

Town of Kennebunkport  
Board of Selectmen Meeting  
January 25, 2024  
6:00 PM  
Village Fire Station (32 North Street)

**MINUTES**

**Selectmen attending:** Mike Weston, Sheila Matthews-Bull, Allen Daggett, Jon Dykstra, Marybeth Gilbert.

**1. Call To Order.**

Chairman Weston called the meeting to order at 6:00 PM.

**2. Approve the January 11, 2024, and January 14, 2024, selectmen meeting minutes.**

Chairman Weston noted that the January 14<sup>th</sup> meeting was a special meeting where Select Board members and members of the public observed damage from the recent storms.

**Motion** by Selectman Daggett, seconded by Selectman Matthews-Bull, to approve the January 11, 2024, and January 14, 2024, selectmen meeting minutes. **Voted:** 5-0. **Motion passed.**

**3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)**

No members of the public, either in the community room or on Zoom, came forward to address the Board.

**No motion was necessary. No motion was taken.**

**4. Consider renewal liquor license for Chez Rosa LLC d/b/a Chez Rosa Bistro, located on Cross Street and Union St in Building D.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Daggett, to renew the liquor license for Chez Rosa LLC d/b/a Chez Rosa Bistro, located on Cross Street and Union St in Building D. **Voted:** 5-0. **Motion passed.**

**5. Consider renewal liquor license and special amusement permit for Rhumb Line Motor Lodge d/b/a Rhumb Line Resort, located at 41 Turbats Creek Rd.**

Selectman Matthews-Bull recused herself as this is her business.

**Motion** by Selectman Daggett, seconded by Selectman Gilbert, to renew the liquor license and special amusement permit for Rhumb Line Motor Lodge d/b/a Rhumb Line Resort, located at 41 Turbats Creek Rd. **Voted:** 4-0-1. **Motion passed.**

**6. Audit presentation by Casey Leonard of RKO for FY 2023.**

Nicole Evangelista, Finance Director, informed everyone that the audit went very well with our revenues over budget and expenditures under budget. There were no significant findings. There were a few minor findings: credit card policy (we are updating), purchasing policy (we are working to align that with Federal standards), and segregation of duties (e.g. have two people counting cash, one person completes a deposit and different person scans the checks). It is difficult with a small Finance department, but we have a person from a different department assist when needed.

Casey Leonard, RKO representative, echoed that the audit went very well. The Town received an unmodified, clean opinion. In addition, RKO performed two compliance audits: a "Yellow Book" audit of internal controls, and a test of compliance with laws, regulations, contracts, and grant agreements. No material weaknesses or deficiencies were found; only the recommendations that Nicole mentioned.

The total fund balances increased by about \$1.39 million in FY 23. Actual revenues exceeded the budget by \$52,045 due to greater than expected excise taxes, intergovernmental revenues, parking violation and beach sticker revenues, and interest earned due to higher-than-expected rates of return due to interest rate increases.

Expenditures were about \$2.262 million under budget, due to lower-than-expected administration, planning and development, contingency and tax abatement costs. Public Safety costs were less than expected due to vacancies in the Police Department and Communications. Public Works were under budget due to vacancies and lower than expected repair costs. Debt service payments were under budget due to the first payment for the 2022 radio tower bond being budgeted for FY23, but not actually being made until FY24. Committed funds were under budget as they are carried forward until expended on their intended use.

It is the policy of the Town to maintain the General Fund unassigned fund balance at 18% of fund expenditures. Unassigned funds in excess of 18% are to be transferred to capital reserve accounts. The current fund balance is at 26%.

General Fund expenditure distribution for FY 2023 is similar to that of FY 2022, with the largest amounts being about 49% to RSU21 for Education, 13% to Public Safety, and 10% to General Government expenses.

**Motion** by Selectman Daggett, seconded by Selectman Matthews-Bull, to accept the audit report. **Voted:** 5-0. **Motion passed.**

**7. Authorize annual transfer to the Capital Reserve Fund in accordance with the Fund Balance Policy.**

Nicole recommended, in accordance with the General Fund Balance Policy, that \$1.8 million be transferred from the General Fund to the Capital Reserve Fund for general capital improvements. The Capital Reserve Fund balance on June 30, 2023, was \$1.1 million. We had committed funds for a boat launch and pier funding of \$1.5 million. With this transfer of \$1.8 million, \$1.4 million will remain in the Capital Reserve Fund.

**Motion** by Selectman Daggett, seconded by Selectman Gilbert, to transfer \$1,810,871 to the Capital Reserve Fund in accordance with the Fund Balance Policy. **Voted:** 5-0. **Motion passed.**

Laurie Smith, Town Manager, commended Nicole for completing the Comprehensive Annual Financial Report (CAFR) on her own this year. Last year we spent \$8,000 to have auditors create this report. There are many, larger communities that do not create a document of this nature. We go above and beyond to make sure we have good financial reporting for ourselves and our citizens.

**8. Presentation of proposed June 2024 ordinance changes:**

**a. LD 2003 Land Use Ordinance Amendments**

Galen Weibley, Director of Planning and Development, informed the Board that we need to amend our land use ordinance to address affordable housing and increasing housing stock in Town. He described the three “buckets” to this law:

**Accessory Dwelling Units (ADUs, aka Accessory Apartments)** – we must allow them throughout Town (and we currently do). They can be attached or detached from the existing single-family dwelling, are exempt from our density requirements, and have no parking requirements in addition to those already in effect for the

property. The State has placed a 190 sq ft floor on the size of ADUs, but we are permitted to apply a cap, which the Town has already done at 800 sq ft.

The Growth Planning Committee (GPC) put forward additional optional amendments: 1) requiring a stormwater plan be submitted with a proposal for a new ADU; 2) prohibiting the outside construction of an ADU on an existing non-conforming lot that would make the property more non-conforming (e.g. lot coverage). Short-term rentals of ADUs are not permitted.

Allan Evelyn, Kennebunkport resident, asked if deed restrictions or covenants relating to ADUs are overridden by the proposed ordinance. Galen responded that the Town does not recognize deed restrictions or covenants, but the private individuals involved can resolve violations via civil action. The Town does not get involved in contract lawsuits. So, while the Town would not deny a permit for ADU construction based on a deed restriction, we could advise the individuals that they might face civil action from the other individuals as a result. ADUs are only permitted with single-family dwellings. They are prohibited for multi-family dwellings. ADUs don't follow growth permits or density requirements.

Diane Franz, Kennebunkport resident, asked if an ADU is taxed as a separate property or affects your property tax rate. Galen responded that it is considered part of the property and does not receive a separate tax card. Laurie added that the ADU would affect the overall value of the property, assessed every year on April 1<sup>st</sup>, and therefore the overall tax amount. But the tax rate would not change.

**Affordable Housing Density Bonus** – A 2.5x base zoning density must be permitted for affordable housing projects that meet certain criteria. There must be two parking spaces for every three housing units. Affordable housing developments cannot occur outside the growth area zoned for multiplex unless it is zoned for multiplex and has access to an adequate Town water system.

Selectman Gilbert initiated discussion surrounding the question of drainage and rainwater runoff relating to construction of multiplexes and ADUs. The Board also discussed the problem of properties that have their sump pump tied into the sewer system. Chris Simeoni, Public Works Director, stated that he has witnessed this issue. While he confirmed that it is a problem for the wastewater treatment system, he does not know the scope. Laurie added that while drainage is considered in building applications and before the Planning Board, they are looking at this issue as individual instances. The recent storm flooding shows that drainage is a much bigger issue that affects large swaths of the community and is not addressed by

LD 2003. There is much work to be done in this area, which is beyond our current Town staff and consultant capacity.

Bob Domine, Town resident, asked if the owners of a single-family dwelling that is not on Town water wish to add an ADU, do they need to add separate septic for the ADU? Galen answered that the ADU can be built, tying it into the existing septic system for the main dwelling. However, if the addition of the ADU causes the number of bedrooms for which the septic tank is rated to be exceeded, a building permit for the ADU would not be issued until the septic tank is upgraded. The same well can be used.

Robin Phillips, Town resident, asked via Zoom how the number of building permits issued for the year is determined. Galen responded that there is a formula in the Land Use Ordinance (LUO) that determines the number. He explained that while unused permits in a lower density zone can be transferred to a higher density zone, the reverse is not permitted. Robin then asked how Affordable Housing specified in LD 2003 fits in with the number of issued permits. Galen responded that the LUO specifies that 10% of the permits issued in the growth zone are to be for Affordable Housing. Laurie added that LD 2003 does not affect the number of permits issued. In addition, no more than seven growth permits shall be issued to any one individual, property owner, developer, or company in a calendar year – except after December 1<sup>st</sup> if all permits for that year have not already been issued.

**2 – 4 Units Provision** – Galen explained that this allows up to two units in every zone, but must meet density requirements, and four units in the growth area. State Law says that for every parcel we have with an existing single-family dwelling, two additional units can be added. The GPC needs time to review this language, assess its impact on the Town and comment on it, making it unlikely that it will be brought forward for a vote before November. Laurie added that the State has informed municipalities they need to follow all three changes by a date sometime in July. While there is no penalty from the State for not complying by July, there is a risk because we would be liable if sued by developers when our ordinances are not in compliance with State statute. She and Galen feel that this risk is small for Kennebunkport, but wanted to make sure the Board is aware that the risk exists.

Ed Francis, Planning Board member, expressed his desire for the Planning Board to work with the GPC in reviewing the ordinance language coming from the State to make it as clear as possible, to the standard we currently have in the Kennebunkport LUO. Galen will invite Planning Board members to the upcoming GPC meetings.

**b. Floodplain Ordinance Amendment**

Galen informed the Board that this is a situation that started in 2013 when the Federal Emergency Management Agency (FEMA) proposed amending our flood insurance rate maps. Kennebunkport, along with nearby towns, hired a consultant who proposed changes to FEMA's new map. The appeals process has gone on until recently when FEMA informed us that they will accept our amendments, but with the caveat that their map will be implemented first, closing out the appeals process. Our Town attorney has worked with FEMA and the plan is for the FEMA map to be in effect for one day, on July 27, 2024, with our amended map going into effect on July 28, 2024.

FEMA's map will require residents with mortgages in their flood zone to obtain flood insurance. The Town's amended map has a smaller flood zone, so some of those who would be required to obtain flood insurance by FEMA's map would not be required to do so with our amended map.

The Board wondered if those who would be required to get flood insurance for just one day would be given a waiver. Laurie said she did not know. Allan Evelyn suggested that those in this group could obtain the flood insurance and then cancel it within two or three days in accordance with the State's "buyer's remorse" law.

Selectman Dykstra asked how citizens can determine if their property is in the floodplain. Galen confirmed that they can go to the Town's website and select GIS maps. There is a map layer there for the floodplain. Laurie added that a mailing will go out to all individuals affected by the floodplain map changes.

Cynthia Domine asked why the period between the FEMA flood map application and the amended flood map application had to be 24 hours, and not 1 hour. Laurie responded that we worked with the Federal congressional delegation and the Boston FEMA office along with six towns from Harpswell down to Kittery. This was the best agreement that we could broker with FEMA.

Robin Phillips returned to the previous topic of LD 2003, stating that other towns have rejected the State mandated changes without consequence. She feels that the language is unclear and that we shouldn't rush to put LUO amendments to a public vote in June.

Bob Domine recalled that back when the State mandated the consolidation of Maine School Administrative Districts (MSADs) into Regional School Units (RSUs) several years ago, many municipalities refused, and there was never a negative consequence for any of them.

**No motion was necessary. No motion was taken.**

**9. Consider a quote from Allegiance Trucks for the wiring harness to fix Truck 2.**

Chris Simeoni informed the board that during the latest snowstorm, Truck 2 went into a de-rated engine power mode. Rick Bleakney, Town Mechanic traced the problem to a number of issues with the wiring harness. The truck is inoperable at this point because there is no power to the injectors. Replacement of the part is sole source from International directly and is specific to this vehicle, so is very expensive at a cost of \$9,890.42.

**Motion** by Selectman Matthews-Bull, seconded by Selectman Gilbert, to approve the purchase of a replacement wiring harness for Truck 2 for \$9,890.42. **Voted:** 5-0. **Motion passed.**

**10. Town Hall Building Committee Update.**

Chairman Weston informed everyone that the new Town Hall Building Committee met on January 18<sup>th</sup>, comprised of himself and Selectman Gilbert, Town staff members Laurie Smith and Yanina Nickless, and committee members David Graham, Kevin McDonnell, Dick Smith, Tim Pattison, John Ware, Allen Evelyn, Deborah Bauman, Judy Phillips, and April Dufoe. Invited experts were Mark Adams (President of Sebago Technics), Owens McCullough (engineer) and Mike Hays (architect).

In the January 18<sup>th</sup> meeting, the discussion points were:

- How to engage the public and make them aware of what was discussed and decided in the committee meetings. They decided that discussion points of the meeting would be presented in the Board of Selectman meeting following each committee meeting. Committee members also said they will entertain people for coffee at their houses.
- What were some reasons that the Town Hall proposal was voted down in November? Price, clear communications on energy efficiency, the need and benefit for the public for better communication were cited. They also decided to send out a survey to the community to see if there are other reasons and address those reasons if possible. The survey ends on February 8<sup>th</sup> at noon.

- The committee examined which sites were considered for the new Town Hall. Sebago Technics explored the following sites in detail: the Village Parcel, the Village Fire Station, the current Town Hall site, the McCabe lot near School Street, and the Police Station lot. So far, the Village Parcel was the best option financially and based on public response to the survey. The committee asked Sebago Technics to examine the Village Parcel lot and the Village Fire Station lot as potential sites for the new Town Hall and explore other options to reduce costs (e.g. smaller footprint, different square footage).
- Parking, open spaces, and making sure the design feels like Kennebunkport were also discussed.
- Consultants will be invited to a future meeting to discuss solar, geothermal, and other energy sources.

Selectman Gilbert asked everyone to complete the survey, stating that the voice of the people is necessary for the committee to do its work. Lorrie O., via Zoom, asked if the survey would be sent via USPS or email. Laurie responded that the committee decided it would be an electronic survey, announced by email and social media post as well as the Town website.

## **11. Discussion of Goose Rocks Beach parking permit fees for 2024.**

Yanina Nickless, Director of Support Services, reminded the Board that the Budget Board and Board of Selectmen discussed raising the cost of Goose Rocks Beach parking stickers in March 2023 to increase revenue for the Town. It was proposed to raise the cost of resident seasonal stickers from \$5 to \$10, but stickers had already been sold at that point, so their price did not go up for the 2023 Summer Season. The Board at that time approved this price increase effective in 2024. The Board also approved at that time to increase the daily sticker cost from \$25 to \$30 effective in 2023. The cost of weekly and seasonal non-resident stickers was not changed.

Town staff made the following cost increase recommendations for 2024, which could increase Town revenues by an estimated \$38,000:

- Increase the price of weekly stickers from \$100 to \$125
- Increase the price of seasonal non-resident stickers from \$200 to \$250

Board members discussed various pricing options for a few minutes. Diane Franz asked about the issue of beach residents buying seasonal resident stickers and parking their cars in those parking spaces, while allowing their visitors to park in their driveways. The

board responded that this has been a known issue for years. Bill Hydel asked how much the parking fine is if you park at the beach without buying a sticker. Selectman Dykstra answered that it's currently \$65, but he would like to raise it to \$75. Bill then asked which category of sticker brings in the most revenue, and Selectman Dykstra responded that it's the daily stickers.

**Motion** by Selectman Dykstra, to raise the daily parking sticker rate from \$30 to \$40. **Motion not seconded. Motion withdrawn.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Daggett, to increase the cost of non-resident weekly stickers from \$100 to \$125, and non-resident seasonal stickers from \$200 to \$250. **Voted:** 5-0. **Motion passed.**

In Summary, the 2024 Goose Rocks Beach stickers prices are:

Resident seasonal stickers: \$10

Non-resident daily stickers: \$30

Non-resident weekly stickers: \$125

Non-resident seasonal stickers: \$250

**12. Accept a \$50.00 donation from an anonymous donor towards the nurses' general account.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Dykstra, to accept a \$50.00 donation from an anonymous donor towards the nurses' general account. **Voted:** 5-0. **Motion passed.**

**13. Accept a \$800.00 donation from the Kennebunkport Residents Association, where \$400.00 goes towards the general needs account, and \$400.00 towards the fuel account.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Daggett, to accept a \$800.00 donation from the Kennebunkport Residents Association, where \$400.00 goes towards the general needs account, and \$400.00 towards the fuel account **Voted:** 5-0. **Motion passed.**

**14. Other Business.**

Selectman Gilbert suggested that the Board tour the beach together to get a common understanding of the storm damage there. She also put forward the idea that the Board have a discussion at some point about having a Town land trust or come up with other actions the Board could take to address the issue of climate change.

Selectman Daggett suggested that the Town look into a floodgate or barrier to mitigate flooding and other storm damage. Chairman Weston suggested that everyone should look at presentation of the study conducted by Engineering students at the University of Maine, examining various proposals and making recommendations for the Kennebunk River. Discussion ensued with Laurie stating that she asked Woodard and Curran if a floodgate would be practical, though admittedly extremely expensive. Local representatives do not have this expertise, but as a nationwide company they are consulting with those on the west coast who might have knowledge in this area. Laurie has reached out to the Kennebunk town manager, and they have indicated an interest, but no one knows how much a study would cost. Robin Phillips asked if the Army Corps of Engineers had been consulted on this issue. The Board members responded that the Army Corps has been involved in various consultations, for example at Colony Beach.

Laurie wanted to make the Board aware that the State had implemented a tax stabilization law that took effect in FY 2023 for FY 2024. The law states that if you are over 65 years of age and you applied, your property taxes would be frozen, and the State would make up the difference. The law was subsequently repealed. The delta amount was automatically marked as a tax commitment to the town. The State allocated \$15 million for this measure but received \$26,500,000 from municipalities for reimbursement. Despite the State's previous assurance that municipalities would be reimbursed at 100%, they have reimbursed at 56% so far. The State is seeking other funding to reimburse at 100%. We submitted a reimbursement request for \$90,963.99 and received \$53,069.00, leaving just under \$38,000 uncollected.

Laurie also informed the board that we have been examining the roads that need design work to deal with flooding. The next two projects are Head of the Harbor on Pier Road and Dyke Road. The Head of Harbor project is important to proceed on for engineering because it is single access, and we are already underway with the project for the causeway elevation further down Pier Road. There is a DOT grant called the Maine Infrastructure Adaptation Fund which could provide \$50,000 to pay for half of the engineering cost for Head of Harbor. She is seeking the Board's approval to authorize her to pursue that funding.

**Motion** by Selectman Dykstra, seconded by Selectman Matthews-Bull, to authorize Laurie to pursue a \$50,000 grant from the Maine Infrastructure Adaptation Fund for Head of the Harbor project engineering. **Voted:** 5-0. **Motion passed.**

**15. Approve the January 25, 2024, Treasurer's Warrant.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Dykstra, to approve the January 25, 2024, Treasurer's Warrant. **Voted:** 5-0. **Motion passed.**

**16. Adjournment.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Gilbert, to adjourn.  
**Voted:** 5-0. **Motion passed.** Meeting adjourned at 8:03 PM.

Submitted by,  
Dave Powell,  
Technology Specialist