

Submitted by: TOWN OF PHIPPSBURG Approved by Selectmen:  
SELECTMEN'S MEETING  
John M. Young ADMINISTRATOR  
Administrator MINUTES  
June 14, 2006

*Meeting convened at 6:00 p.m. with Selectmen Douglass (Chair), Selectman Perkins and Selectman Pye in attendance.*

**I. Review and Sign:**

1. Accounts payable and payroll warrants.
2. Minutes from the June 7<sup>th</sup> meeting.
3. Contract for GIS/Tax Map conversion grant

**All items reviewed and signed.**

**II. Meetings and Hearings:**

1. Meet with the Code Enforcement Officer and Town Attorney to discuss a "Notice of Violation, Order to Cease and Desist, and Correct" for North Creek Farms. Also to be discussed will be amending the current court case to include this order and the convening of the Planning Board and Selectmen to consider revoking their business permit.

**Kai Jacob, co-owner of North Creek Farms was present. Lee Rainey, Code Enforcement Officer, explained that he had issued a new "Notice of Violation, Order to Cease and Desist, and Correct" for North Creek Farms because Mr. Jacob's Attorney had alleged that the original one issued last year was not proper. This new notice also requires that North Creek Farms stop preparing and serving food on site until they have a septic system that complies with the State Plumbing Code for this type of business. The new notice was mailed to the owners of North Creek Farms on June 13<sup>th</sup> and the Town Administrator, Mike Young, also personally handed one to Mr. Jacob at the Town Office on the same day.**

**Upon request from the audience to read the CEO's notice, Selectman Douglass replied that the notice was too long and he would not read it, but it was available at Town Hall for review.**

**Jack Thompson requested permission to ask questions of the Town Attorney, Richard Hornbeck, which was granted by the Selectmen. He asked Mr. Hornbeck why he was going to amend the current complaint. Mr. Hornbeck explained that he would be asking the Court to amend the current complaint with the new notice rather than bringing a separate lawsuit. One of the respondent's issues was the specificity of the original notice for violation, which is why Lee Rainey has developed another letter being more specific. Mr. Rainey, as Code Enforcement Officer, is the one who is authorized to issue "Cease and Desist" orders and it is up to the Selectmen to authorize any enforcement action.**

Mr. Thompson asked Mr. Hornbeck what Judge Field's reaction was to the original complaint. Mr. Hornbeck (after disclaiming that what he was about to say was his impression) gave an overview of the case. The case had been postponed to the end of the day because of other priority cases that the Judge had to attend to. When the North Creek Farms case was heard he and the opposing Attorney had come up with an agreement for settlement (which the Selectmen and opposing attorney agreed to) and presented it to the Judge, who seemed to be pleased that both sides had come up with a creative solution. Because it was late in the day, and the court reporter had left, the Judge asked the attorneys involved to prepare the proper settlement documentation and forward it to him for signature. Following the Court appearance Mr. Hornbeck prepared the settlement agreement and, for whatever reasons, the opposing Attorney or his clients did not accept it.

Jack Thompson asked what happens if North Creek Farms continues to operate. Mr. Hornbeck explained that if they continue to operate they do so under their own risk which would probably result in penalties. If they correct the problems then any penalties running would end.

Jack Thompson asked what would happen if the Town lost the suit and Mr. Hornbeck replied that the Town would not get any penalties. He further explained that the original permits given to North Creek Farms by the joint Boards (Planning Board and Selectmen) authorized them to sell take-out food, not to prepare food or serve on site. When it was brought to Lee Rainey's attention that this was happening, Lee recommended that the Owners of North Creek Farms come before the joint boards and get the proper permit. Mr. Hornbeck also explained that the Selectmen do not want to put someone out of business, but they need to protect the safety of the public. He further explained that North Creek Farms had a sink that served a single family residence and the water goes into a cesspool and, at a later date, another sink was installed. He noted that a cesspool has not been a legal system since 1974 and if the use of a property is changed the system has to be upgraded. The current system poses a health risk if it is used for washing dishes or serving food.

Bob Smith, Planning Board member, stated that the serving of food has been going on since May of last year. The Town has been trying to help North Creek Farms settle this issue. He himself has been served lunch at North Creek Farms with a cat on the table.

Selectmen Douglass stated that he was briefed by Attorney Hornbeck in court and had been under the impression that the Town had a settlement with North Creek Farms, but either the North Creek Farms lawyer did not have authority to agree to the settlement or he misinterpreted what his clients wanted or his clients changed their minds. The negotiations broke down on North Creek side – the Selectmen thought it was settled. He further explained that the Town wants the septic system fixed because the current system could affect the preparation of food and serving on site.

Attorney Hornbeck would not get into specifics of what the agreement

was between the Town and North Creek Farms but stated that the Town's goal was to bring North Creek Farms into compliance. He further said that there were State officials in court who had good advice on what needed to be done for compliance. The Town did not want to allow the current situation to last too long so a time line for correction was stated in the agreement and North Creek Farms would have been allowed to operate in the interim with monitoring.

Bob Smith asked if the "Cease and Desist Order" took effect immediately. Selectman Douglass read a section of the CEO's notice that stated that it took effect immediately. Selectman Perkins mentioned that the Town has worked diligently to end this situation and the Town is pro-business. Jack Thompson stated that he wanted to see the situation resolved as cheaply as possible.

The Selectmen voted (3-0) to authorize the Town Attorney, Richard Hornbeck, to take whatever action is necessary to enforce the "Notice of Violation, Order to Cease and Desist, and Correct" issued by the Code Enforcement Officer for North Creek Farms. He was also authorized to amend the current court case to include this order.

The Selectmen then discussed convening a joint Planning Board/Selectmen business hearing to consider revoking the conditional business permit issued to North Creek Farms because they failed to meet the conditions. Marie Varian, Planning Board Chair, stated that she was not opposed to the hearing. Selectmen voted (3-0) to convene a hearing.

The Selectmen also stated that the Code Enforcement Officer (Lee Rainey), the Heath Officer (Dave Barnes) and themselves would be conducting random visits to North Creek Farms to insure compliance with the "Notice of Violation, Order to Cease and Desist, and Correct" issued by the Code Enforcement Officer. It was explained to Mr. Jacob that if he opposed the random visits he should provide a written "No Trespass" notice to the Town. After explaining this a second time Mr. Jacob indicated that he understood.

Kai Jacob stated that what the Selectmen are suggesting is backwards and wanted to know why they are changing this whole thing now. He questioned why the Town Officials are now willing to talk to him when he was told before that the discussions had to be between attorneys. Attorney Hornbeck explained that as far as correspondence and legal issues the Attorneys had recommended that the discussions be between them – and he continues to recommend it. It is the Town's duty to continue finding the facts.

Mr. Jacob stated that this case has been going on for a year and no one has been on the premises and people are citing facts that they have no evidence of. He further said that he does not have a cesspool and Attorney Hornbeck was wrong. A person from Augusta was supposed to come inspect his system and never showed up and he was not told why.

Attorney Hornbeck explained that he gave the facts based on evidence at

**the court hearing, which was based on reports and expert testimony from both sides on what is reported to be in the ground. The conditional business permit that was granted required that the owners of North Creek Farms show that there is an adequate septic system, which was never done. There is a pipe, perforated or unperforated that lead to a spot that collected water. The Town did not dig up any soil – it is the owner's responsibility to show the Town that they have an adequate system.**

2. Meet with the Town Attorney to discuss the Gensheimer vs. Phippsburg Case (Executive Session as per 1 M.R.S.A 405 6.E. – consultation with the Town's Attorney.)

**At 6:45 p.m. the Selectmen voted (3-0) to enter into executive session under 1 M.R.S.A 405 6.E. to discuss the Gensheimer vs. Phippsburg case with the Town Attorney, Richard Hornbeck.**

**At 7:16 the Selectmen voted (3-0) to come out of executive session. No further action taken.**

3. Meet with the Road Commissioner and Road Committee Chair to discuss:
  - A. Carrying Place Road recommendations

**The Selectmen reviewed the recent survey completed on Carrying Place Road and discussed the solutions for water drainage with Curtis Doughty, Road Commissioner and Les Smith, Chair of the Road Committee. Mr. Doughty stated that he and Mr. Smith have been working with the property owners to solve the problem of drainage. He explained that the Town will need to obtain some grading and ditching easements.**

**Mr. Doughty stated that he had a short term and long term plan. The short term plan was to install a culvert, catch basin and swall. The Town would do the work within its right of way and grading and ditching easements while Earl Wallace would do the work on his private property.**

**The Selectmen stated that they will visit the site individually with the survey and would contact the Road Commissioner if they have any questions or concerns. They also voted (3-0) to expend funds from the Capital Road Account for the project.**

**A discussion took place concerning whether the Town had a right-of-way to the water where the old road ended. The survey showed that the Town still had the right-of-way and Tom Totman stated that his research showed that the Town never discontinued it.**

- B. Clearing limitations at the intersection of Popham Road/Parker Head Road

**Les Smith, Road Committee Chair, reported that the State DOT will be forwarding a plan to the Town for the clearing of vegetation at the intersection of Popham Road and Parker Head Road to increase sight line distances. Because the State DOT owns a very small right of way at the intersection the property owners (State Department of Conservation and Francis MacDonald) will be asked for permission to clear vegetation on their property.**

C. Popham Road Rebuild

The State DOT has obtained right of ways (roadway and ditching/grading) from all the abutting property owners except four whom they have been unsuccessful in contacting. If they don't hear from these four property owners by July they will go ahead with construction in September /October. Les Smith has requested that DOT hold a public hearing. The Town will need to sign another cost share agreement because the last one expired in October 2005. Selectman Douglass had a concern with the amount of gravel that would be used as a base because the State had used less than what they had originally stated on a prior construction project. Curtis Doughty stated that the State DOT had used one foot of gravel instead of 18 inches. This was confirmed by Les Smith who added that DOT did it so they could meet costs. Selectman Douglass stated that the Town will not accept having the gravel depth cut back. Les Smith explained that it will cost more, but could be discussed at the public hearing.

D. Road Initiative Program

Les Smith briefed the Selectmen on the RIP. The Town had previously sent a request to the State Planning Office for the 2008-2009 project years requesting that the curve at the intersection of Popham Road and Parker Head Road be redesigned. Today the Town Administrator, Mike Young, had sent out a second request to the DOT Region Office in Scarborough. The Region Office will work up an estimate and then the Selectmen would have to sign a cost share agreement. Mr. Smith further explained that DOT can only spend up to \$450,000 a year on any section of road, which is a 2/3 State, 1/3 Town cost share. The RIP is for minor collector roads (Popham and Small Point) and the major collectors (Main Road from Popham Road to the Winnegance causeway) are funded totally by the State and the Town has no control.

E. FEMA grant submission for culverts on Sam Day Hill Road

Les Smith expressed a concern that the Town may not meet the application deadline date for possible FEMA funding of the Sam Day Hill Road culvert replacement project. The Town needs to obtain signed agreements with the State Departments of Inland Fisheries, Marine Resources, and Environmental Protection. The only way the Town would have qualified for consideration would be if there was already a request in the hopper. He recommended that the Town continue to develop the submittal package and have it ready for the next round of funding. Another issue that complicated the matter was the recent resignation of the Sagadahoc County Emergency Management Director.

Selectman Douglass asked about installing a second culvert across Parker Head Road and Mr. Smith replied that this would be Phase #2 of the project. Their intention is to run a dry channel along Sam Day Hill Road and install a 4 foot culvert under Parker Head Road. This would

handle a 100 year flood.

### III. Unfinished Business

#### 1. Center Pond Alewife Bid

**Brett Gilliam had submitted a \$10.00 bid for a six year contract to operate the Center Pond Alewife fisheries. It was recommended by Peter Roberts and Tom Totman that the Selectmen accept the bid. Selectman Pye stated that the Town probably would not find anyone else to work the fisheries and need to have someone start tending the fishway. It was mentioned that Mr. Gilliam is aware of the special circumstances surrounding the fishway (i.e. State legislation that controls the depth of water which must be maintained in Center Pond). The Selectmen voted (3-0) to award the six year Center Pond Fishway contract to Brett Gilliam for \$10.00. The contract will run from 2006 to 2011.**

### IV. New Business

#### 1. Meet with the Assessing Agent to review the following items:

##### a. Homestead Reimbursement

**The Assessing Agent, Juanita Wilson, reviewed the Homestead Reimbursement figures that were provided to the Selectmen last week. This year there were 631 exemptions for a total of \$42,000. Adjusted values (\$8,203,000 vs. \$7,300,670 for a declared ratio of 89%) reduced the amount of each exemption. There were 24 new Homestead Exemptions this year. Selectmen signed the State's Homestead Reimbursement form.**

##### b. Lorraine and Frank Hackett Abatement

**The Selectmen approved and signed an abatement for Lorraine and Frank Hackett who own a camper in Wyman's Campground. The TRIO software had suppressed the tax bills and Ms. Wilson had re-entered the information but did not factor in two years of depreciation. The abatement was for 2005 and 2006 for the amount of \$77.42 and \$72.68.**

##### c. Stephen Mitchell Abatement

**The Selectmen denied an abatement for Stephen Mitchell who had purchased property that was previously owned by the Department of Human Services (prior to DHS the property was owned by Thelma Alexander).**

**The Assessing Agent, Juanita Wilson explained that the sale was not considered an arms length sale and Mr. Mitchell purchased the property for \$33,000.00. At that time the property was under assessed at \$40,000.00. After the interim equalization took place the property's assessment increased to \$51,900.00. Mr. Mitchell had based his purchase on taxable value, which included a homestead exemption, instead of true value.**

**Ms. Wilson presented the Selectmen with 12 arms length sales**

records which indicated that the assessment of \$51,900.00 for Mr. Mitchell's property was reasonable. Ms. Wilson added that Mr. Mitchell was informed that he had the right to review the sales books to gather sales information to support his abatement, as required by the court. It appeared that his focus was on his belief that other properties were assessed less than his and that the Town increased his assessment because he was from Harpswell. Ms. Wilson had explained that this was not the case.

She further stated that the court has consistently ruled that the question of assessment is an aggregate value and one of the most recent court cases she reviewed was similar to this situation. Mr. Mitchell did not present any sales data and she recommended that the abatement be denied. She further stated that Mr. Mitchell had purchased the property when the interim equalization was in play and that was why his first tax bill was an increase. The Selectmen were unanimously opposed to granting the abatement.

2. MMA nominations for the 2007 MMA Executive Committee  
**Reviewed. No action taken.**

#### **V. Correspondence**

1. Invitation from Sebasco Resorts for opening of Harbor Village Suites  
**Reviewed. No further action taken**

#### **VI. Adjournment - Selectmen voted (3-0) to adjourn at 8:22.**