

Adopted

Town of New Boston Selectmen's Meeting August 19, 2019

<u>PRESENT:</u>	Joe Constance	Selectman
	Karen Scott	Selectman
	Christine Quirk	Selectman
	Peter Flynn	Town Administrator

Transfer Station Manager Gerry Cornett, Road Agent Dick Perusse, Police Chief Jim Brace, Mike Pimenta, Jon Vandecar, Sue Ruggieri, Chuck and Melissa Strausbaugh, Allison and Rob Vermette, David Litwinovich, Brandon and Kim Merron, Keith Gentili, Jen O'Brien, Travis and Amy Daniels, Skip Gomes, Tom and Jennifer Lazott, Peter Clark, Nancy Bax, Kevin Hodgdon, Geoff Peirce, Anthony Governanti, Liam Hurley, Donna Mombourquette, Randy Parker, Paul and Shannon Aubin, Kathy and Bill Morrissey, Dan Garrity, Dan Chamberlain, Maureen Mansfield, Wayne Daniels, Rob and Victoria Witt, Susan Clay, Thomas Speck, Ray McMullen, Clete Peirce, Kaleb Jacob, Bill McFadden and approximately twenty-one other members of the public were present for all or part of the meeting.

A. CALL TO ORDER: A regular meeting of the Board of Selectmen was called to order by Joe Constance at 6:00PM beginning with the Pledge of Allegiance.

Consent Agenda-The Selectmen signed the consent agenda. Karen moved to approve the consent agenda including the reappointment of Matt Beaulieu to the CIP Committee. Christine seconded the motion. All were in favor. 3-0

B. PUBLIC FORUM:

Joe noted the Board always welcomes public comment and feedback. There are two opportunities for public comment, one at the beginning of the meeting and then another at the end. Anyone with a comment is asked to state their name and address for the record and that comments be respectful and thoughtful. The Board will listen, but public comment is typically not back and forth. If there is any need for extended dialogue a request to be added to the agenda and supporting documentation should be sent to the Town Administrator beforehand. Seeing none, Joe closed the first session of public comment.

C. APPOINTMENTS:

None.

D. OLD BUSINESS:

Item 1: Second Reading-Public Input-Noise Ordinance Proposal-Public Input Accepted: Police Chief James Brace was present to meet with the Selectmen to continue discussing a

proposed Noise Ordinance. He began with a history of discussions with the Selectmen to date: at the April 1 Selectmen's meeting he came before the Board to see if they were in favor of his drafting a Noise Ordinance and the Selectmen voted in favor of pursuing a draft ordinance at that meeting. This was originally brought to the Selectmen due to a worsening situation. The draft was presented for a First Reading on April 15 and discussion was continued to June 3 and July 1 where it was discussed as a First Reading for a second and third time. Today is the fourth time this has been discussed at a Selectmen's meeting. There have not been any amendments or changes to the draft since it was first presented to the Selectmen.

This proposal came about due to issues with noise in general. Residents e-mail and call the Police Department, many of these are not documented as calls for service as they usually call in later but get documented when the incident reoccurs or worsens.

Bill Morrissey of Mill Street requested the meeting be moved to the larger room upstairs due to many attendees in the hallway that could not hear the discussion or provide input. The Selectmen agreed, and the meeting moved upstairs.

Jim continued by saying the proposed ordinance addresses actual situations in town that have been going on for twelve years. He read aloud the applicable statute 644:2, Disorderly Conduct, Section III(a) and III-a. The proposed ordinance was also partially read aloud showing it is in line with the statute, police are not people of average sensibilities, they must be called by people in town (a person of average sensibilities) who believes the noise is obviously disturbing the peace. If the Department doesn't receive a complaint, they consider the noise to be acceptable. Police response to noise is complaint driven. The proposed ordinance is a draft for further discussion that the town government and public could create together. The Police Department is bringing this proposed ordinance forward because they are the voice of the people who call the Police and don't have the courage to attend and speak tonight and/or fear retaliation from neighbors. The proposed ordinance is an attempt to manage noise issues at the local level. Alternatively, neighbors could try to work out any issues between themselves and not involve the Police Department.

He has heard concerns from the public and addressed each as follows:

- Vehicle noise: This is partially covered under RSA 266:59 that covers mufflers in that there is no decibel level for vehicles but there is for motorcycles.
- Proposed ordinance is more government: The ordinance would mandate a warning. The current procedure under RSA 644 does not mandate a warning, if police are called and the complaint is verified the person making noise could be arrested immediately with a \$100 fine. Also, under the proposed ordinance, the second offence would be a \$100 fine to be paid at the Town Clerk's office if the person feels they are guilty with the same rights they would have in District Court. The current procedure under RSA 644 for a second offense is a misdemeanor arrest with a \$100 fine.
- Shooting noise and affects to second amendment rights: Shooting is covered and enforced under shooting and Fish and Game laws.
- Agricultural animal noise: Covered under other statutes.

The Police Department is bringing this proposed Noise Ordinance forward because they are the voice of the people who call the Police and don't have the courage to attend and speak tonight. The Department is trying to manage it at the local level. This issue goes back to 2007, was revisited in 2011, it is time to have the discussion again. If the proposed Noise Ordinance does not pass the Police will follow the Disorderly Conduct statute. This proposal is a way to manage the problem with a reasonable approach.

Statistics from July 2016 to July 2019 were reviewed. 80 instances of noise complaints, 53 between 9:00 PM and 1:00 AM. Roads with the biggest offenders are Clark Hill, Bedford, Carriage, McCurdy, Wright, Lyndeborough with multiple offences. New Boston's statistics seem consistent with other towns.

Susan Clay of Bunker Hill Road noted she is a former state representative and selectperson. She asked that this discussion be postponed due to room temperature and outside noise and be held in the library next time.

Ray McMullen of Bedford Road asked if the proposed Noise Ordinance would cause any extra costs in the Police Department. Jim noted it would not, as the Department will continue using the current record system for any needs caused by the ordinance.

Kaleb Jacob of Fraser Drive asked if the Department received any noise complaints of the train whistle on the fourth of July. Jim noted the Department did not receive any noise complaints for this or fireworks this year. He did notice some complaints on social media, but none came in to the Police Dispatch.

Donna Mombourquette of West Lull Place requested generators running all night during power outages be considered for an addition to the ordinance. Jim noted that is covered in the proposed ordinance under section D2.

Mike Pimenta of McCurdy Road noted the ordinance language "annoy" might be too vague and generators might need to be specified. Jim noted the proposed ordinance is a guideline for officers and generators could be a life safety issue. The Department is trying to be reasonable. If officers are called, they go to the area of the complaint to determine if the noise is "annoying." An officer might determine it is not annoying or unreasonable. The complainant then could file a complaint with the Department that would be sent to the Selectmen and a judge would decide.

Victoria Rios-Witt of Bedford Road asked for a definition for "prolonged" and how that would be determined. Jim said that would be a situation where the type of noise is considered. Joe gave an example of a dog left alone barking for hours. Jim noted there are events at the Fairgrounds where the events have permits to play loud music until a certain time and that would be explained to the complainant.

Rob Witt of Bedford Road asked if future drafts would include decibel limits as the term "unreasonable" is very subjective. Jim noted that is possible, but it needs to be researched. Cruisers now have decibel meters. The Selectmen can determine if they want to include that in the ordinance. The Selectmen noted the Planning Board sometimes includes decibel levels in venue site plans, but the Selectmen prefer the term "reasonable." Jim noted RSA 644:2 is

subjective and the proposed ordinance defines noise more clearly, it is not about more restrictions, just clearing up ambiguity.

Amy Daniels of Bunker Hill Road noted she respects and appreciates what the Police Chief is trying to accomplish, clear guidance for officers. She said this draft might not be the best draft and asked if it is going to town vote. The Selectmen noted that ordinances and bylaw changes are the purview of elected representatives not Warrant Articles. There is plenty of time for public discussion. This decision is a function for public servants in representative government. Joe gave an example from the 1970's when courts were trying to define pornography. This goes back to trying to determine what is reasonable. Decibel measurements can be tricky depending on the venue, but when noise is unreasonable it is heard and known to be unreasonable. It is ambiguous, but the proposed ordinance tries to clarify it.

Skip Gomes of Misty Meadow Lane asked if the proposed ordinance would restrict his ability to start his trucks at 6:00 AM to get to a job site by 7:00 AM. Jim noted the Selectmen would have to clarify the timeframe, but the proposed ordinance was originally brought to the Board due to logging at a New Boston job sites beginning at 3:00 and 4:30 AM. The unreasonable time was the issue. The Selectmen noted transportation to a job is perfectly reasonable.

Clete Peirce of Clark Hill Road asked why not deal with the logging operation instead of proposing an ordinance and taking away freedoms. The Selectmen noted Jim gave statistics and the noise complaints were not just from the logging operation. Clete asked how many arrests occurred and was told 6 in three years. Clete asked how many were fined as he heard none. Jim did not have this information prepared for the meeting.

Anthony Governanti of Inkberry Road noted there is a lot of language in the proposed ordinance defining violations. He asked how habitual complainers would be handled. Jim noted the only way the Police could do that would be to determine the complaint was unfounded.

Melissa Strausbaugh of Meetinghouse Hill Road asked what the difference between the current procedure and the proposed ordinance is and why an ordinance is needed if it is happening already. Jim explained it would mandate a warning, a warning would no longer be discretionary and if the Police returned to the location due to continued violation there is potential for a fine. Currently if Police return the offender could be arrested for disorderly conduct resulting in a criminal record. Melissa noted the amount of arrests indicates noise is not an issue. Jim noted there have not been many arrests because of the way the Department manages the issue but that does not mean it is not a problem. He gave an example of speeding that occurs everyday where the Police try to educate the driver first and take further action if the speeding continues. The Department is receiving more noise complaints lately and proposed this ordinance to give the Department a way to manage noise complaints at a local level by educating people making noise and act if the noise continues other than arresting them which is the current procedure. If the proposed ordinance doesn't pass the current procedure will continue.

Chuck Strausbaugh of Meetinghouse Hill Road noted speeding is an issue on his road and he invites the Police to sit in his driveway to decrease speeding.

Liam Hurley of Bunker Hill Road asked if frequency and tone would be considered along with decibels as certain frequencies travel further than others and could be more annoying at a certain tone, but the decibel reading might not reflect that. He asked if someone was warned for a noise such as caused by a vehicle, then another noise such as something at home, would that be considered two separate events and fined/warned accordingly. Jim noted the Department would investigate these complaints separately, evaluated and potentially fined separately.

Dan Chamberlain of Beard Road asked about how a complaint would be initiated. Jim noted the ordinance clearly states complaints are only initiated from a resident except motor vehicle noise that are subject to motor vehicle laws. If no one calls the Police, it is not an issue.

Kevin Hodgdon of Rustic Lane asked if a noise would become an issue if a new person moved in and complained even though it was not an issue before that person moved in. Jim said yes.

Anthony Governanti suggested adding language to the proposed ordinance explaining how it gives officers more options than the current procedure.

Clete Peirce noted neighbors could get together to talk to the person making noise to ask them to stop before calling police. Jim noted that is the ideal situation, but the world is not perfect. Retaliation and vindictiveness occur.

Victoria Rios-Witt noted she writes policies and procedures and suggested supporting data and analysis of the town be included, not just people calling the police.

Mike Pimenta suggested police start wearing cameras as police could say someone is loud, but the person might disagree.

Amy Daniels noted there are good quiet people in town and she is happy to see so many people attending tonight, especially her neighbors. Her family owns a farm and met new neighbors to explain the business and potential noise to them. She noted many in town are doing the same reasonable and polite thing.

Ray McMullen asked if agriculture is handled under another statute and Jim said it is.

Peter Clark of Bedford Road asked if there is a defined decibel level and Jim said there is no guidance.

Bill Morrissey of Mill Street noted there is some guidance for decibel readings for motorcycles and this could be generalized. Jim noted the Department plans to do that, but they are not sure it will hold up in court.

Joe proposed the Selectmen and Police Chief continue to study the possibility of a noise ordinance with input from the public, preferably in writing, to continue the discussion and determine if a noise ordinance is necessary.

Karen noted she researched statistics and found information in the Town Reports listing 64 noise complaints in 2016-2018. Jim noted there were 80 total calls received for excessive noise and

they are listed separately under fireworks, general noise and shots fired. Karen asked how many were considered unfounded and Jim noted he did not prepare that number in time for the meeting and will have to research that. Karen asked if they are considered disorderly conduct and Jim said that is what noise complaints fall under with six arrests in the last three years. Karen noted eight disorderly conduct cases are noted in the Town Report. Jim noted 6 were arrests and two were not arrests.

Karen asked if the Department speaks to each person who is complained about. Jim said it depends on the situation and there are three options: to call the complainant back and say no noise was heard, have a conversation with the accused to make them aware or do nothing. Are there a lot of calls where a warning is given? Jim noted anytime the Department verifies a complaint, a warning or other action will result. Karen asked about repeat addresses and Jim noted he would have to research that.

Karen noted concern with the word “reasonable”. She gave an example someone posted on Facebook that said, “benefits of country living are folks being neighborly”. She agrees and noted the Police chief said he doesn’t get many calls, residents need to be neighborly in this country setting. She noted this Facebook post was pursued with a comment “need to grandfather the train whistle.” She asked who would choose what is ok and not ok. The train whistle is once a year and residents may have a party once a year and neighbors should be understanding of that. She suggested reviewing the wording as this is a concern. She noted she did not make any changes to the proposed ordinance since it was drafted because she feels it is not up to her, it is up to the residents.

Karen reviewed her opinion on separate noise concerns contained in the proposed ordinance as follows:

- Section D2 deals with operating a motor vehicle and should be handled under motor vehicle laws.
- Section D2f specifies blowing a horn, she would blow her horn if necessary
- Farming: This is a farming community and farming begins early. This is not specified in the ordinance but not excluded and should be addressed.
- Generators should be specified in the ordinance as some neighbors may have an outage when others do not.
- Target shooting: Hunting coyote is not addressed in the ordinance but that is covered under Fish and Game laws. She is concerned it could be a complaint, but Jim noted it would not be if Fish and Game laws are being followed.

Karen recommended the proposed ordinance go to town vote and thanked all for attending this meeting.

Mike Pimenta asked the Selectman to vote on the proposed ordinance tonight but that is not possible as the ordinance is not in its final form. The Selectmen asked anyone with comments to send them to the Police Chief and Town Administrator.

Brandon Merron of Dane Road asked what the next step is as the Selectmen have discussed the proposed ordinance four times already.

Victoria Rios-Witt noted the public needs to be educated before a noise ordinance can move forward.

Joe moved to table this issue for one year for further study. Christine seconded the motion. The motion carried. 2-0-1.

Item 2: Approval of Public and Non-Public Minutes of July 15, 2019: The Selectmen reviewed the Public minutes of July 15, 2019. Christine moved the Public minutes of July 15, 2019 be accepted as presented. Karen seconded the motion. All were in favor. 3-0 The Selectmen reviewed the Non-Public minutes of July 15, 2019. Christine moved the Non-Public minutes of July 15, 2019 be accepted as presented and sealed for five years. Karen seconded the motion. All were in favor. 3-0

E. NEW BUSINESS:

Item 3: Appointment Road Agent Dick Perusse-Updates: Road Agent Dick Perusse was present to meet with the Selectmen to update them on Highway Department projects as follows:

- Dougherty Lane Bridge: Dick is working with Town Engineer Kevin Leonard to prepare a bid request that is expected to be ready next week. Kevin will then advertise it.
- Salt shed: Lumber quotes are expected soon. Sitework has begun to move the sand pile currently in the shed location to a new location.
- Driveway at 8 Chamberlain Road: Dick asked the Selectmen to contact the landowners to remove the unapproved portion of the driveway as it is causing road deterioration. The area was paved although the driveway permits specifically stated not to. The Selectmen considered having the Code Enforcement Officer address this. The Selectmen will consider this in non-public.
- Primex-Highway Department Safety Audit: Not discussed.
- Grant Proposal for Lyndeborough Road Culvert Replacement: The grant application for \$125,000 will be finalized by August 29. Dick requested a letter of support from the Selectmen to include with the application. He is working with Town Engineer Kevin Leonard for DES permits for the culvert that is planned to have a natural bottom.
- Depot Street Bridge: A walkway board broke on August 11. It was replaced but there are several other boards that may be considered for replacement next year.

Item 4: First Reading: Revisions of the “No Thru Trucking Ordinance” And Establishment of a New Sign Policy Relative To ‘No Through Trucking’: Police Chief James Brace was present to meet with the Selectmen to discuss the following:

NOTE: -Before the actual First Reading another ongoing issue was brought forth for discussion first.

- Mill Street Parking/Parking Ordinance Amendment: On July 1 Jim met with the Selectmen to propose parking restrictions for both sides of a 240’ section of Mill Street allowing emergency vehicles to maneuver in and out of the Fire Department side bay to avoid potential delays in responding to emergencies. Further parking limitations were suggested at that meeting. Jim sent a letter to all property owners of record on Mill Street to let them know it would be discussed tonight. He went to the area today. The Parking Ordinance enacted in 1993 and revised in 2003 already limits parking on Mill Street 300’

from the Historical Society. Photos of the proposal were reviewed.

Randy Parker of Mill Street was present. He provided an aerial photo. He noted he didn't realize there was an ordinance. He also measured the area and expressed concerns at the July 1 meeting. He suggested the 300' point be moved back to the church parking lot entrance. He noted he and his Mill Street neighbors discourage street parking. It would be nice to have no parking on the street entirely but that might not be practical.

Bill Morrissey of Mill Street was present and noted pedestrian traffic has increased on the road from the Mill Pond Conservation Area and he is concerned for their safety.

Paul and Shannon Aubin of Bedford Road own 28 Mill Street were present and noted they have had contractors working at their property and asked if no parking on the street would prevent him from improving his property. They can park at the Town Hall parking lot. Shannon is concerned this proposal could affect the ability to park on other town roads in the future. She is also against no parking signs and concerned about enforcement ability.

Dan Garrity of Mill Street noted he parks on the street to create an obstacle to slow traffic on the road. He is also against no parking signs as they are an eyesore and a hazard pushing pedestrians and bikers into the road.

Wayne Daniels owns property on Mill Street and noted he installed the no parking signs on his property to prevent damage from people parking on his property. He agrees with Randy. He said there should be parking on the street. He asked for measurements that are unknown at this time. He is concerned about the minimal parking available downtown and how this would affect it.

The Fire Department needs a 240' no parking zone allowing emergency vehicles to maneuver in and out of the Fire Department side bay to avoid potential delays in responding to emergencies. The Selectmen reviewed the town owned land behind the fire station. The Selectmen are concerned if an emergency vehicle cannot exit the fire station to respond when needed. Fire Chief Dan MacDonald requested 240' be designated as no parking to allow vehicles to exit the fire station due to vehicle arrangement in the station. Jim brought it forward at the July 1 meeting where Randy brought up a good point.

Kathy Morrissey of Mill Street was present and noted she is comfortable with the proposal and no additional action is needed.

Bill Morrissey suggested parking due to town events could be addressed such as adding a shuttle service with the Recreation bus from parking at NBCS. The Selectmen said that is a different issue.

The Selectmen support the 240' proposal separate from the 300' no parking area on the other end of Mill Street. Christine moved to accept the proposed 240' on Mill Street be no parking. Karen seconded the motion with the tree saved on the town owned land

behind the fire station. All were in favor. 3-0

FIRST READING Starts HERE:

- No Through Trucking: Peter reported this came up at prior Selectmen's meetings with complaints from residents on Wilson Hill Road and concerns of how to enforce the current ordinance. This is a first reading for additional language that has been proposed. The Selectmen reviewed these. The Road Agent traditionally posts roads for weight limits, the ordinance proposes the Selectmen post roads for other situations in conjunction with the Road Agent. The Selectmen suggested revised language for posting roads. Signs are proposed and specified in the ordinance and there are some already in some locations. Transfer Station Manager Gerry Cornett was present and asked if a truck is considered "trucking" if it is not hauling anything. The Selectmen, Town Administrator and Police Chief said yes, that is "trucking" not "carrying", the ordinance does not require it be loaded. If the police stop a truck, they review the definition to determine if it is "trucking." A second reading is planned.

Nancy Bax of Wilson Hill Road asked why trucking is not prohibited on Byam Road due to the nature of the road. She recently moved to New Boston, was disappointed to learn this was occurring, and would not have purchased the property if she had known trucking occurs there all day every day. Jim explained most truckers using that road are not "through trucking", they are going to a site in town from a pit in town. A "No Trucking" ordinance would have to be enacted and that would prevent some deliveries to residences. There is a lot of development currently occurring off Bedford Road and there will be for some time, causing more trucks traveling to that area.

Donna Mombourquette of West Lull Place noted concern about the amount of traffic on Lull Road and the layout of that road and asked how roads were chosen for no through trucking. The Selectmen noted the roads were selected in 1996 when the ordinance was created, and Lull Road was probably not chosen due to the amount of traffic and condition of the road at that time.

This conversation was continued to non-public.

Item 5: Discussion Regarding: Posting of Minutes and Recording Secretary Assigned to Be Present for Non-Public Meetings for Minutes: Moved to non-public.

Item 6: Approval of Items for The Capital Improvements Program from Selectmen's Office: Peter reported he brings items from the Selectmen to the CIP Committee each year. The Selectmen items currently include the Reval spread over five years and the GIS mapping system will be requested to occur one year sooner. Joe moved to move the Selectmen's submission to the CIP Committee as detailed in the memo from the Town Administrator to the Selectmen dated August 12, 2019. Christine seconded the motion. All were in favor. 3-0

Item 7: Acceptance of Donation for Forestry Committee Project in Honor of The Late Dwight Lovejoy: The Forestry Committee plans to commemorate Dwight Lovejoy by creating a Dwight Lovejoy Educational Loop in the Bob Todd Town Forest this fall, supported by John

Neville and Brian Fournier. Christine moved to accept the donation from John Neville for the Forestry Account to be used for a Dwight Lovejoy Educational Loop in the Bob Todd Town Forest. Karen seconded the motion. All were in favor. 3-0

F. OTHER BUSINESS:

Item 8: Proposals for No. 2 Oil and Propane Supplier for Town Buildings: Peter reported the town has not participated in a commodity buying group with Goffstown. If it did so, the town would save approximately \$1,038 next year for oil. The town has been using Putnam for many years due to Putnam's loyalty and dependability of reliable service as the price difference was not great. Putnam also participates in New Boston community service by donating to the Recreation Department programs. Peter recommends choosing Putnam for oil deliveries for the coming year. The Selectmen support the recommendation. Joe moved to contract with Putnam for oil deliveries for the coming year. Christine seconded the motion. All were in favor. 3-0
The propane bid from the current provider, Rymes, decreased 25 cents per gallon at \$1.74 at the library for the coming year. This is the only New Boston location using propane and not much is used. The SAU could not include New Boston in the propane buying group this year, but it may be possible next year. Rymes also owns the tank. Christine moved to contract with Rymes for propane deliveries for the coming year. Karen seconded the motion. All were in favor. 3-0

Item 9: Town Administrators Report:

- Line Striping: Has begun.
- Record Retention: Meeting scheduled for August 21 at 10:30 AM.
- Year to Date Expenses and Revenues: Provided.
- Annual Employee Cookout: Scheduled for September 11 at the fire station.

Item 10: Selectmen's Reports: None.

G. PUBLIC FORUM:

Bill McFadden of Dane Road asked the status of the siding repair needed at the Fire Station. The Selectmen noted quotes are expected soon.

Item 11: Possible Non-Public Session per RSA 91-A:3, II (a and c): Joe moved to enter Non-Public session per RSA 91-A: II (a and c) at 8:04PM. Karen seconded the motion. All were in favor, 3-0. Poll Vote: Joe-yes, Christine-yes, and Karen-yes. Board then entered non-public session.

Move to exit Non-Public Session: Joe made a motion to exit Non-Public Session at 8:20PM. Christine seconded the motion. All were in favor. 3-0.

ADJOURNMENT: Karen made a motion to adjourn the meeting at 8:21PM. Christine seconded the motion. All were in favor. 3-0

Prepared by Maralyn Segien

**Next Scheduled Meeting: Town Hall Conference Room on September 16, 2019 (6:00 PM)
7 Meetinghouse Hill Road- New Boston, NH 03070
Phone: (603) 487-5504-www.newboston.gov**