

MINUTES OF THE BOARD OF SELECTMEN MEETING

September 28, 2015

Meeting held at 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: Lawrence White - Finance Committee; John Ross Troop B Ipswich; Jack Ross Troop B Ipswich; Mike Dalzell Troop B Ipswich; Lee Dalzell Troop B Ipswich; M-C Condon-Dalzell Troop B Ipswich; Henry Rolfe - Independent Press; Stephen Comley - We the People; Stuart L. Dalzell Sr.; Bernie Cullen

CALL MEETING TO ORDER

Chairman Robert Merry called the meeting to order at 7:00 p.m. He said the meeting is being audio and video recorded digitally.

PLEDGE

Mike Dalzell led the Pledge of Allegiance.

7:00 p.m. Appointment – Michael Dalzell for a Proclamation for achieving the rank of Eagle Scout

Chairman Merry read the proclamation. The Board congratulated Michael, gave the proclamation to him and photos were taken.

GENERAL BUSINESS

1. Letter of resignation from Philip A. Cressey, Jr. from the Zoning Board of Appeals

Chairman Merry read the letter.

Dave Petersen made a motion to accept Philip A. Cressey, Jr.'s resignation with regrets and to send him a letter of thanks, Bob Snow second, all in favor - aye (5-0).

7:05 – 7:10 p.m. CITIZEN QUERY

Larry White of Central Street said he is speaking as a water rate payer. He read the attached statement. Merry said they will take this under advisement under the agenda item for this topic.

GENERAL BUSINESS

2. Letter from the Zoning Board of Appeals Associate Member Robert H. Clewell. requesting to be appointed as full Zoning Board of Appeals member

Chairman Merry read the letter.

Dave Petersen made a motion to appoint Robert H. Clewell as full Zoning Board of Appeals member for a five year term, Joseph Perry second, all in favor - aye (5-0).

3. Letter from Association of Town Finance Committees re: invitation to their annual meeting

Chairman Merry read the letter. Perry said he attended this last year, it was a very good session and worth the ride. Eagan asked the Board to contact the office staff if they wish to attend.

4. Request from the Girl Scout Troop 75124 to hold annual Caroling on the Common

Chairman Merry read the following:

Jane White from Girl Scout Troop 75124 (fifth grade Juniors) has requested permission to use the Town Common for their annual Caroling on the Common on Sunday, December 6, 2015 from approximately 4:30 p.m. to 5:30 p.m.

In response to concerns from the Highway Surveyor and Fire Chief, event coordinator Jane White said that they will have trash receptacles for cocoa cups and other trash, and they won't be using candles or other open flames.

The Police Chief and Health Agent have no comments or concerns about this event.

Dave Petersen made a motion to grant permission to Girl Scout Troop 75124 to hold annual Caroling on the Common on December 6, 2015 from 4:30 p.m. to 5:30 p.m., Bob Snow second, all in favor - aye (5-0).

5. Announcement on new Council on Aging Director Brienne Walsh

Chairman Merry read the following:

Brienne Walsh has been hired as the Town's new Council on Aging Director. Brienne replaces MaryEllen Mighill who retired on August 28th. Brienne's first day on the job was today.

Brienne will be introduced to the Board of Selectmen with Council on Aging Board Chairwoman Mary Bright at an upcoming Selectmen's meeting. Due to a conflict with

Mary Bright's schedule for this evening, she was unable to schedule the introduction for this evening.

Petersen said he met Brienne at the COA and she seems nice and he wishes her well and hopefully she will have a long employment with the Town of Rowley. He said she has big shoes to fill and she knows that. Perry said he met her this morning, she seems very nice and welcomed her to the COA.

NEW BUSINESS

1. Application for a one-day liquor license from Ellen Mendoca of the Clark School

Chairman Merry reviewed the application.

Joseph Perry made a motion to approve the one-day liquor license for the Clark School, Bob Snow second, all in favor - aye (5-0).

The Selectmen signed the license.

2. Discuss response to the Open Meeting Law Complaint - Attorney William Moschella

Chairman Merry read the following:

We are in receipt of three open meeting law complaints from Attorney Moschella against the Board of Selectmen.

The complaints are outlined as follows:

- 1) *Tuesday, September 22, 2015 via email at 8:05 a.m.;*
- 2) *Tuesday, September 22, 2015 via email at 9:19 a.m.; and*
- 3) *Mailed hardcopy received in the Office of the Board of Selectmen on September 24, 2015.*

The subject line of the email sent on September 22, 15 at 9:19 a.m. states "Corrected OML." However, Attorney Moschella's email message does not explain what has been "corrected" or whether the "corrected" complaint replaces the original complaint. Due to the lack of explanation or instruction by Attorney Moschella, Debbie recommends that the Board respond to each of these complaints separately.

On all of the three complaints, Debbie notes that in the Contact Information Box, Attorney Moschella did not check off if he is filing the complaint as an individual, organization or media.

Debbie has prepared a response to each of the received complaints. The Board needs to review them and if the Board is satisfied with the response, they will need to vote to sign them.

Merry read the Letter from the Selectmen to Attorney William Moschella regarding open meeting law complaint response to email dated 9/22/15 8:05 a.m. Eagan said the responses to the second and third complaints are the same with the dates of the complaints changed.

Pierce said he doesn't understand the complaint since an alleged misstatement of fact is not an Open Meeting Law violation. Petersen said Moschella doesn't understand the law or Open Meeting Law. He said these allegations have nothing to do with the Open Meeting Law. He said the Water Board is not exempt and are subject to all the same laws and regulations that all Boards are, and Moschella doesn't seem to understand this. He said the Selectmen have the authority to hire legal counsel.

Dave Petersen made a motion to approve the letter from Selectmen to Attorney William Moschella regarding open meeting law complaint response to email dated 9/22/15 8:05 a.m., Cliff Pierce second, all in favor - aye (5-0).

Dave Petersen made a motion to approve the letter from Selectmen to Attorney William Moschella regarding open meeting law complaint response to email dated 9/22/15 9:19 a.m., Bob Snow second, all in favor - aye (5-0).

Dave Petersen made a motion to approve the letter from Selectmen to Attorney William Moschella regarding open meeting law complaint response to mailed complaint received on 9/24/15, Joseph Perry second, all in favor - aye (5-0).

Bernie Cullen of 283 Wethersfield Street asked if the responses will be sent to the Board of Water Commissioners and Moschella. Eagan said the process is to respond to the complainant and copy the Office of the Attorney General Division of Open Government. Cullen asked if there is a mechanism to report the response to the Water Board since there is a breakdown in communication and this isn't helping if it is going into a black hole. Petersen said Moschella didn't check off the boxes to indicate in what capacity he was filing the complaint, so we have to assume he filed it as an individual.

3. Update and discuss Water Department issues - Water Board Meetings, including executive session meetings; letters to Water Board on re-instatement of water superintendent and Mass. General Law Chapter 40 Section 39A; Chapter 41 Section 69B; and Chapter 11 of the Acts of 1946; State Ethics violations complaint filing

Chairman Merry read the following:

Water Board Meetings, including executive session meetings

The Water Board did not hold a meeting on Tuesday, September 22, 2015. Their last meeting was on Friday, September 18, 2015 at 8:30 a.m. A meeting agenda was posted for Tuesday, September 29, 2015. (Attached is a copy of the posted September 29th. Water Board Meeting Agenda). The Board of Selectmen has three Open Meeting Law complaints pending before the Board of Water Commissioners.

Letters

Pursuant to last week's meeting, a letter was sent to Water Board Chairman Timothy Toomey and Commissioner Stuart L. Dalzell, Sr. demanding the re-instatement of Water Superintendent MaryBeth Wiser. A copy of this letter was sent to Attorney General Maura Healey. Chairman Merry will read this letter into the record.

Merry read the letter the letter sent demanding reinstatement of Superintendent Wiser. Pierce asked if she has been reinstated and Petersen said no. Perry said the Water Board meets tomorrow. Eagan said Wiser reported to work today.

Merry read the following:

Also pursuant to last week's meeting, a letter was sent to Water Board Chairman Timothy Toomey, Vice Chairman John Manning, and Commissioner Stuart L. Dalzell, Sr. notifying them that the Town did not accept Mass. General Laws Chapter 41 Section 69B and that the Town's Water Department operates under Chapter 11 of the Acts of 1946. Chairman Merry will read this into the record.

Merry read the letters and Judy Pickett's opinion.

Merry read the following:

State Ethics Violations Complaint Filing

Does the Board wish to file a complaint with the State Ethics Commission on conflict of issue matters involving Board of Water Commissioners Chairman Timothy Toomey? It appears that Chairman Toomey is using his position as chairman to hinder the grievance process as outlined in the Town's Personnel Plan Grievance procedure.

Petersen said as a Personnel Board representative, MaryBeth Wiser is first and foremost a Town employee and secondly assigned to work at the Water Department. He said the Superintendent operates under the personnel bylaws and there is a collective bargaining agreement for union employees. He said the personnel bylaw has a clear method for filing a grievance against a supervisor and at no time has the Board of Water Commissioners or Toomey followed this process. He said Wiser's complaint was specific to Toomey and under ethics laws he should have recused himself and turned over the matter to Vice Chairman Manning. He said Vice Chairman Manning

was in the process of setting up a hearing when Toomey held the illegal executive session and Wiser was put on leave. He said this is a clear violation, Toomey should have recused himself, and the Board needs to make a complaint. He said this appears to be retaliation. He said the Town has a clear discipline process - a complaint is made, the employee is met with and given a chance to respond and take corrective action. He said Wiser was not given written reprimands, the Water Board was apparently unhappy so they put her on administrative leave so they could conduct a so called investigation. He said they have had a total disregard for the employee's rights and the Board of Selectmen is ultimately responsible for the Town's personnel who expect fair and respectful treatment in accordance with the Personnel bylaw. He said the Water Board has circumvented this bylaw and he recommends that the Town Administrator write up the violations and submit them to the State Ethics Commission as soon as possible.

Petersen said the Water Board thinks they don't have to obey State laws, bylaws, rules or regulations. He said Chapter 11 doesn't say that, and it doesn't authorize them to violate the rights of the employees or override the authority of the Board of Selectmen over employees. He said it was her right to have this discussed in private or open session and at the illegal September 11, 2015 meeting Wiser clearly asked for open session but was denied. He said only Commissioners Toomey and Dalzell know what the complaints are - Wiser and Commissioner Manning do not know. He said there must be some pretty serious allegations to put Wiser on leave and this is costing the Town money. He said Wiser had an attorney and he would expect a lawsuit and the Town is going to be liable for big fines and lawsuits. He encouraged the public to attend tomorrow's Water Board meeting. He said he is embarrassed and disappointed in the Water Board's actions, but ultimately the Town will be sued. He said the Selectmen's hands are tied and we need the Attorney General's Office to respond and issue fines.

Pierce said the Superintendent has been badly mistreated and the Board of Water Commissioners has violated a slew of personnel policies. He said he is not sure if the State Ethics Commission is designed to consider these issues and a complaint should be limited to Tim Toomey's ethical violations, for example when he chaired the meeting regarding the grievance against him. He said he thinks the complaint should focus on the specific ethical violations. Petersen said he agrees, but said the other information backs up and supports the serious issues that are surrounding the violations. He said in his opinion Wiser has been damaged. He said Town officials have to take a state ethics exam, and we should check if the Water Board completed this. He said we should ask for the harshest action possible to be taken and hopefully the Board of Water Commissioners will pay the fines and not the Town. Snow said this appears to be an ethics violation and it needs to be put together correctly. He said Toomey used his position to hinder the grievance process. Pierce said that is vague and we need to cite the specific ethical violation. Petersen said Toomey failed to recuse himself when he was the subject of the grievance and used his influence to postpone the time frames and retaliated before the grievance was responded to by putting Wiser on leave. Pierce said Toomey is the chair and it doesn't mean he has to recuse himself on all actions involving the employee. Petersen said he totally disagrees, and once allegations were made against him, he clearly should have recused himself. He said Toomey went into

executive session against the Town Attorney's advice, chaired the meeting and put Wiser on leave.

Petersen said we should file the ethics complaint against Toomey for his failure to recuse himself and his subsequent retaliation by putting Wiser on leave before the grievance was heard. He said they can leave the wording up to the Town Administrator and Town Attorney, and they can approve the final document at next week's meeting. He said the least we can do is file it, the public is upset, and he is ready to leave the meeting if the Board doesn't support this. He said an employee has been treated with total disrespect and the Selectmen need to take a strong stand. He said this needs to be filed regardless of the thoughts that it might be lost or won. Pierce said if it goes to the Town Attorney and is written with appropriate language he has no problem with filing it.

Eagan said the Board has submitted an OML complaint for the August 25, 2015 Board of Water Commissioners meeting which was held to discuss the grievances, Manning left and Wiser was told to leave. She said they attempted a second executive session on August 31, 2015, but it was not voted for. She said John Manning was attempting to schedule a grievance hearing for the following week, but couldn't proceed when Wiser was put on leave. Merry said on September 11, 2015, Wiser asked for an open session meeting and Toomey said that could be done later. Petersen said on August 25, 2015, Toomey should have recused himself, Manning wasn't at the meeting and this is a clear violation.

Dave Petersen made a motion to have Labor Attorney Joe Fair and the Town Administrator draft the complaint and the Board will review it next week, Bob Snow second, all in favor - aye (5-0).

Bernie Cullen said he has attended a number of Water Board meetings and they are not productive or efficient. He said even if the ethics complaint violation is successful, what will change? Petersen said they are an elected Board so the Selectmen have no control and can take no action other than file complaints. He said the voters need to determine the fate of the Water Board and last night there was a meeting about a recall petition for Tim Toomey and Stuart L. Dalzell Sr. He said the Selectmen do not have legal authority over other boards.

Snow said during "garage gate" the Selectmen put together the fiscal team. He said there is a lot the Selectmen can't do and said the Water Board meets tomorrow night and people can attend and question them. Cullen asked what the time frame is for a recall. Petersen said it is lengthy. He said the complaints sent to the Attorney General could take six months and it is important that people call the Commissioners and go to the meetings. Cullen said the Attorney General's Office must have some suggestions since this can't be the first time there has been a rogue board. Cullen asked who determines the number of Water Board Commissioners. Petersen said the legislation of 1946. Petersen said putting Wiser on leave for two weeks cost \$3,000.00, they have hired Moschella for \$5,000.00 and Weston & Sampson at \$80.00 per hour. He said the

number of man hours and legal fees for this fiasco is costing the Town and rate payers a lot of money. He said the Water Board rapidly spends money and at the same time questions Wiser about spending. Snow urged all to watch the emergency meeting and strongly voice their opinion. He said he has watched it three times and cannot see why this was an emergency meeting.

OLD BUSINESS

1. Discuss sending a letter to Steve Comley, Sr. regarding email dated September 21, 2015

Chairman Merry read the following:

Steve Comley Sr. has sent the Board of Selectmen the attached email.

Does the Board wish to vote to send a response to Mr. Comley?

#1 and #2 from the email

Mr. Comley has informed the Board of Selectmen that Congressman Seth Moulton has not contacted him to meet with him. Congressman Moulton, who represents the sixth Congressional District in Massachusetts, which includes the Town of Rowley, has a local office in Peabody Square. The address is: Seth Moulton, Sixth Congressional District, 17 Peabody Square, Peabody, MA 01969. The telephone number is 978-531-1669. Congressman Moulton also has a website, www.moulton.house.gov. Congressman Moulton represents all the residents in the Sixth District, and The We The People organization has every right to reach out to Congressman Moulton directly.

#3 from the email

Assistant Town Administrator Amy Lydon told Mr. Comley that the August 24, 2015 Selectmen's meeting minutes were not typed. Amy offered to show Mr. Comley her handwritten notes.

#4 and #5. from the email

The Board of Selectmen held a meeting on June 1, 2015 in response to Stephen Comley's vote at the May 4, 2015 Town Meeting under Article 1. (Copy is attached.) The meeting was held 28 days after Town Meeting, pursuant to Mr. Comley's motion The following State officials attended:

- *Dave Rodham of MEMA;*
- *John Gianrusso of MEMA;*
- *Michael Cauley of MEMA;*
- *Senator Bruce Tarr; and*

- *Representative Brad Hill.*

Also, the Town's Emergency Management Director and Fire Chief James Broderick and Police Chief Robert Barker attended. Mr. Comley did not attend the meeting.

REMA Director James Broderick spent 40 hours reviewing the materials Mr. Comley submitted to the Board.

During the June 1st meeting, the MEMA officials, REMA Director Jim Broderick, and Police Chief Barker explained the emergency plans that the state has in place to deal with the Seabrook power plant.

Going forward, we know that REMA Director Jim Broderick will notify the Board of Selectmen on any emergency situations involving the Seabrook Power Plant. If a situation should arise, Jim will be in constant communication with appropriate MEMA officials.

Does the Board wish to send a letter to Mr. Comley explaining this?

Petersen said we should send Mr. Comley a letter and add in a statement that after the Board of Selectmen set in motion the meeting with MEMA officials, Tarr and Hill, that Mr. Comley didn't attend or call to let us know that he wasn't coming. He said the Board of Selectmen went above and beyond their responsibility given the Town Meeting vote and there is nothing else the Selectmen can do. He said Comley is looking for the Board to contact Moulton's office, but the Board has many business items. He said the Selectmen did the due diligence, and a letter should be sent to Comley to put this to bed pending any new issue, and this topic cannot be carried on week to week. He said we did send a letter to Moulton.

Steve Comley Sr. said he had a personal emergency and he did let Tarr's office know. He said Petersen's recommendation to not allow him back is irresponsible, he has new information and the whole Town voted for his motion. Merry said there are 4,000 voters in the Town of Rowley and the whole Town did not vote for this. Comley said he has a recent statement from the New Hampshire National Guard. Petersen objected to Comley continuing. Comley said this is new information. Petersen said the agenda item is only to discuss Comley's letter and not to discuss new information.

Comley said this is a mockery of the democratic process and a number of people are saying some Selectmen should resign. Snow said on June 1, 2015 there was a room full of state representatives here to discuss this issue, including Tarr, who did not mention that Comley was unable to attend. He asked Comley not to fluff him off. He said the Selectmen did due diligence on this and yet he is treating the Selectmen as if they dismissed his concerns. He said the Board has tried to do everything they possibly

could. Comley said the Fire Chief discouraged people from attending the REMA meeting and said the Water Superintendent was not notified of the meeting. Comley said the Light Commissioners should recuse themselves from this meeting and he has been bucked on this issue since the beginning. Merry told Comley he is done, he is not on the agenda. Comley said our forefathers must be turning in their graves, Merry is on the Historical Committee and this is unreal.

Dave Petersen made a motion to have the Town Administrator respond to Comley in a letter and to mention that Comley didn't call or notify us that he couldn't make the meeting and didn't contact us until three weeks later, Bob Snow second, all in favor - aye (5-0).

2. Discuss recruitment process for police chief position

Chairman Merry read the following:

During the past several meetings, the Board has been discussing various options on how to deal with the retirement of Police Chief Robert Barker.

Debbie has contacted Badge Quest, Inc. and is waiting to hear back from Robert Pomeroy on interim police chief services. By next week's meeting, Debbie should have more information.

Eagan said she will have this information for next week's meeting.

MINUTES

- September 1, 2015

Cliff Pierce made a motion to approve the minutes from September 1, 2015, Dave Petersen second, all in favor - aye (4-0). Bob Snow - recused.

- March 23, 2015

Joseph Perry made a motion to approve the minutes from March 23, 2015, Bob Snow second, all in favor - aye (3-0). Cliff Pierce - recused. Dave Petersen - recused.

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**– one seat
 - f) **Zoning Board of Appeals Associate** – two open seats
 - g) **Historical Commission-Historic District Commission** - two seats
 - h) **Parks and Recreation Committee** - two seats
 - i) **Open Space Committee** is seeking members
- 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.
 - 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.
 - Tax title property auction - October 20, 2015 at noon in Town Hall, second floor

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

Open meeting adjourned at 8:48 p.m.

Respectfully submitted,
Amy Lydon
Assistant Town Administrator

ATTACHMENTS

1. Proclamation for Michael Dalzell for achieving the rank of Eagle Scout
2. Letter of resignation from Philip A. Cressey, Jr. from the Zoning Board of Appeals
3. Statement read by Larry White during Citizens Query
4. Letter from the Zoning Board of Appeals Associate Member Robert H. Clewell requesting to be appointed as full Zoning Board of Appeals member
5. Letter from Association of Town Finance Committees re: invitation to their annual meeting
6. Meeting memo regarding General Business #4: Request from the Girl Scout Troop 75124 to hold annual Caroling on the Common
7. Email request from Jane White regarding Caroling on the Common
8. Meeting memo regarding General Business #5: Announcement on new Council on Aging Director Brienne Walsh
9. Application for a one-day liquor license from Ellen Mendoca of the Clark School
10. One-day liquor license issued to the Clark School
11. Meeting memo regarding New Business #2: Discuss response to the Open Meeting Law Complaint - Attorney William Moschella
12. Letter from Selectmen to Attorney William Moschella regarding open meeting law complaint response to email dated 9/22/15 8:05 a.m.

13. Letter from Selectmen to Attorney William Moschella regarding open meeting law complaint response to email dated 9/22/15 9:19 a.m.
14. Letter from Selectmen to Attorney William Moschella regarding open meeting law complaint response to mailed complaint received on 9/24/15
15. Open Meeting Law Complaint filed by Attorney William Moschella including enclosure
16. Water Department Rules and Regulations 2013 Edition pages 2-5
17. Motion made by Stuart L. Dalzell Sr. regarding legal counsel
18. Letter from Deborah Eagan to William Moschella regarding purchase order to provide investigation
19. Email and attached Open Meeting Law complaint from Attorney William Moschella emailed 9/22/15 9:19 a.m.
20. Email and attached Open Meeting Law complaint from Attorney William Moschella emailed 9/22/15 8:05 a.m.
21. Meeting memo regarding New Business #3: Update and discuss Water Department issues - Water Board Meetings, including executive session meetings; letters to Water Board on re-instatement of water superintendent and Mass. General Law Chapter 40 Section 39A; Chapter 41 Section 69B; and Chapter 11 of the Acts of 1946; State Ethics violations complaint filing
22. Water Board agenda for September 29, 2015 meeting
23. Letter from Board of Selectmen to Water Commissioners Toomey and Dalzell regarding Water Superintendent Wisner and enclosures
24. Letter from Board of Selectmen to Water Commissioners regarding Massachusetts General Laws Chapter 41 section 69 B and enclosure
25. Excerpt from 1946 Annual Town Report
26. Excerpt from 1952 Annual Town Report
27. Meeting memo regarding Old Business #1: Discuss sending a letter to Steve Comley, Sr. regarding email dated September 21, 2015
28. Email from Steve Comley, Sr. dated September 21, 2015
29. Memo from Amy Lydon to Board of Selectmen regarding Steve Comley, Sr. dated September 21, 2015
30. Motion made by Steve Comley, Sr. at May 4, 2015 Town Meeting
31. Attendance sheet from June 1, 2015 Selectmen's meeting
32. Memo from Amy Lydon to James Broderick, REMA Director dated March 19, 2015 regarding material submitted by Steve Comley Sr.
33. Meeting memo regarding Old Business #2: Discuss recruitment process for police chief position
34. Letter from Badge Quest, Inc. dated September 12, 2015 and reference list
35. Minutes September 1, 2015
36. Minutes March 23, 2015