

**SELECT BOARD MEETING MINUTES
MINUTES MARCH 18, 2019
APPROVED**

SB Members Present: Barry A. Pease, Chair (VIA PHONE); Alison S. Manugian, Vice Chair; John R. Giger, Clerk; Joshua A. Degen, Member; Rebecca H. Pine, Member

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

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

ANNOUNCEMENTS

Mr. Pease announced the Friends of the Elders Gala event at the Groton Inn.

Ms. Pine announced that the Nashua River had been designated a Wild and Scenic River by the US Congress and signed into law that week. She congratulated the Nashua River Watershed Association on this major accomplishment.

Ms. Pine said that the Groton History Center had a successful fundraiser the other night. Ms. Pine said that the Interfaith Council held a vigil tonight which was also successful. Ms. Pine said that the Taste of Nashoba was also coming up tomorrow night.

Mr. Haddad said that the new website was going to launch on Wednesday, April 10th. He said that they were very excited about the new site.

Ms. Gail Chalmers said that the new owner of the Tarbell School said he would be willing to have an open house once the building was done.

Ms. Marlena Gilbert said that the School Committee voted their budget. She said that there was a second vote that asked the Superintendent to continue to review expenses. She said that they were also still reviewing enrollment. Mr. Pease asked if there were any updates to the resolution the Board voted on. Ms. Gilbert said that there was going to be a meeting next week about this adding that the State had requested original documents pertaining to this.

TOWN MANAGER'S APPOINTMENT

1. Mr. Haddad said that he was bringing forward the appointment of Leah Pierce as a Communications Officer and reviewed her resume with the Board. Mr. Haddad said that they had 2 vacancies currently and were happy to bring Ms. Pierce forward. He said he had made the appointment and asked the Board to consider ratifying the appointment. Chief Luth said that Leah came out on top during the interview process.

Mr. Degen moved to ratify the appointment of Leah Pierce as a Communications Officer at the Groton Police Department. Ms. Manugian seconded the motion. The motion carried unanimously.

2. Mr. Haddad said that the Council on Aging had recommended that Edward Wenzell be appointed as a Van Driver and asked the Board to consider ratifying his appointment.

Ms. Manugian moved to ratify the Town Manager's appointment of Edward Wenzell as a Van Driver. Ms. Pine seconded. The motion carried unanimously.

3. Mr. Haddad said that he had brought to the Board the week before a request from KP Law for a determination from the Groton Select Board stating that their representation of Pepperell in reviewing detail mutual aid agreements will not affect the exercise of independent professional judgment on behalf of the Town of Groton. He said that the Board wanted additional information on what the agreements would say. The following was an email he received from Pepperell Police David Scott on this issue:

"To try to make a long story somewhat short, I have been trying to eliminate the need to swear- in all neighboring officers. I think the Middlesex Mutual Aid Policy has basically done that for common mutual-aid situations, but depending on which

lawyer you ask it does not do the same for working details. The other issue with details in our area is that some departments do direct billing and some do not. I drafted a MOA for our towns that basically puts us all on the same page for using each other's officers for details and for direct billing. I ran the draft MOA by Attorney Atstupenas and he made a few changes. I then sent it to our (new) town counsel, KP Law."

He respectfully requested that the Board consider making this determination. Ms. Pine asked if it would run the risk of the contract running afoul. Mr. Haddad said that he and Ms. Dufresne had discussed that and would review the contract when the time came. He said that they could also not sign the agreement if it didn't behoove Groton to. Mr. Degen said he would be okay with this providing that Groton's Town Counsel reviewed it also.

Mr. Degen moved to approve a request from KP Law subject to positive review by Groton's Town Counsel. Ms. Manugian seconded the motion. Ms. Pine said she thought it was 2 different motions. Mr. Degen withdrew his motion.

Ms. Pine moved that they grant the waiver to KP Law to work with several towns on this issue. Ms. Manugian seconded the motion. The motion carried 4-1 with Mr. Degen against.

Mr. Haddad said he would bring this to their Town Counsel before bringing it back to the Board.

7:15PM - PUBLIC HEARING SPRING TOWN MEETING WARRANT.

Mr. Haddad read the public hearing notice into the record.

Mr. Degen moved to open the warrant public hearing. Mr. Giger seconded the motion. The motion carried unanimously.

The Finance Committee called their meeting to order.

Article 26 - Olivia Way: Two Residents of Olivia Way were present. One of the residents said that they were looking for a drainage easement on map 228 parcel 29. He said that this would help alleviate flooding on Olivia Way. One of the residents explained what the easement would address (continuous flooding of basements, backyards and the road, erosion damage). Mr. Haddad said that there were plans before the Stormwater Committee but that any costs would be borne by the developer. He said that there would be no expenses by the Town. Mr. Haddad said that in order to grant an easement onto conservation land, an Article 97 approval at Town Meeting would be needed and approval at the legislature. Mr. Gualco said that replacement conservation land would be needed with an article 97 approval. Mr. Degen asked who the Town engineers were that approved this. Ms. Collette said that it was Nitsch Engineering when it was originally approved and still them now. She said it was an old plan that was never developed but that the flooding problems came to light last fall. Ms. Collette said that it was an old gravel pit adding that they went through the normal inspections, etc. She said that test pit showed groundwater at 12 feet deep. Mr. Degen asked if the developer had tried to solve that problem. Ms. Collette said that there were 12 condos on 4 acres and little land to work with. Ms. Collette said that this was a real emergency situation. Mr. Degen asked if the Town was still holding a bond. Mr. Tada said that the bond was for \$209K and was still in effect. He said that the Planning Board had not made any decisions to seize the bond. Ms. Manugian asked if the project was constructed to plan. Ms. Collette said that it was and they did. Ms. Pine asked if they were anticipating that the developer pay for land to acquire. Mr. Gualco said that the developer understood this was up to him and they were discussing that with him. Mr. Pease asked when the subdivision was fixed. Ms. Collette said that it has not been finished. Mr. Pease asked why it's just manifesting now. Ms. Collette said that it was a rainy fall and nowhere for the water to go adding that she was not an engineer and couldn't answer that question fully. Ms. Manugian said that the 12-foot differential just didn't make any sense to her as a civil engineer. Mr. Pease wondered if the Select Board could help remedy this if this was something that would happen once every 100 years. Ms. Manugian said she wasn't sure that a remedy other than a permanent fix would work. Mr. Giger suggested that an engineering firm other than Nitsch be brought in to do the peer review.

Mr. Haddad reviewed articles 1, 2 and 3. He said that article 4 was on the budget. He said he sent out that afternoon a document that walked them through where they stood and what happened at the Finance Committee meeting on Friday morning. Mr. Haddad said that since the original budget they had received information from GDRSD and Nashoba Tech on their budgets along with the discussion of adding 2 additional fire fighters. He said that as of Friday they had a deficit of

\$289K. Mr. Haddad said that the Town appreciated the Schools using E&D but the Town didn't want to use E&D to reduce the budget adding it would hurt them next year. Mr. Haddad said he was asked by the School Committee to show what reductions of \$279K would look like. Mr. Haddad reviewed that list adding he was not in favor of any of these suggestions. Mr. Green said that the Finance Committee was seeing what these reductions would look like but had not discussed or made decisions. Mr. Haddad said that scenario 2 was what the budget would look like if they used the SC's E&D reduction. They would be \$30K over the levy limit but would create a larger problem in FY21. Mr. Haddad said that scenario 3 would seek an override in May at the ballot of \$309K. He said that it would better prepare them in FY21 because they wouldn't use the money this year and they would fund the additional 2 firefighters with this. Mr. Haddad presented a spreadsheet showing what the override needs would be through the next 5 fiscal years based on the original budget and scenarios 1, 2 and 3.

Mr. Degen said he wasn't ready to discuss a 5-year override. He said that if you looked at the spreadsheet, they were looking at an override of \$750K over the next 2 years. He said that they had a recommendation from the chief to add additional staff over the last 3 years and a recommendation from the Task Force to moved forward on additional staff. He said he asked the Finance Committee to make a recommendation to the Select Board about this funding. He said that he had been talking about a \$2M override for a couple of years now adding this wasn't too far off base. He suggested waiting on a \$2M override until the tri-board met to discuss the needs. He said that the FC voted 5-1 to recommend an override of \$279K. Mr. Green said that the overrides being discussed in future FYs were merely forecasts at this point. He said at \$750K deficit could not be absorbed. Mr. Green said that their mantra was to not use one time funding sources to fund ongoing expenses. He said that the district was in the process of working through the recommendations of their audit and were not completed with their process. He added that an override would ask the Town if they wanted to two additional firefighters.

Mr. Degen went to remote participation at 8:15pm.

Mr. Robertson said that the cost of 2 firefighters was \$160K it was not \$64K. He said that instead there were savings within the budget to get to the \$64K that was being quoted. Mr. Haddad said that the \$64K was the actual additional cost to the fire departments budget. Ms. Manugian said she understood the difficulty of using E&D but thought that scenario 3 almost guaranteed that they would need to cut \$400K out of their municipal budget. She said there was no way the voters were going to vote an override 2 years in a row. She said she also wanted to see grants shown in the budget. She said she was incredibly frustrated that they weren't making this clear and transparent for the voters. Ms. Gilbert said that their other member town came to them looking for help. She said that Dunstable could not afford the school or municipal budgets this year and the School Committee had decided to use E&D this year to help them out.

Mr. Robertson said that 80% of their spending was on wages and benefits. He said that they needed to fix that number and that the Tri-Board needed to do that. Mr. Giger said that Grafton had done one of these \$2M overrides adding that it wasn't smooth sailing. He said that he had spent some time around the issues of getting grants to show up in the reports. He said that the reality was that they only had one large grant adding that the grant was about \$230K that could only be used toward regionalization of dispatch systems. He said they didn't get a pot of money to spend adding they had to spend town money and put in for reimbursement. He said that they were looking at ways to make this more transparent. Mr. Green said that the Select Board needed to make a decision about whether they wanted to hire two additional fire fighters or not. He said that they still had a deficit problem no matter what.

Mr. Haddad reviewed article 5 and the OPEB trust. Ms. Pine suggested looking at adding additional money to it if they had additional free cash. Mr. Haddad reviewed the capital budget items.

Article 7 - Mr. Haddad said that the DPW Building Committee had met last week to discuss the cost estimates that came in at \$4.5M. He said that the Committee made a change to the way they wanted to do things. He said that they were going to bid the main building and the building for equipment and trucks as separate bids. Mr. Amaral said that the main building was estimated to be around \$2.6M.

Article 8 - Mr. Haddad said that they were out to bid on the library roof. He said that bids were due on April 12th. Mr. Gerath said that the delta between the 2 roofs (slate vs. synthetic) was about \$200K. Mr. Pease suggested moving the CPA articles up because of this one.

Article 10 - Mr. Haddad said that the ticket tax would add a tax to events held in Groton. Mr. Haddad said that he received a phone call from Rep. Harrington who explained that she had discussed topic with the Chair of the Ways and Means Committee. He said that because this has ramifications that could be felt statewide, the likelihood of this passing was not great even as a home rule petition. Mr. Degen said that someone had to go first and didn't mean they shouldn't move forward with this. Ms. Perkins said that the Groton History Center was a non-profit and asked how that would impact groups like them. Mr. Pease said that the intent of this was for paid performances and events. Mr. Degen said that this was not meant to impact non-profits in town.

Mr. Haddad said that the Board would need to open the warrant and vote to add the Prescott School article. He said that the needs of the School exceeded the \$62K they had appropriated. He said that they needed an additional \$86K to run Prescott School over the next 3 years. Mr. Pease said that Prescott was becoming a capital challenge and wondered if it made sense to make it a capital expenditure. It was decided to table this until next week when they would be discussing the Prescott Business Plan. Mr. Degen asked if there were any funds left in the CPC appropriations to use toward any of these issues. Mr. Haddad said that the answer was more no than yes. He said that they had recently learned they were not eligible for a grant for the sprinkler system. Mr. Degen said that this was becoming another country club and thought they needed to have a question about whether or not they should keep the building or sell it. Mr. Pease said that he was really frustrated with needing more money for something they hoped would break even.

Mr. Haddad said that Article 15 looked at what was needed to address ADA issues at their Town buildings. Based on the ADA Transition Plan. Ms. Collette said that Prescott needed the most attention and that they were looking at a grant to help with that. Mr. Pease asked why just Prescott and not the \$60K that the article was for. Ms. Collette said that the grant would probably be more likely if it was for one larger building. Ms. Pine said she would be hesitant to apply for a grant prior to knowing what the fate of the building was.

Mr. Haddad reviewed the consent agenda items.

The Finance Committee left the meeting at 9:24pm.

Mr. Tada said that Article 18 stemmed from a citizen's petition that came up in the fall and would hopefully address the parking issues brought up by the residents.

Article 19 - Mr. Pease said that these were housekeeping items to the zoning bylaw.

Article 25 - John Amaral said he was petitioning to add 11 Lowell Road to the Overlay District. He said that they wanted to create some mixed use to compliment the hospitality they had next door. Mr. Tada said that the Planning Board would hold a public hearing on April 11th.

Ms. Manugian moved to continue the public hearing until next week. Ms. Pine seconded the motion. Roll Call: Pease-aye; Manugian-aye; Pine-aye; Giger-aye (Mr. Degen was not present for the vote)

Mr. Degen rejoined the meeting at 9:49pm via phone.

TOWN MANAGER'S REPORT

Mr. Pease said that the Finance Committee had requested the Board make a decision about the addition of 2 firefighters. Ms. Manugian said that she had a chance to sit down with the Chief to discuss what he had gone through in Littleton when they were facing the same problem. Ms. Manugian said that the chances they were going to find additional call firefighters was going to take time. She said that they needed to move into the direction of 24/7 department. She apologized for how long it took her to get here but appreciated the need. Mr. Giger said he supported completely the addition of the 2 firefighters. He said he didn't see the need to wait any longer. He said waiting would cause them to be more stressed out. He said that studies had been done and more time had been put into the statistics then the tasks that were done. He said it was the time to listen to the Chief and the department

members. Ms. Pine said Mr. Robertson said that salaries being 80% of the budget was a big influence for her. She said she had not heard any complaints about the fire department. She said that the report said that the recommendation started with the word "if" the Town wanted to go to 24/7 coverage. She said she went back and looked at the data received adding she was looking at the data and not bringing emotions into her decision. She said that they should not be looking to sleep at the station adding those were some of the reasons they could hold off for another year. Mr. Degen said that he supported this completely. He said that Mr. Giger did a good job of summarizing his thoughts. He said they could look statistics until they were blue in the face. He said that they had a growing community. He said that they needed to let the voters vote on this. He said if they had enough money to put towards Prescott School, they had enough money to fund 2 additional firefighters. Mr. Pease said he was totally taken aback that a vague motion was made to table this discussion last year at a meeting he could not be present for. He said that he too supported this request.

Mr. Giger made a motion to support 2 additional firefighters to add to the 7 they had already for the FY 20 budget. Ms. Manugian seconded the motion.

Mr. Degen offered a friendly amendment to say it would be subject to a successful proposition 2 ½ override. Mr. Pease said he didn't want to see this coupled with the override. Mr. Degen said that was fair.

Ms. Gail Chalmers thanked them for finally making this happen. Mr. Tyler Shute said that he would like the statics checked. He said that the call department did more than 20 calls between the hours of 8pm and 6am as Ms. Pine had stated. He said they were talking about 300 times per year. He said they deserved a lot more credit than that. Ms. Pine clarified that she was looking at the midnight to 6am time period and said she didn't think anyone was taking credit away from the call department.

Roll Call: Degen-aye; Pease-aye; Giger-aye; Manugian-aye; Pine-nay

Mr. Degen left the meeting (via phone) at 10:07pm.

OTHER BUSINESS

Mr. Pease said that a question had come up about a Committee member not being sworn in. He read the following opinion from Town Counsel”

M.G.L. c. 41 sec. 107 requires that: "Every other elected member and every appointed member of every board or commission of a town, and every other elected officer and every appointed officer of a town, shall also, before entering upon his official duties, be sworn to the faithful performance thereof."

There are no pertinent cases interpreting the statute. The Town should assume that any votes by the Committee Member who was not sworn are invalid. If the votes of the remaining quorum of members at a meeting would have carried the motion, the Town has an argument that the vote was valid.

In December, 2018 the AG considered a complaint under the Open Meeting Law that alleged that the Orange Library Building Committee members were not sworn. The AG refused to find a violation of the OML on that basis because the OML does not require that public body members be sworn in to office. However, the AG did find a violation of the OML because the members had not certified that they had received a copy of the OML and AG's regulations and educational materials, "within 2 weeks of qualification for office." The AG ordered, "immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law."

We recommend that the Committee Member be immediately sworn-in and sign the certification required by the OML. The Committee, at its next meeting, should reaffirm and ratify all votes taken during the term and attendance of the member who was not sworn.

Mr. Pease said that they should ask the Chair of that Committee to revote all their votes. He said that none of the votes would change even with that members vote. He asked the Board if he should reach out to the Chair and Member to request this. Ms. Manugian said that it might not be worth going there if the votes would not change. Mr. Pease said that the Committee had not been disbanded yet. He said that the member not sworn in would not be allowed to give a presentation at Town Meeting.

Mr. Pease said that he would reach out to the individual and tell them they should be sworn in. Mr. Giger suggested that a letter be added into the file adding that the votes would not have changed.

ON GOING ISSUES

Mr. Haddad said that he had no other updates other than that the Senior Center construction was back on track.

MINUTES

Ms. Manugian moved to approve the minutes of March 11, 2019 as presented. Ms. Pine seconded the motion. Roll Call: Pease-aye; Manugian-aye; Pine-aye; Giger-aye

Ms. Manugian moved to enter into ES at 10:27pm and not return to OS Pursuant to M.G.L., c.30A, §21(a), Clause 2 – “To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel.” – Purpose – Town Manager's Contract. Ms. Pine seconded the motion. Roll Call: Pease-aye; Manugian-aye; Pine-aye; Giger-aye

Approved: _____
John Giger, Clerk

_____ respectfully submitted:
Dawn Dunbar, Executive Assistant

Date Approved: 3/25/19