

MINUTES OF THE BOARD OF SELECTMEN MEETING

April 8, 2019

Meeting held at Town Hall, 139 Main Street, Rowley, MA

7:00 p.m.

MEMBERS PRESENT: Chairman Cliff Pierce; Vice Chairman Joseph Perry; Clerk Robert Snow (Town Administrator Deborah Eagan, Assistant Town Administrator Amy Lydon) David Petersen - ABSENT

PUBLIC ATTENDEES: David Zizza – Finance Committee; Mark Behringer – 115 Bennett Hill Road; Mary Behringer – 115 Bennett Hill Road; Barbara Pierce – 111 Bennett Hill Road; Henry Rolfe – 13 Plantation Drive; John Beard – 167 Boxford Road; Marcia Anderson – 26 Mehaffey Lane; Elizabeth Tucker – 186 Central Street; James Gallagher; Curt Bryant – 80 Boxford Road; Stephen Grant – 100 Bennett Hill Road; Bernard Cullen – 283 Wethersfield Street; Rhonda Ward – 76 Boxford Road; Anthony Franciosa; Michael Bontos; Paul Konish – 8 Mehaffey Lane; Bryan DiPersia – 500 Wethersfield Street

CALL MEETING TO ORDER

Chairman Pierce called the meeting to order at 7:00 p.m. He said the meeting is being audio and video recorded and broadcast live via Rowley Community Media.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

GENERAL BUSINESS

1. Request from Rowley Public Library to hold Annual Vehicle Day on the Town Common

Chairman Pierce read the email request.

Joe Perry made a motion to approve this request, Bob Snow second, all in favor - aye (3-0). Dave Petersen – ABSENT

2. Request from the Friends of the Council on Aging to hold Annual Yard Sale Fundraiser at the Town Hall Annex, 39 Central Street on May 18, 2019

Chairman Pierce read the request.

Bob Snow made a motion to approve this request, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

3. Request from PEG Access Director Janet Morrissey to lift the hiring freeze for the position of Production Technician

Chairman Pierce read the request memo.

Joe Perry made a motion to lift the hiring freeze, Bob Snow second, all in favor - aye (3-0). Dave Petersen – ABSENT

NEW BUSINESS

1. Sign May 14, 2019 Annual Town Election Warrants

Bob Snow made a motion to sign the May 14, 2019 Annual Town Election Warrant, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

The Selectmen signed the Annual Town Election Warrant.

2. Review Zoning Board of Appeals Application filed by Michael Bontos d/b/a Rowley Auto Parts appealing the Inspector of Buildings decision for property at 164 Boxford Road

Chairman Pierce said there is a separate item on the agenda for a license revocation on the same property, and this is a different matter. He said this item is to review Bonto's appeal to the Zoning Board of Appeals. The Board had no comments on this application.

OLD BUSINESS

1. Pine Grove School Project Update

Joe Perry said the project is on schedule, and moving into Phase 4 out of five phases. He said they will be busy on the project between June 14th and Labor Day.

2. Fire Station and Police Station Addition Project Update

Chairman Pierce read the following:

The project is moving along. The contractor is working on the landscaping and the paving should be done next week. The contractor is also working through the punch list items.

The Fire Department will be moving into their building by May 1st.

An Open House is being planned for both buildings in either May or June.

3. Sign Memorandum of Agreement with the Massachusetts Coalition of Police Local 360

Pierce said the Board has already discussed the terms of this agreement.

Bob Snow made a motion to sign the Memorandum of Agreement with the Massachusetts Coalition of Police Local 360, Joe Perry second, all in favor - aye (3-0).
Dave Petersen – ABSENT

The Selectmen signed the agreement.

4. Sign Memorandum of Agreement with the American Federation of State County and Municipal Employees - AFSCME Local 2905

Pierce said the Board has already discussed the terms of this agreement.

Bob Snow made a motion to sign the Memorandum of Agreement with the American Federation of State County and Municipal Employees - AFSCME Local 2905, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

The Selectmen signed the agreement.

ANNOUNCEMENTS

- Earth Day Event Co-hosted by the Rowley Open Space Committee and the YMCA on Saturday, April 20 at the Dodge Reservation and Camp Cedar Mill, 390 Wethersfield Street from 9:00 a.m. to 2:00 p.m. Rain date is Sunday, April 21. The event is a day of fun for the whole family: Events include: Yoga at 9:00 a.m.; trail clearing from 10 a.m. to 12 p.m.; 11 a.m. to 1 p.m. YMCA Health Kids programs and exhibits; and 1 p.m. to 2 p.m. a Community Hike. For more information call the Y at 978-356-1102 or the Conservation Office at 978-948-2330.
- Town Meeting will be held on May 6, 2019 at 7:00 p.m. at Pine Grove School
- Annual Town Election will be held on May 14, 2019 from noon to 8:00 p.m. at St. Mary's Church Hall
- The Town has the following vacancies:
 - a. Agricultural Commission Associate;
 - b. Cultural Council;
 - c. Deputy Shellfish Constables – two positions.For more information on these positions, please contact the Selectmen's Office at 948-2372.

- The Rowley Food Pantry is in need of donations. Donations can be left at the Rowley Public Library. The Food Pantry is open on Tuesdays from 10:00 a.m. to 12:00 p.m. and on Thursdays from 5:30 p.m. to 7:00 p.m.

7:05 to 7:10 p.m. PUBLIC COMMENT

There were no public comments.

7:15 p.m. PUBLIC HEARING – Earth Removal Application filed by Anthony Franciosa of Kings Oak Properties LLC to remove soil from 108, 112, and 116 Bennett Hill Road, Rowley

Chairman Pierce read the following:

The applicant has not properly notified abutters of this Public Hearing. The applicant requested a certified abutters list from the Assessor's Office for only 112 Bennett Hill Road (Copy provided by Assessor's Office attached), and did not request certified abutter lists for 108 and 116 Bennett Hill Road. The Assessor's Office has confirmed that if the lists were requested for the other two lots, there would have been more names of abutters than on the list for just the one lot requested.

He said we are legally unable to proceed with the hearing. He said the options are for Franciosa to withdraw the application without prejudice, or for the Board to dismiss the application without prejudice. He said the potential new hearing dates are April 29 at 6:30 p.m. or May 13 at 7:15 p.m. He said April 29 is the date of the Informational Hearing on the warrants.

Franciosa said there is confusion about this, and he found out about this at 1:00 p.m. today. He said he found out that an abutter came in, identified themselves as a direct abutter, and said they hadn't been notified, which is untrue. He said Libby Tucker is not a direct abutter to lot 3, 4 or 5. He said the direct abutters of these parcels are lot 2 and lot 6, and there are no other direct abutters. He said the Assessors certified abutters list form uses a radius of 300 feet, but the ordinance states to use a 200 feet radius. He said there is no proof that he is in violation of not notifying abutters. He said Tucker's lot is 216 feet away from the boundary, so she wouldn't need to receive notice. He said he would like to open the hearing, continue it, and he will work with the Assessors Office to ensure all abutters are notified as required. He said he doesn't want to have to withdraw his application and pay for another advertisement, and he would like to get the project finished.

Eagan said the 200 foot reference is in the Earth Removal Bylaw, Section E. 4., but it pertains to the operational plan. She said in the bylaw there is a provision about how an

application should be submitted and it is clearly 300 feet, which follows the procedures under Chapter 40 A. Pierce said he can understand why this would confuse someone. Franciosa said he has obtained two abutters lists from the Assessors Office and that he has done everything in good faith. He said he will work with the Assessors Office to get an accurate list and notify everyone. Tucker said she is an abutter to all the properties except for the one on the corner and she did not receive any notice. Franciosa said the only direct abutters are lot 2 and lot 6. He said the majority of the material is on 112 Bennett Hill Road, and the material previously removed was from 108 and 116 Bennett Hill Road. He said he is asking the Board to consider opening the hearing and continuing it.

Eagan said the one application submitted covered three lots, and they probably should have filed three applications – one for each lot. She said three different abutters lists are needed, and they only requested an abutter's list for 112 Bennett Hill Road. She read the email from Rosemary Restuccia from the Assessors Office about the difference in the lists if all three addresses had been requested. Pierce said he is willing to follow Franciosa's request and not require new applications. He said Franciosa needs to demonstrate that he has met with the Assessors Office to get the three abutters listings, using the 300 foot rule, and that all abutters have been notified.

Bob Snow made a motion to open the public hearing and continue it until April 29, 2019 at 6:30 p.m. to enable Franciosa to give timely notice to all abutters within 300 feet of all three lots and to prove that notice has been provided, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

7:30 p.m. LICENSE REVOCATION HEARING: Michael Bontos, d/b/a/ Rowley Auto Parts, 164 Boxford Road, Rowley Class III Motor Vehicle Junk License and Auto Auction License

Chairman Pierce read the following:

Chairman Pierce states that the reasons for the possible revocation include:

- a. The licensed premises are not "a place suitable for the purpose" of practicing a Class III license within the meaning of G.L. c. 140, § 59.*
- b. The Building Inspector issued a cease and desist letter to Mr. Bontos dated February 20, 2019.*
- c. The exercise of the licenses would appear to be in violation of the special permit issued by the Rowley Zoning Board of Appeals in Case No. 15-07*
- d. The premises are located in the Municipal Watershed Protection District, where junk and salvage yards, including automobile graveyards as defined under G.L. c. 140B, § 1, are forbidden by § 4.11.3.1(p) of the Rowley Protective Zoning Bylaw; and the premises are in relatively close proximity to the Boxford Road Well.*

Pierce said point (c) is the primary reason. He said the previously issued license to sell autos is in violation of the ZBA decision which clearly states there will be no sales of automobiles or storage of junk vehicles. He said the license to auction autos should be revoked since it is violation of the ZBA decision.

Bonto's attorney, Peter Ross, said the premises has been the site for auto auctions and salvage for over 45 years. He said each year his client has come before the Board and the license has been issued. He said in 2015 his client went before the ZBA for a permit to store new cars, and a special permit was issued on condition that no junk cars would be on the premises. He said this ended in August of 2017, it hasn't been used for this purpose since, so it reverts back to the original non-conforming use. He said this was a condition of the Special Permit, and it isn't attached to the land. He said the Special Permit is not currently being used. Pierce said the Special Permit is attached to the land. Ross said he has a case where the court ruled on this issue, and the court's ruling is not on Pierce's side. Pierce said the ZBA special permit hasn't been repealed, modified or revoked, and the license was issued inappropriately. He said the Board of Selectmen wasn't aware of the ZBA decision. Ross said they are appealing the cease and desist issued by the Building Inspector before the ZBA on Wednesday. Pierce said Bontos can apply for a new license if the ZBA reverses its decision. Ross said they are entitled to the ZBA hearing before the Selectmen vote on this. Pierce said Bontos will have his day in court and the Selectmen will abide if there is a change in the agreement. Ross read the ZBA conditions on the Special Permit and said they are clearly attached to the Special Permit. Pierce said he believes the conditions attach to the use of the land. He said if they aren't entitled to sell automobiles, how are they entitled to a license to sell them. Ross quoted the court case and said they have been using the non-conforming use of the land for the past 45 years. Pierce said this need to be brought to the ZBA. Eagan said the Board can revoke one or both of the licenses issued to Bontos for the Class III and Auto Auction. She said the Board can also suspend it or attach a condition to it.

Joe Perry made a motion to terminate both licenses, Bob Snow second, all in favor - aye (3-0). Dave Petersen – ABSENT

OLD BUSINESS

5. Review Annual and Special Town Meeting Warrants

Eagan reviewed the Special Town Meeting, which is a rough draft reviewed by Town Counsel, articles as follows:

- #1 – standard article
- #2 to fund Town Meeting

- #3 Library repurposing funds to improve their heating and cooling system
- #4 Transfer unexpended funds from Health Insurance to Essex Regional Technical school budget for FY19
- #5 Cemetery transferring money from a number of articles to fund an \$18,000 replacement of water lines and faucets
- #6 Transfer of \$5,000 from Police Chief salary to Police expenses
- #7 capital spending article for \$136,583 total: \$29,200 for technology; \$50,541 for equipment and \$15,992 for facilities upgrades (partial appropriation); \$45,850 for dump truck
- #8 Continuation of funding for the capital plan using unexpended funds of \$49,640 from the Town Hall Auditorium heating project
- #9 Purchase of a dump truck for \$175,000 from free cash
- #10 \$100,000 to continue program of tree and limb cutting and maintenance
- #11 repurposing the unexpended debt from the Police & Fire Station project to the Pine Grove School project
- #12 Funding for a cost estimate for a new Recycling Center at 516 Newburyport Turnpike
- #13 \$6,000 to perform a Pay Equity analysis under the Massachusetts Equal Pay Act
- #14 \$20,000 for developing policies and training for the new State Law that meets the standards of OSHA.
- #15 funding for a new Town website
- #16 funding for Rowley Community Media cameras and equipment
- #17 Water Department funding to replace valves on the Prospect Hill storage tank
- #19 Water Department funding for distribution main valves
- #20 Annual CPA article
- #21 appropriation of CPC funds for the Housing Authority to replace windows and roofs for \$260,000
- #22 \$20,000 of CPC funds for the Town Clerk to digitize Town records
- #23 lease of property off of Smith Lane – current lease with SBA is expiring
- #24 Didax building donation
- #25 transfer parcel on Saunders Lane to the Conservation Commission
- #26 Cemetery bylaw update to remove fee language from the bylaw and set fees by the Cemetery Commissioners
- #27 amendment to the Wetlands Protection Bylaw
- #28 Shellfish Constable deleting fees from Bylaw and authorizing the Commissions to set fines and penalties
- #29 House to House Bylaw – there is a question on the fee for renewals, which would be the cost for the employees to process the renewals.

Bob Snow made a motion to set the renewal fee at \$20.00, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

- #30 Retail Village Overlay District submitted by the Planning Board, and associated map
- #31 Zoning changes on Route 1 and two maps submitted by Planning Board
- #32 Zoning article for the Transient Oriented Overlay District at 375 Main Street, including map
- #33 Citizen Petition for 293 Wethersfield Street, intersection of Route 1 and Wethersfield Street. Town Counsel said this wording cannot be changed. Pierce read the explanation at the bottom of the article.

Eagan said the Fingerprinting Bylaw is extensive and is still being worked on. Pierce said this should be postponed since we have 33 articles on just the Special Town Meeting warrant. Perry agreed.

Joe Perry made a motion to postpone the Fingerprinting Bylaw, Bob Snow second, all in favor - aye (3-0). Dave Petersen – ABSENT

8:00 p.m. PUBLIC HEARING Liquor License Alteration of Licensed Premises
Application filed by Steven Morris of Rowley Veterans Association, 19 Bradford Street, Rowley

Caroline Jean said RVA President Steven Morris is on a leave of absence and is stepping down. She said the Interim President was unable to come tonight because his son is being confirmed. She introduced Jennifer Pironte, who helps her run the operation.

Chairman Pierce read the Public Hearing Notice then read the following:

- *The applicant has paid all taxes, water bills and electric bills.*
- *The Occupancy Permit issued to the RVA for the second floor is attached.*
- *The current liquor license for the first floor only issued to the RVA is attached.*

Bob Snow made a motion to open the public hearing, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

Public Hearing opened at 8:04 p.m.

Pierce read the Department Head comments. He said the Town Planner suggests that the operation is being expanded to the second floor which may require a site plan approval, but the use of the second floor was just interrupted and is not a new use. Bernie Cullen said the parking is tight and asked when the site plan was last completed. Pierce said there probably was never a site plan review, which is true for many older establishments. He said this doesn't seem to be really an expansion which would

trigger a site plan review. He said the Police Chief has no concerns about parking. Caroline Jean said the occupancy limits are the same as before.

Pierce read the email from abutter David Zizza. Caroline said she believes in the past there were four hour rentals of the second floor from 7:30 p.m. to 11:30 p.m., which could have included live bands. She said to respect the neighbors, they will have the music stop between 11:00 and 11:30 p.m. She said the majority of the events use a D.J. or phones for the music. Zizza said the Fools concert went to 1:00 a.m. Caroline said going forward the music will end at 11:30 p.m. and the building will close at 12:00 a.m. She said they have a new air conditioning system, so the windows will be closed. Pierce said music ending at 11:00 p.m. is reasonable. Zizza asked how an 11:00 p.m. cutoff for music will be enforced when they are allowed to serve alcohol until 1:00 a.m. Monday through Sunday. Pierce said if the RVA requires the music to end at 11:00 p.m., the noise from a few lingering people shouldn't interrupt the neighborhood too much. He said the RVA staff has typically been downstairs, so when the upstairs is loud and he calls, the staff have to go upstairs to check. Caroline said there is one bartender upstairs and someone on site for crowd control. She said she can't speak for the prior management. She said they are trying to make people happy in the neighborhood, not hurt their business, and provide a service to the Town. Bernie Cullen asked if there is a noise bylaw. Pierce said there is no Town noise bylaw. Eagan said if the Board approves this, it will be sent to the ABCC for approval. Pierce said if the noise is an issue, we can revisit it during the renewal process. Eagan said she spoke with Caroline about the RVA Board transitions and told her when they get the resignation, to submit a Change in Officers and Directors application. Caroline said they need to have a Board meeting and have been talking about a June meeting. Eagan said the RVA needs to update their information with the Secretary of the State otherwise the ABCC will bounce the application back to us.

Joe Perry made a motion to close the public hearing, Bob Snow second, all in favor - aye (3-0). Dave Petersen – ABSENT

Public Hearing closed at 8:19 p.m.

Bob Snow made a motion to approve the application with the condition that music, either live or recorded, terminate at 11:00 p.m. each day, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

Eagan said the vote on the music time in on the Entertainment license, and this is a pouring license. She said the time they are allowed to pour is consistent with the first floor hours. She said if they are holding events that are open to the public, they will need to get an Entertainment license. Pierce said he would like to keep the condition about the music with the vote. Caroline asked if there is an entertainment permit for private events. Eagan said a private event with music doesn't require an Entertainment license.

Bob Snow made a motion to approve the hour for pouring on the second floor to be the same as on the first floor, with no music upstairs after 11:00 p.m. daily, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

Pierce said, "Amy will prepare the Local Licensing Authority Summary Form tomorrow, and will let the Board know when this is ready to be signed. The application, along with the Summary Form, needs to go to the ABCC for further review and approval."

OLD BUSINESS

1. Review Annual and Special Town Meeting Warrants - CONTINUED

Eagan reviewed the Annual Special Town Meeting articles as follows:

- #2 required under the Town Meeting bylaw
- #3 salary of Elected Officials
- #4 – Omnibus budget
- #5 – Water budget
- #6 – Water general overhead and revenue statement
- #7-12 – Water articles presented in their budget package
- #13-15 – standard articles regarding sale of electricity, harbormaster and assessors recertification
- #16 authorization of revolving funds
- #17 RCM annual budget appropriation
- #18 Septic Loan program transfer
- #19 Increasing the amount for the Senior Tax Credit exemption
- #21 MOA AFSCME funding
- #22 MOA Teamsters funding
- #23 CPA budget for FY20
- #24 Treasurer/Collector to become appointed position
- #25 Agricultural Commission reduction of members from seven to five
- #26 Citizen Petition for the seal and motto on the Massachusetts flag
- #27 re-zone a portion of land off of Kathleen Circle
- #28 \$600,000 from free cash and borrowing to purchase a new pumper fire truck
- #29 authorization for a capital stabilization fund to be used to save for the purchase of large scale items
- #30 appropriation of \$200,000 into capital stabilization fund
- #31 OPEB funding
- #32 \$50,000 into stabilization fund. Current balance is \$1,300,000 and we need enough to deal with a catastrophe in a \$20,000,000 budget
- #33 standard election article

Pierce said Eagan did a great job, and this took a lot of work. Eagan said the Finance Committee meets tomorrow night and Wednesday night if needed. She said the Selectmen will meet on Thursday at 9:00 a.m. to finish the warrant and to sign it. She said the goal is to have it printed and in resident's hands the week of April 22nd.

ADJOURN

Chairman Pierce called for a motion to adjourn. Bob Snow so moved, Joe Perry second, all in favor - aye (3-0). Dave Petersen – ABSENT

Open meeting adjourned at 8:35 p.m.

Respectfully submitted,
Amy Lydon
Assistant Town Administrator

ATTACHMENTS:

1. Request from Rowley Public Library to hold Annual Vehicle Day on the Town Common
2. Request from the Friends of the Council on Aging to hold Annual Yard Sale Fundraiser at the Town Hall Annex, 39 Central Street on May 18, 2019
3. Meeting memo regarding General Business #3: Request from PEG Access Director Janet Morrissey to lift the hiring freeze for the position of Production Technician
4. May 14, 2019 Annual Town Election Warrants
5. Zoning Board of Appeals Application filed by Michael Bontos d/b/a Rowley Auto Parts appealing the Inspector of Buildings decision for property at 164 Boxford Road
6. Meeting memo regarding Old Business #1: Pine Grove School Project Update
7. Meeting memo regarding Old Business #2: Fire Station and Police Station Addition Project Update
8. Signed Memorandum of Agreement with the Massachusetts Coalition of Police Local 360
9. Signed Memorandum of Agreement with the American Federation of State County and Municipal Employees - AFSCME Local 2905
10. Earth Day Event announcement
11. Meeting memo regarding 7:15 p.m. Public Hearing– Earth Removal Application filed by Anthony Franciosa of Kings Oak Properties LLC to remove soil from 108, 112, and 116 Bennett Hill Road, Rowley
12. Certified List of Abutters Request submitted by Tony Franciosa to Assessors Office
13. Certified List of Abutters for 112 Bennett Hill Road dated March 6, 2019
14. Email from Rosemary Restuccia regarding Abutters' List – 112 Bennett Hill Rd.

15. Public Hearing Notice for Earth Removal Application
16. Earth Removal Application filed by Anthony Franciosa of Kings Oak Properties LLC to remove soil from 108, 112, and 116 Bennett Hill Road, Rowley
17. Certified List of Abutters Request submitted by Tony Franciosa to Board of Selectmen at the meeting
18. Meeting memo regarding 7:30 p.m. License Revocation Hearing: Michael Bontos, d/b/a/ Rowley Auto Parts, 164 Boxford Road, Rowley Class III Motor Vehicle Junk License and Auto Auction License
19. Letter from Ken Ward to Michael Bontos dated February 20, 2019
20. Current Class III license issued to Michael Bontos
21. Current Auto Auction license issued to Michael Bontos
22. Letter from Deborah Eagan to Mr. Bontos dated March 18, 2019
23. Letter from Ken Ward to Zoning Board of Appeals dated April 3, 2019
24. Memo from Deborah Eagan regarding 164 Boxford Road – Michael Bontos
25. Renewal package for Class III license issued to Michael Bontos
26. Renewal package for Auto Auction license issued to Michael Bontos
27. Photos of 164 Boxford Road
28. Stop work order for 164 Boxford Road
29. Request for Zoning Enforcement at 164 Boxford Road, including attachments
30. Massachusetts General Law Chapter 140 Section 59
31. Special Town Meeting Warrant for May 6, 2019
32. Meeting memo regarding 8:00 p.m. Public Hearing: Liquor License Alteration of Licensed Premises Application filed by Steven Morris of Rowley Veterans Association, 19 Bradford Street, Rowley
33. Published Public Hearing Notice for RVA liquor license
34. Public Hearing Notice for RVA liquor license
35. Alteration of Licensed Premises Application filed by Steven Morris of Rowley Veterans Association
36. Occupancy Permit for second floor of RVA
37. Current liquor license for RVA
38. Memo from Amy Lydon to Board of Selectmen regarding Alteration of Licensed Premises Application filed by Steven Morris of Rowley Veterans Association, including attached comments
39. David Zizza comments on the Alteration of Licensed Premises Application filed by Steven Morris of Rowley Veterans Association
40. Annual Town Meeting Warrant for May 6, 2019