

## **MINUTES OF THE BOARD OF SELECTMEN MEETING**

May 26, 2015

Meeting held at Town Hall, 2:00 p.m.

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

**PUBLIC ATTENDEES:** Lawrence White - Fincom, Karen Summit - Treasurer/Collector

### **CALL MEETING TO ORDER**

Chairman Robert Merry called the meeting to order at 2:03 p.m.

### **PLEDGE OF ALLEGIANCE**

Larry White led the Pledge of Allegiance.

### **SPECIAL BUSINESS**

1. Memo from Larry White re: Water Board meeting of May 19, 2015

Chairman Merry read the memo from Larry White. White said the memo summarizes his concerns. He said they are opening a can of worms in granting reductions in interest charges, especially when facing a Water Department revenue shortfall of \$300,000 with four weeks left to make up the difference. Summit said they should be treating everyone the same and it didn't make sense to her for them to discretionarily reduce charges. She said as Treasurer, she can waive up to \$15.00 and as Collector she is responsible to collect funds for the Town. Summit reviewed her memo. She said she doesn't see that the Water Board has the authority to waive interest charges, but if they abate water usage, they can abate the interest associated with the usage. She said another point is their policy says they shall lien, not may lien. She said they have to have a policy in place to waive interest charges and she asked if Town Counsel can review this.

2. Memo from Karen Summit re: Ability of Board of Water Commissioners to Waive Interest Charges

Chairman Merry read the following:

*After the Board has reviewed and discussed Karen's memo, the Board should consider having Attorney Judy Pickett review and provide a written determination on the ability of*

*the Board of Water Commissioners to waive interest charges on monies owed to the Town.*

Chairman Merry read Karen Summit's email to the Attorney of the Day. Pierce said it seems clear under their policy that interest shall be assessed and there is no provision for them to waive it. He said it is clear that they cannot do this and is a violation of their own policy. Merry said this is by State law also. Summit said she doesn't believe they requested an abatement. Pierce said this is an issue of unfairness. Petersen said they asked the customer what they thought was fair, and they can't operate like this. He said they can't set a precedent for customers to not pay their bill and then the customer sets their own penalty. He said the Water Department is short \$350,000 on the projected revenues, and the Department of Revenue will make the Town come up with the revenue. He said they should ask Town Counsel for an opinion on this and he will not sign off on this customer rebate, since he feels this is illegal.

Dave Petersen made a motion to send the Water Board a letter, informing them that in the Selectmen's opinion, it is illegal for them to waive interest charges and they should make no decisions about this until the legal opinion from the Town's Attorney is received, and waiving interest charges before the legal opinion is received will set precedents, Bob Snow second, all in favor - aye (5-0).

3. Discuss obtaining written legal opinion on appointing authority of Water Board

Chairman Merry read the following:

*Does the Board wish to vote to request Labor Counsel Joe Fair to write a legal opinion on the appointing authority of the Water Board?*

Merry said the Board has discussed doing this in the past and recommends that we request this legal opinion. Perry said this should be requested.

Snow said on May 19, 2015, he attended the Board of Water Commissioners meeting which was one of the most chaotic meetings he has attended and he stormed out of the meeting because the agenda, Roberts Rules and Parliamentary Procedures were all ignored. Snow said the Water Board ignored the Water Superintendent, and he exploded about an hour into the meeting. He said this is appalling. He said in his eight years on the Board of Selectmen they have lived through Tree gate, Garage gate, and Deer gate. He said he heard that after he left the meeting one Commissioner was discussing concerns about the Superintendent's purchase of approximately \$200 worth of furniture. He said that Commissioner signed off on purchases of \$3,879 worth of furniture in 2012, which was from un-appropriated money. He urged all to watch the May 19, 2015 Board of Water Commissioners meeting.

Petersen said he has been reluctant to get involved in the appointing authority of the Water Department, and he said he doesn't think it is the Selectmen's duty to hire for every day functioning of the Water Department. He said this will add to the work load of the staff in the Selectmen's office and to the Board of Selectmen. He said Attorney Fair has stated that nowhere in the statute that established the Water Department Enterprise Fund is authority given to the Board of Water Commissioners to hire or fire employees. He said the policy of how the Town hires employees can be reinforced. He said the Personnel Department reviews the applications against the job description to be sure they are qualified, and then the qualified applications are given to the Department Head, who conducts the interviews and makes a recommendation to the Board of Selectmen who should be hired. He said he thinks the Water Superintendent should interview the applicants and make the recommendation. He said recent interviews conducted by the Water Board have been embarrassing, where cursory questions are asked, but no questions are asked about technical qualifications. He said the legal opinion on this can be requested, and the Town's hiring policy should be distributed to all Town Departments. Perry agreed that we should get a written opinion regarding the appointing authority.

Pierce said last week at the Water Board meeting, Labor Counsel did give an oral opinion that the appointing authority lies with the Board of Selectmen, but it wouldn't hurt to get this in writing. Eagan said we are in the middle of working on a new Personnel Plan paid for via a grant with Kopelman and Paige and we can bring this to her attention. She said the Board of Selectmen is the employer for the Town regardless of the department they work for. She said the hiring section can be reviewed, but not distributed until the legal opinion is received. She said some statutes say that a Board has the ability to appoint, such as Board of Assessors and Board of Library. She said at this point can we focus on the Water Board initially and then a further review can be done regarding the hiring authority of other departments. Perry said these situations need to be differentiated. Merry said the Water Board should be done separately, and once the Personnel Plan project is complete, the other departments can be added in. He said the Water Board thinks that nobody controls them, and we need this opinion in hand. Petersen said he agrees that the Water Department should be done first, and then clearly delineate the hiring/firing authority for each department.

Larry White said that he noticed at the Water Board meeting that the Superintendent walked out because the Water Commissioners wanted to turn on the water at the Cemetery, and the Superintendent pointed out that this was against DEP regulations since there are leaks in the system in the Cemetery. He said she left the meeting because she was being ignored, and they voted to turn the water on – two in favor and one abstention. He said four Water Department staff and the Superintendent turned on the water at the Cemetery and then chased the leaks for a half day, all to do something

that is against the law. He said the Board of Selectmen should be able to step in to prevent future criminal activities. He said the Superintendent tried to address the \$350,000 revenue shortfall, but the Water Commissioners wouldn't address this, and they are hung up in the day-to-day responsibilities of the Department. He said this is affecting the whole Town and is dismaying.

Snow said the reason he erupted at the meeting was because they were ignoring the Superintendent and trying to run the day-to-day operations. Snow said he erupted at the meeting and said that he as a Selectmen doesn't tell the Highway Surveyor or the Police how to do their job. He said their role is to set policy and provide oversight, and he doesn't blame the Superintendent for leaving. Merry said the Superintendent tried to explain that if she does what they are ordering her to do that she could lose her licenses. Pierce asked how this violates DEP regulations. White said it is a violation of the water ban. Merry said with broken pipes, contaminants will flow into the system, against DEP regulations. He said she tried to explain this to the Water Commissioners, but was ignored. White said if the Superintendent is asked to do something illegal she can go to a higher authority. Eagan said the Water Superintendent did come in and told Eagan that under CMR 310, if a licensed water operator knows there is a leak in water service, they cannot turn on the water under code regulations overseen by the DEP, and she had concerns that there was no backflow preventer in that water service which could potentially contaminate the water. Pierce asked if this was explained to the Water Board. Petersen said they wouldn't listen to her. Eagan said Commissioner Dalzell contacted her to tell her the Board voted to turn the water on. White said the water was turned on at 12:30 p.m. and several leaks were discovered and 560 gallons of water bubbled out of the ground. Merry said she was ordered to turn on the water and fix the leaks, and the water treatment plant had to be shut down in order to do this. Petersen said the leak repairs and costs are the responsibility of the Cemetery, but the Water Department bore those costs. White said he did not see Cemetery Commissioners that day on his four visits to the Cemetery. Petersen said the priorities are out of whack and licenses are being jeopardized on the whim of the Commissioners. Snow said we are in danger of reverting back to how things were three years ago with the Commissioners running the day-to-day operations. He said the Town hired a Superintendent to run the day-to-day operation of the Water Department. Merry said if they force her to do things like this, the DEP will step in, take over and issue fines to the Town. Petersen said the Water Department has a serious issues that the Board doesn't want to discuss, and they worry about abatements and water at the Cemetery. He said we can't let them violate the law and these legal opinions are needed.

Joseph Perry made a motion to request a written legal opinion on appointing authority of Water Board, Bob Snow second, all in favor - aye (5-0).

Perry said the other issues brought up by Finance Committee Chairman White should be put on the next meeting agenda. Snow said that is a good idea. White said the Superintendent, the Primary and Secondary Water Operators are doing a great job, they are standing as one, he is proud that we have these types of people and thanked them.

### **ADJOURN**

There being no further business before the Board, Chairman Merry called for a motion to adjourn. Dave Petersen so moved, Joseph Perry second, all in favor - aye (5-0). Open meeting adjourned at 2:53 p.m.

Respectfully submitted,  
Amy Lydon  
Assistant Town Administrator

### **ATTACHMENTS:**

1. Letter to Board of Selectmen from Lawrence White dated May 20, 2015 regarding Water Board of Commissioner's Meeting of 19 May 2015
2. Meeting Memo regarding Special Business #2: Memo from Karen Summit re: Ability of Board of Water Commissioners to Waive Interest Charges
3. Memo from Karen Summit re: Ability of Board of Water Commissioners to Waive Interest Charges
4. Invoice from Bay State Office Furniture, Inc. from 2012 showing invoices for furniture for the garage totaling \$3,879.00
5. Meeting Memo regarding Special Business #3: Discuss obtaining written legal opinion on appointing authority of Water Board