

**BOARD OF SELECTMEN MEETING
MINUTES DECEMBER 4, 2017
APPROVED**

BOS Members Present: Joshua A. Degen, Chair; Barry A. Pease, Vice Chair; Alison S. Manugian, Clerk; Rebecca H. Pine, Member; John G. Petropoulos

Also Present: Mark W. Haddad, Town Manager; Dawn Dunbar, Executive Assistant

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

PUBLIC COMMENT PERIOD

Ms. Ellen Baxendale asked about the second handicap parking spot at the rear of the building. Mr. Haddad said he would see that the sign gets placed back up.

TOWN MANAGER'S REPORT

1. Mr. Haddad asked the Board to consider ratifying his appointment of Carol Ann Sutton to the Commission on Accessibility to fill a vacancy left by James Buckholder.

Mr. Pease moved to ratify the appointment with a term end date of June 30, 2018. Ms. Manugian seconded the motion. The motion carried unanimously.

2. Mr. Haddad said that they had received a complaint from Alan Hoch complaining against the Board going into executive session to discuss Indian Hill. Mr. Haddad reviewed the process outlined by the Attorney General's office for reviewing an Open Meeting Law (OML) complaint. Mr. Haddad read Mr. Hoch's complaint into the record.

The history of this intentional violation of the Open Meeting Law is as follows. On October 23, 2017, Town Manager Mark Haddad asked the Groton Board of Selectmen to enter into Executive Session per M.G.L. c. 30A, Sec21(a)(6) "to consider the purchase, exchange, lease of real estate..." The reason given was a pretext. The Board voted to go into Executive Session not to discuss the value of real estate but to discuss in secret the request of an entity named Indian Hill Music Center, Inc., that building permit and inspection fees be capped at the sum of \$400,000, which on information and belief is approx. \$300,000-\$350,000 less than the 1.2% building permit fee assessed to commercial property projects in Groton per the Town of Groton Land Dept. Fee Schedule, at line 26, which requires a permit fee of 1.2% as noted above. The Board discussed Indian Hill's position that it wanted fees capped at \$400,000, for fees and inspections. In other words, Indian Hill wanted an all-inclusive fee. Indian Hill's position was that it didn't know the project cost and that even if it did know the project cost, it would decline to give the number because project cost was deemed to be "intellectual Property". The development in question is a massive music school and a 3,000 seat music performance center. On information and belief, the project cost is somewhere between \$50m and \$70m. After discussion, the Board voted 4-1 to reduce Indian Hill's permit fee and issue a building permit for an all-inclusive fee of \$400,000, including all inspections. Indian Hill paid \$340,000 by check after the vote, which included a deduction of \$60,000 for a concrete/foundation permit fee previously paid. The Board illegally went into Executive Session. The Board's vote is illegal and void.

Mr. Haddad said that Mr. Hoch's contention was that the board violated the OML by going into Executive Session to discuss a building permit fee. Mr. Haddad said that upon receipt of the complaint, he forwarded it to the Chair and Town Counsel at the Chair's request. Mr. Degen suggested that before they looked at Mr. Hoch's proposed action they should discuss whether they violated the OML. Mr. Haddad said that there was one action item the Board could not do anything about adding that the building permit has been issued and was done so by the Building Commissioner.

Mr. Degen said they had received an opinion from Town Counsel and read Attorney Doneski's response into the record:

Mark,

I have reviewed the November 22, 2017 Open Meeting Law complaint submitted by Alan Hoch regarding the October 23, 2017 executive session meeting of the Board of Selectmen and the matter of the building permit fee for the Indian Hill Music facility to be constructed at 122 Old Ayer Road. This will confirm my previous opinion that it was permissible for the Board to consider that matter in executive session under clause 6 of section 21(a)(1) of G.L. c. 30A.

Clause 6 authorizes an executive session meeting of a public body as follows: "To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body." In its capacity as chief executive officer of the Town, the Board of Selectmen elected to take up the request of Indian Hill Music to set the building permit fee for the large development approved for the Old Ayer Road site (site plan approval granted by the Planning Board in January of 2017). As a building permit fee is based on the estimated cost, or value, of the buildings and improvements to be constructed, and as the matter involved additional infrastructure improvements to be completed for the Town's benefit, I advised that the Board's consideration of the fee amount – which would necessarily entail discussion of the value of the facility to be constructed – would relate to the value of real property and would implicate a negotiating position of the Board of Selectmen and could therefore take place in executive session, pursuant to clause 6.

While there was an executive session meeting on October 23, there was also an open session on that same evening (pursuant to a posted meeting notice) at which the Board of Selectmen formally voted to set the building permit fee. It was that vote, in open session, which constituted the official action with respect to the building permit fee. You have also informed me that the Board of Selectmen discussed the building permit fee at a posted meeting on November 20, 2017.

For the reasons stated above, it remains my opinion that the executive session of October 23, 2017 was permissible under the Open Meeting Law.

Please contact me if you have any further questions on this matter.

David J. Doneski, Esq.

Ms. Manugian said she thought it was pretty clear that this was a topic and reason for an executive session. Ms. Pine reminded the Board that they received an opinion from Town Counsel before entering into executive session for the first time. She said that this had created a lot of turmoil within their community and said that although it may it have been legal she was less certain now that deliberating in executive session was wise. She said that when she received the complaint, she asked the Town Manager to seek an opinion from the Attorney General and was told (by the Attorney General's Office) the Board needed to have a discussion about it in open session before they could obtain an opinion from the Attorney General. She said she thought it was in their best interest to get clarity on what had transpired to get beyond the turmoil.

7:15pm - Mr. Haddad read the public hearing notice for Tax Classification Hearing into the record.

Mr. Pease moved to open the public hearing on the tax classification. Ms. Manugian seconded the motion. The motion carried unanimously.

Mr. Haddad said that the Board of Assessors was not ready and asked the Board to continue the hearing to next Monday, December 11th at 7:15pm.

Mr. Pease moved to continue the public hearing to Monday, December 11th at 7:15pm. Ms. Pine seconded the motion. The motion carried unanimously.

Mr. Petropoulos said he didn't believe they had talked about purchase, lease, exchange, or value at any of those meetings except maybe the first meeting. He said that at the meeting on the 17th they talked about a fee and not value. Mr. Pease said he had voted against going into the executive session adding it may have been legal but was not appropriate. He said that he chaired one of those meetings, had expressed his opinion on the matter of entering executive session but didn't feel it was appropriate as chair to go against 80% of the board and allowed it to continue. Mr. Degen said that the initial meeting on October 10th was certainly within the bounds of executive session adding they had discussed the value of Indian Hill. He said that value was the beginning points of

negotiations. Mr. Degen said that on their meeting of October 23rd, they had discussed what a fee reduction might look like and continued to discuss what values to the Town would be. Mr. Degen said that the Selectmen had the ability to reduce or waive a building permit fee and still thought this discussion fell under the allowable clause under MGL. He said they also talked about the value of Economic Development the project would bring as well as the value of the redesign of the intersection of Old Ayer Road and Boston Road. Mr. Degen said he agreed with Town Counsel's opinion and agreed with Ms. Pine and Mr. Pease to a certain degree adding this was something he had never done as a Selectmen. He said that they had learned some valuable lessons as far as transparency went but did not believe they broke or violated the OML. Mr. Petropoulos said that the first executive session had been called by Ms. Pine and himself to discuss a permit cost they were trying to get to. He said he thought they stopped talking about value half way through that executive session. He said they were only allowed to talk about the value of real estate. Mr. Degen said that they did not talk about value at the meeting on October 23rd. Ms. Pine said that she recalled Mr. Pease talking about a value of \$180K if Indian Hill didn't build the concert hall.

Mr. Alan Hoch of Peabody Street said he was the one who had filed the OML complaint adding it was apparent to him as a citizen and lawyer that the Board violated the OML by going into executive session. Mr. Hoch said that the statute was designed to protect the negotiating position of the Town adding that none of that went on. Mr. Hoch argued that Town Counsel's opinion was saying that anyone could request an executive session to discuss a building permit fee. He said that the opinion did not apply to the facts of this case. Mr. Hoch said that there was nothing contained in the October 23rd meeting minutes that said anything about buying or selling real estate. Mr. Hoch said he vehemently disagreed with Town Counsel's opinion and did not agree with Mr. Haddad's statement that the building permit fee could not be voided if it was discussed in an illegal meeting. He said that the Board's illegal conduct could be voided and the authority given to the Building Commissioner is similarly void the permit and fee. Mr. Hoch said that this was all highly unfortunate and thought the Board had no right to consider in secret the request of Indian hill to avoid a payment like all other landowners. Mr. Hoch said they could have been looking at a potential million dollars in permit fees and should have been discussed in the open for the tax payers to decide. Mr. Hoch said that it was his intention at this point to proceed with an appeal to the Attorney General and said he would do everything in his power to see that the Attorney General undue what had been done.

7:30pm – Mr. Haddad read the public hearing notice for the Blood Farm Earth Removal Permit into the record.

Mr. Pease moved to open the public hearing. Ms. Pine seconded the motion. The motion carried unanimously.

Mr. Degen asked for a motion to suspend the hearing until after the end of the current discussion. Ms. Manugian made the motion. Mr. Pease seconded the motion. The motion carried unanimously.

Mr. Haddad said that the Board did not vote on the fee in executive session adding that vote had been taken in the open session portion of the meeting on October 23rd. He said that had been addressed in Town Counsel's opinion. Mr. Degen suggested for the sake of full transparency that they don't take action one way or another and instead forward under their own accord the AG's office for an opinion. He thought that might be the cleanest way to handle this. Ms. Pine said she agreed adding as she stated earlier, she had requested that already. Mr. Haddad said that the Board's action could be to vote that they refer this to the AG.

Mr. Pease asked Mr. Petropoulos if he felt that bringing the original request for an executive session ES was appropriate. Mr. Petropoulos said that it was arguably appropriate but that there was also an argument that it was a real stretch. He said he could not in good faith say they should have continued it and apologized to the public for such. Ms. Manugian said she agreed with Mr. Hoch in that the whole situation was a difficult one. She said it was somewhat easy in hindsight to look at the minutes and say there wasn't a discussion on value when there could have been. She said it made sense for them to push this forward to the AG. She said a potential remedy might be to release the minutes which they had already done adding she still thought it was appropriate how they acted but that it was not clear cut. Mr. Pease said that he would not have done and said anything different if this was discussed in open session.

Mr. Hoch said that the minutes of October 10th referred to a spreadsheet from Ms. Manugian and said they were not attached to the minutes. He asked that they be released immediately. Mr. Hoch said that for Mr. Pease to say he would not have said anything differently was a disappointment. He said that people that come out and express their opinions adding that regardless if they were right, and regardless of how persuasive they might be, he said Mr. Pease stated he would have voted how he voted. Mr. Hoch said that the purpose of a public meeting was for the public to be able to express their opinions and provide input to their public officials. He said that their input would have resulted in no change in Mr. Pease's views or votes which he found disappointing. He said he hoped Mr. Pease would agree that was a misstatement on his part. Mr. Pease said Mr. Hoch was assuming he took no public input which was absolutely, farcically wrong. He said it was not his duty to release any of that information adding he did reach out to the public and spoke to many people who were afraid of what would happen to this project if the negotiations failed. He said he reached the difficult decision he did based on the public's input adding he took offense to Mr. Hoch's comment. Mr. Petropoulos said he took Mr. Hoch's point adding they gave a tax subsidy to Indian Hill. He said it was a TIF of a different kind. He said that they asked Town Meeting for a TIF approval the last time. He said he thought they would have had a different discussion if this was done in public. Mr. Degen said they did meet in public session to vote on the building permit fee. He said he knew it was non-televised and in the cafeteria at the Middle School but it was done. Mr. Degen said that Mr. Pease's point was very valid. He said that he too spoke to a lot of individuals. Mr. Degen said that they could talk and spin this all they wanted but that they had a complaint and could remedy it by forwarding it to the AG's office.

Mr. Degen asked for a motion that they forward all pertinent and relevant information, including Mr. Hoch's complaint, to the AG's office for interpretation on whether a violation occurred or not.

Ms. Manugian made the motion. Ms. Pine seconded the motion.

Mr. Petropoulos said he thought they had the ability to take a position on the complaint that night and said he would end up voting no on this. Mr. Degen said he didn't believe they violated the OML and would like to see a higher power provide them with an opinion. Ms. Pine said she thought they would open themselves up to more legal issues if they voted on and tried to remedy this if they thought they violated the OML. She said they needed an opinion from the AG.

Mr. Degen amended the motion made by Ms. Manugian to say that if the AG found that they violated the OML, to suggest which of the remedies, if any, could support action taken by the Board. Mr. Petropoulos seconded the amendment.

Mr. Pease asked if they could ask for an extension to get some clarification. Mr. Haddad said that they would have to AG to request an extension adding that by sending this letter and all information to the AG for their interpretation it would not require them to seek an extension also.

Mr. Kevin Brogan asked if bumping this to the AG was part of the procedure that Mr. Haddad reviewed earlier. Mr. Haddad said that the Board's response was you have public input and Town Counsel's opinion and were now seeking clarification from the AG which he thought was an appropriate response.

Mr. Degen asked for a vote on the amended motion. The motion carried 3-2 with Mr. Pease and Mr. Petropoulos opposed.

Mr. Degen asked for a motion to instruct the Town Manager to send a letter to the AG and supply all accompanying information, minutes both regular session and executive session and Mr. Hoch's complaint.

Mr. Petropoulos made the motion. Ms. Pine seconded the motion.

Mr. Haddad said he would send the Board the draft for comments and asked that they only respond to him. He said we would also bring the letter to the Board's meeting the following Monday for approval.

The motion carried 4-1 with Mr. Pease opposed.

Mr. Petropoulos asked Mr. Pease why he voted no. Mr. Pease said he thought they should either be requesting an extension or have a response that night adding that was the reason he voted no. Mr. Degen said that they provided a response by requesting clarification from the AG. Ms. Jane Allen asked how long it might take for the AG to get back to them. Mr. Haddad said that the AG has 90 days to respond generally. Mr. Degen said that they could request an estimate of time. Mr. Petropoulos said he thought it was up to Mr. Hoch to tell them (the Board) whether they had provided him (Hoch) with a response. Mr. Hoch said he intended to continue to move this forward to the AG. He said that the Board had affirmative duty to decide whether they violated the OML.

PUBLIC HEARING - BLOOD FARM

Mr. Pease moved to re-open the public hearing. Ms. Pine seconded the motion. The motion carried unanimously.

Mr. Haddad read a letter received from Richard Blood and said that they had a letter from the Earth Removal Stormwater Advisory Committee also who recommended that the Board issue the permit. Ms. Collette said that it would be a two-year permit effective that day. She said that the Committee was very comfortable taking into account the extenuating circumstances the Blood Family faced with the deaths of Mr. and Mrs. Blood. She said that the Blood Family track record with earth removal was impeccable and had always had a good working relationship with them. Mr. Degen said there was no question that it was not a very active site adding it was one of the cleanest he had ever seen. Mr. Petropoulos asked what the time lapse was and if there were any implications from the lapse. Ms. Collette said that it should have been renewed in September 2016. She said that there was a provision in the regulations that stated the Board could waive the lapse. She added she didn't believe any work had been done during that period of lapse.

Mr. Petropoulos moved to close the public hearing. Ms. Manugian seconded the motion. The motion carried unanimously.

Mr. Pease moved that they approve the waiver of the 1-year lapse for the Blood Farm Earth Removal Permit. Mr. Petropoulos seconded the motion. The motion carried unanimously.

Mr. Pease moved that they approve Earth Removal Permit for the Blood Farm operation for 2 years effective December 4, 2017 to expire on December 4, 2019. Ms. Pine seconded the motion. The motion carried unanimously.

LIAISON REPORTS

Mr. Degen said that Mr. Pease had pointed out that Mr. Pease was thought to be a liaison for a department he was not. Mr. Degen said that Mr. Haddad resent the Board the liaison list and posted it on the website also. Ms. Pine asked about a Liaison Policy. Mr. Pease said that he and Mr. Haddad were working on it.

Mr. Petropoulos said that the Groton School was holding its annual Lessons and Carols on December 8th at 7pm adding it was open to the public.

MINUTES

Ms. Pine moved to approve the Budget Guidance meeting minutes of September 25, 2017. Mr. Pease seconded the motion. The motion carried unanimously.

Ms. Manugian moved to approve the Regular Session meeting minutes of November 13, 2017 as amended. Mr. Pease seconded the motion. The motion carried unanimously.

Mr. Degen adjourned the meeting at 8:09pm.

Approved: _____
Alison Manugian, Clerk

_____ respectfully submitted,
Dawn Dunbar, Executive Assistant

Date Approved: 12/11/17