

1 **LYNDEBOROUGH BOARD OF SELECTMEN**
2 **MEETING MINUTES**
3 **July 3, 2019**
4 *Approved*
5

6 **I. Call to Order:**

7 Chairman Chamberlain called the meeting to order at 6:00 p.m.
8

9 **II. Introduction of Members Present:**

10 Chairman Mark Chamberlain, Selectman Fred Douglas, and Selectman Richard McQuade
11 Town Administrator Russ Boland and Secretary Kathleen Humphreys
12

13 **Public Present:** Marie Gruella, Paul Martin, Walter Holland, Art Napolitano, Ellen Martin, Leo Trudeau,
14 Ray Humphreys, Larry Larouche, Kurt Berna, Theresa Burner, Margaret Hagen, Lou Sorrentino, Sharon
15 Akers and Gregory Kreider.
16

17 **Media Present:** Jessie Salisbury and Ashley Saari
18

19 **III. Appointments:**

20 **6:05 p.m. - Purple Heart Community Proclamation**

21 Chairman Chamberlain read the Purple Heart Community Proclamation then the three
22 Selectmen signed the document. Photographs were taken after.
23

24 **6:10 p.m. - Re-Appointment to Planning Board, Larry Larouche**

25 Larry Larouche was before the Board to discuss re-appointment to the Planning Board. He was
26 asked what he brings to the Planning Board. Mr. Larouche replied he brings a lot of history.
27

28 Chairman Chamberlain discussed procedural issues. Mr. Larouche said the Board has been
29 working on tightening up procedural items and felt it is getting better. When he was asked what
30 he does not like about the Planning Board, Mr. Larouche said he does not like the informal
31 discussions because, "If it is business, then it should be treated as business." His concern with
32 the informal discussions is it gives the applicant the "warm fuzzy" when they leave the room.
33

34 Mr. Larouche found the interaction between the new Building Inspector Leo Trudeau and the
35 Planning Board positive. He felt the inter-board meeting with Attorney Drescher was productive.
36 Chairman Chamberlain informed him that there are discussions with NHMA to conduct a
37 refresher course.
38

39 Selectman Douglas asked what he felt the biggest challenge is for the Planning Board for the
40 upcoming year. Mr. Larouche felt it is tightening the ordinances. He mentioned there is a
41 pending major subdivision. It's been about 10-years since the last major subdivision in Town.
42

43 Selectman Douglas asked if he felt that everybody should be treated the same in relation to
44 Planning Board regulations. Mr. Larouche replied, "Yes, for sure."
45

46 Selectman McQuade thanked him for his 15-years of service. Mr. Larouche said his greatest
47 satisfaction is knowing they are doing something to help the Town.
48

49 **VOTE: Chairman Chamberlain moved, Selectman Douglas seconded to re-appoint Larry**
50 **Larouche as a Planning Board member to a three-year term. Motion passed 3-0.**
51
52

53 **6:20 p.m. - Conservation Commission re: Wetlands Protection**

54 Conservation Commission Members: Kurt Berna, Theresa Berna, Margaret Hagen, Sharon
55 Akers, Lou Sorrentino and Gregory Kreider were present along with resident Ray Humphreys
56 and Building Inspector/Code Enforcement Officer Leo Trudeau.
57

58 Kris Henry emailed documents relative to this discussion. Ray Humphreys provided a
59 document titled, "2003 Federal Clean Water Act Fact Sheet". During the meeting, Margaret
60 Hagen submitted a document titled, "Timber Harvesting" from the NH Division of Forests &
61 Lands website which contained links to forms, regulations, information, resources and contacts.
62

63 Chairman Chamberlain discussed a major concern is the Town does not have their streams
64 ordered therefore it's hard to regulate concerns without the basis of mapping. This action is part
65 of the Conservation Commission's purview and the Board was looking for an update.
66

67 Kurt Berna was not sure what the Board meant by this and thought the Town has NRI with
68 maps that identify wetlands and wet areas and inquired if this is what the Board is referring to.
69 Chairman Chamberlain said it's more intense than that.
70

71 Chairman Chamberlain explained that there was a problem off Crooked S Road a few years
72 ago. The Town was told they didn't have mapping sufficient to enforce the basal area of law.
73 For example, there needs to be a 150 feet buffer for any 4th order or higher stream. The Town
74 didn't have mapping that indicated the stream ordering for this area.
75

76 Kurt Berna asked if that information is available when a parcel of land is surveyed and he was
77 informed it is not.
78

79 Selectman Douglas provided a brief history of this concern. When the Town contacted the
80 State regarding violations, they looked at the logging operation but said as a result of the town
81 not codifying these streams in the proper way, there was nothing they could do. This has been
82 lingering since. There was another logging operation that cut within the basal area.
83

84 Resident and Civil Engineer Ray Humphreys confirmed the 2003 Storm Water Protection Act
85 permits is one acre or greater for residential projects while for commercial it's greater.
86

87 Mr. Humphreys referred back to the Chairman's comments on ordering streams. He asked the
88 people present if they are aware that Lyndeborough has 4 (four) waterbodies that fall under the
89 **Shore Land Protection Act RSA 483-B:**

90 -South branch of the Piscataquog River

91 -Piscataquog River

92 -Badger Pond

93 -Burton Pond
94

95 This information can be found on the State's website. He continued to explain that the Town
96 needs to order the streams based on what the State has said about those streams. Therefore,
97 any streams that comes off those streams or rivers would have to be ordered 1 through 12. For
98 example, twelve (12) is a water body such as the Concord River and one (1) maybe is a small
99 little stream that runs all year long.
100

101 One of these streams off Crooked S Road flows into Badger Pond, through Fred Douglas' land.
102 Badger Pond is a protected water therefore it falls under the Shore Land Protection Act. This
103 property did not have erosion control. To this day, there is no seeding and no mulching.

104
105 There was a second property on Crooked S Road which is the process of reseeded. It appears
106 that not much mulch has been put down yet. There is still no erosion control measure on the
107 severe slope that flows into that other brook which falls under the Shore Land Protection Act.
108

109 *6:27 p.m. Margaret Hagen arrived.*
110

111 Selectman Douglas asked if those feeder streams that run into those larger bodies of water, that
112 the State has identified, needs to be codified by the Conservation Commission. Mr. Humphreys
113 said that is how he interprets it under State Law.
114

115 Selectman Douglas mentioned that during another timber harvest on Crooked S Road, the
116 stream that was feeding into Badger Pond turned color. That stream goes into Dutton Pond and
117 ends up in the Souhegan River. "This is getting out of hand. We need to get a handle on this
118 by identifying those feeder streams to those major bodies of water that the State has identified.
119 So when we have a problem and the State comes in, they will look for the documentation from
120 your committee so that they can do something about it. Right now they can't." What has
121 escalated this issue is the most recent issue on Crooked S Road that Mr. Humphreys recited.
122

123 Mr. Humphreys said the Town has not ordered the wetlands or designated wetland based upon
124 habitat whether it be amphibian, aquatic life or plant life. Mr. Humphreys mentioned his
125 wetlands, which has a lot of animals that included landing turtles, spotted salamanders, orange
126 salamanders, box turtles and snapping turtles. "This is serious. We need to take a stand as a
127 Town. We have to at least follow the Federal requirements that came out in 2003."
128

129 There is supposed to be a Notice of Intent filed before dredging or clearing land of more than an
130 acre. Mr. Humphreys addressed the RSA's and that it appears some landowners are using a
131 loophole to file a Notice of Intent, and cut one tree then grade the entire property, and not put
132 any erosion control measures in place. "That is not where we want to go," said Humphreys.
133

134 Mr. Humphreys would like to see the Conservation Commission provide public education. He
135 suggested they present a new topic each meeting and invite the public. Mr. Humphreys
136 mentioned that if there is a major subdivision before the Planning Board that there is a Storm
137 Water requirement by the Federal government. "We have to start educating people".
138

139 Kurt Berna mentioned in other towns in the Planning Board does the protection and the
140 ConCom does the overlay. Mr. Humphreys hopes that the Conservation Commission can work
141 with the Planning Board on what has to be done. Zoning Ordinances may possibly have to be
142 changed. They may need to ask for assistance from the State or NRPC to fix these things to
143 help preserve our land.
144

145 It was noted by Mr. Berna that he did not see any wetlands protection in the Lyndeborough
146 Zoning Ordinance. Chairman Chamberlain confirmed there is not any at this time and said the
147 Board is currently reviewing the Subdivision Regulation and looking at Zoning. If any changes
148 are to be made it would need to be ready by about October in order to go through the proper
149 process for Town Meeting. It would be useful at least for the Conservation Commission to make
150 a recommendation. In other Towns the Conservation Commission is an Advisory Board to the
151 Planning Board.
152

153 It was announced that there is a major subdivision pending, which will start the pre-application
154 phase at the July 18, 2019 Planning Board meeting. This property does have wetlands on it. It

was recommended that the Conservation Commission members attend the meeting or review a copy of the application and site plan.

Sharon Akers and Gregory Kreider arrived.

Margaret Hagen provided a handout from the Division of Forests and Lands with contact information for timber disputes and not encroaching on wetlands. The laws exist through the EPA, Wetlands Bureau and NH Dept. of Environmental Services. She said it can be confusing what comes from which bureau. The County Forester works with landowners when they are getting ready to do a timber harvest to teach them what they need to know.

UNH Cooperative Extension County Forester Ethan Belaire is leaving his position in August therefore it was recommended to book him soon for an education session. 603-641-6060.

Ray Humphreys thought that is a great idea for education for all of us. He said the recent project is not a part of timber permit. People could think that removing stumps are part of the timber project but it's not the same thing. Since March 10, 2003, the EPA said, "*Construction activity that disturbs 1 (one) or more acres of land need to apply for, and comply with the Federal Storm Water Discharge Requirements.*" Projects disturbing more than 5 (five) acres have required permits since 1992. This is a requirement of the Federal National Pollutant Discharge Elimination System (NPDES) program authority by the Clean Water Act for projects in New Hampshire through the U.S. Environmental Protection Agency. Mr. Humphreys made it clear there was no Notice of Intent filed for this project. This affects the land owner and contractors. This information needs to go out to contractors that work in Lyndeborough regarding the permits and requirements. "We have every right as a Town to ask for that."

Mr. Humphreys mentioned a large piece of equipment on a property on Center Road and asked if there is a Notice of Intent. He said there are activities that do not required a permit; any municipal activity, creating roads and stuff like that, spreading loam on a lawn with the intent to immediately seed and mulch it, grading the driveway, digging for trees or gardening but not major disruption to a land, particularly next to a stream, as this project is, with no encroachment control measures.

Mr. Humphreys has worked with Conservation Commissions all across New England in his line of work as a Principal Engineer for a major pipeline company and said, "They wield a big stick. Why isn't this town wielding that big stick?"

Building Inspector/Code Enforcement Officer Leo Trudeau discussed education. "People and the Boards may have been unaware, but now that they do know, it's time to make a change." Mr. Trudeau did research on prime wetlands prior to tonight's meeting and read, "*The designation of prime wetland is where Conservation Commissions play a vital role in determining the protection status of certain wetlands*". -RSA 483-b:15: Shore Land Protection.

"*Allows a Conservation Commission, and only a Conservation Commission, to designate, map and document prime wetlands.*" -RSA 482-a:15. Mr. Trudeau interprets this as the Town has a responsibility to do this. This mapping and ordering should be put on the front burner. He felt this would take a team and offered his assistance.

Mr. Trudeau said he visited the site on Crooked S Road and wondered why things were not put in place there. He realized this was site work done after the logging operation.

Margaret Hagen reported there are about 30 towns and cities in New Hampshire that have designated wetlands. Kurt Berna discussed an article written by Barbara Rictner.

Sharon Akers said the most recent information she has heard is that the 100 foot buffer that goes with a prime wetlands has been taken away from the State so the main protection is no longer in affect. Buffers were discussed. She added that this is another reason the Conservation Commission decided not to go with a prime wetlands in the past because it takes away more control from the local community and puts in the hands of the State. Chairman Chamberlain commented there is zero control now because there are no setbacks.

From the NH Timber Harvesting Law Fact Sheet by UNH Cooperative Extension

What is Basal Area?

Basal area means the cross-sectional of a tree measured four and a half feet from the ground. It is the expressed in square feet per acre. Simply stated, basal area is a measure of tree density on each acre of land. The higher the basal area, the denser the forest.

What does the law say?

-The law says no more than 50 percent of the basal area may be cut or otherwise felled each year, leaving a well distributed stand of healthy, growing trees.

Within 150 feet of:

-Any great pond, which is a standing body of water 10 acres or greater in area

-Any fourth order or higher stream

-Public Highway

Within 50 feet of:

-Any stream, river or brook that is not fourth order or higher stream which normally flows throughout the year.

-Any standing body of water less than 10 acres associated with a stream, river or brook, with normally flows throughout the year.

-For listings of 4th Order Streams: Call 800-444-8978; pages 33-36 of Guide to NH Timber Harvesting Laws; or <http://ceinfo.unh.edu/Pubs/ForPubs/gtnhthl.pdf>

Sharon Akers asked if the Country Forester has been consulted about this particular site. Ray Humphreys said this is under his purview but it now falls under NH DES. It was discussed the County Forester is only allowed to go on the land with landowner's permission. The Conservation Commission is not authorized to enter a property without permission.

The group discussed if anyone had a conversation with the landowner. Leo Trudeau and the Road Agent visited the most recent activity on that property. The contractor felt the work was under the permit. It was noted that the permit was issued last summer and expired therefore it was in violation but regardless it was a timber cut permit. Leo Trudeau said he knows what a timber cut is but when there are different pieces of machinery in there pulling stumps and grading the land that is a whole different operation than a timber cut.

At the most recent Crooked S Road stumping operation, it was noted that the equipment went through the steam. There is a large spoils pile visible from the road on top of a rise. There is no silt fencing, mulch or vegetation, so the spoils will flow down to the stream when it rains.

Ray Humphreys asked where enforcement comes from. The contractor and the land owners are in violation of the 2003 Clean Water Act. There was no Notice of Intent.

Margaret Hagen informed the Board and ConCom members that the first action is to file a complaint with NH Division of Forests and Lands.

Ray Humphreys asked Margaret Hagen if there is liability to the town should this project contaminate a well or Badger Pond because we did not speak up. What if Badger Pond gets silted in, is the town in a position of liability?

Selectman Douglas provided an example from a few years ago where a resident on Crooked S Road wanted to put biohazard sludge on his land after a timber cut. The research was clear many permits were needed. The project didn't happen. The stream that runs into Badger Pond splits this property. This logging operation also cut right up the stream, including all the basal. The biohazard sludge would have been put down on multiple acres on both sides of the stream.

Selectman Douglas asked the Conservation Commission to become educated on this topic and put something in place and propose it at Town Meeting so that permitting is required. Even if it is mirroring what is required at the State and Federal level. This can't continue to go like this.

Selectman Douglas mentioned a pending timber operation that will cross Cold Stream. There are concerns about crossing the stream and crossing a culvert.

It was asked if the Selectmen are they looking for a recommendation for the Conservation Commission so they can proceed with the permitting. It was confirmed.

Margaret Hagen informed the group that the above mentioned project is required to file a permit with NHDES which could be a minimal impact permit if they are not making much change and can put it back the way it was. If it's a major change then it has to go through another process.

It was noted that the NH Timber Harvestings Law has a section that requires this project to comply with the 2003 Federal Clean Water act which means erosion control measures and silt control.

Ray Humphreys explained the control measures he goes through with pipeline construction and said that these (local projects) are also commercial operations for major dollars and nothing is being done. "We need to carry a bigger stick."

Leo Trudeau had a conversation with Jeffery LaChargis who is a NHDES Compliance Supervisor for Land Resources Management for NHDES and is waiting on the information.

Mr. Humphreys provided another example that earlier today he heard a pump running and noticed a property on Mountain Road drawing water out of wetlands to water their lawn. People need to become educated and those that are to keep their eyes opened.

Mr. Humphreys felt the Town has to get past what Selectman Douglas mentioned earlier, that if the Town reports something and the State said they can't enforce it, then what does the Town need to put in place in order to enforce it.

Brain Storming Ideas:

- Conservation Commission to order streams.

- Start the process and come up with ideas then meet with the Planning Board to protect the wetlands and streams.

- Look at what other towns have in place for their town ordinances.

-Check out the Wetlands draft on the NRPC website.
-Work with the library. The Department of Environmental Services will send an employee out to help inform the public. It's their job to go to the communities and help raise awareness.
-Provide landowners with a package of information during the logging operation permit that includes the laws, enforcement and so forth.
-It was discussed the problem with commercial operations that are in it for the money and don't care what is left behind in the Town.
-Proposed adding a "stop gap" to the building permit that requires the proper permits to grade more than one acre. This was debated. This could help until zoning regulations are in place.
-Ensure all proper permits are in place
-Public education.
-Education for the Boards.
-Update zoning regulations to help enforce water protection. Planning Board and ConCom
-Put pertinent information on the Town's website to help educate the public on this information.
-A well-written newspaper article.

Margaret Hagen provided the contact information for a complaint: Jennifer.little@dncr.nh.gov or 603-271-2214.

Selectman Douglas said that Badger Pond is the life-blood of this side of the mountain. Water goes from Badger Pond to Dutton Pond to Purgatory Falls then the Souhegan River. It is a major watershed in Lyndeborough.

Sharon Akers noticed that Badger Pond is getting smaller and smaller because of silt. Selectman Douglas agreed and said during the summer you can walk across it in places and it was never ever like that before. It was noted that the wetlands that feeds Badger Pond is between the Humphreys and Douglas properties, and abuts the two properties on Crooked S Road which have had multiple logging operations over the past few years and the recent stumping operation.

IV. Community Forum and Public Comment:

Jessie Salisbury asked who is responsible for emptying the trash at the Purgatory Falls parking lot because it's overflowing. She mentioned there has been parking on both sides of the road on the upper falls on Purgatory Falls Road.

Mrs. Salisbury said the access to Dr. Lorenzo Bartlett's grave on Crooked S Road is difficult because it's a steep slope now and there is no gate on the small plot which is surrounded by a stone wall.

The Historic Commission asked if there is additional information on the proposed horseshoe pits at Center Hall. Supporters Ray Humphreys and Walter Holland envision the pits along the boundary of the cemetery at the lower end, behind where the tent goes for Community Day. They are asking how many pits are proposed, will they be permanent, and who will maintain them. They are not opposed to it but would like a plan before they make a comment. Chairman Chamberlain will forward Ray Humphreys the lot map of the town land so he can sketch the location for the pits and present a plan.

The Wilton Old Homes Day Committee holds a horseshoe tournament in the summer to help raise money for Old Homes Day.

Jessie Salisbury asked about the status of the Putnam Pond boat ramp improvements.
T/A Boland said they have permission from the State to conduct the necessary

360 maintenance. Selectman Douglas volunteered to cut the dead trees on July 5, 2019 and
361 asked if the Highway Department can haul the cut-offs away. It was discussed to
362 incorporate future work into the 2020 Budget.

363
364 In August there will be a public showing of the restored 1979 8mm home movie in which
365 Bronson Potter flew his plane under the Eagle rail road trestle in Greenville, which at the
366 time was the longest and highest trestle in New Hampshire. The showing is a joint
367 project between the Mason Conservation Commission and the New Hampshire Aviation
368 Museum in Manchester.

369
370 Jessie Salisbury asked him why he did it and he said, "It was a fun, foolish thing to do".
371 She said he spent a lot of time looking at the trestle, measured the space and painted a
372 spot in the middle. The trestle has been taken down. On a side note, Jessie said, "The
373 FAA was totally unamused by this. There were hundreds of people there watching him
374 do this but not one after would admit he did."

375
376 **V. Decision Making Actions:**

377 **Old/Tabled Business:**

378 **HVAC Installation at Citizens' Hall**

379 The contract was awarded to Ciardelli Heating for a Trane system. The work will take
380 place on July 15-16, 2019. Paul Martin completed the electrical work.

381
382 **Highway Department CDL Class**

383 The company was notified the Lyndeborough employee will not take the upcoming class.

384
385 **b. New Business:**

386 **Flag Protocol**

387 The town receives notification from the Governor's office when flags are to be at half-
388 staff. The notification goes to T/A Boland, Administrative Assistant Dawn Griska, Town
389 Clerk Trish Schultz, and Police Chief Rance Deware. Whoever is available will lower the
390 five flags in town. It was decided to add the Road Agent to the notification list. Walter
391 Holland and Kathleen Humphreys volunteered to be added to the list. It was asked why
392 the Cemetery Trustees are not on the list.

393
394 **c. Items not on Agenda:**

395 The wall at the Town Pound has been repaired and it looks good.

396
397 **VI. Town Administrator Report**

398 The grader is stranded on Cemetery Road, with orange cones around it, while they wait
399 for the mechanic. Grading is ongoing. Mountain Road, Schoolhouse Road and New
400 Road grading is completed. They are grading, raking, rolling and adding calcium.

401
402 The Center Road/Johnson Corner Road Fence Agreement is being reviewed by the
403 resident's attorney. At this time, the resident has not continued installing the fence.

404
405 The Town Barn roof project is moving forward. Some of the ceiling pieces have been
406 pulled down and inspected. The Transfer Station will take the waste material at no cost.

The Board was asked if they have a preference so the Highway Department can schedule the three ten-hour days of roadside mowing utilizing a rotary blade. It was discussed to concentrate on intersections for visibility issues.

Line Striping: There is money in the budget to stripe the Turnpike and a half mile of Center Road. It was decided to stripe a section of Johnsons Corner Road to the Wilton town line then the Wilton line to the end of the Town portion of Center Road.

The EEI Energy Audit is complete. T/A Boland and Fire Chief Smith will review their budgets to see if they can fund the work. There are rebates that would come in as revenue for the \$9,000 Fire Station estimate and the \$7,500 Citizens' Hall estimate.

Audit: T/A Boland asked the Board to authorize him to sign the audit. He informed the Board there was a change regarding a comprehensive computer policy.

VOTE: Selectman Douglas moved, Selectman McQuade seconded to authorize T/A Boland to execute the audit. Motion passed 3-0.

Road Agent Mark Chase passed his Culvert Maintainer certification.

Chief Deware would like input from the Board on the location of the two electronic speed signs. He is considering Center Road, near Steve's School Bus; Center Road near Center Cemetery; the NH Turnpike near High Bridge Road; and Mountain Road near the new culvert by the Welch's. The signs will be moved as necessary to the four locations.

Selectman Douglas will meet with Chief Deware and Road Agent Chase to look at the sites. The goal is to preempt speed and have the notification prior to the area where speeding typically occurs.

A light has been installed at Center Hall to illuminate the driveway.

VII. Selectmen's Report

a. MACC Base Action & Agenda

T/A Boland attend the last meeting. Milford invited Lyndeborough, Mont Vernon and Wilton to the July 29, 2019 meeting. The Selectmen are invited.

b. Transportation Committee

No meeting this month.

c. Planning Board

The Board held a work session to review the subdivision regulations which will continue at the July meeting.

d. Heritage Commission

They met recently and addressed updates on Town Barn and on Fire Station developments. The general consensus was DO NOT take down the Town Barn to put a fire station there.

e. Safety Complex

No items to discuss.

Consent Agenda:

Winn Road Current Use, Item #14, will be addressed on July 17 along with Steve and Maria Brown's case. It was agreed to hold off on the Intent to Cut #9.

The Board discussed the crossing of Cold Stream and the options that could happen to protect the stream and the culvert. The Road Agent shall document the area prior to work commencing. This project applied for a permit on June 17. There is a one month timeframe to consider. The Board planned to meet at the site on July 5, around 9:00am.

VIII. CONSENT AGENDA: Selectman McQuade made a motion to approve the Consent Agenda of July 3, 2019 and June 19, 2019 with the exceptions of Item #9 and Item #14 on the June 19, 2019 Consent Agenda. Selectman Douglas seconded. Motion passed 3-0.

VIII. Information Items Requiring No Discussion:

None

IX. Non-Public Session:

None

Adjournment:

All scheduled items having been addressed, the public meeting was adjourned at 8:10 p.m. with an affirmative motion from Chairman Chamberlain and seconded by Selectman McQuade.

Next regular meeting: July 17, 2019 at Citizens' Hall at 6:00 p.m.

Kathleen Humphreys, Transcriber

Chairman Mark Chamberlain

Selectman Fred Douglas

Selectman Richard McQuade