

APPROVED 07/23/2009

At 6:08 pm the Board's meeting was called to order in the basement meeting room at the Fremont Town Hall. Present were Selectmen Donald Gates Jr and Greta St Germain; and Town Administrator Heidi Carlson.

Selectmen talked about working on the Personnel Policy and deferred further action until the full Board is here and more time had been spent on the review process.

OLD BUSINESS

1. Selectmen reviewed the minutes for 25 June 2009. Motion was made by Gates and seconded by St Germain to approve the minutes as written. The vote was approved 2-0.
2. Carlson provided the Board with updates on tax deeds. The Tax Collector is out tonight but had met with Carlson on Tuesday. There are four properties still slated for deeding. Carlson had written letters to the property owners and is waiting for a response. The Collector has not yet presented the tax deeds.
3. Carlson also updated the Board on some of the statutes related to tax deeding and the period of redemption. Review of the statutes indicates that there is a three year redemption period by the former owner on a tax deeded property.

NEW BUSINESS

1. Selectmen reviewed the payroll manifest \$21,106.03 and accounts payable manifest \$46,570.08 for current week dated 10 July 2009. There was discussion about a check to the Veterinary Emergency & Surgery Hospital of Brentwood. A question will be posed to Chief Janvrin before the payment is released.

It is noted that Selectman Hunter and Heidi Carlson signed the accounts payable manifest for last week dated July 2, 2009 in the amount of \$1,012,856.73 which included a \$1M disbursement to the School following receipt of the TAN. Gates and St Germain signed this manifest tonight.

2. The Selectmen reviewed the folder of incoming correspondence.

At 7:00 pm there were no Department Heads present.

3. Selectmen reviewed and signed outgoing correspondence: letter to School Board re: TAN issuance; letter to Departments re: 2010 budget process and due dates; letter to Richard Laughton on budget submission memo; letter to Susan Denning re: insurance claim on North Road; letter to Dan Itse re: town forests. Some further information is needed to finalize a second letter to Dan Itse regarding the Arnofsky property.
4. Selectmen signed the DRA form related to use of PA-28. Fremont does not use the Inventory Blank.
5. Selectmen reviewed the submission for the Newsletter from CK Scoops, the new ice cream shop on Main Street. The article is an advertisement and not permitted in accord with guidelines, but the Board agreed it could be announced as a new Planning Board approval, welcoming a new business.

6. Carlson indicated there were no submissions yet for the August newsletter, so it is believed that the approval of it can wait until the Board's meeting of July 23, 2009. It would go out just after the first of August, which will be OK given the July issue was a double.

7. Carlson advised the Board that she had met the District's new Superintendent Bill Lander today, and talked with him about a variety of issues facing the Town and the School. Lander would like to come in and meet with the Selectmen at a future meeting, as well as make an initial phone contact with Chairman Gates, simply to introduce himself, sometime soon. Lander was hired following a several month search process to replace the interim Superintendent Norm Tanguay, whose contract ended June 30, 2009. The School Board meets next on Thursday July 23rd and has altered somewhat the nights of their meetings for the summer as Superintendent Lander teaches on Tuesday evenings at Plymouth State. Carlson expressed that the meeting had been very productive and she was glad to welcome Lander to Fremont.

8. The Planning Commission has sent out a letter seeking Rockingham Metropolitan Planning Organization (MPO) and Technical Advisory Committee (TAC) representatives from Fremont. The Board suggested that Carlson put a piece in the newsletter announcing open volunteer positions to include these as well as land use boards.

At 8:30 pm Steve Hamilton, Director, NH DRA Property Appraisal Division and Keith Gagnon, NH DRA met with the Selectmen to discuss the mandated revaluation for 2010. Carlson thanked them for coming as the Town has many questions in light of Gagnon's recent visit and his learning that the warrant article for the recertification had been turned down.

Selectmen asked Director Hamilton to review the Town's options, given that the voters had rejected the article on the warrant to do the recertification and take existing monies from the capital reserve fund created for that purpose.

In this light of this, Hamilton said the Town has very limited options. He said that town's are required "at least as often as every five years. Selectmen asked for the statute reference and he said NH RSA 75:8-a. This statute reads:

75:8-a Five-Year Valuation. – *The assessors and/or selectmen shall reappraise all real estate within the municipality so that the assessments are at full and true value at least as often as every fifth year, beginning with the later of either of the following:*

I. The first year a municipality's assessments were reviewed by the commissioner of the department of revenue administration pursuant to RSA 21-J:3, XXVI and the municipality's assessments were determined to be in accordance with RSA 75:1; or

II. The municipality conducted a full revaluation monitored by the department of revenue administration pursuant to RSA 21-J:11, II, provided that the full revaluation was effective on or after April 1, 1999.

Source. 2001, 158:54, eff. Sept. 3, 2001. 2003, 307:11, eff. July 1, 2003. 2005, 119:1, eff. June 15, 2005.

He said the requirement in the statute mimics Part 2 Article 6 of the NH Constitution regarding valuation anew. That reads:

Second Part [Art.] 6. [Valuation and Taxation.] *The public charges of government, or any part thereof, may be raised by taxation upon polls, estates, and other classes of property, including franchises and property when passing by will or inheritance; and there shall be a valuation of the estates within the state taken anew once in every five years, at least, and as much oftener as the general court shall order.*

June 2, 1784 Amended 1903 to permit taxes on other classes of property including franchises and property passing by inheritances.

Hamilton said that everyone thought that the equalization ratio took care of assessing variations, but that there has always been a requirement for regular updates. He cited a court matter of *Sirrell v State of NH* where it was argued that property tax in general was unconstitutional and the court agreed, no one had followed the constitutional requirement that appraisals be done every five years.

The Selectmen asked about the penalty for not doing it and Hamilton reviewed the NH Board of Tax and Land Appeals (BTLA) court process which would order the Town to complete it. He said a number of communities over the years have been ordered by the BTLA to reappraise their properties, using the requirements of RSA 75:8-a and the Constitution. In this instance, the Town then loses control of the process, with NH DRA duty bound to oversee it, solicit bids, and a premium is added to the cost to the Town to complete it.

Hamilton said the duties of the Commissioner of NH DRA pertinent to the enforcement are listed out in NH RSA 21-J:3 XXV which reads as follows:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16-19 whenever the valuation of property in a particular city, town, or unincorporated place is disproportional to the valuation of other property within that city, town, or unincorporated place, or whenever the municipality has not complied with RSA 75:8-a.

XXVI. Review and report each municipality's assessments once within every 5 years pursuant to RSA 21-J:11-a.

There was discussion of “no means no” in the sense that the voters had rejected the proposal, even though there is no tax dollar impact of the Town undertaking it. Hamilton said that voters cannot use “no means no” to alleviate a legal requirement. He equated this to special education in school budgets, and that if voters do not approve such expenditures it does not alleviate the district’s responsibility to provide any of those services. Voters excluding these mandatory requirements simply make it more difficult for the town or school to do what they are legally required to do.

Hamilton said to the Board, “this is your town and you are in the best position to make these decisions for the Town of Fremont.” He added that DRA does not want to have to force a revaluation via the BLTA process.

Hamilton said in response to a further question from Carlson that this is not an unfounded mandate because it is in the NH Constitution and has been part of it since the 1784.

There was discussion about holding a special town meeting as had been done this year in East Kingston. The Selectmen cannot ask the same question that was included in the March 2009 regular meeting without a court order to do so. The Board, can, however, hold a special town meeting to ask the voters for approval to make the Selectmen agents of the existing revaluation capital reserve fund. Hamilton said that the Town is lucky in that sense, that the money is already held by the Town to complete the required work for a recertification.

Selectmen asked what happens next if the voters at a special meeting vote down that question. Hamilton said that the Town could then go to the March 2010 meeting and ask both questions again, but that by late winter or next spring, the DRA would be looking to enforce the issue and be seeking action from the BTLA.

If the Town were to be ordered by the BTLA to perform the revaluation, the DRA then also has the authority to put the cost into the Town's tax rate, and not take the money out of capital reserve, meaning the Town will end up paying for it in taxes without the benefit of being able to use the capital reserve money. Gates said that the Town has a lot to gain by having a special town meeting and approving the matter and everything to lose if that option fails. He stressed how important it will be for the Town to get more information out there for voters, and stress the urgency of this matter. If taken out of the Town's hands, we stand to lose 1/3 to 1/2 again as much as the recertification process would normally cost, or \$25,000 to \$35,000 given the premium and added legal costs. We will also lose control over who does it and how and when it happens.

Carlson expressed concern over the perception that the Selectmen were making decisions contrary to voter direction. Hamilton said the Town has no choice. The Constitution and Statues are clear and that the Town is obligated to do this. He said it is one of the few cases where the voters can't say no.

Gates asked about the appeal process to the BTLA. Hamilton said that the NH BTLA is a quasi-judicial organization equal to Superior Court in NH. Any appeal to a BTLA decision must be taken to the NH Supreme Court.

Carlson discussed the process used in East Kingston, which includes preparation and holding of a deliberative session, waiting the prescribed time period for the Tuesday all day voting session, and then if it passes, a public hearing by the Selectmen (now designated agents) to expend funds from the existing revaluation capital reserve fund. East Kingston said it cost them approximately \$2,900 to do all of that work, and that it was anticipated to cost between \$5,000 and \$10,000 if they tried to get a court order for a special town meeting. Hamilton added that if the matter is forced to go through the BTLA, that it will be additionally thousands in legal fees to the Town.

Selectmen discussed the larger picture of what happens in another five years when it is likely a full revaluation is needed again (including measure and list); and the voters have no longer set aside funding in capital reserve. Without that annual money set aside, the cost every five years (depending on a full revaluation) could be \$150,000 for the 2015 requirement.

Hamilton suggested that the Selectmen seek out legal advice, have our legal counsel talk to East Kingston's counsel, and be sure that the process for a special town meeting is as streamlined as possible, legal and binding, and done properly.

Carlson asked if Hamilton had a letter sent out to Town's in a similar situation, or a sample PR information sheet with regard to the situation. He said he had written similar letters and if Carlson sends an email to him, he would look and see what he could find that would be helpful for him to forward.

Gates asked Hamilton if DRA could assist the Town with public relations and attendance at the deliberative session and/or public hearing. Hamilton said that he or a representative from the office would be available for such meetings. He stressed how seriously the Department takes this matter and wants the Town to understand that as well.

Hamilton said they understand how important this is and want Towns to do the right thing.

Hamilton and Gagnon left the meeting at 9:10 pm and the Board thanked them for their time and consideration of this important matter.

There was a brief discussion about an animal control issue from 2005 wherein a legal firm representing the NH SPCA is seeking payment from the Town and the Police Department. Chief Janvrin will be consulted about this matter.

Carlson also said a letter was received today from the Library Trustees regarding the pothole at the intersection of Jackie Bernier Drive and Main Street. Trustees asked for time to meet with the Board to discuss this.

Carlson also indicated to the Selectmen that there was a part-time hiring recently and the issue of the painting bids for the library which should also be reviewed with the Trustees. Carlson had already advised the Trustees that time would be set aside for them on July 23rd as the painting bids are due on July 22nd and supposed to be publicly opened at the Trustee meeting that evening. A time will be set on the Selectmen's agenda for Library matters on July 23rd.

NEXT WEEK

There is a personnel session (non-meeting) scheduled for Thursday July 16, 2009.

The next regular Board meeting will be held on Thursday July 23, 2009 at 6:00 pm.

With no further business to come before the Board, motion was made by Gates and seconded by St Germain to adjourn the meeting at 9:35 pm. The vote was unanimously approved 2-0.

Respectfully submitted,

Heidi Carlson
Town Administrator