

BOARD OF SELECTMEN MEETING
Kensington Town Hall
95 Amesbury Road Kensington, NH 03833
MONDAY April 29, 2019 – 6:30pm
Approved 5-6-19 with amendments

In attendance: Joe Lavelle, Vanessa Rozier

Absent: Peter Graves

Joe called the meeting to order 6:32pm.

Dog License Fees:

A Public Hearing will be held by the Board of Selectmen on April 29, 2019, at the Kensington Town Hall, located at 95 Amesbury Road, Kensington, NH 03833, at 6:30pm, in accordance with RSA 41:9-a to amend the fee for dog licensing in the Town of Kensington to require the payment of an additional \$1.00 (one dollar) for all dog licenses in the Town of Kensington. This process is in accordance with RSA 41:9-a requiring the Board of Selectmen to hold a public hearing before amending fees.

Joe opened the Public Hearing for dog licenses at 6:34pm. No one from the audience wished to speak. The Public Hearing was closed at 6:34pm.

Pole License and Utility Excavations:

A Public Hearing will be held by the Board of Selectmen on April 29, 2019, at the Kensington Town Hall, located at 95 Amesbury Road, Kensington, NH 03833, at 6:30pm, on the Petitions delivered to the Board of Selectmen to universally amend pole and conduit licenses and to universally amend excavation and road opening permits in the Town of Kensington to require the payment of properly assessed property taxes, to require the licensees and users of the public rights-of-way to provide information to the Town annually on the entities attached or sharing to their poles, conduits, and pipes, and to require said entities to indemnify the Town for damages caused by the structure to be constructed in the Town's rights-of-way.

Joe opened the Public Hearing for taxation of utility poles at 6:34pm and explained that the BOS received a petition on March 29th from petitioner Ben Cole. The Petitioner was unable to attend, but authorized Hez Mercadante to read a letter to the BOS on his behalf. Ms. Mercadante read the letter to the BOS (Attachment 1). No one from the audience wished to speak. The Public Hearing was closed at 6:39pm.

At 6:40pm, Vanessa made a motion to universally amend the pole and conduit licenses and to universally amend excavation and road opening permits. Joe seconded. Both voted in favor.

At 6:40pm, Vanessa made a motion to increase the fee for all dog licenses for \$1.00. Joe seconded. Both voted in favor.

NEW BUSINESS:

Timber Warrant – The Board reviewed. **At 6:44pm, Vanessa made a motion to sign the Gravel Tax Levy (\$234.14) and the Timber Tax Levy (\$924.58), Timber Tax Levy (\$267.34). Joe seconded. Both voted in favor.**

Excavation Warrant – The Board reviewed.

Application for Solar- The Board reviewed. **At 6:47pm, Vanessa made a motion to sign application for solar energy exemption for 152 Drinkwater Rd. Joe seconded. Both voted in favor. At 6:49pm, Vanessa made a motion to sign the application for Solar Energy Exemption for 6 Towle Hill Rd. Joe seconded. Both voted in favor**

Brief discussion on solar power and the solar energy tax exemption.

All veterans Tax credit – **At 6:51pm, Vanessa made a motion to sign the application for All Veteran’s Tax Credit. Joe seconded. Both voted in favor.**

Brief discussion on the Veteran’s Tax Credit and how residents will know it is available.

Intent to Excavate for Town of Seabrook – The Board reviewed the Notice of Intent to Excavate 18-239-07-E. **At 6:54pm, Vanessa made a motion to sign the Notice of Intent to Excavate for Tax Map 3, Lot 14. Joe seconded. Both voted in favor.**

Vanessa read a proclamation proclaiming May 5-May 11 Municipal Clerk’s Week.

At 7:01pm, Vanessa made a motion to appoint Norman Giroux, Building Inspector for another year with expiration in April 2020. Joe seconded. Both voted in favor.

Joe will review the Heritage Commission documents and provide feedback to the Commission. The Richie McFarland Center thanked the town for funding voted on in March. Meals on Wheels also thanked the BOS and town for funding.

The Board reviewed Bills.

At 7:05pm, Vanessa made a motion to approve the minutes from the April 15th meeting. Joe seconded. Both voted in favor.

The next meeting will be May 6th.

At 7:08pm, Vanessa made a motion to go into non-public session under RSA 91A-A:3 II (I). Joe seconded. In a roll call vote, both voted in favor. At 7:19pm, Vanessa made a motion to exit non-public session. Joe seconded. Both voted in favor.

At 7:20pm, Vanessa made a motion to close the meeting. Joe seconded. Both voted in favor.

Respectfully submitted,

Chelsea Lalime

Attachment 1

Benjamin R. Cole
242 North Haverhill Rd.
Kensington, NH 03833

29 April 2019

I, Ben Cole, designate Hez Mercadante, my neighbor and a registered voter and resident of Kensington, NH, to represent me before the Kensington Board of Selectmen during the public hearing related to pole and conduit licenses, on April 29, 2019 beginning at 6:30 PM. Specifically, I wish Hez Mercadante to communicate my view that:

The amendments proposed are in the public good because they would change the licenses and agreements to comply with the requirements of New Hampshire law by referencing the statutory scheme which authorizes the Town to tax entities using the rights-of-way. Additionally, the amendments would require the license holders and those with such agreements to notify the Town of additional attachers on the poles and conduits and other users of the rights-of-way who have perhaps avoided taxation until now. Properly assessing property taxes against all entities using the public rights-of way is required under the law and is in the public good.

The law of New Hampshire is clear at this time that licenses such as those held by License/Agreement Holders are required by law to include a section requiring the occupier of the public rights of way to pay properly assessed real and personal property taxes. Specifically, I point the Board to the cases of N.E. Tel. Tel. Co. v. City of Rochester, 144 N.H. 118 (1999) ("Rochester 1"), Verizon New England, Inc. v. City of Rochester, 151 N.H. 263 (2004) ("Rochester II"), N.E. Tel. Tel. Co. v. City of Rochester, 156 N.H. 624 (2007) ("Rochester III").

Additionally, RSA 72:23, I(b) currently requires that all leases or other agreements for the use or occupation of real property owned by the Town "shall provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property no later than the due date and further requires all leases or other agreements to provide that the lessee has an obligation to pay real and personal property taxes on structures or improvements added by the lessee."

The law also requires that if the lessee or person using or occupying the property fails to pay the duly assessed real and personal property taxes on the due date, the tax collector must notify the Town, and the Town must terminate the lease or agreement. RSA 72:23, I(C).

The Petition to the Board of Selectmen is to universally amend the licenses and other agreements it has issued for conduits or poles or water or gas pipes in the public right-of-way to include these requirements and the requirement for the licensee to notify the Town of additional attachers on the pole or conduit to confirm to the law.

I authorize Hez Mercadante to answer any questions related to this petition on my behalf during the public hearing, and to represent me in all matters related to this petition before the Board of Selectmen during the public hearing. This authorization ceases after the public hearing has concluded, or 11:59 PM on April 29, 2019, whichever comes first.

If anyone has any questions, I can be reached by phone at 603-303-5227 during the public hearing.

Sincerely,



Ben Cole 29 April 2019