

BOARD OF SELECTMEN MEETING

May 9, 2023

MINUTES

Present: Shawn Talbot (Chair), Jason Somero, Lou Alvarez and Debbie Deaton (Town Administrator)

Also in attendance: Dennis Howe (FAC Chair), Joe Woodworth, Mitch Gluck, Luke Moran, Melissa Mack

5:00 Open Meeting in the Town Office with the Pledge of Allegiance at 5:00

5:05 Finance Advisory Committee Presentation:

- Dennis Howe said the FAC has had contact with most department heads as part of their quarterly review and didn't find any major issues. There are a few things they are keeping an eye on.

Joe said they will continue working with Debbie and accounting to correct some things that were charged to the wrong accounts (PB postage, ZBA postage, Pool electricity, etc.).

Joe went over the "Lessons Learned" (attached).

- The Board and FAC discussed stipends for next year and potential increases for 2024. Dennis suggested the amount for 2024 should be put in flat and he can add a column if the person/department receiving the stipend is requesting an increase.

- Mitch and Joe requested if a department head requests changes in their budget to anyone at the Town Office, they be referred to the FAC so it is correctly documented. It was agreed this will be done.

- Mitch made a comment regarding scheduling of meetings with department heads. He added there were a lot of last minute changes to some departments which created some chaos for the FAC. Shawn added the Deliberative Session is the last chance to make any changes by the department heads and/or the general public so some changes at that point could be expected.

- Mitch brought up the topic of merit increases. Shawn said the turnover in the TA office over the past few years contributed to the merit raises falling off the radar. Dennis said he thought that everyone should have a review and we need to have something in place which states the range/expectations. Shawn and Jason agreed the department heads should create a scale and description for each position in their department. Dennis suggested having a line item with a pool of money for each department for the merit increases because we won't know who would get what for a merit increase. Melissa added it may be late in the game to put this in place right now but it should be done in preparation for next year.

- Jason suggested if the Town is paying for a new employee to get a CDL or other education, the employee should have to sign a contract similar to what the Police Department does.

- Dennis mentioned the Town should have a policy for contracts which would include clear written guidelines (scope, process, specs, etc.). It should also have a statement where a Request for Proposal would be needed if the purchase/project would exceed a decided on dollar amount (for example, anything over \$5,000). This would also avoid any favoritism or conflict of interest. There also has to be oversight of the process.

- Jason will meet with Dennis, Peter G and Peter S to discuss the DPW budget and RFP's.

- There was discussion regarding spending trends (thrifty in the first quarter and high spending in the fourth quarter). Shawn said we need to get away from this. In their quarterly reports, the FAC will be able to notice trends and report back to the BOS.

- The Board and FAC also discussed the Capital Improvement Program. Shawn stated this has been put on the back burner for years and has been trying to get it back in place because it weighs heavily on decisions made by the Board for purchases from Capital Reserve Funds. He told the FAC how important this document is and

said he is going to ask the Planning Board to complete the task. He added it seems like it would be something the FAC could help with because they will be speaking with the department heads about their budgets. Lou said he had been working on the CIP previously and has some information. Shawn said the BOS needs to receive the formalized document and nothing has been submitted.

Shawn said it's imperative we have this in order to plan for the future and know what big purchases we'll need to make in the next few years.

Joe asked Debbie and Lou to email anything they have regarding the CIP to him and he will take a look at it.

7:05 Investment Policy:

The Board read the 2019 Investment Policy and decided to make no changes to it. Debbie will update the adopted date for the Board's signatures. The Board also discussed looking into purchasing a 6 month CD to see if we can get some interest revenue.

7:25 Generator Discussion:

Lou mentioned he had emailed the owner (David Wright) of Gemini Power to see if it would be possible to separate the cost for wiring from the installation of the generators and the transfer switches.

Shawn informed the Board that the Trustees of the Trust funds stated they would approve the expenditure of the wiring as long as it was wiring that would have to be done if new generators were **not** being installed because it would be considered Building Maintenance and eligible for the expense.

Lou mentioned Jeff Muhonen is interested in having access to the generator and may be willing to pitch in for the cost.

7:45 Old/New Business:

- Employee Appreciation will be held Tuesday, May 23rd from 11:30am-1:30pm. Debbie will send an email to everyone.

- The May 16th meeting will be cancelled.

- Debbie gave the Board some additional information on the Brownfield Grant for the old highway garage (attached). The SWRPC website has additional information.

Debbie informed the Board a local resident is interested in purchasing the adjacent property so he can have his office in Town.

- Debbie gave the Board a letter from the NH DOT stating they would like to sell .44 acres in front of Prime Roofing. Shawn made a motion to allow the DOT to sell the property to Prime Roofing. Jason seconded the motion and it passed unanimously.

- Jason asked if the Town was still paying for the fence around 283 Greenville Road. Debbie replied she called the fencing company when the new owner signed the deed.

- Jason also mentioned the fence is at the Civil War Memorial and will hopefully be installed before the parade.

- Debbie mentioned tax bills will be going out soon and will be due July 5th. There was some discussion regarding the new school payment being an additional \$200,000 per month and the tax rate won't reflect the new amount until the December tax bill.

- Jason suggested making each of the Capital Reserve funds a separate warrant article.

- Shawn stated he was talking to Ollie Niemi about a particular cemetery plot for a burial. Shawn will give the map received from Ollie to Jason (liaison to the Cemetery Trustees).

- Shawn said he received an email from Dee Daley regarding the paving schedule which has been forwarded to the Road Committee and will be discussed at the Road Committee meeting on May 23rd.

•Shawn mentioned he had received an email from Becky Doyle (NITV). One of the things she mentioned was why there are no employees working in the Town Office on Fridays. She suggested employees should be working 40 hours and Friday should be a catch up day where it's not open to the public. Shawn said he would like to look into the cost of adding 5 hours to full time employees in the office. Debbie responded it would only affect Jennifer because she is the only hourly full-time person. Everyone else is either part-time or salary. Her other question was inquiring if we had found anyone to help with the video recording of meetings. He responded he understood Susan Mallett was being trained and this would be outside the scope of her regular hours and wages for recording meetings should come out of the NITV revolving fund to which she responded NITV will not be paying anyone to run the equipment, it is strictly on a volunteer basis. Jason asked why they aren't using the money they are receiving quarterly from Comcast. Shawn agreed he was under the assumption they would use these funds for equipment and employees for expanding what is being covered by NITV.

At 8:57, Shawn made a motion to adjourn. Jason seconded the motion and it passed unanimously.

Respectfully submitted,

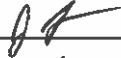
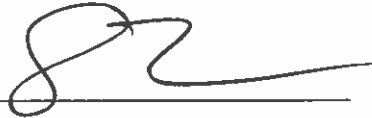
Debbie Deaton
Town Administrator

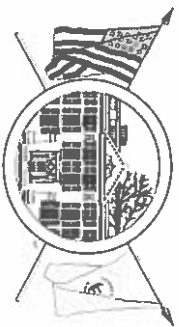
Minutes approved by BOARD OF SELECTMEN

Shawn Talbot, Chairman: _____

Jason Somero: _____

Lou Alvarez: _____





TOWN OF NEW IPSWICH

FAC: Q1CY23 Quarterly Budget Execution Review

Summary

Categories	Quantity
Budget Adjustments Required	3
Incorrect account alignments (Journal Entries)	6
Raising Awareness (potential high impact)	3
“Other” accounts required for further analysis	9

Budget Adjustments: Expenses that exceed the budgeted amount.
Incorrect alignment: Expenses charged to the wrong account
Raising awareness: High expense accounts that may need attention
Other accounts: Anomalies and discrepancies needing investigation



TOWN OF NEW IPSWICH

FAC: Q1CY23 Quarterly Budget Execution Review

Budget Adjustments Required

Department	Account	CY23 Budget	Q1CY23 Expense	Explanation
Board of Selectmen	Consulting Services	\$3,500.00	\$3,910.00	Accountant Training
Planning Board	Postage	\$50.00	\$287.81	Silver Scones
Zoning Board	Postage	\$10.00	\$384.38	Silver Scones

These are expenses that exceed the budgeted amount. Ultimately the BOS will need to consider transferring funds into these accounts.



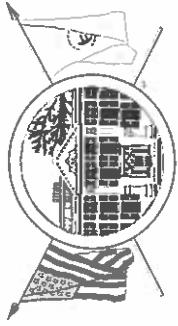
TOWN OF NEW IPSWICH

FAC: Q1CY23 Quarterly Budget Execution Review

Journal Entries Required (account alignment)

From	To	Amount	Description
01-4210.1-530	01-4210.1-531	\$ 25,152.00	Dispatch services
01-4197.3-560	01-4130.1-560	\$ 5,803.00	Southwest Planning
01-4196.1-484	01-4196.1-480	\$ 52,760.00	Prop/Liab Insurance incorrectly charged to Worker's Comp account
01-4194.1-621	01-4520.5-622	\$ 109.74	Pool Electric moved from GGB to Pool
01-4220.1-624	01-4220.1-901	\$ 566.02	Heat bill charged to wrong account (assumption)
01-4194.1-901	01-4312.1-901	\$ 2,395.97	Move to DPW Propane account

These are expenses that appeared in the incorrect account. Debbie will work with Mindy to perform the journal entries (actual transfer).



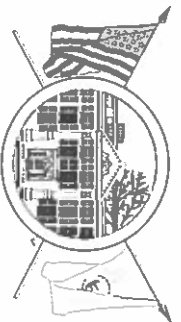
TOWN OF NEW IPSWICH

FAC: Q1CY23 Quarterly Budget Execution Review

Raising Awareness (potential high impact)

Department	Account	CY23 Budget	Q1CY23 Expense	Explanation
DPW	PART-TIME SUMMER / WINTER	\$6,315.13	\$6,017.90	2 FT Positions vacant; 1 more expected at EOM May.
DPW	OVERTIME	\$13,009.53	\$11,043.61	2 FT Positions vacant; 1 more expected at EOM May.
DPW	DPW SALT	\$100,000.00	\$82,477.75	Bulk purchase; salt bin is full. \$17,522 remaining as backup

- Vacant positions will result in increased part time and over time expenditures
- Salt: Should Nov-Dec winter be severe; must keep eye on this.



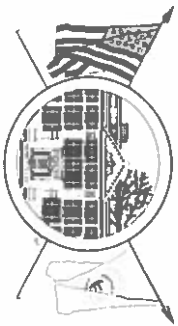
TOWN OF NEW IPSWICH

FAC: Q1CY23 Quarterly Budget Execution Review

Additional Expenses with Actions

Dept	Account	CY23 Budget	Q1CY23 Expense	Explanation / Action
BOS	COMMUNICATION Tel,Int,Cell	\$4,860.00	-\$135.02	Appears to be a credit
BOS	GENERAL SUPPLIES	\$4,000.00	\$2,221.69	Debbie to investigate
Police	MASS UNEMPLOYMENT TAX	\$0.00	-\$89.13	Debbie will work with Accountant
Police	POLICE RENTALS/LEASES	\$540.00	\$494.15	Need to check with accountant. Mike was unaware of rental fees/leases.
Police	GENERAL SUPPLIES	\$3,000.00	-\$634.99	Appears to be a credit
EM	DIRECTOR	\$5,000.00	\$2,000.00	Pulled from incorrect account
EM	FICA	\$310.00	\$124.00	Pulled from incorrect account
EM	MEDICARE	\$72.50	\$29.01	Pulled from incorrect account
TS	ELECTRICITY	\$1,758.00	-\$1,997.93	Appears to be a credit

These are “other” expenses that are being investigated but were not described earlier.

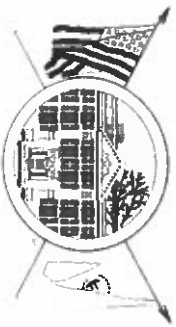


TOWN OF NEW IPSWICH

FAC: Lessons Learned

What worked well

- Finance Advisory Committee was diverse, capable, and professional.
- Department Heads understood the importance of budgeting.
- Department Heads accepted our role and welcomed our input.
- Board of Selectmen and Town Administrator participation excellent
- Department Heads understood the balance between requirements and budget.
- Weekly meetings and times worked well.
- Allotted time for completion of budgets seemed adequate.
- Budget tool was effective and captured all required detail.
- Preparations for the Deliberative Session proved effective.



TOWN OF NEW IPSWICH

FAC: Lessons Learned

Areas for Improvement

Scheduling and Milestones

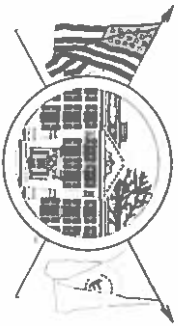
Timeframe: Development, Prioritization, BOS Review, Deliberations, Public Meeting, Town Voting

Owner: Board of Selectmen

Assistance from: Finance Advisory Committee

Specific actions:

- Plan for “All Dept Heads” meeting to kick off the budget process.
- Articulate importance, responsibilities, timelines, and specific asks to the Department Heads.
- Develop and share calendar/schedule with very specific milestones, and drop-dead dates.
- Include dates for each Department review.
- Note: Emphasize that last minute changes may not be accepted (exceptions only).



TOWN OF NEW IPSWICH

FAC: Lessons Learned

Areas for Improvement

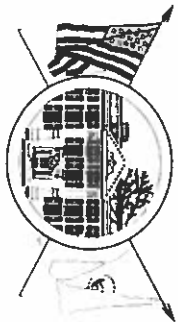
Budget Workbooks

Timeframe: Development, Prioritization, BOS Review

Owner: Finance Advisory Committee

Specific actions:

- Two budget spreadsheets were used: personnel and master. Recommend one.
- Use consistent account names and numbers across the Departments.
- Create definitions for every line-item.
- Separate wages and stipends for COLA adjustment.
- Create “year-end-salary” column which scales adjusted wages over 12 months.
- Revise Pivot table so that prior year actuals are not removed.



TOWN OF NEW IPSWICH

FAC: lessons Learned

Areas for Improvement

Process Improvement

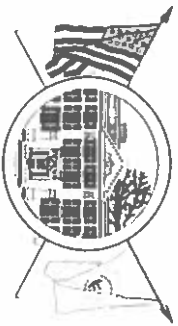
Timeframe: Development

Owner: Finance Advisory Committee

Assistance from: Board of Selectmen & Town Administrator

Specific actions:

- Eliminate request for 1x1 meeting minutes.
- Include Finance Advisory Committee in all Department Head, Board of Selectmen and/or Town Administrator budget discussions.
- Schedule all Department Heads for the presentation of their budgets to the Board of Selectmen.
- Limit changes/new requests at Deliberation and Public Meetings (stand in agreement).



TOWN OF NEW IPSWICH

FAC: Lessons Learned

Observations (not FAC scope)

Observation: Merit versus COLA

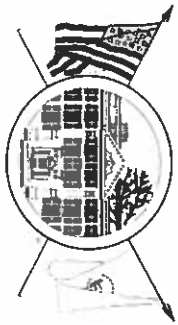
Timeframe: Throughout fiscal periods

Owner: Department Heads

Assistance from: Board of Selectmen

Specific actions:

- Establish personnel review policies and procedures.
- Evaluate individual performance against goals and objectives.
- Assign value of performance (e.g., meet, exceed, far exceed, etc.)
- Consider COLA (cost of living adjustment) and MERIT adjustments individually.



TOWN OF NEW IPSWICH

FAC: Lessons Learned

Observations (not FAC scope)

Observation: Contracts

Timeframe: Throughout fiscal periods

Owner: Board of Selectmen

Assistance from: Department Heads

Specific actions:

- Create clear written guidance/policies for contracts.
- Promote consistency, efficiency, effectiveness through all departments.
- Ensure quality and cost-effectiveness.
- Minimize legal risk to the Town.
- Decide whether contracting should be centralized or decentralized.

Be sure to address:

- How requests for contracts are initiated (“request for proposal” versus “single source”)
- How contracts are negotiated, and by whom.
- Authority for accepting contracts and pricing.
- Conflicts of interest.
- Contract terms such as fixed, length, etc.

TOWN OF NEW IPSWICH

661 Turnpike Rd New Ipswich NH 03071



2019 INVESTMENT POLICY

The purpose of this Investment Policy is to comply with RSA 41:9 VII. (Financial Duties). The Selectmen shall annually review and adopt an investment policy for the investment of public funds in conformance with applicable statutes and shall advise the Treasurer of such policies.

I. Scope: This Investment Policy applies to all the financial assets of the Town, not including those under the direction of the Trustees of the Trust Funds.

II. Objectives: The primary objectives, in priority order of investment activities shall be safety, liquidity, and yield.

1. Safety - Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
2. Liquidity - The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated.
3. Yield - The investment portfolio shall be designed with the objective of attaining a market rate of return. Return on investment is of secondary importance compared to the safety and liquidity objectives described above.

III. General Policy:

1. Authorized Depositories - All depository accounts of the Town must be held in the name of the Town. All income payable to the Town and all revenue received by the Town shall be forwarded to the Town Treasurer.
2. Authorized Investments - Assets of the Town may be invested in the following:
 - a. Obligations of the U.S. government such as U.S. Treasury securities maturing in less than one year and short-term obligations of the U.S. government agencies approved for investment purposes by the Treasurer of the State of New Hampshire.
 - b. Participation accounts established with the New Hampshire Public Deposit Investment Pool established pursuant to RSA 383:22.
 - c. Savings accounts in solvent banks in New Hampshire.
 - d. Certificates of deposit at banks incorporated under New Hampshire law after procuring three different rates of return maturing in less than one year.
 - e. Certificate of deposit at national banks located in New Hampshire procuring three different rates of return and maturing in less than one year.

IV. Standards of Care: Investments shall be made with judgment and care, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

1. Ethics and conflicts of interest - officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program or which could impair their ability to make impartial investment decisions. Investment officials shall disclose to the Selectmen any material financial interest in financial institutions that conduct business within the Town.
2. Diversification - It is the policy of the Town to diversify its investment portfolio. Investment of assets held in the common cash fund and any other investments shall be diversified to eliminate the risk of loss. Diversification strategies shall be determined and revised periodically by the Treasurer and reviewed by the Board of Selectmen or Town Administration.
3. Policy Review - Annually the Board of Selectmen will review and approve this policy for the investment of public funds in conformance with the provisions of the applicable statutes.
4. Delegation of Authority - Authority to manage the investment program is hereby delegated to the Town Treasurer and may involve the Board of Selectmen or the Town Administrator. No person may engage in an investment transaction except as provided under the terms of this policy.
5. Risk and Prudence - The Town recognizes all investments create risk. The Town Treasurer is expected to display prudence in the selection of investments in a way to minimize default risk.

V. Reporting:

- Define - Trustees of Trusts?*
1. Quarterly - The Treasurer shall prepare an investment report at least quarterly that summarizes the quarter's total investment return.
 2. Area of Concern - At any time during the quarter, the Treasurer should indicate areas of concern regarding the policy.

V. Safekeeping and Custody:

1. Investment officials shall be bonded to protect the public against possible embezzlement and malfeasance.

Approved by:

BOARD OF SELECTMEN


David S. Lage, Chairman


John Veaser


Bernard Hamill


Nancy Lashua, Treasurer

June 4, 2019

Adopted 06/04/2019 Board of Selectmen

Adopted 01/29/2013 MKnowlton, Town Administrator

Adopted 04/03/2012 MKnowlton, Town Administrator

Amended 08/23/2011 MKnowlton, Town Administrator

Amended 06/07/2010 MKnowlton, Town Administrator

Amended 06/16/2008 MKnowlton, Town Administrator

Amended 04/25/2007 MKnowlton, Town Administrator

Created 03/01/2006 MKnowlton, Town Administrator

Third Party Check Deposits

Diana Young <diana@threebearings.com>

Thu 5/27/2021 6:32 PM

To: scmtrader scmtrader <scmtrader@hotmail.com>; bobbittz@gmail.com <bobbittz@gmail.com>; Jim Coffey <jcoffey@townofnewipswich.org>

Hi All:

I know you have a check for deposit on its way. I should be able to work with Fidelity for a short time in getting these checks deposited, but I am not sure how long they will continue to grant exceptions. In the meantime, the following is a result of many emails and teleconferences this week:

Third -Party Checks for Deposit-Update 2021

Since we transferred your accounts to Fidelity from NATC in 2019, Fidelity, along with a host of other clearing & custody firms, has taken a stricter stance about third-party check deposits. This is partly a result of many regulatory mandates regarding fraud & anti-money laundering legislation. As a result, we will have a more difficult time requesting exceptions for checks completed using the instructions we provided initially (endorsing the back and providing a letter of instruction for checks over \$2,500).

To ensure smooth processing of future deposits, we strongly encourage you to reach out to Town Administrators, Selectmen, Cemetery and/or Library Trustees, School Districts and any other entity that provide checks for deposit to make checks payable as follows:

Acceptable Payee's:

"Fidelity Investments" (most preferable)

"National Financial Services"

"New Ipswich, NH, Common Trust Fund"

"New Ipswich, NH, Common Capital Reserve Fund"

"New Ipswich, NH, SAU 87 Common Capital Reserve Fund"

Please also note: if for some reason the third party is hesitant to have the check just say Fidelity Investments as the payee, they can always use, "Fidelity Investments FBO New Ipswich, NH, _____ name of fund)" (FBO stands for "For the Benefit Of").

We can certainly reach out to any entities on your behalf with your permission. Please just let us know, and we'll do the leg-work for you. Or, feel free to forward this along to the departments/persons responsible for making these changes. They can call us at 603-926-1775, or email diana@threebearings.com if they need further information.

Another option is to open a Trustee Checking account, and likely, you would not need to use checks at all. We can establish standing instructions to send distributions via ACH (also known as EFT-Electronic Funds Transaction), and even pull cash in as a deposit (a bank letter is required-please let us know if you need more information), all for no fee.

And finally, another option altogether...should the Town Office or School District have the flexibility to do so, we can provide instructions on how they can set up their bank account to send deposits electronically. We have two municipalities that are currently doing so through Citizens Bank. Please let me know if this may be of interest and we'll be happy to provide more information.

Also, as a reminder, I had sent an email about adding Jim Coffey to the Fidelity accounts on 3/24/21. Please let me know if you want me to resend the information.

Thank you!
Diana



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Commissioner

May 8, 2023

David Rodrigue, P.E.
Assistant Commissioner
Andre Briere
Deputy Commissioner

Debbie Deaton, Town Administrator
Town of New Ipswich
661 Turnpike Road
New Ipswich, NH 03071

Re: Sale of State-Owned Land in New Ipswich
New Ipswich, S-275(5), S-3459

Dear Ms. Deaton:

The New Hampshire Department of Transportation is proposing to sell 0.44 +/- of an acre of state-owned land located on the northerly side of NH Route 132 (Turnpike Road) in the Town of New Ipswich. The sale will be to the abutter, Prime Roofing Corp (Grantee). This parcel is identified as abutting Map 11, Lot 96, as depicted on the New Ipswich Tax Records.

The Department is proceeding with the sale of this parcel to the Grantee (pending Governor and Executive Council approval), at the contributory opinion of value of \$2,400. In addition to the appraised value, the Department will also assess an administrative fee of \$1,100. The sale will include the following conditions:

- The Grantee will be required to commission a Licensed Land Surveyor in New Hampshire, to survey and prepare a Perimeter Boundary Line plan depicting the limits of the right-of-way, and meeting the NH Code of Administrative Rules 503.09, to be submitted to the Department for review and approval. Upon the Department's approval, the Grantee must record the plan under RSA 478:1-a, in the Hillsborough County Registry of Deeds, from which the Department will prepare the conveyance deed.
- The Grantee shall be responsible for all local and state land use permits precedent to the closing.

Pursuant to RSA 4:39-c, the Department is inquiring with the Town of New Ipswich as to the Town's interest in the property, prior to it being offered to the Grantee. I request that the Town please contact me within thirty (30) days concerning their interest in the purchase of this state-owned property for the listed value.

If you have any questions, please feel free to contact either Sandra Newman, Property Agent for the Department, or myself, at the phone number listed below.

Sincerely,

Stephen G. LaBonte
Bureau Administrator

SGL/SJN/jl
Enclosures

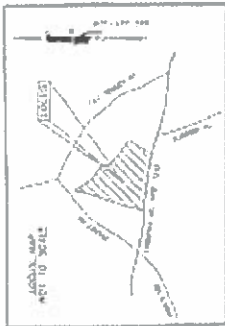
Certified Mail

cc: Adam Smith, Assistant Bureau Administrator

Bureau of Right of Way
JO Morton Building – Room 100
7 Hazen Drive PO Box 483
Concord, NH 03302-0483

Tel: (603)271-3222 Fax: (603)271-6915

Requested Area



NOTES

1. The owner of the site is to provide for the construction of the site.
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PLAN REQUIREMENTS

1. The owner is to provide for the construction of the site.
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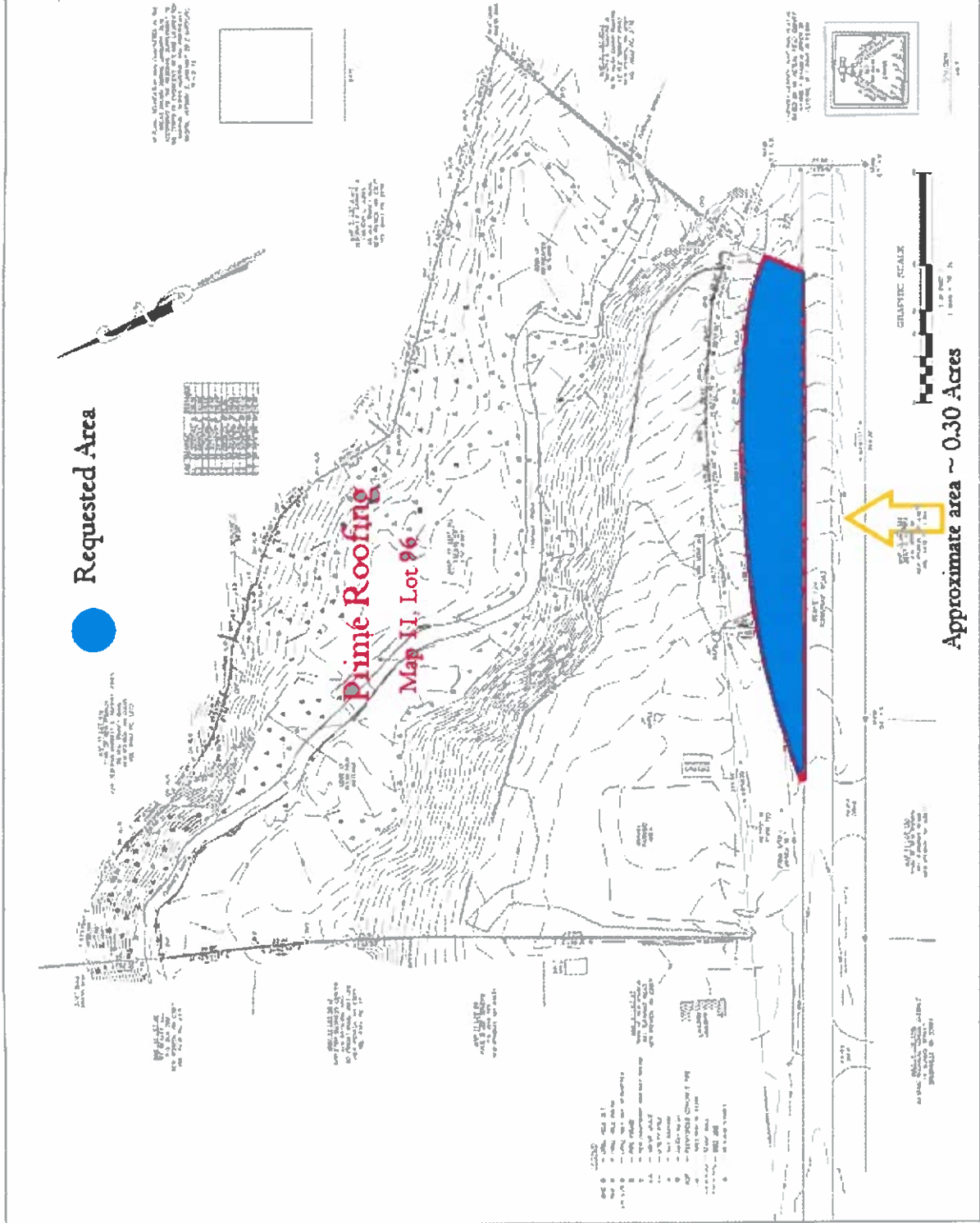
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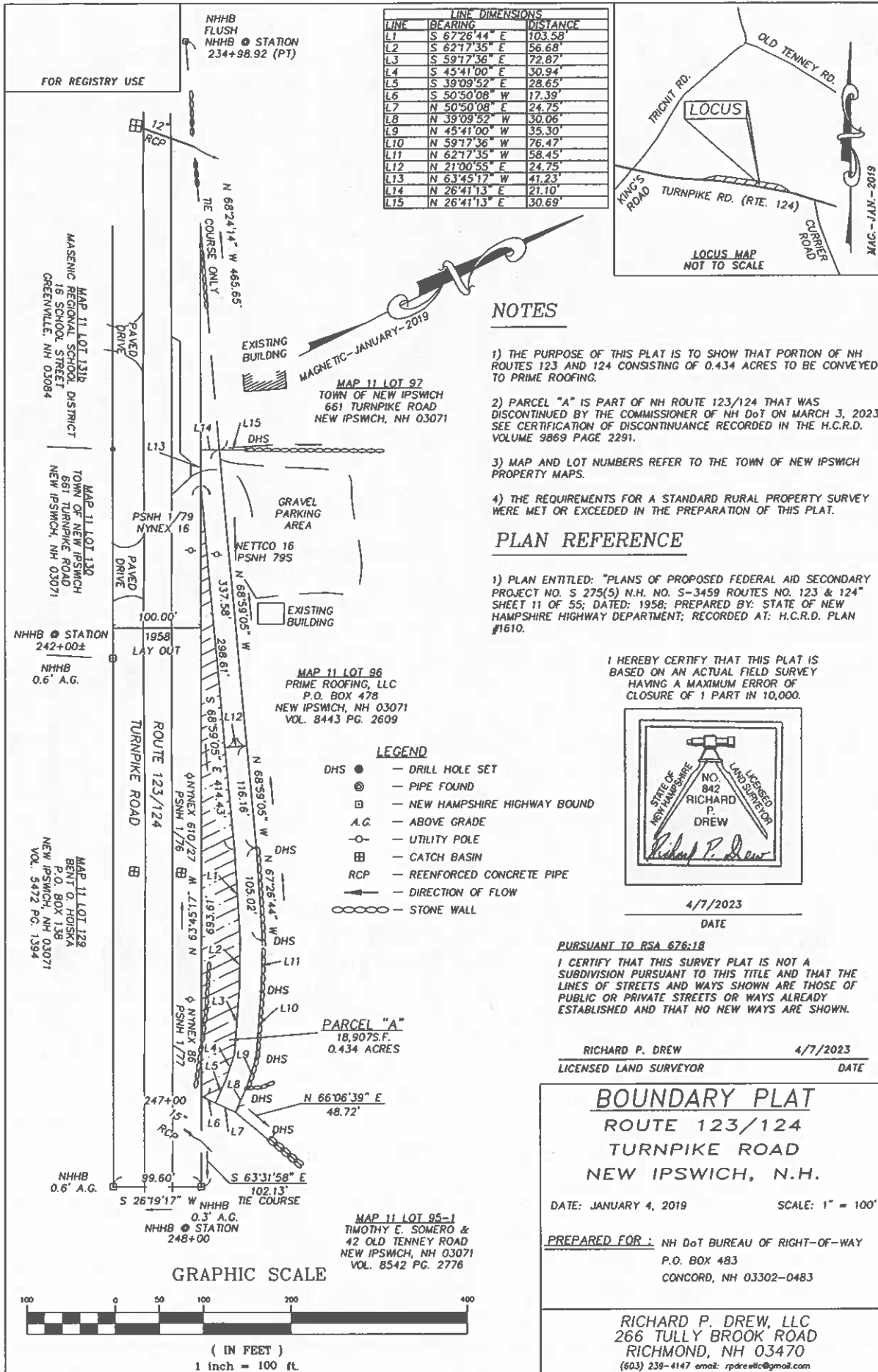
EXISTING CONDITIONS PLAT

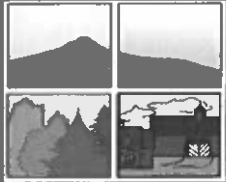
MAP 11 LOT 96
TURNPIKE ROAD
ROUTE 124
NEW IPSWICH, N.H.

APPROVED BY: [Signature]
DATE: 1/1/13

214 TAYLOR ROAD, NEW IPSWICH, N.H. 03049
TEL: 603/888-4100 FAX: 603/888-4101
WWW: WWW.12345.COM







SWRPC

37 Ashuelot Street
Keene, NH 03431
(603) 357-0557
www.swrpc.org

BROWNFIELDS ASSESSMENT PROGRAM

Since 2003, the Southwest Region Planning Commission has managed a Brownfields Assessment Program designed to help municipalities in southwestern New Hampshire understand real or perceived contamination of vacant or underutilized properties and to work towards the remediation and redevelopment of those properties. The program is managed by SWRPC staff with the help of a Brownfields Advisory Committee (BAC) and a pool of contracted environmental consultants. The latest grant awarded to SWRPC covering the period 2014-2017 was in the amount of \$400,000 towards brownfield assessment activities.

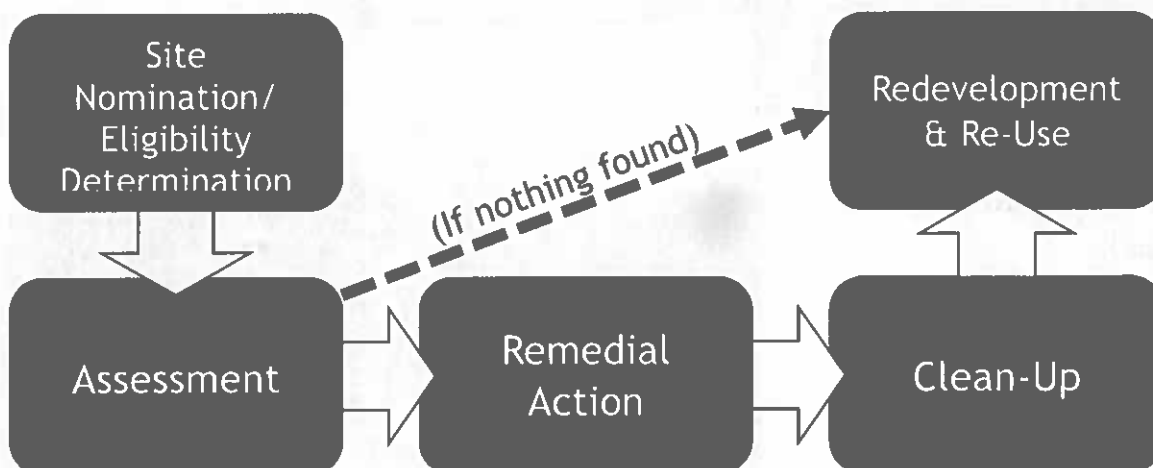
Why Participate?

Contaminated properties are a threat to public health & safety and the economic viability of the property and surrounding area. Participating in the Brownfields Program will make the property more viable for redevelopment. Participation can also offer liability protection for a prospective purchaser or an innocent landowner.

Program Goals

- Protect Environmental Quality
- Eliminate Public Health Threats
- Create & Retain Local Jobs
- Restore & Enhance Local Tax Revenue
- Protect Community Character: Redevelopment vs. New Development
- Support Historic Preservation

Program Overview



BROWNFIELDS ASSESSMENT PROGRAM

Program Outcomes

Since 2003, 24 sites have gone through the SWRPC Brownfields Assessment Program. This has led to the creation of:

- 5 Community facilities
- 76 Housing Units (Senior & family housing, high-end condos)
- 33 acres of Greenspace
- 155+ Jobs
- Increased tax revenue for 7 municipalities
- The removal of 1,127+ tons of contaminated soil at 9 sites.

How to Participate:

1. Contact SWRPC Brownfields staff.
2. Complete a Site Nomination Form.
3. Property owners must provide written consent for the Commission to proceed with assessment work.

AFTER



75 Railroad
St Keene,
NH

Brownfields Staff contact:
J.B. Mack
Principal Planner
jbmack@swrpc.org
(603) 357-0557



BEFORE



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Keene, NH 03431
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Brownfields Program

Local Government Liability Fact Sheet

Local governments can play an important role in facilitating the cleanup and redevelopment of properties contaminated by hazardous substances. In particular, by acquiring contaminated properties, local governments have an opportunity to evaluate and assess public safety needs and promote redevelopment projects that will protect and improve the health, environment, and economic well-being of their communities. However, concern about potential liability for the cleanup costs can be an impediment to redevelopment. A keystone of the SWRPC Brownfields Program is removing uncertainty of liability for local governments.

Local Government Involvement with Brownfields

Local governments are increasingly becoming involved in the acquisition, cleanup, reuse, and long-term protectiveness of contaminated properties. Common scenarios for government involvement include:

- Involuntarily acquiring property as a function of their governmental powers;
- Leasing of the property by the state or a municipality;
- Negotiating a purchase in a transaction similar to one negotiated between private parties;
- Responding to an emergency on contaminated property; or
- Implementing, monitoring, or enforcing institutional controls.

Local Government Liability

A local government may be found liable for contamination at a brownfields site if it:

- Currently owns or operates the property, or owned or operated the property at the time of disposal of hazardous substances;
- Arranged for hazardous substances to be disposed of or transported to the site for disposal; or
- Transported hazardous substances to the site.

Exemptions: There are two exemptions, the "Involuntary Acquisitions Exemption" and the "Emergency Response Exemption." These exemptions protect local governments who obtain property through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government entity involuntarily acquires title by virtue of its function as a sovereign, or who respond to an emergency created by a release or by a threat of release at a property not owned by the local government.

CERCLA (Superfund) Liability Protections

CERCLA contains several liability protections for private parties, states, and local governments that acquire property. These Superfund liability protections are:

- The bona fide prospective purchaser (BFPP) protection.
- The third party defense and innocent landowner protection.
- The contiguous property owner (CPO) protection.
- The enforcement bar when the local government complies with a state response program.

For further Resources: See the EPA State and Local Government Activities and Liability Protections webpage at:
<http://www2.epa.gov/enforcement/state-and-local-government-activities-and-liability-protections>

Local Government Liability Fact Sheet

Bona Fide Prospective Purchaser (BFPP) Protection

A local government, whose potential liability is based solely on the fact that it knowingly purchased a contaminated property and is, therefore, considered the current owner or operator, will not be liable under CERCLA if it achieves and maintains BFPP status.

To obtain BFPP status, a local government must:

1. Perform all appropriate inquiries (AAI) prior to purchase of the property;
2. Dispose of hazardous substances before acquiring the property;
3. Have "no affiliation" with a liable or potentially liable party.

To maintain BFPP status, a local government must:

1. Comply with land use restrictions and any other institutional controls;
2. Take "reasonable steps" to prevent the release of hazardous substances;
3. Provide full cooperation, assistance, and access;
4. Comply with information requests and administrative subpoenas; and
5. Provide legally required notices.

*All local governments that may be liable at a site for which they are applying for funding must demonstrate that they qualify for one of the CERCLA liability protections.

Third Party Defense and Innocent Landowner Protection

CERCLA provides a "third party" affirmative defense to CERCLA liability for any owner, including local governments, that can prove the contamination was caused solely by the act or omission of a third party whose act or omission did not occur "in connection with a contractual relationship." An entity asserting the CERCLA defense must show that:

- It exercised due care with respect to the contamination;
- It took precautions against foreseeable acts or omissions, and the consequences thereof by the third party that caused the contamination.

Innocent Landowner Protection is given to purchasers who acquire property without knowledge of contamination, governments "which acquired the facility by escheat, or through any other involuntary transfers or acquisition, or through the exercise of eminent domain authority by purchase or condemnation," and inheritors of contaminated property.

The Enforcement Bar

CERCLA protects local governments and other parties from EPA enforcement, subject to specific exceptions, when they comply with a state response program and are conducting or have completed a cleanup of an eligible response site. This protection is known as the "enforcement bar." EPA has entered into non-binding Memoranda of Agreement with over 20 states, including New Hampshire, which clarify EPA enforcement intentions under CERCLA at sites addressed in compliance with state response programs. It is important to note that while this protection may prohibit EPA from taking an enforcement action; it does not preclude third party litigation.