

MINUTES OF THE BOARD OF SELECTMEN MEETING

September 21, 2015
Town Hall, 7:00 P.M.

MEMBERS PRESENT: Chairman Robert Merry, Vice Chairman Joseph Perry, Clerk Robert Snow, David Petersen, Clifford Pierce (Town Administrator Deborah Eagan, Assistant Town Administrator Amy Lydon)

PUBLIC ATTENDEES: Treasurer/Collector Karen Summit; Barbara Stanley; Bob & Jan Covino; John Manning; Mo Levasseur; Steve Comley

CALL MEETING TO ORDER

Chairman Robert Merry called the meeting to order at 7:01 p.m. He said the meeting is being audio and video recorded digitally.

PLEDGE

Karen Summit led the Pledge of Allegiance.

GENERAL BUSINESS

1. Invitation from the Independent Living Center of the North Shore and Cape Ann, Inc. to attend the FY 16 Annual Meeting on October 21, 2015

Chairman Merry read the first paragraph of the letter from the Independent Living Center of the North Shore and Cape Ann, Inc. Perry said this is a wonderful group and he would like to attend this meeting.

Dave Petersen made a motion to have Joe Perry attend this meeting, Bob Snow second, all in favor - aye (5-0).

2. Road Opening Permit application from Water Department to open area near 128 Wethersfield Street for emergency water repair

Dave Petersen made a motion to sign this road opening permit, Bob Snow second, all in favor - aye (5-0).

The Selectmen signed the permit.

CITIZEN QUERY 7:05 p.m. – 7:10 p.m.

There were no Citizen's Queries.

GENERAL BUSINESS

3. Road Opening Permit application from Water Department to open 19 Bradford Street for the relocation and replacement of a fire hydrant

Joseph Perry made a motion to sign this road opening permit, Bob Snow second, all in favor - aye (5-0).

The Selectmen signed the permit.

4. Discuss issuing a proclamation to retired Rowley Housing Authority Director Joan Petersen

Dave Petersen recused himself and sat in the audience. Chairman Merry read the proclamation.

Cliff Pierce made a motion to sign the proclamation, Bob Snow second, all in favor - aye (4-0). Dave Petersen previously recused himself.

Petersen returned to the Selectmen's table at 7:09 p.m. Perry said the residents held a party for Joan and they did a great job.

5. Request from YMCA to hold Annual Rowley Poker Road Race

Chairman Merry read the following:

Please see the attached flyer for the Rowley Poker Run to be held on Saturday, October 3, 2015. The Course will be the same as in previous years: Leave Rowley Veteran's Association to Summer to Main to central to Bennett Hill Rd. to Wethersfield Rd. to Bradford and back to Rowley Veteran's Association. A Police detail will be hired, there will be ten volunteers along the course, and North Shore Timing and the Ipswich YMCA will be handling the course management. All volunteers will have cell phones and communication Y Director Gerry Beauchamps. The Ipswich Y will be responsible for trash clean-up, no roads need to be closed and they are hoping for 150 runners. Watermelon/ bagels/ oranges/ bananas will be served, and the use of the Town Common is not required.

The Police Chief, Fire Chief, Highway Surveyor and Health Agent have no comments or concerns about this event.

Petersen said he hopes residents strongly support the YMCA, who did an incredible job getting the Rowley camp up and running. He said they put \$100,000 into the camp and will be putting another \$100,000 into the pool at the camp. Snow said Gerry Beauchamps is retiring and will be sorely missed.

Dave Petersen made a motion to allow the YMCA to hold their annual Rowley Poker Road Race, Cliff Pierce second, all in favor - aye (5-0).

APPOINTMENTS* 7:15 p.m.* Treasurer/Collector Karen Summit to give an update on the tax title property auction

Summit said there will be an auction on October 20, 2015 at 12:00 p.m. to auction off properties the Town has received through the tax title process. She said Zekos Group is the auctioneer, and their website showing the available properties should be available at the end of the week. She said all ten properties will be listed with details such as the field cards, aerial views, Board of Health and Building Inspector information and title five information. She said the bid requirements will be outlined and any questions should be sent to Zekos Group. She said this will be advertised through Rowley Community Media and there will be a link to the Zekos Group website from the Town's website.

NEW BUSINESS

1. Discuss disposition of 1980 Cemetery truck

Chairman Merry read the following:

The Board of Cemetery Commissioners would like to dispose of a 1980 Ford F350. We issued an invitation for bid for the sale of this vehicle on June 22, 2015, and did not receive any responses. We issued a second invitation for bid for the sale of this vehicle on August 12, 2015, and received one bid from Don Savory for \$112.51.

Arthur Page, Cemetery Commission Chairman, supports the Selectmen awarding this bid to Don Savory for \$112.51. He said that the vehicle is not operational, it is not repairable, and the tires are probably the only parts worth any money. If awarded to Don Savory, he will be responsible for removing the vehicle from the Cemetery at his own expense.

We recommend that the Board award the sale of the 1980 Ford F350 to Don Savory for \$112.51. The money from the sale of this vehicle would be deposited into the Town's General Fund.

Merry recused himself because Savory has done work for him in the past.

Perry took over as the Chairman for this topic.

Dave Petersen made a motion to award the sale of the 1980 Cemetery truck to Don Savory for \$112.51, Bob Snow second, all in favor - aye (4-0). Bob Merry - RECUSED

2. Set Board of Selectmen Meeting schedule for October, November and December

Chairman Merry read the following:

We need to set the meeting schedule. The proposed meeting schedule is as follows:

- October 5
- October 12 - no meeting - Columbus Day
- October 19
- October 26
- November 2
- November 9
- November 16
- November 23
- November 30
- December 7
- December 14
- December 21
- December 28 - no meeting - Christmas holiday break

Bob Snow made a motion to accept the meeting schedule as read by Chairman Merry, Cliff Pierce second, all in favor - aye (5-0).

3. Discuss Mass. School Building Authority onsite Senior Study meeting at Pine Grove School on October 28, 2015 at 1:00 p.m.

Chairman Merry read the following:

Triton Assistant Superintendent Brian Forget informed Debbie that MSBA officials will be conducting an onsite "Senior Study" at the Pine Grove School on Wednesday, October 28 at 1:00 p.m.

(See email message from Brian Forget).

There is no requirement that the Town have representation at this meeting, but the Board of Selectmen is welcome to have representatives at this meeting.

Does anyone on the Board wish to attend?

Petersen said these officials will assess the Pine Grove School and rank it to see if it qualifies for funding. He said it is important to have a Selectmen representative at this meeting.

The consensus was to have Joe Perry and Bob Merry serve as the Selectmen's representatives. Dave Petersen would attend if Bob Merry is not available.

OLD BUSINESS

1. Discuss recruitment process for police chief position

Chairman Merry read the following:

Last week the Board discussed the option of having an interim police chief step in after Chief Barker retires on December 24, 2015.

The Board discussed contacting Chief Barker to see if he knows of any retired chiefs who may want to serve on an interim basis.

In the meantime, we have received a letter from Robert J. Pomeroy, Esq. of Badge Quest, Inc., a public safety consulting firm, which, among many services places interim chiefs.

What does the Board wish to do?

Who on the Board would like to contact Chief Barker?

Would the Board like Debbie to contact Badge Quest?

Merry said he is impressed with Badge Quest as they seem to have worked with every town in Massachusetts except Rowley. Perry said their references are impressive. Petersen said a couple of people have approached him to suggest that the Lieutenant become the interim chief for six to seven months until July 1, 2016, help put together the budget and see how well he does. He said this may make him a stronger candidate. Merry said this can be set aside and reviewed. Petersen said we should make a decision in a week or two. Eagan said last week the Board suggested asking Chief Barker if he knows of other companies that provide this service. Petersen said we can make a brief inquiry, and if Badge Quest is the only one, we can bring them in and meet them.

APPOINTMENT 7:30 p.m.* ## Board of Water Commissioners Chair Timothy Toomey to discuss "breach of contract" issues and public safety and health issues of the Water Department per email of 9/21/15

Dave Petersen checked the hallway for Timothy Toomey, but he was not present.

Chairman Merry read the following:

This appointment was scheduled by Chairman Robert Merry upon Debbie receiving a disturbing email from Chairman Tim Toomey informing her that "The public safety and health of the water customers is at risk."

Chairman Merry will read the email message into the record.

From: Timothy A Toomey [<mailto:timothyatoomey@verizon.net>]

Sent: Monday, September 21, 2015 9:54 AM

To: Debbie Eagan <debbie@townofrowley.org>

Cc: John Manning <rwbmanning@gmail.com>; kdalzell@comcast.net

Subject: Safety Issues Water Department

Ms. Egan,

The Town of Rowley Water Department has a breach of contract action and seeking legal assistance on this matter.

Please have the Town attorney contact the chairman of the water board immediately via email.

The public Safety and health of the water customers is at risk.

*Tim Toomey
Rowley water Board Chair*

Debbie subsequently sent emails back to Chairman Toomey asking him what the nature of the public safety and health issues. Primary Water Operator Rob Swinarski was puzzled when Debbie contacted him about the statement made by the Chairman. (Emails are attached.)

Debbie can read them if the Board so wishes.

Eagan read the emails sent back to Chairman Toomey. She said she is disturbed by this. She said we have been through serious issues, especially the deer slaughtering, and we were concerned by this statement. She said it is disturbing that Toomey is not here to discuss this and explain why he said that. She said it is the Primary Water Operator's responsibility to report issues to the DEP. She said the ecoli call came in after Tim Toomey's message.

Eagan said the resident called the office to report that her spouse had contracted ecoli and she wasn't sure if it was from the Town's water supply. She said the resident said the Thursday before Labor Day there had been a water main break which resulted in brown water that cleared up, and they then brought bottles of tap water to Maine with them. She said while they were in Maine they also drank water from Maine, so there is no conclusive evidence. She said the resident just wanted the Town to be aware of this. She said the protocol is to contact the Health Department and the test results reviewed showed no indication of ecoli in the system. Petersen said there is no evidence of ecoli in the water system and asked if Toomey responded to this issue. Eagan said Toomey sent an email to the Health Department saying there is no need for an emergency since Swiniarski received the test results. Petersen said he just wants to be clear that there is no ecoli problem. Snow said in the past we received a \$25,000 fine for not reporting an issue to the DEP within 24 hours, so we are on our toes now.

Robert Covino of 19 Rowley Country Club Road said he was diagnosed with ecoli and is taking medication. He said they had brown water and were told it was from a construction accident on Wethersfield Street. He said they thought it was a temporary situation, but he had chills and a fever for two weeks and his wife still has a fever, so he is not sure there is no ecoli problem. Merry asked if we can get a sample of Covino's water. Covino said sure and they use a Brita filter. Eagan said the Health Agent spoke to Mrs. Covino and suggested any further testing should be done in the presence of the Health Agent and a Water Operator using the Water Department testing equipment. She said the Health Agent can arrange a meeting with the Covino's to get the sample. Mrs. Covino said the water was unbelievably dirty for a long time and it is probably out of the system now, so how will we know that there was no

contamination. Petersen said there is normally sediment in the pipe and ecoli comes from waste and fecal products. He said the Covino's have symptoms, but nobody else does. Mrs. Covino said one of their neighbors also has symptoms. Petersen said he is no expert and the water should be tested. Mo Levasseur of 6 Leslie Road said there is no Superintendent and the Primary Water Operator didn't know about a public safety issue, so where did Toomey get this information. Eagan re-read the email sent from Toomey. She said she asked him to explain what the issue was because her immediate reaction was that the DEP needed to be contacted, and Toomey said her over-reaction was unjustified.

Ms. Covino said there was a message that went through her community about a water safety issue and a meeting tomorrow night and that is why she called the Selectmen's Office. Eagan said there should be a water meeting tomorrow. Petersen said the email sent by Toomey was vague and he interpreted Toomey's crisis as not having an interim superintendent, which he doesn't think is really a crisis. He said all of this was done through emails and we have paid fines in the past, and we want to be sure everyone is notified.

Mo Levasseur said can the Board should seek a court injunction to remove Toomey since we are dealing with someone who doesn't acknowledge authority. She said in this case he incited a fear of a public health risk. She said a temporary order is needed to stop this madness. Petersen said Toomey didn't come tonight and the Water Board apparently is not meeting tomorrow. He asked John Manning if he knows when the next meeting will be. Manning said he does not.

Snow said last Friday an emergency Water Board meeting was held and two dozen people showed up. He said he doesn't know what the emergency was based on the agenda or the discussion in the meeting. He said if there was an emergency, why is there no meeting tomorrow. He said people took time off from work to attend Friday's 10:00 a.m. meeting and there was no reason that it couldn't have been held at the normal meeting time tomorrow night.

Barbara Stanley of 21 Rowley Country Club Road said she watched a Selectmen's meeting, heard about tomorrow's scheduled meeting and sent an email to the community since they've had quite a few episodes with brown water and she is concerned about the water. Petersen said it is disturbing that a member of the Board of Water Commissioners doesn't know if there is a meeting tomorrow. Manning said he checked today and knows there is not a meeting tomorrow.

Merry said Section 18 of the Open Meeting Law defines emergency as, "a sudden, generally unexpected occurrence or set of circumstances demanding immediate action." Petersen said normally an emergency is of such importance that you don't have 48 hours to post the meeting, and no items on Friday's Water Board agenda were an emergency. He said we should check into getting an injunction. Pierce said there would be a heavy burden, he's an elected official, and you have to prove that an injunction is warranted. Petersen said they suspended the Superintendent for an unknown reason and they are posting emergency meetings when there isn't an emergency, and they are totally out of control. He said it is the Selectmen's responsibility to ensure the water system is properly run if the Water Board isn't,

and they are interfering with the operation. Levasseur asked when the Superintendent will be back. Petersen said he doesn't know.

Manning said this may be for the next agenda item, but based on upon the events and the alleged illegal appointment of Weston & Sampson and the Investigator and the OML violation in conducting that meeting and suspending the Superintendent, he asked that that decision be abrogated by the Executive Board of the Town - the Board of Selectmen - and MaryBeth Wiser be reinstated. Petersen said they don't have that authority, but we can check with Town Counsel. He said the Water Board Chairman isn't even talking to the Primary Water Operator and asked how long do the citizens of Rowley have to suffer. He said at the next Town Meeting we need to vote to put the Water Department under the Board of Selectmen. Pierce said if the pattern of illegal behavior continues, perhaps we could get an injunction forcing the Water Board to comply with Open Meeting Law.

Eagan said we do have to follow the process under the Open Meeting Law. She said the complaint filed last week by the Board of Selectmen and the Water Board needs to address it within 14 days. She said she agrees with Pierce that there needs to be a pattern and a specific action. Pierce said the court will look for evidence of irreparable damage. Eagan said we would have to prove very serious violations.

NEW BUSINESS

4. Update and discuss Water Department issues – treatment plant; water main leaks; Pingree Farm Road; Water Board Meetings, including executive session meetings; the hiring of Attorney Moschella; the hiring of Weston & Sampson services, and Mass. General Laws Chapter 40 Section 39A; Chapter 41 Section 69B; and Chapter 11 of the Acts of 1946

Chairman Merry read the following:

Treatment plant; water main leaks; Pingree Farm Road

Since last week's Selectmen's meeting, the Water Board held a Friday morning meeting, but did not address any of the pending concerns over the treatment plant, water main leaks or Pingree Farm Road.

Levasseur said the Board of Selectmen is on the defense and Toomey will continue and we need to try to get an injunction to send him a message. She said she is heading the recall which will take a while and she has a lot of work to do. She said Toomey is running the show and the Selectmen need to get on the offense. Merry said the Selectmen have the same issues, this will take time, but the wheels are in motion. Petersen said this is the water system and if nothing else we should contact the DEP - they tell us the requirements and oversee the licensing and testing. Levasseur said maybe Rowley will set the precedent, and can we ask the DEP to come back and oversee the system again since we are having a problem. Snow said we went down memory lane, and this has been going on for five years and now we are in "Rubicon Gate." Levasseur said these are just suggestions.

Merry read the following:

Water Boards Meetings, including executive session meetings

The Water Board has seemed to switch to early Friday morning meetings, making it hard for the public to attend. Most people are either going to work or are at work. Their September 18th meeting agenda also was confusing because it had two times listed – 8:30 a.m. at the top, but then citizen query was listed at 8:05 and then again at 8:35. The agenda also lists under Executive Session “Statue Chapter 41 Section 69B issues.” There were many residents in attendance at this meeting. Someone asked the Board for the reason why the water superintendent was put on leave and one of the commissioners mentioned something about a brush hog. Town boards cannot go into executive session to discuss a general law of the Commonwealth of Massachusetts. Apparently, however, the Board did not follow through on going into executive session during this meeting. There is no meeting posted for Tuesday, September 22.

Notwithstanding all that has happened, does the Board of Selectmen wish to send a letter to the Board of Water Commissioners demanding that they re-instate the water superintendent immediately?

Bob Snow made the motion to send a letter to the Board of Water Commissioners demanding that they re-instate the Water Superintendent immediately, Dave Petersen second.

(The vote was not completed at this time.)

Snow said we aren't seeing full transparency. Petersen said the Water Board is not resolving issues, but rather are debating comp time. He said the Superintendent comes in early to cover the Administrative Assistant position, and she has put out more work this year than the previous Superintendent did in his twenty year career. He said they haven't given a reason why the Superintendent was put on leave and now we are paying her to sit at home and the Department is falling apart. Snow said he and Petersen have attended many Water Board meetings in the last two years, they have asked questions and interjected and have been accused of interference by the Board of Selectmen. He said it is far from interference, and they had to give the authority to the Superintendent to sign payroll and bills because the Water Board wasn't handling this. He said we need the Superintendent back.

Steve Comley Jr., the owner of the Seaview Nursing Home, said he just shut off the water at the facility since he heard there was an issue with the water, and he can't get answers. He said he needs 4,000 gallons by tomorrow morning for compromised people. He asked the Board what is going on. Petersen said the report of ecoli came in as a result of a water main break before Labor Day, so there are no allegations of a current problem, but he can't tell him what to do. Comley asked how Petersen knows there is no problem. Petersen said he doesn't know for sure but the Primary Water Operator gave the Board of Health the lab tests and there was no indication of ecoli. Eagan suggested that Comley contact Health Agent Frank Marchegiani or the Water Department on this issue. She said Marchegiani oversaw this issue and reported all water samples show no issue with ecoli. She said the Primary Water Operator is responsible for reporting any issue to the DEP and he was unaware of any issue. Manning said they test the water coming out of the plant daily. Comley said he needs to know if the

water is safe in the next two hours. Eagan said perhaps he can call Chairman Toomey. Petersen suggested that Comley call the Police Department and ask them to ask the Primary Water Operator to call him who can explain the situation and then you can decide what to do with the water. Petersen said he cannot tell him to turn it on or keep it off, but he personally thinks the water is okay.

The previous motion was completed as follows:

Bob Snow made the motion to send a letter to the Board of Water Commissioners demanding that they re-instate the Water Superintendent immediately, Dave Petersen second, all in favor - aye (5-0).

Dave Petersen said the Town Administrator should contact the Attorney General's Office, Town Counsel, and any other appropriate entity to pursue advice for resolution including a court injunction. Petersen said we have an emergency and we need to get some advice about how to proceed. He said Dalzell and Toomey are holding the Selectmen and the Town hostage and he doesn't like it. He said Toomey thinks he can do anything be it legal or illegal and asked how can we stop him. Snow said he is very concerned about the September 11, 2015 Water Board meeting.

Dave Petersen made a motion to have the Town Administrator contact the Attorney General's Office, Town Counsel, and any other appropriate entity and to authorize the Chairman and the Town Administrator to pursue what is needed, including a court injunction. Pierce said the first step should be to determine what the options are and then have the Board review the options and decide. Petersen said once the options are known, we can post an emergency meeting to discuss them.

(The vote was not completed at this time.)

Eagan said Manning called the Attorney General's Office right after the September 11, 2015 meeting. Manning said he explained the situation, and was told that we have to follow the process and they will evaluate it. Levasseur said this affects everyone in the Town and asked what is next. She said the Selectmen ran to protect the people in the Town. Snow said at the Spring Town Meeting we need to bring the Water Commissioners under the Selectmen. Petersen said he is concerned about the short term, the system is broken, and there is no communication.

Eagan said the Board would like her to explain to the Attorney General's Office that the Water Superintendent was suspended in an improper executive session without proper notification; that the Selectmen have a pending Open Meeting Law complaint; and that there is nobody running the Water Department. Pierce said we don't know if anyone is running the department, Weston & Sampson may be there illegally. Petersen said because they aren't holding a meeting, we can't even ask. Snow said we should have a Town Meeting in November to put this on the fast track. Perry said we cannot wait until the Spring. Eagan said there is a lot of legal work that needs to be done before this can happen, and she hasn't had time to work on this. Covino asked who has the checkbook. Merry said the Town does. Covino said if you

stop paying the bills, they will come to the meeting. Petersen said there aren't any bill issues now, and this isn't an issue of money at this point, but an issue of power. Levasseur asked if the Selectmen can post a Water Board Meeting, Snow said no, the Selectmen aren't the elected officials. Summit asked if a Water Board member other than the Chairman can post the meeting. Eagan said we would have to contact the Attorney General's Office to ask about the validity of a meeting not posted by the Chairman. Perry said we have to have a Fall Town Meeting and we cannot wait until the Spring. Eagan said no legal research has been done on this yet. Petersen said a Town Meeting is too far away and we need an injunction to order them to conduct themselves in the proper and legal way so this can be corrected soon. He said Toomey needs to answer to the court and if we can't do this, at least we tried.

Snow said if the last meeting was an emergency, why is there is no meeting posted for tomorrow night. He said the Water Board has everyone, including the public, hanging. Petersen said maybe they can talk Dalzell into his senses, open his eyes and maybe he will vote with Manning to get the department back on track, or if he doesn't want to he can resign and the Superintendent can come back. He said people need to call the Commissioners to let them know what they want them to do.

Levasseur said the Superintendent should report back to work since she was put on leave during an illegal meeting. Eagan said the Board of Selectmen need to go on record in the form of a letter to the Water Board to immediately reinstate the Superintendent, and the Attorney General's Office will look to make sure this was communicated. Summit suggested posting a joint meeting so maybe two of the three Commissioners would come. Eagan said we can request that for next week, and the Water Chairman would have to post the meeting. Petersen said that can't hurt.

Dave Petersen made a motion to authorize the Chairman and the Town Administrator to contact the Attorney General's Office, the Essex County District Attorney or Town Counsel, to see what our options are, to see if we can get an injunction, Cliff Pierce second, all in favor - aye (5-0).

Merry read the following:

Also, Chair Toomey contacted Town Counsel Judy Pickett on Friday afternoon asking for her legal assistance with recent open meeting law complaints. Debbie responded to him on Friday see message below.

From: [Debbie Eagan](#)
Sent: Friday, September 18, 2015 3:18 PM
To: timothyatoomey@verizon.net ; [Judy Pickett](#)
Cc: [John Manning](#) ; kdalzell@comcast.net ; [Rowley Selectmen](#)
Subject: RE: OML Complaint

Dear Chair Toomey:

You were provided a legal opinion for your September 11, 2015 meeting, which I sent you via email on September 9, 2015. This opinion, concerning your September 11th meeting agenda, was read into the record by Vice Chairman John Manning.

You disregarded the legal opinion and proceeded to hold an executive session. You now have received Open Meeting Law Complaints that the named parties in the complaint will need to respond to.

Judith Pickett will not be providing any legal services to the Water Board on this matter.

Sincerely,

*Deborah M. Egan
Town Administrator
Town of Rowley
PO Box 275
Rowley, MA 01969
(t) 978-948-2705
(f) 978-948-8202
debbie@townofrowley.org
www.townofrowley.net*

Egan said there are precedents for the OML complaints. She said last year Toomey filed an OML Complaint against Water Board Chairman Roy Ricker. She said Ricker didn't seek legal assistance and was not provided with legal assistance to respond to the complaint. She said Ricker asked the Selectmen for assistance, who deemed the complaint frivolous, and asked her to assist Ricker with the response, which she did. She said Manning requested a legal opinion on the posted September 11, 2015 agenda as Vice Chair of the Water Board, not as a citizen. She said Attorney Fair is a skilled labor attorney who knows the Open Meeting Law, and he advised not to hold the executive session. She said Wiser received a letter to be prepared to turn in her keys and vehicle. She said how could the Chairman have known the outcome of the meeting on September 9th when the letter was sent to Wiser. She said this needed to be a vote of the Board. She said Toomey and Dalzell intentionally disregarded the legal opinion provided to the Board and they need to respond to the Selectmen's Open Meeting Law complaint about this. She said Toomey will not receive legal assistance to respond to this complaint.

Merry read the following:

Chairman Toomey sent the following message to her this morning:

Ms. Egan,

Mr. John Manning, a citizen of the Town of Rowley asked you to contact an attorney for an opinion. The water board never approved or endorsed his unilateral action via a proper motion, which is inconsistent with the water board policies. The town provided, John Manning, a citizen of the Town of Rowley an attorney at the tax payer expense. This board is seeking as a collective to have counsel discuss legal matters with the approval from your office immediately.

Your cooperation is appreciated,

Tim Toomey RWB

Eagan said Mr. Toomey needs to read G.L. 268A. She said once you become a Town Official, you cannot take that hat off, and Manning contacted her as a Water Commissioner, not as a citizen. Manning said he didn't request a legal opinion, rather asked Eagan about the agenda which didn't seem correct, and then Eagan requested the legal opinion. Merry said Manning followed protocol.

Merry read the following:

Mr. Toomey needs to read G.L. 268A. What "collective" is he referring to? The Water Board was served with an Open Meeting Law Complaint from the Board of Selectmen via email on Wednesday, September 16, 2015 at 4:33 p.m. The Water Board has not even met to discuss this. How can Chairman Toomey speak for the Board? He signed the letter "Tim Toomey RWB". One important note, last year Water Board member Timothy Toomey filed an open meeting law complaint against former Water Board Chairman Roy Ricker. Mr. Ricker never sought legal assistance in response to this complaint. Debbie helped Roy in his response at the request of the Board of Selectmen.

The hiring of Attorney Moschella; the hiring of Weston & Sampson services

On Tuesday, September 15, 2015 Debbie sent letters to both Attorney Moschella and Weston & Sampson informing them that they do not have valid contracts with the Town. Later that same day, Chairman Toomey emailed the president of Weston & Sampson, John Bocchini. Chairman Merry will read the message below:

*From: "Timothy A Toomey" <timothyatoomey@verizon.net>
Date: September 15, 2015 at 4:37:57 PM EDT
To: <bocchinij@wseinc.com>
Cc: "John Manning" <rwbmanning@gmail.com>, <kdalzell@comcast.net>
Subject: Rowley Board of Water Commissioners 9/11/15 contract*

Dear John,

*I just Spoke with Paul. The board voted to hire W&S, we will stand by the contract.
The town and the water department are separate entities. There are two separate budgets. The Board contracts for services.
The Board authorizes payment through our bill paying service, the town. If they don't pay what we authorize, you will get paid for sure because of the statute Title VII, Chapter 41 section 69B.*

*Mr. Fair does not represent this board, he represents the town on personnel matters only.
The Board is in the middle of an investigation.*

That's all I can say now.

*Please let me know if you can't provide service under our contract.
I feel this should be cleared up by the end of the week.
The board has voted to make Paul our interim Superintendent, as before and he was selected because of our relationship with W&S.*

*Thanks
Tim Toomey, Chair Rowley Water Board*

Chair Toomey states in that message to the president of Weston & Sampson that “we will stand by the contract.” The Water Board should be discussing the invalidity of the contract at their meeting. How can Mr. Toomey make this statement “We”. The Water Board never discussed Debbie’s letter to Weston & Sampson. How can Chair Toomey speak for the Board on this matter? Weston & Sampson and Attorney Moschella will not be paid for any work done on the contracts approved in the September 11, 2015 illegal executive session.

Mass. General Laws Chapter 40 Section 39A; Chapter 41 Section 69B; and Chapter 11 of the Acts of 1946

The Town has not accepted the provisions of Mass. General Laws Chapter 41 Section 69B, which references Chapter 40 Section 39A. Bob Merry and Debbie researched the town meeting votes. The Town operates under a special act of the Legislature, Chapter 11 of the Acts of 1946. This special act outlines the authority of the Water Board. Does the Board of Selectmen wish to send a letter to Chairman Toomey informing him of this since he continues to reference this statute in meetings, meeting agendas and correspondence to the president of Weston and Sampson and Attorney Moschella?

Merry said Chapter 40 and 41 were never accepted by the Town, but Chapter 11 was accepted in 1946, and chapter 40 section 38(k) to become an enterprise fund was accepted in 1988. Summit said an enterprise fund is an accounting entity. She said because they produce and sell a product, they can keep their retained earnings and reinvest them in the Water Department, and not put back into the General Fund. Levasseur said it is alarming that they need to be told this and that Toomey didn't know where the \$500,000 in Water Department free cash went. Petersen said in 1952 the Water Board was created and the Selectmen acted as the Water Commissioners from 1946 - 1952.

Merry re-read the following:

The Town has not accepted the provisions of Mass. General Laws Chapter 41 Section 69B, which references Chapter 40 Section 39A. Bob Merry and Debbie researched the town meeting votes. The Town operates under a special act of the Legislature, Chapter 11 of the Acts of 1946. This special act outlines the authority of the Water Board. Does the Board of Selectmen wish to send a letter to Chairman Toomey informing him of this since he continues to reference this statute in meetings, meeting agendas and correspondence to the president of Weston and Sampson and Attorney Moschella?

Petersen said this is just more work for the office. Levasseur said this will serve as documentation that the Selectmen tried every avenue.

Bob Snow made a motion to send a letter to Chairman Toomey informing him that the Town has not accepted the provisions of Mass. General Laws Chapter 41 Section 69B, which references Chapter 40 Section 39A, and the Town operates under a special act of the Legislature, Chapter 11 of the Acts of 1946, Dave Petersen second, all in favor - aye (5-0).

Merry read the email from Moschella dated September 16, 2015 as follows:

From: William Moschella [<mailto:attywam@usa.com>]
Sent: Wednesday, September 16, 2015 8:02 AM
To: Debbie Egan <debbie@townofrowley.org>
Cc: bill <attywam@usa.com>
Subject: Interferrance

Ms. Egan,
Town Administrator

Please clarify..

It has come to my attention.

The chairman of the Water Department informed me this morning of an open meeting on July 14, 2015. It was conducted in accordance with all applicable statutory requirement concerning the Open Meeting Law, M.G.L. c. 30A, §§ 18-25 (Effective July 1, 2015). The water board meeting was open and in public aspect a vote was taken to retain private legal assistance .

Section 69B. states inpart:

"The water commissioners, or the selectmen authorized to act as such, in a town establishing a water supply or water distributing system under authority of section thirty-nine A of chapter forty **shall have exclusive charge and control of the water department,....** The income of the water works shall be appropriated to **defray all operating expenses....**"

Therefore, alleged open meeting law violation referenced in you email and fax sent on September 15, 2015 is a moot point.

Regards,

Any and all Emails that fail to have a appropriate signature block will not be responded too it isn't acceptable is to send out emails that don't identify the sender. The recipient of an email shouldn't have to guess who sent the email. Please clearly identify yourself in every communication.

William A. Moschella SR. DMD.,M.ed.LMHC.,JD
20 Main Street Saugus, Mass. 01906-2340
Tel. 781.233.2450 Fax 781.231.1873

Merry read the last paragraph of Chapter 41 69B and noted it says upon acceptance. He said the Town of Rowley has not accepted this, and has only accepted Chapter 11. He said they need to understand this. Pierce said even if they have exclusive control of the Water Department it doesn't mean they can violate State and Town laws, so this isn't a defense for what they have been doing. Eagan said Moschella's email cut off the most significant part of 69B about being subject to all lawful by-laws. She said they are not exempt from procurement laws or the Open Meeting Law. Merry said when they were sworn in as Commissioners, they swore to abide the rules, regulations of the Town of Rowley and the laws of the State of Massachusetts, and they seem to have forgotten about this, and he doesn't know how they sleep at night.

Snow said we are at a rubicon that doesn't need to be crossed and asked them to come to their senses, and if this continues it will spiral out of control. Manning said their actions will be expensive to them personally.

Merry read the email from Eagan to Moschella dated September 16, 2015 as follows:

From: Debbie Eagan

Sent: Wednesday, September 16, 2015 2:31 PM

To: William Moschella <attywam@usa.com>

Cc: Timothy A Toomey <timothyatoomey@verizon.net>; kdalzell@comcast.net; John P Manning <rwbmanning@gmail.com>; Judy Pickett <ja.pickett@verizon.net>; Joseph S. Fair <JFair@k-plaw.com>; Rowley Accounting <accounting@townofrowley.org>; Rowley Treasurer <treasurer@townofrowley.org>; Rowley Selectmen <selectmen@townofrowley.org>

Subject: RE: Interferrance

Dear Attorney Moschella:

Town Counsel Judy Pickett has informed me that you called her today. She asked me to send you an opinion in which she clearly states that the Board of Water Commissioners does not have the authority to hire counsel. Please see attached memo dated Feb. 10, 2011. Board of Water Commissioners Chairman Timothy Toomey was a member of the Board of Water Commissioners at this time and received this memo.

The Board of Selectmen denied the Board of Water Commissioners recent request for legal counsel. See attachment.

Attorney Moschella, you have not been appointed by the Board of Selectmen to represent the Board of Water Commissioners. The letter I sent you yesterday, a copy of which is attached, stands.

Deborah M. Eagan
Town Administrator
Town of Rowley
PO Box 275
Rowley, MA 01969
(t) 978-948-2705
(f) 978-948-8202
debbie@townofrowley.org
www.townofrowley.net

Manning said he gave a copy of Pickett's 2011 letter to the other Commissioners and they didn't recall it even though they were Commissioners at that time. He said the current situation is no different, it involves the same people and the same issue.

Steve Comley Jr. came back into the meeting and said he cannot get answers. He said Petersen made a statement that there were no issues with ecoli and asked how he knows that. Petersen said what he said is all they can do is go by the test results and if they took a new test today they obviously don't have the results back yet. He said they reviewed the tests that

the Water Department makes on a regular basis. Comley asked how regularly the tests are done. Petersen said he doesn't know. Comley said nothing has been tested since September 1, 2015, and there was a report from an incident on September 7, 2015. He said Petersen made a statement that there is no ecoli issues. Petersen said he did not say that, he said he cannot tell him what to do and he needs to make his own decision. Comley said there seems to be a game being played and he needs answers and needs to keep his clients safe. He said keeping his clients safe is going to cost him money and asked if there is any way to get an answer. Levasseur said Toomey has the Town in a hostage situation, it is not the Selectmen's fault and they are trying to resolve this. Petersen said tests need to confirm if there is an ecoli issue and if there was a widespread ecoli issue, we would be getting complaints. Comley said they have a protocol and have emergency water on hand that will be depleted in a couple of days. Merry suggested contacting the Ipswich Water Treatment Plant and ask them to test the water for ecoli and explain why you need this done. Comley said he tried to contact Toomey to no avail and asked what the action plan is for the next week. Merry said they will be testing the Covino's water. Petersen said this is an example of why this is an emergency. Levasseur said the Selectmen are trying to fix the problem, Toomey and Moschella are doing the opposite.

MINUTES

- March 16, 2015 Executive Session

Bob Snow made a motion to approve the minutes from March 16, 2015 Executive Session, Joseph Perry second, all in favor - aye (4-0). Cliff Pierce - ABSTAINED.

- March 23, 2015 Executive Session

Joseph Perry made a motion to approve the minutes from March 23, 2015 Executive Session, Bob Snow second, all in favor - aye (4-0). Cliff Pierce - ABSTAINED.

- September 1, 2015

These minutes were held for the next meeting.

ANNOUNCEMENTS

- The Town has the following vacancies:
 - a. **Shellfish Commissioners** – two seats
 - b. **Cable Advisory Committee** – seeking five members
 - c. **Fence Viewer** – three positions;
 - d. **Wood, Lumber & Bark Inspector**; and
 - e. **Zoning Board of Appeals Associate** - two seats
 - f. **Historical Commission-Historic District Commission** – two seats
 - g. **Parks and Recreation Committee** – two seats
 - h. **Open Space Committee** is seeking one member

For more information on these positions, please contact the Selectmen's Office at 948-2372.

- Rowley Food Pantry is in need of donations. The Food Pantry is open Tuesdays from 10:00 a.m. to 12:00 p.m. and Thursdays from 5:30 p.m. to 7:00 p.m.
- Rowley Chili Cookoff will be held on Saturday, September 26, 2015 from 2:00 p.m. to dusk on the Town Common
- The Rowley Public Library is offering a seminar on Understanding Social Security on September 22 at 7:00 p.m.
- The Rowley Public Library is offering a presentation on "North Shore Witchcraft – Did you know that Rowley had 7 accused witches?" on October 3 at 1:00 p.m.

ADJOURN

There being no further business before the Board, Chairman Merry called for a motion to adjourn. Dave Petersen so moved, Bob Snow second, all in favor - aye (5-0).

Open meeting adjourned at 9:23 p.m.

Respectfully submitted,
Amy Lydon
Assistant Town Administrator

ATTACHMENTS

1. Letter from Independent Living Center of the North Shore and Cape Ann, Inc, September 11, 2015
2. Road Opening Permit, area of 128 Wethersfield Street, Rowley Water Department
3. Road Opening Permit, 19 Bradford Street, Rowley Water Department
4. Proclamation to Rowley Housing Authority Executive Director Joan Petersen
5. Meeting memo regarding General Business #5: Request from YMCA to hold Annual Rowley Poker Road Race, October 3, 2015
6. Flyer from YMCA for Annual Rowley Poker Road Race
7. Meeting memo regarding 7:15 p.m. Appointment: Karen Summit to give an update on the tax title property auction
8. Memo from Karen Summit regarding tax title property auction
9. Meeting memo regarding New Business #1: Discuss disposition of 1980 Cemetery truck
10. Bid submitted by Don Savory for 1980 Cemetery truck
11. Meeting memo regarding New Business #2: Set schedule for Board of Selectmen's meetings
12. Meeting memo regarding New Business #3: Discuss Mass. School Building Authority onsite Senior Study meeting at Pine Grove School on October 28, 2015
13. Email from Brian Forget of Triton regarding MSBA Study
14. Meeting memo regarding Old Business #1: Discuss recruitment process for police chief position
15. Letter from Badge Quest
16. Meeting memo regarding 7:30 p.m. Appointment: Board of Water Commissions Chair Timothy Toomey to discuss "breach of contract" issues and public safety and health issues of the Water Department per email of 9/21/15
17. Email chain from September 21, 2015 between Toomey and Eagan regarding Safety Issues at Water Department

18. Meeting memo regarding New Business #4: Update and discuss Water Department Issues - treatment plant; water main leaks; Pingree Farm Road; Water Board Meetings, including executive session meetings; the hiring of Attorney Moschella; the hiring of Weston & Sampson services, and Mass. General Laws Chapter 40 Section 39A; Chapter 41 Section 69B; and Chapter 11 of the Acts of 1946
19. Water Board Emergency Meeting Agenda from September 18, 2015
20. Mass. General Law Chapter 40 Section 39A
21. Mass. General Law Chapter 41 Section 69B
22. Email trail regarding OML Complaint
23. Draft minutes for September 1, 2015
24. Flyer, Rowley Senior Center, announcing Drug Take Back Day, September 26, 2015