

**BOARD OF SELECTMEN MEETING  
MINUTES DECEMBER 15, 2014  
APPROVED**

**Present:** Josh A. Degen, Chair; Anna Eliot, Vice Chair; Stuart M. Schulman, Clerk; Peter S. Cunningham, Member; John G. Petropoulos, Member

**Also Present:** Mark W. Haddad, Town Manager; Dawn Dunbar, Executive Assistant; Brain Maser, Town Counsel, Kopelman & Paige

Mr. Degen called the meeting to order at 7:00pm.

Mr. Haddad said that he met with the Chair of the Planning Board, Board of Health, Zoning Board of Appeals (ZBA), Mr. Degen (via phone), Mr. Grossman, Ms. Collette and Mr. Schulman the week before to discuss the litigation against the ZBA. He said that he was impossible to rescind the ZBA's decision and it was up to the Planning Board to decide how to move forward. Mr. Haddad said that he asked Ms. Collette to contact their counsel for an estimate of what this litigation was going to cost.

- A conference with land court                      \$2-3K
- Mediation    \$3-4K
- Settlement docs based on mediation            \$5-7K
- Summary Judgment                                 \$15-20K
- Trial    \$35-45K

Mr. Haddad said that the Planning Board would be discussing this on Thursday night in Executive Session. Mr. Degen asked what the cost was thus far. Mr. Haddad said that the first bill was for a total of \$4,948.88. Mr. Haddad said that he had that bill that night and asked the Board to sign off on it. Mr. Haddad said that there was no way to overturn the decision unless ordered to do so by the judge. Mr. Cunningham asked what the alternatives were adding that they couldn't afford this. Mr. Degen said that the ZBA Chair said they were steadfast in their decision adding that the Planning Board had made a good case. He said that mediation might work but would still be costly. He said that he would like to wait until the Planning Board meets on Thursday and discuss at their next meeting. He suggested limiting them to \$5K. Mr. Haddad said that they should not incur any additional bills until January 14<sup>th</sup> when they meet with the judge. Ms. Eliot said that counsel for the Planning Board should not charge more than what they pay Town Counsel. Mr. Degen said that they would wait to hear from the Planning Board but had no other choice than to pay this bill. Mr. Haddad suggested that someone from the Board attend the Planning Board meeting.

*Mr. Schulman moved to approve the bill as presented and added that they not allocate any additional money until after they hear from the Planning Board. Mr. Petropoulos seconded the motion. The motion carried unanimously.*

Mr. Haddad said that they had received a request from Ms. Sherrill Gould, owner of parcel 110-19-0 on Mill Street to vacate the foreclosure decree. He said that the property owner has the right to get their property back if they approached the Town within a year or petitioned the courts. The amount to redeem and vacate the foreclosure was \$19,657.21. Ms. Gould said that she had been working with DEP on cleaning up the property and the contaminants on it. She said that she had been on a payment plan with the Tax Collector but it got ahead of her. Mr. Mike Hartnett said the process started in 2009 and Ms. Gould had been given extensions over the years. He said that this amount would cover the Town in full. He said that once the funds clear, a new deed would be processed and put back on the tax role. Ms. Gould said she was hoping to pay this by the end of the week. Mr. Degen agreed to extend this to December 31<sup>st</sup>.

*Mr. Cunningham moved that the Board of Selectmen petition from Sherrill Gould, former owner of Mill Street, Assessors Map: 100-19-0, to vacate the foreclosure decree on the property, upon full payment in good funds of all amounts due. Ms. Eliot seconded the motion. The motion carried unanimously.*

## OPEN MEETING LAW COMPLAINT

Mr. Degen said that a week ago Mr. Petropoulos had contacted him letting Mr. Degen know that he had been in touch with the attorney of the day about a potential Open Meeting Law complaint from back in March with the annual performance review of the Town Manager. Mr. Degen said that he contacted Town Clerk, Mr. Bouchard and set up a meeting between himself, Mr. Petropoulos at which time they agreed they should contact Town Counsel after the meeting. Mr. Degen said that they met the next Friday in the morning and were in agreement with the Assistant Attorney General that there was a violation of the Open Meeting Law. He said that an Open Meeting Law Complaint was filed by Mr. Art Campbell which didn't even allow the Board time to discuss this. He said that Mr. Petropoulos choose to share it with Mr. Campbell adding they didn't need to be told by the media that they violated the Open Meeting Law. He asked Mr. Petropoulos to take that under advisement in the future. Mr. Degen read the Open Meeting Law complaint filed by Mr. Campbell. (see attached)

Mr. Degen said that the situation, as he saw it was that any elected body whose employees are subordinate to that Board should have their reviews done in conjunction with the Open Meeting Law. He said that the way in which he understood the process the way it has occurred was that self-evaluation document was sent to the Town Manager. He said that the Chair distributes that to the individual members of the Board. He said that what should be done was that document should be handed out during a posted meeting of the Board. Members were not to discuss it with each other and all evaluations were to be handed back to the Chair. Once all evaluations were received, a summary was to be done by the Chair and placed on an agenda for discussion. Mr. Maser agreed with everything Mr. Degen said. Mr. Degen said that the easiest remedy was to discuss how this violation occurred.

Mr. Degen said that Mr. Petropoulos asked Mr. Cunningham if it was okay to share others comments. Mr. Degen told Mr. Cunningham it was okay to share his whereas Mr. Schulman and Ms. Eliot said no. Mr. Cunningham shared Mr. Degen's comments with Mr. Petropoulos which should not have occurred.

Mr. Cunningham said that he was confused about the timeline but was not surprised he was in named in the complaint. Mr. Cunningham said that they just learned on September 17<sup>th</sup> that serial communication was not okay and was surprised that this was being brought up now. Mr. Cunningham explained that this had been the practice of the Board since he had been on the Board and even before the Charter. He said that they needed to rectify this and come up with a process moving forward. Mr. Cunningham said that he had an issue with one of Mr. Campbell's suggested remedies which was an article at Town Meeting. He said that this was pointless adding that they would comply with the law and didn't need to bring it to Town Meeting. Mr. Petropoulos was asked by Mr. Degen if he had any comments. Mr. Petropoulos said he did not at that time. Ms. Eliot said that they were not trying to do something underhanded here. She said that it would have been common courtesy to allow the Board to discuss this before bringing it to the media. Ms. Eliot said that some were not as courteous as others.

Mr. Schulman said that at the conclusion of a pipeline coalition meeting the week before he took a few minutes to ask the Town Manager/Administrators and Board of Selectmen how they conducted their reviews. He said of the five (5) he asked one (1) never gave the Town Manager a review (he was a long time Town Manager), two (2) set the goals and objectives for the Town Manager and provided him with a copy of the minutes and the other two (2) did them the way they did them. He said he was happy to fix this adding it was not a well understood portion of the Open Meeting Law.

Mr. Degen asked Mr. Maser what some of the actions the Board could take moving forward. Mr. Maser said that the discussion would have to happen in an open meeting. He said that in 2009 a document could be drafted in Executive Session but in 2011 that all changed. The Attorney General started interpreting the law differently whereas the document should be released to the public. Mr. Maser said that comments should be provided to the Chair in a duly posted meeting. Mr. Degen asked what they do with the evaluation forms. Mr. Maser said that the individual forms were subject to disclosure if discussed during a meeting. He said that because Mr. Cunningham's comments were shared with Mr. Petropoulos, at a minimum those two (2) should be released that evening. Mr.

Maser said his recommendation would be to release the individual comments. Mr. Degen asked about the others, Mr. Schulman's and Ms. Eliot's. Mr. Maser said that they should make the summary available to the public adding that they should also take a formal vote retroactive to the past summaries. Mr. Degen said that should vote to approve all past summaries and release those so as to not open themselves up to other potential violations. Mr. Campbell said that it was being assumed that this complaint had gone to the Attorney General's office already when in fact it had not. Mr. Cunningham said that he would have appreciated it if Mr. Petropoulos had notified the entire Board of this potential violation prior to going to the press. He said again that the whole notion of a serial violation was covered in Open Meeting Law training on September 17<sup>th</sup> and found it surprising that this had not been flagged at that time. Mr. Campbell said that the potential violation had been flagged to him at the Open Meeting Law training by a few people who were afraid of retribution. He said that the Board had from September 17<sup>th</sup> to speak up about this known violation. Mr. Cunningham said that the Open Meeting Law was not always black and white adding that Mr. Campbell has not hesitated to bring forward complaints in the past. He said in any case, they needed to make this right. Mr. Schulman said that he was not going to sit there and be lectured to. He told Mr. Campbell that it was absurd, demeaning and insulting. He said that the training left a lot to be desired adding that there were a lot of gray areas. Mr. Schulman said that all of Mr. Haddad's reviews had been good and was baffled by this.

Mr. Degen said they needed to comply with the changes in the Open Meeting Law instituted in 2010. He pointed out that while they were taking all the heat, Mr. Petropoulos was sitting quietly. Mr. Petropoulos said that Mr. Campbell had brought this to his attention. Mr. Cunningham pointed out that Mr. Campbell told him Mr. Petropoulos talked to him. Mr. Petropoulos said that he found out on the same chat line they all read. He said that he at first didn't think they violated the Open Meeting Law. He said that in speaking with Mr. Campbell, he told him he would get an opinion from the Attorney General's office. Mr. Petropoulos said he told Mr. Campbell to let the Board handle it. He thought it was important for the Board to hear that. Mr. Cunningham thought it was a little disingenuous adding Mr. Petropoulos had time to bring it to the Board first.

Ms. Eliot suggested the process moving forward should be:

1. Evaluation document comes from HR office
2. Mr. Haddad completes self-evaluation and gives it to the Chair; Chair then gives it to the other members.
3. Members provide comments and forward them to the Chair
4. Chair takes comments and completes a summary

Mr. Maser agreed adding that the last step would be that the summary is discussed in open meeting, approved and then released.

*Mr. Schulman moved to approve and release the 2013 evaluation of the Town Manager. Mr. Cunningham seconded the motion. The motion carried unanimously.*

Mr. Haddad read into the record a press release from the Office of the Town Manager dated December 15, 2014. (see attached) He said that he drafted this based on information obtained from Mr. Degen, Town Counsel, Mr. Maser and Town Clerk, Mr. Bouchard. Mr. Haddad's press release said that he was issuing this to address the negative review of his performance by Selectmen John Petropoulos. He went on to say that he believed "this is important given the negative attention he (Mr. Petropoulos) has brought on the position of Town Manager over the past several months despite the fact that the Town is in a strong financial position and we continue to address the very important issues facing Groton in a professional and positive manner." Mr. Haddad said that "in an effort to get his (Mr. Petropoulos's) negative comments released to the public, Mr. Petropoulos contacted the Office of the Attorney General and informed a local blogger of a potential Open Meeting Law violation in which he was an active participant." Mr. Haddad said that his reviews appears to me to be a case of slinging as much mud as possible against a well to see what sticks...I have received outstanding performance reviews and have constantly been rated as exceeding the requirements of the job. I am releasing all of my previous reviews in their entirety and they are on

file on the Office of the Town Clerk for public review.” Mr. Haddad went on to say “Notwithstanding his constant negative attacks of my performance, I will continue to work as hard as possible for the Board of Selectmen and residents and taxpayers of this Town.”

Mr. Degen said they should vote to accept the reviews and release them back through the initial 6-month review of the Town Manager.

*Mr. Schulman moved to accept and release all reviews of the Town Manager going back through the initial 6 month review. Mr. Cunningham seconded the motion. The motion carried unanimously.*

Mr. Degen said that he appreciated Mr. Haddad’s position adding they had already accepted the Town Manager’s reviews and were available in the Town Clerk’s office. Mr. Petropoulos said that he didn’t want to speak about individual issues but was happy to discuss his comments with anyone that wanted to. Ms. Rena Swezey said that she wanted to point out that amount of town employees who were present that night. She said that in speaking for herself she would give Mr. Haddad a very high rating. She said the rapport he had with the employees was very good adding that none of the Selectmen had asked any of the employees to see what the relationship with the Town Manager was like. She said that the employees were behind Mr. Haddad 100%. Mr. Petropoulos said that he referenced the strong employee relationships in his review.

Mr. Maser said that any emails that exist should also be voted on by the Board to be released. Mr. Maser said that he had been directed by Mr. Degen to obtain all emails dating back to the spring of 2013. Mr. Haddad said that he would like a copy of all those emails.

*Mr. Schulman moved to release all the emails. Mr. Cunningham seconded the motion. The motion carried unanimously.*

Mr. Maser said that the Board should authorize Town Counsel to respond to Mr. Campbell’s complaint in writing. Mr. Degen asked Mr. Campbell if he was satisfied. Mr. Campbell said that they didn’t address the third issue of a citizen’s petition at the Spring Town Meeting mandating that the Town Manager reviews take place in open session and in compliance with the Open Meeting Law. Mr. Degen said that he couldn’t support that request. Mr. Cunningham said that they were required by law to abide by the laws and was in essence what he was asking happen here. Mr. Campbell said that they could pass on it adding that as long as in the future summaries will be posted. Mr. Campbell said that he thought the Board was in compliance with actions #1 and #2 and would withdraw #3. (see attached)

Mr. Degen asked Mr. Maser to provide the Board with a proposed policy moving forward and asked that it be done prior to the start of the next review process.

Mr. Cunningham said that the Open Meeting Law was a complex law. He said that attorney Lauren Goldberg, who conducted the training in September, said at that training that they were not there to play the got you game adding that Mr. Petropoulos had been redirected at that training because of that. He said that many felt as though they were walking on eggshells adding that no one wanted to be the topic of a local blog. He said that this sets a discouraging tone and people were nervous to even engage in colorful commentary as what had occurred through emails of the Pipeline Committee as an example. He said that in this example no opinions had been shared. He said that he was really concerned that because a lot of time had been spent talking about Open Meeting Law people would be discouraged from serving on committees.

Mr. Petropoulos said that he had originally brought this potential violation forward to the Chair. Mr. Degen said that he had spent 20 hours rectifying this when it could have taken all of five (5) minutes. He told Mr. Petropoulos that he exasperated this and the Board and asked that in the future this be brought to the Board and not the press.

**OTHER BUSINESS**

1. Mr. Degen said that he had been contacted by Ms. Eliot to reconsider a vote taken by the Board at their last meeting having to do with people recording meeting. He said that they may have been out of place with that vote.

*Mr. Degen moved to withdraw a vote previously taken by the Board that anyone who wanted to record portions of the meeting provides notice to the Chair publicly. Mr. Schulman seconded the motion. The motion carried unanimously.*

2. Mr. Petropoulos said that he had been asked by a member of the public who was thinking of volunteering for the Charter Review Committee. They wanted to know how many meetings, hours, etc. it would take. He said he put together an outline and handed it out to the Board. Mr. Degen said that the review committee would start at the conclusion of the Spring Town Meeting adding that they wouldn't be appointing the committee for a few months. Mr. Cunningham said he thought it was premature to put this out adding that it would be a significant time commitment. He said it would be misleading to put these numbers out there as no one will know until the committee organizes and meets.

**LIAISON REPORTS**

Mr. Cunningham said that he and Mr. Haddad concluded the interviews for the Municipal Building Committee for Prescott School. He said that based on the number of qualified applicants, they may need to expand the committee from seven (7) to nine (9) members. He said the plan was to bring the applicants forward for ratification at the next meeting.

*Mr. Cunningham moved to adjourn at 8:50pm. Mr. Schulman seconded the motion. The motion carried unanimously.*

Approved: \_\_\_\_\_

Stuart Schulman, Clerk

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respectfully *submitted*,  
Dawn Dunbar, Executive Assistant

Date Approved: 2/10/15