

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

Tuesday May 24, 2022

Town Hall

6:30 PM

Select Board members present: George Willard, Bill Ezell, and Ken Caisse

Other Attendees: John Kieley, Scott Hecker, Ivy Bibler, Ben Fisk, Emily Sliviak, Deb Harling, Vivian Wills, Christine Robidoux, Keith Charlton, Bill Torphy, Honey Hastings, and Gail Cromwell

Meeting called to order by Ezell at 6:30 PM.

Chairman Comment: *None*

Public Comment:

- *Hastings asked about the dangling light on the town hall. Ezell commented they are working on finding someone to fix this. Hastings also asked about the cleaning of the town monuments and asked which ones are being worked on. Ezell stated all that need to be cleaned. The ones on the common for sure. Hastings also mentioned that the area around the monuments is being over crowded by weeds which is a shame.*

Old Business:

- **Marsh Litigation Update:** *Ezell updated there was a court hearing on May 19th in which Willard attended. Ezell noted the judge reviewed the motion to intervene, and the motion to compel which was postponed. Bibler who was at the hearing, commented that the judge asked what the issue was with the abutters not being participants in the process. Bibler asked why the select board has the position of not allowing them to participate. Ezell repeated again that they are following the advice from 3 attorneys. Caisse added that the board does not like the agreement either but 3 law firms said to sign it. Bibler asked each select board member what their position was on allowing the abutters to participate in the process. Ezell and Caisse said they did not have a problem with it and Willard stated he was taking a neutral position. Kieley mentioned the Town of Wilton's letter, (included at the end of these minutes). There was also a discussion on the Aquifer and the Marsh's hydrological report which Kieley stated did not address any of the abutters or the conservation commissions concerns or anything in the agreement. Hecker agreed adding that the hydrological report is way off base noting it only focused on drainage. Kieley also feels the Marshes are not in compliance with the agreement. Ezell reminded him that there is no agreement until it is approved by the court. Kieley and Bibler also noted that at the May 19th hearing, they witnessed the towns attorney and the Marshes attorney making eye contact and hand motions suggesting they were in cahoots with each other. Ezell added that this is speculation but they will meet with the attorney and ask, and they will also ask why they spoke at the hearing when it was agreed that they would not. Additional conversation on the Marsh case continued until Ezell had to stop the discussion rather than keep rehashing the same things over and over.*

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- **Code Enforcement Officer:** Ezell noted they have a couple of leads. One interested person is from Brookline and would like part time work. Ezell also noted that Robidoux talked to the NRP commission who can offer assistance.
- **Parking/Zoning/Fee structure follow up:** No update
- **Background checks:** Caisse noted the Library is going over their policy now, then we can come up with something we can apply across the board.
- **Flag pole painting & Monument cleaning:** Caisse updated on the flag pole painting, we have someone who is donating the equipment including a bucket truck, we just need to get the paint. Willard commented he has received a quote from Kaufholds Marble & Granite for \$9,000 which far exceeded the amount Mr. Baxter is willing to donate. Therefore, it was mentioned that the fire department has a pressure washer and for a donation to the association, they can probably do the cleaning.
- **Review ZBA Secretary Application:** Ezell commented that the ZBA is in need of a recording secretary. Having a board member do the minutes is not working. Ezell stated the ZBA has received a very impressive resume from Karen Chrissey and the ZBA has recommended that the select board appoint her. Caisse moved to accept Karen Chrissey as the new ZBA secretary with a pay rate being the same as the planning board secretary. Willard seconded the motion, Ezell abstained (ZBA conflict), motion passed.

New Business:

- **CAC Committee update:** Robidoux provided the following updates:
 - * **Fiber Update** - Robidoux updated that Fiber Internet was installed at the town hall last week. The new username and password will be sent to committee chairs and will be posted at the building.
 - * **A/V update** - East West is still waiting for a few things and will hopefully be ready in 2 weeks.
 - * **Plan NH update** - Tim Fiske, Bill Torphy, Bill Ezell and Christine attended a site walk with team NH. There is a concern that there are no hotels for the team members to stay overnight when they do the review. Robidoux noted they were looking for host homes for possibly 15 people. Robidoux added that we received a grant for these professionals to make recommendations and there will be more information and forums in the coming months, to get the communities input.
 - * **Septic update** - Bill Torphy communicated that they will need \$400 to have someone test the existing septic system and provide a report. Caisse moved to spend \$400 from funds to be determined later, for the professional services to test the septic system. Ezell seconded the motion, all were in favor, motion passed.
- **Lot Line adjustment:** Ben Fisk indicated there were some issues with the lot he purchased from the town. After some research, it was discovered the property is 7 feet short of the required road frontage in order for it to be a buildable lot. Robidoux added that the tax card and the tax maps do not match. Ezell stated he will get this corrected in the coming weeks.

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- **Building permit application question:** *Deb Harling communicated that she believes the Woodcock farm property has 2 buildings on the property and one has never been permitted or picked up by the assessor. Harling also believes the building has changed its use and there should have been a permit. Caisse added that it is a 3 season hut with no power, no electricity. After discussion, Caisse agreed he will research further and contact the assessing company.*
- **Letter of Agreement:** *Wills asked if the select board has reviewed the letter of agreement and asked if she can use the draft version until everything is nailed down. Wills added that sponsor's never have had anything in writing. Caisse added that they need a vendor application for the Rec Commission. Caisse added that we need to send the document to our lawyers first to ensure the language is ok.*
- **Review 2021 Audit Report:** *The board reviewed the audit report and accepted it. They will also follow up with the year-end sick time policy discrepancy.*
- **Approve Request to use the Ballfield:** *Caisse moved that it is ok for Brandy Urbon to use the ballfield for a child's birthday party. Ezell seconded the motion, all were in favor, motion passed.*
- **Review and approve building permit application McElreavy:** *The board reviewed and approved the application.*
- **Approve Select Board Meeting Minutes May 10, 2022:** *Willard moved to accept the minutes from May 10, 2022 as amended. Caisse seconded, all in favor, motion passed.*

Other Business: - None

Committee Updates: - None

Meeting Adjourned: 8:00 PM. *Motion by Caisse, second by Willard, all were in favor, motion passed.*

Next Select Board Meeting: *The next select board meeting will be held on Tuesday June 14, 2022 at 6:30 PM at the town Hall. Meeting minutes respectfully submitted by Carole Singelais*

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Planning Board
Town of Wilton
42 Main Street
Wilton, NH 03086
May 18, 2022

By E-mail
Select Board
Town of Temple
423 NH Route 45
Temple, NH 03084

Dear Sirs:

It has come to the attention of the Wilton Planning Board (“we” or the “Board”) that the Temple Select Board (the “Select Board”) is seeking court approval of an agreement (the “proposed agreement”) to permit the continuation, and expansion, of an outdoor “collection” of aging construction equipment, motor vehicles and assorted detritus covering multiple acres at 38 West Rd. (the “site”).

Initial Reactions

The collection meets the definition of a “junkyard” under New Hampshire state law (RSA 236:112 I) and therefore must be licensed, as well as comply with local zoning requirements (RSA 236:114). The state identifies junkyards as potential sources of contamination for ground and surface water, among other resources (RSA 485-C:7(f)). Based on our review of GIS maps, the site is surrounded by, and uphill from, a stratified drift aquifer that not only underlies this part of Temple but extends to Wilton, where it is the town drinking water supply, and other communities to the east.

Moreover, the site is 100 feet above, and about 600 feet away from, Temple Brook and a pond it flows through, making the average slope from the site about 17%. Any runoff, including

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runoff containing dangerous pollutants, makes its way into Temple Brook, which flows into Wilton and Blood Brook, which in turn flows into the Souhegan River in Wilton's wellhead protection district.

Clearly, decisions, or agreements, with respect to the continuance of the collection will have an impact beyond Temple's boundaries, as more fully described below. State law governing Developments of Regional Impact (RSA 36:54 through 36:58) requires land use decisions by the Temple Zoning Board ("ZBA") and Planning Board ("TPB"), among others, to identify, seek input on, and take into account potential regional impact on neighboring and other communities that could be affected. By definition (RSA 36:55), proximity to aquifers or surface waters that transcend municipal boundaries are expected to affect neighboring communities.

In this case, however, state law and local zoning requirements have been ignored, and, as a result, Wilton's right to notice and an opportunity to provide timely comments on action that could have a significant adverse regional impact was eliminated. First, the proposed agreement does not implement the ZBA's 2018 denial of a special exception to allow the collection at the site, although that decision was not appealed by any party, including the Select Board. Then, it preempts site plan review by the TPB. The site plan review process requires the TPB, among other things, to evaluate the proposed use and its effects on the public health and welfare not only in Temple, but in neighboring communities, and to craft conditions of use that will protect those interests. Here, the proposed agreement substitutes the judgment of the Select Board and the owner of the collection for that of the ZBA and the TPB on matters – the interpretation and application of the Temple Zoning Ordinance – that are solely within their purview, and fails to consider the positions of other communities that may be affected.

Although neither Wilton nor other abutters received notice or an opportunity to comment on the proposed agreement, the Board has nevertheless been able to determine that the collection presents significant risks to both Wilton and more distant New Hampshire communities, and that the terms of the proposed agreement are inadequate to protect against those risks. We believe that the Select Board should be aware of our concerns and indeed, should present them for consideration to the court before which this matter is pending.

Adverse Impact on Neighboring Communities

1. Groundwater Contamination

The Temple Conservation Commission expressed its concerns about the collection at July 19, 2018, hearings on the application for a special exception from the ZBA. In part, it stated:

Our concerns are twofold: that many of the vehicles and machinery on the property contain oils, hydraulic fluid, antifreeze, and diesel fuel. Many, if not most, of the vehicles and machinery are significantly old, exposed to the elements and sitting on bare ground. The fluids in the machinery pose a risk to water, surface, groundwater and rivers. ... The applicant's property has a rather large number of vehicles and machinery in one area which increases the risk of any leaks. ... The location of the property magnifies the risk to water resources because it is on top of a hill and surrounded on

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three sides by an aquifer. Chemical leaks do not stay put. They travel and travel quickly with any precipitation. Any chemical leak will travel downhill and possibly into the aquifers. ... Any contamination would affect residents, plants and animals, and [it] would be difficult, if not impossible, to remediate any damage.

In addition to the pollutants identified by the Conservation Commission, there are likely aging batteries, catalytic converters, hoses and wires, among other components, deteriorating in place. Lead, other heavy metals, hydrochloric acid and other dangerous pollutants could leak directly into the soil and seep into the aquifer as the collection decays with exposure to sunlight and weather. In the absence of a detailed inventory of the equipment on the site and its state, the amount and types of pollutants, the likelihood of leakage or spillage, and appropriate protections, have not been, and cannot be, assessed. An aquifer does not stop at town lines. If the collection on the site contaminates the aquifer, Wilton's drinking water supply is compromised, as is that of the other Southern New Hampshire communities who depend on this aquifer.

2. Surface Water Contamination

The collection endangers Wilton's surface waters and its wellhead protection district. The deteriorating collection is outside, on the ground, unprotected from the elements. In addition to potential seepage into the aquifer, the pollutants identified above likely will contaminate runoff from the site, which flows downhill at an average 17% slope into the Temple Brook, thence into Blood Brook in Wilton, and then into the Souhegan River in Wilton's wellhead protection area.

The Proposed Agreement Does Not Provide Sufficient Protection

As the ZBA determined in 2018, the collection, which had been in place without license or oversight since 2015, was not an appropriate use of the site. We believe that determination should be enforced and the collection promptly and safely removed from the site so as to mitigate the risks of contamination in Temple and beyond its boundaries. Even if the ZBA's decision is ignored, we believe it is essential that Temple reinstate the required site plan review process to allow the TPB to evaluate the situation, its local and regional impact, and to craft conditions that will protect the public health and welfare. In any event, the proposed agreement, in its present form, cannot be approved. We have not reviewed it in detail or from a legal perspective, but we note several basic deficiencies in the proposed agreement that must be addressed if the collection is not to be shut down. The proposed agreement would allow the outdoor collection to continue and expand, limited only by a four-acre boundary. Licensure is not required; basic protections, adequate testing, monitoring and owner accountability are absent. The proposed agreement does not require the individual items of equipment on the site to be inventoried or inspected to record their age, condition or other information necessary to assess the risks they presently pose. While the proposed agreement calls for a one-time hydrology report, it has not been made available, nor is the owner required to abide by or implement its recommendations.

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Site inspections, presumably at Temple's cost, are to be conducted only annually to measure compliance with the terms of the proposed agreement – which focus not on identifying potential sources of pollution and preventing it, but rather on the visibility of the outdoor collection. Needless to say, this nonspecific yearly review provides no solace to the communities whose environment or drinking water could have been contaminated due to an incident up to 364 days prior, of which they are not even required to be notified. Nor are there bonding or other requirements to address the high cost of remediating widespread pollution that originates with the collection.

The proposed agreement requires the owner to maintain the collection only in accordance with the Best Management Practices (BMPs) for Groundwater Protection outlined by the New Hampshire DES. While important, these BMPs provide only partial protection at the site. They do not address the potential for polluted stormwater runoff at the source. At the very least, the collection, and the owner, must also comply immediately with all the planning and control requirements set out in the New Hampshire Stormwater Manual, Volume 2, Post-Construction Best Management Practices Selection and Design, Chapter 5, Pretreatment, with particular attention to Section 5-4, Source Control. The owner must provide continuing evidence of compliance with these requirements at least annually. In sum, once an aquifer or surface water is polluted, the regional public health and safety is at risk, and remediation is extraordinarily difficult and costly. We believe that the risks of contamination should be mitigated at the source, by its owner, at its cost, to protect the public, rather than shifting those risks and costs to the Town and its neighbors. The proposed agreement is not only insufficient to mitigate the ongoing risks to Wilton if the collection continues to exist, but also illegally disregards and overrides the statutory roles and responsibilities of the ZBA and the TPB, including the obligation to address regional impact.

Very truly yours,

Planning Board

Town of Wilton, NH

Cc: Select Board, Town of Wilton, NH

Souhegan River Local Advisory Committee,

Cory Ritz, Cahir

Mr. John Kieley