

BOARD OF SELECTPERSON'S SPECIAL MEETING MINUTES
January 25, 2017 6:00 p.m.
Rumford Falls Auditorium

PRESENT: Chairperson Jeffrey Sterling, Vice-Chairperson Mark Belanger, Selectperson Michael Peter Chase, Selectperson James Windover, Selectperson Christopher Brennick, Town Manager John Madigan, Jr.

ATTENDEES: Harry Burns, Brian Gagnon, Jim Thibodeau, Rick Pershken, Steve Dymont, Bromley Cook, Gerry Allaire, Tami Andrews, Lewis Irish, Anthony DeSalle, Maureen Cook, Len Greaney, Kim Sequoia, Jon Starr, Candice Casey

1. Meeting Call to Order at 6:00 p.m. by Chairperson Sterling
2. Pledge of Allegiance to the American Flag
3. Discussion on Petition received on January 19, 2017 to Request Special Town Meeting to Allow Rumford Citizens to Vote for a Moratorium on Water Extraction

Chairperson Sterling read the opinion from Kendall Ricker, the Attorney representing the Town.

Mr. Brennick asked what scientific evidence there is concerning private wells near the aquifer.

Len Greaney noted that there was a long presentation from Nestle at a Rumford Water District Board Meeting on the technical aspects.

Bromley Cook noted there was not a specific study, but he has their records going back to 1991 regarding the volume of water out of the system. The maximum has been one million gallons about 30 years ago and in 2016 there was 660,000 gallons. Nestle is now talking about one million and what will the Town be left with.

Richard Scagliola asked if there was hardly any rain at a specific time had there been a critical situation that there was no water.

Brian Gagnon responded that they have not experienced any critical situations regarding the Milligan aquifer. It was designed to produce up to one million gallons per day. At the same time we have two systems, including Milligan's well and two wells at the Scotties well system, which can produce up to 400 gallons and 200 gallons per minutes respectively for the lower end of town.

Jim Thibodeau believes there is no critical issue here regarding withdrawal of water and noted that we just went through the worst drought in 35 years and did not have any problems. Our water withdrawal is heavily regulated by the Public Utilities Commission, Department of Environmental Protection and the Drinking Water Program. These entities would not allow enough water to be extracted to affect the aquifer. He does not believe the citizens of Rumford should fund a Special Town Meeting when there is not a critical circumstance.

Mr. Belanger shared a concern regarding the Rumford Comprehensive Plan and read a section that noted that large extractions of water from the Ellis River aquifer places goals of the Plan in peril concerning protection of the aquifer. He believes the Town has never really weighed in on large volume water body extraction specifically. He asked if that wording had been in the Comprehensive Plan when last voted on, if would it have been voted on in the affirmative.

Walter Buotte believes that we have climate change going on and does not want to take the gamble on our water resource. He is concerned about what will happen in 15-20 years with Nestle.

Mr. Windover read from Attorney Ricker's opinion [Chapter 33-C Wellhead Protection of the Ellis River and Scotties Brook Aquifers Ordinance, Section 6K] regarding an exemption that noted that the purpose of the Rumford Water District was in supplying high quality water to the residents of Rumford. He did not think Poland Spring fell under that guideline.

Candice Casey noted that part of this was based on the Water District being in the financial position to maintain the system. We have one hundred year old pipes in the system.

Mr. Sterling read a section from the petition request. He asked Brian Gagnon of the Water District if the Town of Mexico ran into a problem with their water supply, would any type of a moratorium, prohibit that.

Brian Gagnon noted that the Town of Bethel lost their water system from a microburst and the Rumford Water District helped them out by allowing trucks to be filled from our water system to help them recover their system from another spring. There is also an interconnection at the Swift River Bridge with the town of Mexico. The Mexico Water District called for some tentative assistance when they recently had a problem and wanted to know if we could help with our water. The Rumford Water District was willing to open up the valve at that location if so needed and that this would be reciprocal if Rumford needed water also.

Jolene Lovejoy believes if there was a moratorium, we would not be able to help others out.

Jon Starr believes this concern could be remedied by adding a contingency to allow the Water District to help others out.

Mr. Sterling pointed out that on this date there is nothing happening at the Milligan well site. On a presentation given by Poland Spring, their timeline indicated that if there is an agreement, it would be at least until the spring of 2018 at the earliest, that any large scale volume water extraction would happen at that site. He then asked what would make this a critical circumstance.

Jon Starr stated that [his group] believes that legally they cannot just look at the concept of when water is extracted, they must look at legal taking of water by any agency that enters into a contract, whether or not they are pumping water as we cannot turn around at that point and say that we do not like what they agreed to and then make it illegal. With a moratorium in place in the meantime, it would be understood that any contract that is entered into would not constitute an illegal taking.

Mr. Sterling stated that he understands that the moratorium is desired in order for them to draft an ordinance to regulate this type of activity. The ordinance needs to be before the Select Board in under a month. He believes that the critical circumstance has been used occasionally, and perhaps in hindsight, not always when there is a critical circumstance. It seems there is time for the ordinance to be written and presented to the Board.

Jon Starr responded that the critical circumstance is in the nature of unforeseen events that could profoundly change the nature of the town and its security in several ways, not so much in writing the document. He was concerned that a contract may be signed quickly with no recourse to the citizens.

Mr. Brennick noted that the guidelines from Attorney Ricker pointed out that we must decide not just if this is a critical circumstance or that if prompt action must be taken as opposed to being dealt with

in its ordinary course. He asked why this has to be handled any differently than any normal water deals handled in Rumford and throughout the State.

Jon Starr noted it is the nature of the extraction, not strictly the volume of water, with the business transaction also a part of this. He believes that giving the citizens the decision through zoning what we want to happen with our land and resources, it is not controlling the Water District. Once we give control to the Water District, the Town can also say what we would like to happen in our town. If we do not want to sell our water for commercial purposes so others can make money off our resource, we do have the power to decide that. There is a difference in controlling land use in the town and controlling the Water District. We should be able to decide these parameters.

Mr. Windover read from the Attorney's opinion regarding the moratorium request. He thought the municipality portion could be struck from that section.

Chairperson Sterling does not believe we can make changes to the proposed moratorium request.

Mr. Belanger noted that the motion could be made by the Board in their own words.

Attorney Ricker noted that the motion could come down to any standard practice, to accept only as written or consider making a change consistent in what is being asked for.

Mr. Chase believed the wording needed to be precise when it is being voted upon at a Special Town Meeting. Attorney Ricker agreed and also that it would need to be done prior to the Warrant preparation so that citizens can see it before the meeting.

John Madigan believes that basically the petition was in standard proper form needing a little tweaking. We could have our attorney re-write it. If this effort is rejected, there is another process for the citizens to go through.

Walter Buotte was concerned about the contract that Nestle has with Fryeburg for 45 years and he is concerned that the Rumford Water District is heading in that direction.

Brian Gagnon noted that there are laws and regulations that must be followed and the process will be played out by the rule of the law. They cannot pull over any fast ones and sign quick contracts. This past fall he visited the springs at Fryeburg, Kingfield and Hollis along with some Water District Board members and spoke with town administrators. None of the communities had any problems and said Poland Spring was a great corporate citizen. He encouraged others to do the same. He added that on December 19, 2017, a Task Force was held in Augusta that was attended by many professionals in the industry. He discussed the drought conditions that we experienced this summer with many of them and they did not have any problems with Poland Spring at any of the springs or plants whatsoever. He was told that there is a monitoring system within this state and it works. One million gallons a day are reserved for Rumford citizens and anything beyond that may be available to Poland Spring. If there are any questions regarding the geology, Ricky Pershken, a geologist and engineer, from A.E. Hodsdon is here. He has worked for the Water District for a number of years and knows the Milligan site very well.

Jolene Lovejoy noted that Mr. Pershken is a very good professional who would err on the side of caution for the Water District and is not being paid by Nestle. She feels it is short sighted to say that we do not want to sell any additional water because someone else might be making a profit from it. She asked if we wanted to see this pass us by. There is nothing concrete with Nestle on the table. All the Water District Board has done is to allow Nestle to come in and do some testing. This group can walk away or stay at the table.

Len Greaney said that basically they are asking the Board to have a meeting and moratorium so that the legislative body can have a vote one way or the other. Both sides can discuss their point of view at the meeting.

Steve Dymment asked if any contract with Nestle would have language about shutting down the water extraction if there was a critical circumstance such as fire or drought, without recourse for Nestle to go to court. He feels the people should have a chance to say how they feel and they need to be heard.

Brian Gagnon noted that they are required to hold a Public Hearing regarding any possible project. The Charter was changed in several areas to bring it up to date when Senator John Patrick brought the changes to the legislature.

Mr. Dymment thought that the Water District should have been more open about their intent.

Richard Scagliola believes the same questions keep coming up that have already been answered. He wants to open the town to corporations.

Town Manager Madigan noted that the critical circumstance that is stated in the petition, may not be entirely the case as there are two separate issues. He asked for further clarification as to why the Town's water source did not dry out, but private wells did.

Mr. Pershken explained that dug wells are shallow and located in soils that do not hold as much water nor give it up as freely as compared to the Ellis River aquifer.

Mr. Madigan asked if extraction from the Water District land had anything to do with the wells running dry. Mr. Pershken said that, in his opinion, it has nothing to do with the wells going dry.

Jon Starr noted economic need may be dire, but it is independent of a need for a moratorium. They are not saying that the contract with Nestle needs to be off the table. They are saying that the public deserves some time to absorb and grapple with the issue. There are some concerns that more time is needed for them to understand the issue and have their concerns answered. The public trust is important.

Mr. Brennick noted that we have a number of quasi-municipal boards in our community. He asked what makes this issue any different. He asked why we should change the process when we could potentially open things up to others wanting the Board to impose a moratorium.

Jon Starr noted that we do not have a moratorium on everything and that this is part of the process as this is an unforeseen circumstance. Let us have the town talk about this as it is a different type of decision than the Water District has made in the past.

Bromley Cook noted that Poland Spring started this process in November of 2014. It was a year and a half before the citizens knew about this. They are asking for 180 days for the citizens to weigh in on the situation. An ordinance has been drafted and sent to the Select Board Chairperson. He noted that the Trustees of the Rumford Water District have executed oaths of office to the town and should be responsible to the town. He was concerned that there was a time line that the Water District had with Nestle to sign a contract in May. Ordinances can only be proposed in February and voted on in June. A 180 day moratorium would slow things down to give people a chance to vote on a water extraction ordinance.

Walter Buotte explained that he canvassed Franklin Street for the group supporting the moratorium. Not one person expressed support for doing business with Nestle. He also went down part of

Somerset Street and Porter Avenue. People wanted to know why they would not have a say in this important matter.

Mr. Chase noted that if an ordinance is placed before the legislative body, they will have their say. The process starts in February to present the ordinance to the Select Board who decides whether it goes to the legislative body. The Water District has to follow protocol as well.

Jerry Allaire shared his experiences with Nestle.

Candice Casey explained that there must be a critical circumstance. She does not believe there is a threat to our water supply. As a rate payer she believes she can petition the Board...

Point of Order was made that it was stated that, "there are no rate payers here."

Ms. Casey said there is an alternative as ratepayers can petition the Water District Board to hold a meeting where the rate payers would vote on the issue. That has been no effort towards that.

Mr. Belanger made a motion to accept the petition with the understanding that the requirement of the proper moratorium be prepared by the Town Attorney. The reason is because he believes there is a critical circumstance as this has never been mentioned in any Town document, Comprehensive Plan. The town of Rumford has been blindsided by this proposal and he believes they have a chance to speak. We do not need to be afraid of a vote by the citizens. Seconded by Mr. Windover.

Mr. Chase asked the Rumford Water District Board if an ordinance was to be voted upon in June by the citizens, if they would hold off signing a contract with Nestle until after that vote.

Jim Thibodeau, of the Rumford Water District Board, responded that based on what has happened so far with the Board and Nestle, there is not much chance that something would happen in the next few months or in the near future.

Mr. Chase asked if it was safe to say the June Town Meeting would take place prior to the Water District signing a contract.

Mr. Thibodeau stated that he could not make a commitment as a Chairperson and did not believe this was the proper forum to do so.

Mr. Brennick believes that if we waited until June, we would have more information about any negotiating process.

Mr. Belanger asked if the Board votes this down, and they get the signatures, would we have to accept what is brought to us. Mr. Sterling and Mr. Chase answered in the affirmative.

The Town Manager noted that if it was voted down, there are 4,512 registered voters and they would have to produce 451 valid signatures to override the Board's vote.

Attorney Ricker noted that removing "municipality" from the proposed moratorium, that it may raise the question if a critical circumstance had actually transpired.

Chairperson Sterling and Mr. Belanger believed this would allow water to be available to other towns in an emergency.

Attorney Ricker said this raises the question that if we allow this to happen, is there really a critical circumstance.

Mr. Belanger believed if they get the signatures and bring them to Board the way it is written, we cannot deny it. Attorney Ricker answered in the affirmative.

Mr. Chase believes the citizens have a right to speak and it will come at the June Town Meeting and that a critical circumstance does not exist right now.

The Town Manager asked Attorney Ricker if the Board should act on other issues first before voting on this motion. Attorney Ricker responded that the Board does not have to act on each item.

Vote: 2-3, Mr. Brennick, Mr. Chase and Mr. Sterling opposed.

4. Discussion to take any Necessary Action Concerning Petition Request

This was addressed above under Item 3.

5. Approval of Town Warrant dated January 24, 2017

There was an error in the amount on the last Warrant for a check to the RSU 10 and this Warrant would correct that error.

Mr. Brennick made a motion to approve the Town Warrant, dated January 24, 2017. Vote: 3-2, Mr. Belanger and Mr. Windover opposed.

6. Adjournment

Mr. Belanger made a motion to adjourn at 8:05 p.m. Vote: 5-0

John E. Madigan, Jr.
Town Manager

JEMJr/tp