

Submitted by:

Approved by Selectmen:

9/22/21
[Handwritten signatures]

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Adele M. Suggs
Admin Asst

**TOWN OF PHIPPSBURG
BOARD OF SELECTMEN MEETING MINUTES
September 1, 2021**

The Select Board convened at 5:00 p.m. to meet in Executive Session at the Town Hall with Chair of the Municipal Officers House, Board Members Mixon and Levene, and Administrator McLellan present.

Regular select board meeting convened at 5:37 p.m. following Executive Session.

I. Executive Session

1. Meet in Executive session per Title 1 M.R.S.A. § 405(6)(E) for consultation with town attorney.

Vote: At 5:04 p.m. Board Member Mixon motioned to go into Executive Session which was seconded by Board Member Levene and passed by a vote of 3-0.

Vote: At 5:35 p.m. Board Member Mixon motioned to come out of Executive Session which was seconded by Board Member Levene and passed by a vote of 3-0.

II. New Business

1. Discussion with Dan Gurney of 30 Fuller Mountain Road.

The Clark's met with the Board of Appeals, and they found a violation by Mr. Gurney of a nuisance of noise. Codes Enforcement Officer Rainey was told to seek a Consensual Agreement between the town and Mr. Gurney, which includes a timeline to perform the changes and a plan to solve the problem between the parties. Codes Enforcement Officer Rainey and the Town Attorney prepared a draft agreement which was not signed by Mr. Gurney. Now the Board of Selectmen must determine which action to take or come to some sort of agreement as the Board of Appeals recommended.

Mr. Gurney explained that he did not sign the Agreement as they wanted him to stop work at 6 p.m. on Saturday and 3 p.m. on Sunday. He feels that is impossible as he works 7 days a week. He has lived at his residence in Phippsburg for 31 years. He doesn't want to upset anyone; he wants to earn a paycheck for him, his family, and his well-being. Mr. Gurney feels that his neighbors knew of his business, as did everyone around, when they moved in. He just wants to be able to go to work.

According to today's ordinance, the Board of Appeals has agreed that he is grandfathered as a home business. Home businesses today have set hours of operation to comply with the ordinance. If a document is signed, it will set a precedence for the whole town, but nothing can be enforced unless it is in writing.

Juanita Clark shared that she felt Mr. Gurney had every opportunity at the Appeals Hearing to present evidence and to state his case. If he was unhappy, he should have appealed it to Superior Court as the ordinance says. Mr. Gurney added that he wasn't allowed to talk at the Appeals Hearing. When the meeting was over, he did not receive any paperwork to make a note that he didn't agree with what went on at the meeting, so he could contest it, and still has not received the Findings of Fact. There is no

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evidence that this was ever mailed. Mr. Gurney shared that he has changed a few things. Since the February 23rd meeting, he has not started any equipment prior to 7 a.m. versus 6 a.m. He has also bought a decibel meter to understand the sound of the noise from the wood splitter and the chain saw. He's moved his splitter back further to the middle of the property (85' off the road) and has positioned it so that the exhaust does not point in the direction of any neighbors. He also goes into his barn and shuts the door to work prior to 7 a.m.

Chair of the Planning Board, Marie Varian, stated that not every home business has set hours. They usually tell the Planning Board what they want to do and when they want to do it. There is nothing in the ordinance that governs reasonable hours. The Town of Phippsburg does not have a Noise Ordinance and would go by the State Noise Ordinance which is until 10 p.m.

Board Member Mixon asked Mr. Gurney if there was a scenario that he could work with to sign an agreement. Mr. Gurney responded by saying day light to dark.

The Fuller Mountain Road is a subdivision. Mary Bowker, through Power of Attorney, now owns that road. Mr. Gurney has spoken with her, and she has given him permission to work within the 50' right of way of the road if it's not in the road. There are no noise rules included in the Homeowner's Association agreement.

Ms. Clark reiterated that she has been trying to work with the Town and Mr. Gurney, to come up with an agreement, not about his business, but the hours of operation of his equipment. There are a lot of other things he can do beside run that equipment. She doesn't feel that was unreasonable; they should be able to have some peace and not listen to that all day long. Ms. Clark believes that Mr. Gurney has not moved the wood back from the road.

Mr. Clark stated that the nature of Mr. Gurney's business has changed over the years. He has pushed to the outside borders of his property, cutting on Fuller Mountain Road, and at one point pushed onto the Trebilcock's property by 60'. They have had a survey done two different times. The Clark's want Mr. Gurney to operate his business, it's about being loud and unreasonable. The large equipment they are referring to is a commercial grade chainsaw and the two splitters which operate on the borders of the property.

Chairperson House suggested the board go visit Mr. Gurney, see where the property lines are, and listen to the chainsaw and wood splitter and determine if there is a nuisance. The board will schedule an on-site meeting and they will let Mr. Gurney know when it is. Ms. Trebilcock added that she feels Mr.

Gurney's statement about nothing being close to her property is incorrect, as there are some pallets resting up against her No Trespassing Sign as she speaks. She feels he is doing this as retaliation.

The Town Attorney explained that the process about entering a Consent Agreement is with the Select Board and that the Appeals Board has no authority to sign a Consent Agreement.

Mr. Clark feels that no one has acknowledged that the Land Use Ordinance 1C reads "By adopting this Ordinance, the Town seeks to balance the right of landowners to use their land throughout the community for commercial, industrial, municipal, institutional or recreational uses, with the corresponding right of nearby landowners to enjoy their homes without unreasonable disturbance or damage from smoke, noise, fumes, dust, odor, glare, traffic, storm water runoff, or the pollution of ground or surface water resources." That was brought to the Appeals Board and the basis for the

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Clark's and Trebilcock's concerns. Mrs. Clark stated that what hasn't been mentioned is the Cease-and-Desist Order and violation notice that she believes did go out. Ms. Clark asked the Board if they rescinded that Order. Chairperson House responded that the Board has chosen not to enforce that Order until an Agreement is reached; that is what the Codes Enforcement Manual recommends. The best option is to come to an agreement that all parties can live with. The Town Attorney further states that a nuisance exists as found by the Board of Appeals. The question is how it will be enforced.

Chairperson House suggest the parties involved contact the subdivision homeowner's association. Mr. Clark asked if the Town Board of jurisdiction in this matter determined that Mr. Gurney's business, as operated, is a nuisance to his neighbors. Chairperson House responded by stating the Board of Appeals did and now it is in the hands of the Select Board how to take care of this. No action will be taken on this tonight. Site visit to 30 Fuller Mountain Road is scheduled for Monday, September 13th at 4:30 p.m. No action will be taken at the time of the site visit either; it will be discussed at the next Select Board Meeting on September 15th.

2. Select Board letter to Maine Department of Transportation.

Board Member Levene had sent some edits to Administrator McLellan that she would like to see incorporated. This letter is being written about the condition of the road on Route 209 and needing to be cut back.

Vote: Board Member Levene motioned to table signing of the above letter to the DOT which was seconded by Board Member Mixon and passed by a vote of 3-0.

3. Approval of Dan Couture as Deputy Harbormaster.

The Board previously appointed Mr. Couture but it was only until September 1st; this will be through December 31st.

Vote: Board Member Levene motioned to approve the above appointment which was seconded by Board Member Mixon and passed by a vote of 3-0.

III. Administrator/Members of the Select Board Comments and Announcements:

Traffic Delay - September 13th starting at 7 am due to fishway repairs

Administration McLellan reminded of the above traffic delay.

Senior Health Fair - Saturday, September 18th - 10 am to 1 pm - Fire Station

Chairperson House reported that the Senior Fair may or may not happen; there will not be any flu shots available. CHANS is hoping to have flu shot clinics in October if they can get the flu shots. Will keep you posted. If you can get a flu shot, get it.

IV. Review and/or Sign:

1. Payroll and Accounts Payable Warrants

Vote: Board Member Mixon motioned to sign Payroll Warrant #22 & Accounts Payable Warrant #23 which were seconded by Board Member Levene and passed by a vote of 3-0.

2. Select Board Meeting Minutes for July 7th & 14th

Vote: Board Member Levene motioned to the above meeting minutes which were seconded by Board Member Mixon and passed by a vote of 3-0.

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3. Central Maine Power Town Pole Permit

These pole permits are done frequently. This pole is not going under the road; it's the pole only on Sea Street.

Vote: Board Member Mixon motioned to sign the above permit which was seconded by Board Member Levene and passed by a vote of 3-0.

Adjournment

Vote: At 7:10 p.m. Board Member Mixon motioned to adjourn which was seconded by Board Member Levene and passed by a vote of 3-0.