

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

Tuesday May23, 2023

Town Hall

6:30 PM

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

Other Attendees: Peter Allen, Tim Fiske, Connie Kieley, Kathy Boot, Ben Fisk, Emily Sliviak, Amy & Matt Cabana, Allan Pickman, & Gail Cromwell.

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

Chairman Comments: *Ezell stated that our available zoom cloud recording storage is running out. We can increase the storage for a fee Ezell added. Connie Kieley noted YouTube is free. Amy Cabana volunteered to put the meetings on YouTube.*

Public Comment:

Kieley commented that there has been some discussion of a Thursday date for the special town meeting and she suggested that a Friday date would be better. Ezell noted this topic is on the agenda therefore lets discuss it then.

Old Business:

1. **Code Enforcement Officer/Parking Zoning Fee Update** – *No Update*
2. **Background checks & policy update** – *Caisse noted he should have an update at the next meeting.*
3. **ARPA funds – Town Common Well, Ballfield, fencing, playground estimates etc.** – *Ezell noted we need to decide what to spend this money on before the end of the year. Caisse said he was notified that the ballfield is getting pretty ratty around the bases. The fence repairs were also mentioned again. Ezell said let's get some quotes.*
4. **Update on Alarm System vendors** – *No Update*
5. **Legal Meeting update – Flag Policy** – *Ezell noted legal was working on writing up a draft policy.*
6. **Compensation policy update** – *Ezell is working on this and asked Caisse if he wanted each individual department listed. Caisse said yes so there is no question as to who is eligible.*
7. **Investment Policy update** – *Ezell noted they received the sample document Peter Allen sent. Caisse noted there is some good stuff in the document but he had questions about who makes the decisions. Peter added it is the Select board. The treasurer does however have discretion authority on things like changing banks.*

New Business:

- **Schedule special town meeting date:** *Ezell noted Thursday night June 22nd was the first available date the Elementary School has open but noted he has no preference on the date and asked for comments. Kathy Boot feels that having the meeting on any weekday will result in a lower turnout and felt that Saturday would be a better day. Tim Fiske and Connie Kieley felt if on a Thursday there would be a low turnout and they suggested Friday. Amy Cabana and Peter Allen felt that Thursday is best with school being out, people may be going away for the weekend and leave on Friday. 7pm Thursday is great added Cabana. Ezell noted he has discussed*

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

the potential June 22nd date with all the officials who need to be there and they all can be available. Ben Fisk suggested holding the meeting outdoors at the town common to accommodate a large crowd. Caisse noted it could rain and it would be hard to hear with the rain on the tent. Caisse also noted that he has meetings most week nights and would prefer not to attend meetings on Fridays. Further discussion on vacations, summertime, and location were all discussed. Caisse moved to have the meeting on June 22nd at 7 pm. Willard seconded, all were in favor, motion passed.

- **Reappoint Cathy Joly and Mike Madden to the Conservation Commission 3 yr. term:** *Caisse moved to reappoint Cathy Joly and Mike Madden to the Conservation Commission for 3-yr terms ending 2026. Ezell seconded, all were in favor, motion passed.*
- **Reappoint Jen Rheaume Animal Control officer 3yr term:** *Caisse moved to reappoint Jen Rheaume as the Animal control officer for a 3-yr term ending 2026. Willard seconded, all were in favor, motion passed.*
- **Reappoint Allan Oxman Town Forester 3-year term:** *Caisse moved to reappoint Allan Oxman as the town forester, 3-yr term ending 2026. Willard seconded, all were in favor, motion passed.*
- **Reappoint Carole Singelais & Iphi Hatt Welfare:** *Caisse noted that Hatt will be staying on while we look for a replacement. We should post the opening on the town website. Ezell noted our welfare officer is retiring and lives mostly in Maine. Caisse moved to reappoint Iphi Hatt and Carole Singelais to 1-yr terms ending 2024. Ezell seconded the motion, all were in favor, motion passed.*
- **Review & Approve Occupancy permit – Sullivan – Moran Rd.:** *Caisse moved to sign the permit. Willard seconded, all were in favor, motion passed.*
- **Review & Approve Cert. of Yield tax & Warrant - Jenks – Brown Rd.** *Caisse moved to sign the paperwork, Ezell seconded, all were in favor, motion passed.*
- **Review & Approve Veterans credit – Boot - 2023** *Caisse noted Kathy's husband Gary Boot was the veteran and Kathy met all of the requirements and therefore he moved to approve the Veterans tax credit. Ezell seconded the motion, all were in favor, motion passed.*
- **Review & Approve Veterans credit – Ulrich - 2024** *Caisse move to approve the Veterans tax credit per Avitar's recommendation noting this one will be for tax year 2024. Ezell seconded the motion, all were in favor, motion passed.*
- **Approve Select Board Meeting Minutes May 9, 2023:** *Caisse moved to approve the minutes from May 9th as amended. Willard seconded the motion, all were in favor, motion passed.*

Other Business:

- *Peter Allen noted he was confused about the special town meeting warrant articles and noted the TLUC committee was formed in 2020 to be a research committee but is now acting on much more. They were only supposed to research and make recommendations to the town. Allen asked the board to discuss the legality of this with legal and the DRA. Allen also asked about the 2023 warrant article #9 regarding the Skladany land*

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

noting this warrant article does not discuss development, construction, etc. just the placement of the building and he believes the TLUC thinks they can spend money. Allen asked the board to check the legality of this article and the other articles presented over the last couple of years and he would like the written determinations made public to the town. Ezell noted he has spoken to both legal and the DRA noting they are waiting for a final written statement from legal, however, Ezell did say they both agree that all of the warrant articles are valid and expendable noting the title is meaningless, it is the body of the article that counts. Amy Cabana noted that the TLUC admitted in their meeting minutes from Jan 6, 2022 that they have stepped beyond just studying and recommending. We need to understand what the TLUC committees role is and find out if they are still acting within that role noting we need legal opinion. Ezell said this is an outstanding question we have with Legal. Cabana asked the board if there will be any money expended on either site. Ezell said nothing has been asked for and there are proper channels to go through before any bills are paid.

- *Ben Fisk felt that Tim Fiske is going to just do his own thing then invoice the town after and it might be best to address the TLUC board and tell them everything is on hold until after the special town meeting. Bill and Ken said they cannot act on spending any money without the board's approval.*
- *The board signed the legal release letter to pay back Ben Fisk \$12,000 in legal fees. Ben will sign his copy and once received by legal, a check will be mailed.*

Committee Updates:

- None

Non-Public Session:

Meeting Adjourned: *Motion to adjourn by Willard second by Caisse. Meeting adjourned at 7:20 PM*

Next Select Board Meeting: *The next select board meeting will be held on **Tuesday June 13th** at the town Hall main room at 6:30pm. Meeting minutes respectfully submitted by Carole Singelais*

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

Attachment (Missing from May 9th meeting)

Town of Temple
Temple Select Board
PO Box 191
Temple NH 03084

May 3, 2023

This letter is in regard to the inaccurate LUCT amount charged to Ben Fisk for Tax Map 2A, Lot 17 at the intersection of Rt 101 and Webster Highway in Temple. That property was taken out of Current Use after a building-permit was issued by the Select Board for a commercial structure.

There are three reasons why this is an important matter:

1. The calculation is contrary to Current Use Administrative guidance on LUCT calculations.
2. By failing to properly calculate the tax, other Town taxpayers are being financially disadvantaged .
3. There is an equity issue when other residents pay thousands of dollars in LUCT taxes for residential lots and here we have a fully permitted commercial lot paying less than one thousand dollars.

The Land Use Change Tax (LUCT) was established by RSA 79-A in 1973 and is applied when land no longer qualifies for special taxation based on its current use value rather than its full market value. There are precise definitions of these terms in RSA 79 -A. The tax becomes due at the time of the change in use.

Benjamin Fisk applied for the change of use for his property identified as Temple tax map 2A lot 17, to be the new site for Ben's Sugar Shack, and was assigned a LUCT by the Temple Assessor (Avitar) on September 29, 2022, amounting to \$259.00. Errors were pointed out to Avitar in November and extensive background information was provided. An additional tax of \$274.00 was assigned in December 2022.

This correction did not address the fundamental errors made in determining the LUCT for the Fisk property. With the granting of a Special Exception by the Temple ZBA in 2021, the property is now a commercial property and has what is called in CU law a "betterment." See the meaning and significance of a betterment in CU law attached below.

Also note that there is no overlap between the small portion of the property originally excluded from CU for the old house and outbuildings and the 2.294 acres now being developed commercially.

Let me review a short history of what has happened.

Just after the CU law passed in 1973, the then owner of this 7 acre property put all of it in CU except for .63 acre held out because there was a house and outbuildings on that portion. The house was torn down some years ago as were the outbuildings.

Mr. Fisk applied for a special exception for the entire property and it was granted. His plan was to construct a 16,800 square foot building for his business, using just under 100,000 square feet of the lot. He applied to remove just under 100,000 square feet or 2.294 acres from CU on April 13, 2022. Construction is well underway.

On September 6, 2022, Avitar calculated a LUCT for 1.294 acres to be removed from CU, equal to 2.294 less 1 acre they believed to be already not in CU. That was the basis for the first LUCT of \$259.

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

Records, including documents filed at the Hillsborough County Registry of Deeds, showed that the amount not in CU originally was only .63 acres and further that the .63 acre did NOT overlap the roughly 100,000 square feet now being developed. These records were provided to Avitar. One would expect that the entire 2.294 acres had to be removed from CU and LUCT assessed as a fully permitted commercial lot.

The assessor agreed that there had been an error and filed a new LUCT on November 30, 2022, acknowledging the new information. He assigned the additional tax of \$274.00. The problem is that in both cases, September and November, the land being removed from CU was valued at \$2,000 per acre. Here is the assessor's explanation:

"That 1 acre site that was already out of current use, like any lot, holds ALL the weight. Meaning most of the value is in that initial site/area that is already out of current use. So when doing the LUCT for the excess or additional acreage that is being disturbed it must be at a substantially lower rate/established excess acreage rate, as you cannot assess them as another building site/lot, when they have already been assessed and paying taxes on a site out of current, etc." (Letter to Temple Select Board, October 6, 2022)

The concept of excess acreage used in this way is not referred to in state law nor in the CU booklet published by the State. CUB.12 refers to excess acreage arising from a measurement error that the landowner is required to correct. That is not the case here.

Again, records show that none of the 2.294 acres being developed overlapped the .63 acre excluded from Current Use originally so the issue is not "additional acreage" as Avitar suggests.

The result of the two LUCT determinations for this property is a total tax of \$533 while other residents with much less valuable land coming out of Current Use are paying thousands of dollars in LUCTs. See examples attached below.

The error is that the Assessor has failed to recognize that the property is now a fully permitted commercial lot, satisfying all of the terms required in CU administrative law for a "betterment."

The requirements defining a betterment include a building plan, indicating intent to construct a building, a site plan, a building permit application, and most particularly the granting of a special exception with all the supporting documents required by municipal ordinances and the Temple Zoning Board of Adjustment.

It should also be noted that special exception negated any importance of the old house and original land in CU. Indeed the special exception specifically states that

"No other buildings or businesses may be on the lot." (Temple ZBA, Section 13A, Standard #3.)

The appropriate action now is to tax the property based on "Full and True Value."

Definitions of all of these terms : "Betterment", "Development Plan", "Building Lot" and "Full and True Value" are attached below and are taken from the administrative rules of the CU Board published by the NH Department of Revenue Administration.

The law requires that the LUCT be based on the "full and true value" of the land which would include all betterments to the land. This needs to be taken into account in a new tax calculation.

In addition, it is necessary to inform Avitar that an additional building permit was issued on January 10, 2023, adding 1800 sq ft to the structure. Exactly what this does to the amount of land to be removed from CU is not known since the required Site

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

Plan Review by the Planning Board was not done. It certainly adds to the value of betterment on the property and acreage to be removed from CU.

I believe we are all aware that Avitar has been valuing residential property at values based on actual sales prices, e.g., a recent acre was valued at \$65,000 and the LUCT assigned as \$6,500. Commercial property sales are difficult to come by in our immediate area although I note that a very comparable commercial property on Highway 101 in the next town over, Wilton, is on the market at \$100,000/acre. Presumably Avitar can consult its files of commercial property sales in southern NH.

I am calling on you as the responsible party to correct this assessing error. Our taxpayers deserve the revenue from a correctly assigned tax.

Sincerely,

Gail Cromwell, PO Box 98 Temple NH 03084 (gpiersoncromwell@gmail.com)

Cc. State of NH Department of Revenue Administration, PO Box 487, Concord NH 03302-0487

Chuck Souther, Chair, Current Use Board, PO Box 487, Concord NH 03302-0487

Avitar Associates, 150 Suncook Valley Highway, Chichester NH 03258

BETTERMENT

CUB 301.02 "Betterment" means the installation or construction of improvements which influence the value of land, such as:

- (a) Roads, with the exception of roadways and trails pursuant to Cub 303.06;
- (b) Water lines, with the exception of irrigation lines pursuant to Cub 303.09;
- (c) Sewage lines, with the exception of farm land tile drainage;
- (d) Utility lines, with the exception of a power source used exclusively to service equipment pursuant to Cub 303.10; or
- (e) Other physical improvements, with the exception of fencing pursuant to Cub 303.08. The term does not include equipment as defined in Cub 301.08.

Note: CUB 301.08 describes equipment used exclusively for farming or forestry, not permanently affixed to the ground.

DEVELOPMENT PLAN

CUB 301.07 "Development plan" means:

- (a) Any subdivision plat, site plan, or building permit application supporting documents or similar documents required by state law or municipal ordinance and filed with the appropriate officials; (emphasis added) or
- (b) A document prepared by the landowner describing his/her intent to build a road, construct buildings, (emphasis added) create subdivisions, excavate gravel or otherwise develop land which is classified under current use.

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING

BUILDING LOT

Cub 303.02 Building Lot. (a) A building lot shall consist of the curtilage of the buildings, structures, and betterments.

CURTILAGE

CUB 301.05 "Curtilage" ...means the land upon which a structure stands and the land immediately surrounding the structure, including the following:

- (a) A yard contiguous to the structure;
- (b) Land groomed and maintained around the structure; and
- (c) Land necessary to the support and service of the structure such as, but not limited to: (1) Driveways and improved parking; (2) Utility lines; (3) Wells; or (4) Septic tanks and leach fields.

FULL AND TRUE VALUE

308.02 Assessing Full and True Value.

(a) For purposes of this section, the full and true value of the land, as referenced in RSA 79-A:7 shall be based on the highest and best use of the land (emphasis added) as of:

- (1) The date the actual physical change was begun; or
- (2) The date on which the parcel no longer qualifies for current use assessment due to size. (b) The full and true value of the land being disqualified pursuant to RSA 79-A:7 shall be based upon the highest and best use of the land, and include:

- (1) The value of all betterments to the land (emphasis added).
- (2) the value of all earthen materials in the case of a legal excavation site...

Note: I have selected the pertinent sections of the State of New Hampshire, Current Use Criteria Booklet for April 1, 2022 to March 31, 2023. The booklet may be obtained online as follows:

- <http://revenue.nh.gov/current-use/booklets.htm>

SAMPLES OF RECENT LUCT ASSESSMENTS IN TEMPLE

The equity issue is of concern in the belief that people are to be treated the same and fairly. LUCTs that have been assigned and collected in the town of Temple in 2022 and to date include the following:

Map 5A Lot 10-4 and 5A Lot 10-5. 3.047 acres. Tax \$9,000

Map 5A – Lot 10-1 6.628 acres Tax \$13,990

Map 9B – Lot 16 1 acre Tax \$6,500.

Map 2B Lot 41-3. 1 acre Tax \$7,000

TOWN OF TEMPLE, NEW HAMPSHIRE

SELECT BOARD

MINUTES OF PUBLIC MEETING