

BOARD OF SELECTMEN – TOWN OF NATICK

OPEN SESSION MEETING MINUTES

EDWARD H. DLOTT MEETING ROOM - NATICK TOWN HALL

November 23, 2015

5:30 PM

PRESENT: Chairman Charles S. Hughes, Vice Chair J. Richard P. Jennett, Jr., Clerk Nicholas S. Mabardy, Joshua Ostroff, and John J. Connolly

ALSO PRESENT: Town Administrator Martha L. White and Executive Assistant Trish O’Neil

Chairman Hughes called the meeting to order at 7:15 p.m.

Mr. Hughes, seconded by Mr. Jennett, moved to enter into Executive Session to discuss matters pertaining to Executive Session Minutes, Real Property, Litigation, Non-Union Personnel Negotiations, and Collective Bargaining, with the Chair announcing that discussion of Executive Session matters in Open Session would have a detrimental effect on the Board of Selectmen’s negotiating position and the Town’s interests. By a roll call vote, Mr. Hughes, Mr. Jennett, Mr. Mabardy, Mr. Ostroff, and Mr. Connolly all voted in favor of the motion. The Board entered into Executive Session at 5:40 p.m. after announcing that the meeting would return to Open Session at approximately 7:00 p.m.

Open Session reconvened at 7:10 p.m. The Pledge of Allegiance was recited and a moment of silence was observed in honor of those protecting our country.

ANNOUNCEMENTS :

Mr. Connolly congratulated the Police Department on the Fill a Cruiser Drive, stating that they “did a good job.”

Diane Packer, the Town Clerk, announced that the annual election would be held on 3/29/16 and that nomination papers would be available on Monday, 11/30/15, with a list of open positions on the Town website, including two Board of Selectmen three-year seats and 60 Town Meeting seats.

CITIZEN’S CONCERNS

None.

WHAT’S NEW

Trish O’Neil, Executive Assistant, provided details about the Coats for Kids Drive being held by the Town with drop-off locations in the Town Hall, both libraries, the Community-Senior Center, and the Recreation and Parks Department.

APPOINTMENTS WITH THE BOARD OF SELECTMEN

- 1. Conservation Administrator - Request Signature for a Termination Notice of Activity and Use Limitation for the Former Natick District Court House:**
Conservation Administrator, Bob Boyce, announced that the final cleanup of the former Natick courthouse has been performed and that this is the final step. Mr. Jennett, seconded by Mr. Ostroff, moved to sign the Termination Notice of Activity and Use Limitation, which the Board unanimously agreed to.
- 2. Natick Wine & Spirits - Application for the Modification of Operating Hours:**
Yogesh Patel, owner, operator, and manager of the Natick Wine & Spirits Package Store, requested that his license reflect the correct closing hour of 10:00 p.m. The business has always been open until 10:00 p.m., but his license says 9:30, and he would simply like the license to reflect the correct closing time. On a motion by Mr. Jennett, seconded by Mr. Ostroff, the Board voted unanimously to change the closing time on the license to 10:00 p.m.

3. **Sepal Natick, LLC - Application for Common Victualler's License**: Mahmoud Shihadeh, owner of Sepal, requested approval for a common victualler's license following receipt of a Certificate of Good Standing from the IRS and approval by the Police Department. Mr. Connolly questioned a history of infractions but Mr. Shihadeh explained that there all restitution had been made. On a motion by Mr. Jennett, seconded by Mr. Ostroff, the Board voted unanimously to grant a common victualler's license.
4. **Director of the Department of Public Works - Approve Modifications to Environmental Monitoring Contract**: Per Ms. White, this item will not be addressed tonight due to problems with paperwork.
5. **Public Hearing - Oga's Japanese Cuisine - Application for the Transfer of Stock, New Officer/Director, and Change in Manager**: Mr. Mabardy read the Public Hearing Notice and, seconded by Mr. Ostroff, moved to open the Public Hearing. Attorney Dan Wilson, representing Minoga, Inc. (Oga's), was present and stated that the business has been open since 2001 with no previous violations. Mr. Oga is currently the 100% owner of Oga's and approval is requested to transfer 50/50 ownership between Mr. Benny Li and Mr. Oga to Mr. Oga as the sole owner. Also requested is a change in manager to Mrs. Kumiko Oga, who is TIPS certified and has experience in serving alcohol. This is a family business. In reviewing the documentation, Mr. Hughes pointed out that there has been no licensed manager for four years, since 2011, since Mr. Li's departure from the business. Attorney Wilson took full responsibility for this oversight and admitted to "dropping the ball" for four years. Mr. Jennett questioned why the Police Department had not been aware of this in any of their compliance checks. Attorney Wilson stated that Attorney Joe Devlin has been hired as legal representative for Oga's from this point forward. Mr. Connolly voiced concern about the lack of a manager of record for the past four years. Mr. Ostroff suggested fixing what is broken currently and then moving forward. Mr. Hughes agreed, stating that it was important to restore the business to compliance for both the Town and the ABCC and then to deal with any possible infractions. Mr. Connolly stated a preference to not let the lack of a manager of record for four years go without notice. Mr. Hughes stated that the Board has the right to have a hearing regarding any violations and to discuss any penalty but that this would be separate and distinct from tonight's hearing. Mr. Ostroff, seconded by Mr. Hughes, moved to approve the change in stock holdings and the Board unanimously agreed. Mr. Ostroff, seconded by Mr. Hughes, moved to accept the new manager of record and the Board unanimously approved. Mr. Jennett requested a meeting with the new attorney of record to discuss future handling of these matters. Mr. Hughes recommended holding a Public Hearing to see if any penalties should be imposed. On a motion by Mr. Connolly, seconded by Mr. Mabardy, the Board voted unanimously to hold a Public Hearing to determine the consequences of Oga's noncompliance for such an extended period of time.
6. **P.F. Chang's - Application for Change in Manager**: Attorney Danielle Jurema from the firm of DiNicola, Seligson & Upton LLP was present representing P.F. Chang's and introduced Amy Thiemann, the proposed new manager, stating that Ms. Thiemann had been an employee of P.F. Chang's for 11 years and had experience in opening new restaurants, etc. Mr. Connolly made note of Ms. Thiemann's self-disclosed conviction for operating a vehicle while intoxicated at the age of 21. Ms. Thiemann stated that she had made a mistake but had performed community service, paid all required penalties, and learned her lesson. On a motion by Mr. Jennett, seconded by Mr. Ostroff, the Board voted unanimously to approve Ms. Thiemann as the new manager. Mr. Hughes made the point that P.F. Chang's had had one of the worst alcohol violations involving an extremely bad car accident and that any future alcohol violation would have dire consequences for the restaurant.
7. **Hearing - Torchona Group, LLC d/b/a Maxwell's 148 - Alleged Alcohol License Violation**: Mr. Mabardy read the public hearing notice regarding Maxwell's alcohol servers not being properly trained. Mr. Hughes, seconded by Mr. Jennett, moved to open the public hearing. Mr. Hughes informed the Board that the matter would be rescheduled at the request of Maxwell's attorney, Mr. John Burke. Mr. Hughes, seconded by Mr. Connolly, moved to continue the public hearing to December 7th.

8. **Discussion of Cheesecake Factory Second Alcohol Violation**: Mr. Connolly requested a Public Hearing. On a motion by Mr. Connolly, seconded by Mr. Hughes, the Board voted unanimously to schedule a Public Hearing.
9. **Deputy Town Administrator/Finance - Fiscal Year 2017 Budget**: Departmental budgets are due December 1st, 2016 and Mr. Towne requested feedback from the Board Members as a tool for preparation of the Fiscal Year 2017 budget. Mr. Mabardy had given a list of five items to Mr. Towne earlier in the evening and Mr. Ostroff indicated that he had sent an email consisting of eight items to Mr. Towne and Ms. White outlining his own personal take on budget preparation. Mr. Connolly outlined his suggestions and gave a list to Mr. Towne. Mr. Ostroff commended Mr. Towne and Ms. White for their handling of the budget and called "budgeting in this Town a great strength." Mr. Mabardy also commended Mr. Towne for his budgeting expertise. Mr. Towne thanked the Board Members for their input.

Mr. Hughes requested a break at 8:10 p.m. The Open Session reconvened at 8:18 p.m.

DISCUSSION AND DECISION

1. **Deputy Town Administrator/Finance - Revisions to Financial Management Principles**: Per Mr. Towne, March 10, 2014 was last time financial management principles were revised, are what drive the Town's financial decisions, and should be reviewed annually, with the Town's policy stating that an annual review be performed. The revised version was presented to the Finance Committee over the summer and outlines what the Town's financial management guidelines are, including those related to reserves, encumbrances, stabilization funds, capital planning, refinancing, etc. Mr. Towne stated that the goal is to stay within the limits of Proposition 2 ½ and to have a very comprehensive budget plan, even to include grants, so that it shows the full capital expenditures. On a motion by Mr. Ostroff, seconded by Mr. Jennett, the Board voted unanimously to adopt the Financial Management Principles as amended.
2. **Chief of Police - Discussion Regarding Consideration of the MetroWest Regional Drug Task Force Occupying Space at the East School**: Chief Hicks stated that the Police Department is looking for a temporary location to house the Task Force Unit, consisting of six officers (none assigned to the DEA), four from Framingham and two from Natick, and inquired whether empty office space at the East School would be available. Mr. Hughes inquired about what operations would actually be performed at the school and Chief Hicks indicated that they would be strictly administrative, with no informants, suspects, evidence, or drugs in the building. Per Chief Hicks, the Task Force currently shares desk space at the Framingham Police Station and there really is not one place where the entire Task Force can meet all together in order to operate cohesively. Ms. White indicated that several local nonprofits are interested in renting space in the building and that her goal is to have organizations in the building that would benefit young adults who are disabled. However, Ms. White expressed her support for the Task Force occupying the building since they are doing important work. Mr. Connolly, seconded by Mr. Mabardy, moved to approve the Chief's request and the Board voted unanimously in favor of the motion. Ms. White indicated that the Superintendent of Schools be asked for his input and Mr. Hughes requested that Ms. White follow up on that and get a response back to the Board.
3. **Article 21 Fall Town Meeting - Submit Letter to State Legislature Regarding Utility Pole Fines**: Per Mr. Ostroff, this is a standard-type letter that is sent after a vote by Town Meeting when seeking support from the legislature regarding a matter of this type. This particular Home Rule Petition would authorize the Town to assess fines for failure of the utility companies to relocate or remove their utility poles and wires. The Town of Framingham has filed identical legislation. Mr. Ostroff asked if there were any objections to filing the same bill as Framingham and there were none. On a motion by Mr. Connolly, seconded by Mr. Ostroff, the Board voted unanimously to submit the letter, signed by Mr. Hughes, to Representative David Linsky.
4. **Town Administrator - Update on the Walcott and Kennedy Trust Funds**: Ms. White thanked Sue Salamoff and Donna Donovan for their work on these funds. Monies

have not been distributed in recent years from these funds because it was determined at some point that the group of clergy, serving as fund committee members as required through the wills of those from whom the funds became available, had to operate under the Open Meeting Law, which was an obstacle for them due to their lack of understanding of the law and their unwillingness to meet under such law. However, it has come to our attention that the Attorney General's Office has ruled that they are not required to operate under the Open Meeting Law. The other problem is that approximately 10 years ago, the Walcott Fund (established to help people with financial emergencies) expended more than it legally should have and ended up in the red. Ms. White's intention is to put an Article on the Spring Annual Town Meeting Warrant that would allow the Town to replenish the fund. After calculating the amount that was over-expended at approximately \$12,700, at 2 percent interest, Mr. Jennett suggested an amount of \$14,500 be put back into the fund. Mr. Hughes asked for an explanation as to why the Town should pay interest, to which Mr. Jennett stated his understanding that Town staff were responsible for the over-expenditure and his contention that the Town would, as a result, then be responsible for the monies that were over-spent. Ms. White stated that the Town is currently working with the clergy to reorganize the Kennedy Fund (established to provide school scholarships). Mr. Connolly expressed happiness that the Walcott Fund issue will be brought before Town Meeting in that he felt that money was stolen from the fund and that the terms of Mr. Walcott's will had been violated as a result. Mr. Hughes responded that money was neither stolen nor misappropriated but was used for its intended purpose - the problem was that the interest from the fund was to have been the funding source and not the principal. Mr. Connolly countered that the clergy members had no input as to how the funds were used and that all the decisions regarding the money were made by one Town employee. Mr. Hughes stated that the matter would be further discussed when the budget is discussed.

5. Review and Discuss 2015 Special Town Meeting #1 Warrant Articles 1, 2, 3, 4, and 5:

- a. **Article 5:** This article requests a home rule petition for an above-quota wine and malt license for a potential future grocery store. Mr. Hughes moved no action and was seconded by Mr. Mabardy. Mr. Hughes explained that the applicant had no intended location for the license and no experience operating a liquor establishment. The Board unanimously voted no action.
- b. **Article 1:** This article proposes to purchase a conservation restriction from the Trustees of Reservations for the property at 193 Pegan Lane. Ms. White indicated that the Finance Committee had already voted favorably on this, as had the Board of Selectmen, but felt that funding would be the issue. The Chairman of the Finance Committee thought borrowing rather than using the stabilization fund for funding might be better. Ms. White said she would prefer to use the stabilization fund but would not object to borrowing and requested that the Board weigh in on the funding source. Mr. Connolly, though in favor of the purchase of the conservation restriction, moved for reconsideration of the Selectmen's vote on this matter because he felt as if it was being fast tracked. Mr. Mabardy seconded the motion. Mr. Jennett also expressed concern since Town Counsel had seemed to indicate the need for more time to review the matter, but felt that an okay from the Town Counsel, indicating that all required conditions as outlined would be met, before the end-of-year deadline would be acceptable. On a vote of 3-2, the motion failed. After Ms. White delineated these conditions, Mr. Hughes asked for a revote on Mr. Connolly's motion to reconsider the previous vote of the Selectmen. Mr. Hughes stated that if this vote were to fail, the previous vote of the Selectmen, which was 5-0 in support of the Warrant Article, would stand. Mr. Hughes asked for a show of hands in favor of reconsideration and Mr. Connolly and Mr. Mabardy raised their hands. Asked for a show of hands in opposition of reconsideration, the remaining Board Members raised their hands. Reconsideration failed on a vote of 3-2. Mr. Hughes indicated that the Board would meet on the 1st of December to discuss the funding source. Mr. Connolly then requested a roll call vote on the question of reconsideration because he had wanted to be let free from his previous favorable vote. Mr. Ostroff stated that in order to move the matter along and let Board Members express their views on the article, he would be willing to change his vote in

favor of reconsideration. Mr. Hughes moved reconsideration and asked for a show of hands in favor of reconsideration. On a vote of 4-1, with Mr. Hughes opposing, the motion passed. Mr. Ostroff moved to support favorable action on Article 1 subject to the concerns of the Board regarding access, parking, and compliance with state and local law, with the funding source to be determined, and was seconded by Mr. Jennett. The Board voted 3-2 in favor of Mr. Ostroff's motion, with Mr. Connolly and Mr. Mabardy casting the dissenting votes.

- c. **Article 2:** This article authorizes the Town to vote to receive various reports of Town officers, boards, and committees. Mr. Hughes, seconded by Mr. Mabardy, moved to support hearing the reports and the Board unanimously voted favorable action.
 - d. **Article 3:** This article authorizes the Board to enter into a structured tax agreement with MA Highway Solar LLC. This article was voted and unanimously approved at the last Selectmen's meeting.
 - e. **Article 4:** This article looks to determine the sum of money the Town will appropriate for the design and construction of a walking trail along the Cochichuate Rail Trail. Per Ms. White, the Board already voted favorably on this Article but was being asked to reconsider. It was determined, however, that the vote of the Board had been not to hear the Article so there was nothing to reconsider. Because a number of concerns, legal and otherwise, had been raised by the Finance Committee, Mr. Ostroff, seconded by Mr. Jennett, moved for referral to the Selectmen, the Conservation Commission, and the Recreation and Parks Commission. Mr. Connolly said that he wanted it on record that he is against this Article because neighbors he has spoken to have concerns about it, including concerns related to public safety and trail designs. Mr. Ostroff thought the neighbors would be best served by a referral. Mr. Ostroff's motion was carried unanimously.
6. **MGL Chapter 30B Determination of Unique Property Acquisition - Pegan Lane:** Per Ms. White, purchasing an interest in a property would normally go out to bid, but Chapter 30B has in it a provision that would disallow that in the purchase of a unique property, i.e., a property having unique characteristics, such as Pegan Lane. Ms. White's request is that the Board make this determination. Mr. Hughes took issue with some language in Ms. White's memo, indicating that the Town, rather than the Conservation Commission, would be making the purchase. Ms. White countered that a conservation restriction can only be held by a Conservation Commission. Mr. Hughes said that at some point, the Board may have to transfer the conservation restriction to the Conservation Commission, but the party on the purchase and sale agreement should be the Town of Natick. Ms. White offered to eliminate the words Conservation Commission. Mr. Hughes moved, and was seconded by Mr. Jennett, to support the determination with the referenced amendment to the purchase and sale agreement. The motion was carried unanimously.
7. **Town Administrator Evaluation:** Per Mr. Jennett, the Town Administrator has requested an extension of time to submit her self-evaluation. Mr. Jennett is prepared to move forward with use of the evaluation form used by the Selectmen in the past unless Board Members have changes or suggestions to make. Mr. Ostroff pointed out that Ms. White's self-evaluation should cover the general categories of the Selectmen's evaluation form and reflect her progress towards the goals that were set for her. Mr. Ostroff requested that the Town Administrator's evaluation be done at the December 7th Selectmen's meeting.
8. **Real Property Update:** Per Mr. Ostroff, this item was placed on the agenda should the Board want to discuss anything or make a report to Town Meeting, and indicated that it could be discussed again at the December 7th Selectmen's meeting.
9. **Sustainability Coordinator - Update on Electricity Aggregation and Eversource Rates:** Ms. Wilson-Martin was unavailable for tonight's meeting but Mr. Hughes read from a memo submitted by her. Eversource's new rate, effective January 1st, will be 10.8 cents per kilowatt hour (this would be a six-month rate). Ms. White indicated that the Town is negotiating with ConEdison, whose fixed rate is 13.3 cents per kilowatt hour, and recommended that folks sit tight while the Town is negotiating. Mr.

Mabardy requested that an explanation be presented to those who wish to opt out of the aggregation program. Mr. Ostroff suggested letting people know how they can get a better rate.

REQUESTED ACTION

1. **JFK Transportation - Cancel One Taxi License and Transfer One Taxi License:**
 Moved by Mr. Mabardy and seconded by Mr. Ostroff, the Board voted unanimously in favor of cancelling one taxi license and transferring one taxi license.
2. **Approval of Minutes - 10/26/15, 11/3/15, 11/9/15, 11/14/15:** The following minutes were unanimously approved by the Board of Selectmen:

October 26, 2015 Moved by Mr. Ostroff, seconded by Mr. Jennett
 November 3, 2015 Moved by Mr. Ostroff, seconded by Mr. Jennett
 November 9, 2015 Moved by Mr. Ostroff, seconded by Mr. Jennett
 November 14, 2015 Moved by Mr. Ostroff, seconded by Mr. Jennett

TOWN ADMINISTRATOR NOTES : None.

SELECTMEN’S CONCERNS

Mr. Connolly stated he received a letter of explanation from Ms. Ramsey as to why the Disabled American Veterans were not able to use a meeting room at the Community-Senior Center recently, this after receiving a complaint from a veteran.

Mr. Jennett received a letter from a veteran concerned that a room named after Ed Jolley was not available to veterans’ organizations and this should be followed up. Mr. Jennett also received a letter from a resident of Eliot Hill Road, an unaccepted road, about having the road accepted and said he would follow up on the matter. He also received an email from DLS Alerts, stating that there are certificates of good standing online for alcohol/liquor licenses, that he will forward to Ms. White to see if it is something the Town should be involved with.

Mr. Ostroff discussed that the opiate issue may actually be of a higher level of concern and that our “best practices” should be discussed. Mr. Ostroff received a letter from a resident of Newfield Drive stating that the Safety Committee has not made a recommendation for lighting on that street, and requested that the Board consider this for a future agenda item because it is just not safe for people to walk there. Regarding the unaccepted street status of Eliot Hill Road, Mr. Ostroff is interested in investigating what it would take to get some streets accepted.

Mr. Hughes wished all a happy and safe Thanksgiving.

CORRESPONDENCE :

Selectmen’s Correspondence : Not discussed.

Town Administrator’s Correspondence : Not discussed.

On a motion by Mr. Ostroff, seconded by Mr. Jennett, the Board unanimously voted on a roll call vote to adjourn the Board of Selectmen’s Meeting.

Nicholas S. Mabardy, Clerk

November 23, 2015 Board of Selectmen Meeting Minutes Approved by the Board of Selectmen on May 31, 2016

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All documents used at this Board of Selectmen meeting are available at:
<http://naticktown.novusagenda.com/AgendaWeb/UpdateMeeting.aspx?MeetId=201>