to attend their regular meeting on April 26, 2023
- **Fire Chief** – Janice Follensbee submitted two complaints against Terry Straight that will be discussed on a non-public session

- **Selectboard Member Jennifer Carter** – Janice Follensbee filed a complaint against Carter for not responding timely to Follensbee’s request to meet and discuss her support of Kevin Follensbee to be appointed as Fire Chief.

On March 20, 2023 I texted @ 08:35 and emailed @ 12:03 (the same as the text) to Jennifer Carter, Selectboard member asking for a meeting so I could discuss what it was like as a female employee under Chief Straight, as there is another female firefighter who is currently being treated in a less than ideal way; some of the same ways I was treated until I stood up for myself. I am a tax paying citizen of Orford, and should have been allowed to have a meeting with you, despite being on the opposing side of Chief Straight for Fire Chief. On 03/25/2023 I emailed at 20:24 another meeting with you, and received emails back; one stating you are too busy to meet.

Text sent on 3/20/23 – “Jennifer, my name is Janice Follensbee. I have really been struggling with whether to ask for this meeting with you or not, as I am very partial to my husband Kevin Follensbee being hired at the new Orford Fire Chief. However, after talking with John Dunham, he pointed out that I do need to at least talk to you to give my perspective as a past OFD member and the way that he (straight) actually treats women. Do you by chance have any availability today Monday March 20th? I know this is pretty last minute, so I understand if you cannot. Please reach out to me (personal phone # listed).”

Text sent on 03/25/23 – “Jennifer, this is Janice Follensbee again. I would like to set up a meeting with you. I am available Tues March 28th all day, Thurs March 30 after noon and on Fri March 31 all day, Sun April 2 all day, Mon April 3 all day, Thurs April 6 all day and Fri April 7 after 1 pm and on. Would you please respond and let me know if any of these dates and times can be done?”

Carter responded on 03/27/2023 – “Hi Janice, I’m pretty booked most days as I have a full-time job and between selectman, town committees and kids sports I don’t have free time. I’ll look at my calendar and see if I have any availability. To what would you like to meet about? If I don’t have time you can always email Esther to put you on the agenda for a selectman meeting so that all three of us can listen to your questions/concerns”

Follensbee responded on 3/28/23 – “Jennifer, just like you, I also hold a full-time job and other responsibilities. I work very Wed, which actually makes me getting to a SB meeting pretty impossible. I need to put my request for time off three months ahead of time. Do you know if there is a way to get a SB meeting on a different day, if requested?”

Carter responded on 03/28/23 – “Janice, I think the 2nd and 4th Wednesdays are pretty set in stone, but I could be wrong, I’d have to refer you to John Adams on that matter”

Follensbee said she should have been allowed to have a meeting with Carter as a resident of Orford, despite being on the opposing side of Chief Straight for Fire Chief. Was this strictly because she’s Kevin’s wife? Or was this because I’m a disgruntled x-employee, as one of your friends advised me. Follensbee asked

why Carter had time to meet with others in Town but not her. What do you know about me, and what makes me a disgruntled x-employee? You are an elected official who is supposed to be the voice of the residents of Orford. Hearing all views and opinions of residents is what you're elected for. If you can't make time to do so, maybe you should consider resigning and allow someone else who can and will do so.

Carter said she really doesn't know Follensbee that well and had no idea she previously served on the Fire Department until recently, and did not recall calling her disgruntled. Carter asked if she reached out to other board members (Follensbee spoke with Kling), and why she couldn't email Carter her concerns. Follensbee said she preferred to meet in person. Carter said unfortunately her calendar is very busy due to her work for her employer, seasonal tax work and her personal schedule. She took many calls over a two week period, and was a bit burnt out. Carter said she met with a few people in town and received many emails that she was able to read over as time permitted. Not meeting with one person should not be a reason for her to resign. Kling said there are many people in Town that he will never choose to speak with for many reasons. Selectboard members are like everyone, and trying to balance family, work and personal commitments can be challenging.

E. Review of received “Notice of Intent to Cut Wood”

Property Owner: Smarts Mountain Realty, LLC, George Evarts, manager, Map & Lot #008-033-007, Forester: George Evarts

F. Correspondence

- Tom Thomson submitted a request to be notified 2 days prior to the NH DES Violation work starting on Mud Turtle Pond road
- Pierre Kozely is requesting the Selectboard reach out to the NH DOT to add a speed limit sign on Bridge Street for drivers going towards the Bridge. In the past the board has made this request, and per NH DOT when the speed doesn't change, they do not put up additional speed limit signs. The speed limit on Route 10 is 30 MPH, as it is on Bridge Street. He also mentioned a busy time on Bridge Street is between 6:00 am and 7:00 am – he feels more enforcement during that hour would be helpful to control the speeding and noise.
- The Selectboard approved a vacation request from Chief Bachus *Motion made by Adams, seconded by Kling to approve the request. Motion Passed 3/0*
- HEB Engineers submitted information on services their company can provide the Town of Orford
- CASA sent a letter of thanks for the Town's appropriation of \$500
- Grafton County Senior Citizens sent a letter of thanks for the Town's financial support

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 8:15 pm. A roll call vote of member's present was taken with a decision in the affirmative

The Board resumed the regular meeting at 9:20 pm. A motion was made by Adams, seconded by Kling to seal the minutes of the nonpublic session. Motion Approved 3/0

Adjourn

Motion made by Adams, seconded by Carter adjourn the meeting. Motion Passed.

The meeting adjourned at 9:22 pm

Respectfully Submitted,

Esther Dobbins-Marsh