

SELECTMEN'S MEETING MINUTES

8/28/90

Regular meeting of the Waterboro Board of Selectmen.

PRESENT: Chm. Robert C. Fay, John C. Monteith, Dennis G. Abbott (arrived late)

REPORT OF STANDING COMMITTEES:

DIANNE HOLDEN: The Board asked Dianne how the tax money has been coming in. She reported that the banks have started to send in the escrow money. She also discussed with the Board the Employee Personal Policy, the Board was going to review it after Town Meeting, and also the telephone system. Would like to know what is happening with the recording of the message and the answering machine for the CEO office upstairs. Next Wednesday at the high school there is an accounting course starting and she and Bertha McAloon would like to attend and asked if the Town will reimburse them for the cost of the course. Chm. Fay stated that if it would be beneficial to the Town, yes. Dianne told the Board that Northern Data has suggested an accounting course to use the General Ledger program. The Board voted to reimburse Dianne & Bertha on the costs of the accounting course. Dianne also asked about dump stickers, if there has been any thought of how they will be handled. Chm. Fay stated that the dump attendants would like to see the vehicle registration number written on the sticker. Chm. Fay suggested sitting down and having a meeting with everyone involved and maybe come out with some new rules and regulations. Need to have one policy and everyone needs to live by it. Dianne also asked on how the budgets for next year will be handled. Sel. Abbott stated that there will be a six month budget and then a twelve month budget. Chm. Fay asked about officials. Sel. Abbott stated that the officials whose term will be expired can either serve until June or from March 1991 to June 1994. Dianne discussed what has been happening with Lionel Belanger's excise tax. The Board asked her to check with Saco to see how they handled the letter that they received. She also discussed with them about Mr. Burns excise tax. His wife registered his motorcycle as an ATV in July and he was stopped by the police in August and found out then that he had it registered as an ATV and he would like his excise tax paid reimbursed. The Board voted to reimburse Mr. Burns his excise tax.

DWAYNE MORIN: Dwayne reported that the DEP contracts are ready to be signed but there are a few changes that need to be done, the date needs to be changed to 1991 and the contingency fund amount needs to be changed and he suggested waiting to sign. Has the figures on the McCandless septic system and will give them to Karen Lovell tomorrow. Karen has written the ordinance to be voted in at the Special Town Meeting. He has been working on the census and the figures are all wrong. The Board signed the letter that Dwayne has written to the census bureau notifying them of the wrong figures. Karen is also doing the paperwork for On-Time-Matching. Dwayne suggested holding the money in a revolving account and the Board voted to do so. The deeds and easements are ready and he will pick them up but first needs to get Jim Hamilton to sign his, so Dwayne will Federal Express it down to him and have it expressed back. The Board gave Dwayne permission to purchase a computer book. Chm. Fay also asked Dwayne to let the Selectmen's Office know when he will not be in his office.

NEW BUSINESS:

FRANK EUKITIS: Mr. Eukitis came in to talk to the Board due to the disagreement that he has had with Dwayne Morin on his property. He has a corner lot and he has been told that he needs to meet the zoning requirements on both roads. Dwayne even drew him out a plot plan to show him where he can build. Chm. Fay told him that he first needs to talk to Van or Tim and not Dwayne, Van & Tim are the Code Enforcement Officer's. Mr. Eukitis will go and meet with Van & Tim tonight.

The Board asked Van to tell his people upstairs to let downstairs know when they will be out of the office. Van told the Board that technically they are open Tuesday evenings and Thursday mornings.

The Board will hold a Special Town Meeting in September.

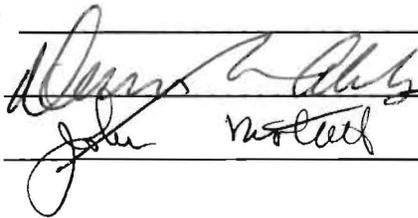
The Board will set a meeting date with the Road Commissioner to sit down and discuss sanding and cutting of brush.

The Board signed the warrant for payment of bills and payroll. The Board made a notation on the warrant for the time submitted by Bob Vermeulen. Bob had submitted time on the same day one time slip for working at the dump and then a slip for constable for three hours during the hours that he was submitting for the dump hours. The Board voted to hold on to the check submitted for the additional hours and if the check had been mailed to adjust his next weeks pay.

As voted on the 22nd of August via telephone with conversation with Dep. CEO Officer Tim Nelson the Board voted on the following options;

1. To allow the 6 year standard statute of limitations to expire, therefore not enforcing.
2. Hold land use violations as continuing violations therefore charging Starrett Pierce with illegal subdivision.
3. Hold land use violations as continuing violations therefore having all people who own property who plan to sell or build in the future will need to apply to the Planning Board for one lot subdivision. The Board unanimously voted to go with option #3. See attached letter and note with times called to the Selectmen.

approved: _____



8-22-90

9:06 hrs | Bob Fay : Single lot
subdivision most feasible

9:08 - John Monkith - single
lot subdivision -

9:15 Dennis Abbott in favor
of single lot subdivision
JN-

Smith & Elliott, P.A.

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August 23, 1990

Tim Nelson
P.O. Box 130
Waterboro, Maine 04087

Re: Starrett Pierce Illegal Subdivision

Dear Tim:

The telephone message which was relayed to me this morning indicated that you wanted written confirmation of the alternative approaches to the illegal subdivision created by Starrett Pierce which you and I dicussed on the phone Wednesday morning.

As I understand it, and as the information in my file indicates, Starrett Pierce made a number of real estate sales over a considerable period of years. Many of those transactions required prior Planning Board subdivision approval which was never applied for or obtained. You have been in the past and are now in the position of being asked to issue building permits for construction on these illegally created lots. As you know, the issuance of a building permit for a lot in a subdivision which needs but has not obtained Planning Board approval is prohibited by state law, 30-A M.R.S.A. §4406 (1) (C).

The transaction which created the most recent illegal lot occurred approximately six years ago. The general statute of limitations applicable to civil cases is six years. There are two schools of thought on the applicability of this six year statute of limitations to land use violations. On one hand, it is possible to interpret land use violations as being subject to the general six year civil statute of limitations. This would mean that any enforcement action against the creator of an illegal subdivision would need to be initiated within six years of the date the subdivision was created. Since, in this case,

Tim Nelson
August 23, 1990
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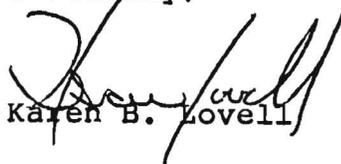
the last lot was conveyed right around six years ago, this analysis would prohibit enforcement action being taken against Mr. Pierce or the present lot owners now.

The opposing view holds that land use violations are continuing violations. In cases such as this one, that would mean that a new violation occurs each day the violation is allowed to continue. The wording of the state statute would seem to support this second interpretation, since it prohibits a building inspector from issuing a building permit for land which falls within the state definition of a "land subdivision" unless the subdivision has received Planning Board approval. In this case, you have no choice but to conclude that the various outsales made by Starrett Pierce created one or more subdivisions as defined by the state statute. You also have no choice but to conclude that Planning Board approval has not been obtained.

When I spoke with you Wednesday, I suggested that you have the Board of Selectmen treat the statute of limitations question as an enforcement decision. As I understand it, you have done that and they have concluded that the violation is a continuing one. Had they concluded that the general six year civil statute of limitations applied, there would still be no question that the lots were illegally created but your ability to use that violation as basis for denying a building permit would have expired six years after the illegal subdivision was created. If we are to treat the problem as a continuing violation, then you must refuse to issue a building permit. As with any other building permit denial, the applicant may appeal your decision to the Zoning Board of Appeals. If the applicant chooses not to do that, or if the Zoning Board upholds your decision, then the only means of curing the illegality would be for the owner of each lot to obtain Planning Board approval for his or her own lot as a one-lot subdivision. This would correct the illegality for all lots receiving Planning Board approval, and would allow the issuance of building permits for those lots, while not in any way correcting the illegality of the remaining Starrett Pierce transfers. I believe the Waterboro Planning Board has in the past, in situations similar to this one, approved one-lot subdivisions.

If I have misunderstood what you wanted in a written opinion from me, or if you have other questions, please let me know.

Sincerely,


Karen B. Lovell