

BOARD OF SELECTMEN MEETING MINUTES
Donaldson Room
Monday February 26, 2018 6:30 P.M.

PRESENT: James Craig (Chair), Jennifer Glass, Jonathan Dwyer

STAFF: Timothy Higgins, Town Administrator, Peggy Elder, Administrative Assistant

WELCOME & INTRODUCTIONS:

- Mr. Craig opened the meeting and reviewed the agenda.

ANNOUNCEMENTS:

- None.

APPOINTMENTS:

- Bypass Road Citizen Petitions – Mr. Craig welcomed the Bypass Road neighbors whom were in attendance. Mr. Craig explained that the Board's practice is to give the proponents of any Town Meeting citizen petitioners the opportunity to review their petition with the Board prior to Town Meeting. Mr. Craig stated that in the case of the Bypass Road petitioners proposed Town Meeting articles (i.e., two separate articles seeking reimbursement of legal expenses in connection with the McLean Hospital's proposed Bypass Road facility) a threshold question has come up as to the legality of the petitions.

Mr. Craig asked Mr. Higgins to explain the process for considering citizen petitions. Mr. Higgins stated that citizens that are contemplating filing petitions typically start by asking for guidance from Town staff. In this particular case, the petitions were submitted close to the deadline and without any prior consultation with Town staff. As part of the Town's diligence, the petitions are reviewed by relevant staff and by Town Counsel if necessary. In this case, upon his initial review of the petitions, Mr. Higgins was concerned that the purpose (i.e., reimbursement of legal fees to private parties) would violate the legal prohibition on public funds for private purposes. Mr. Higgins started by consulting with the Town's Finance Director who concurred. Mr. Higgins requested that the Finance Director seek an opinion from the Department of Revenue's Legal Division. The Finance Director reported that she had spoken with DOR Legal and was advised that due to staff turnover the Department would not be able to provide a written opinion for several months. However, the Department did provide a verbal opinion confirming that the proposed reimbursement would violate the Anti-Aid Amendment of the Massachusetts Constitution; and specifically the so-called public purpose rule. Given that DOR was unable to provide a timely written opinion, Mr. Higgins requested a written opinion from the Town's Special Counsel, Jay Taleran, who was hired to defend the ZBA's decision in the McLean litigation, and who is intimately familiar with the facts of the case.

Mr. Craig then invited Attorney Taleran to share his opinion. Referring the Board to his memo dated February 21, 2018, Attorney Taleran explained that the Law vests the Selectmen with the responsibility and authority for determining which articles appear on the

Warrant for Town Meeting. He explained that there are two key statutes for the Selectmen to be mindful of when considering the legality of the petitions that are being discussed, and whether it is proper for the Board to include them on the Town Meeting Warrant. The first is the statute (i.e., c. 39, s. 10) that states that the Selectmen shall include on the warrant any petitions that satisfy the basic procedural requirements spelled out, including that the petition have the requisite number of voter signatures. In this case, there has been no concern raised about any procedural defect with the petitions. The second statute the Board needs consider is one (i.e., c. 39, s. 24) that any articles must not be inconsistent with any express provisions of any general or special law. Attorney Talerman shared his opinion that the purpose of the two petitions proposed by the Bypass Road neighborhood violates the public purpose requirement of the Anti-Aid Amendment of the Massachusetts Constitution. Attorney Talerman went into great detail differentiating the Town's legal strategy and efforts from those of the private abutters, who had retained their own private counsel to represent their specific interests. Attorney Talerman advised the Board that one of the key tests that should be applied in considering whether the proposed purpose would benefit private or public interests is to evaluate the extent of control that the Town exercised in the decision to retain the attorney, to negotiate a rate, to develop legal strategy, and to remain in communication throughout the litigation. Attorney Talerman underscored that there was no such control exercised by the Town at any stage. Attorney Talerman then reviewed Court decisions that confirm the authority of the Board to exclude from the Warrant any petition article that is for an illegal purpose.

The Board then invited the Bypass Road neighbors to explain their petition and to offer their perspective. The neighbors expressed their view that the purpose of their petitions was to protect the Town's interests as a whole, and not simply their own concerns as abutters. They pointed to the fact that there was close coordination between their counsel, Attorney Fee, and the Town's Special Counsel, Attorney Talerman, and that the underlying intentions of the Town and the Abutters was the same. Attorney Talerman explained that although he and Attorney Fee had a respectful and mutually supportive working relationship, they were reporting to and taking direction from different clients who had different objectives and somewhat different strategies. The neighbors disagreed with Town Counsel and reiterated their view that their involvement served the Town's interests as well as their own.

There was then extensive discussion between the neighbors and Town Counsel about the division of labor between the respective Attorneys throughout the litigation. Attorney Talerman explained that he and Attorney Fee approached the case from differing perspectives and with different objectives in mind. Attorney Talerman explained that he was retained to defend the ZBA's decision and the integrity of the Town's bylaw, whereas Attorney Fee was hired by the neighbors who presented themselves in the litigation as an aggrieved party whose interest was to prevent McLean Hospital from constructing their intended facility at Bypass Road. Attorney Talerman stated that the ZBA has made it clear that they are neutral on the specific subject of the McLean project.

In summary, Attorney Talerman reiterated his opinion that the proposed citizen petitions are illegal in that they are asking that public funds be used to reimburse a private purpose and undertaking which violates the public purpose requirement of the Anti-Aid Amendment of the Massachusetts Constitution. Having said so, Attorney Talerman clarified that the Selectmen did have the discretion to include or to exclude the petitions from the Warrant. The Board asked Attorney Talerman what would happen if illegal petitions were included on the Warrant. Attorney Talerman stated that in the unlikely event that an illegal article would be

approved by the voters, the Selectmen would not be legally obligated to carry out the action called for in an illegal petition.

Mr. Craig then stated that it was his position, given the strong opinion of Special Counsel and the verbal opinion of the Department of Revenue that the two proposed citizen petitions requesting reimbursement of legal expenses are illegal, that the Board should exercise its discretion and vote not to include the petitions on the warrant. Mr. Dwyer stated that he would also be uncomfortable asking Town Meeting to vote on matters that had been determined to be illegal. Ms. Glass stated that in addition to the concerns expressed by others, she was concerned that a vote to reimburse private parties for expenses incurred in representing their interests before a Town board or committee, would set a damaging precedent. She added that it is fairly common for abutters to retain consultants and professionals of various types to represent them. In the end, Ms. Glass felt she was obligated to protect the fiduciary interests of the community.

Mr. Craig asked for a motion. Mr. Dwyer moved that the Board vote to exclude the two citizen petitions seeking reimbursement of legal expenses from the Warrant for the March 24, 2018 Annual Town Meeting. The motion was seconded by Ms. Glass. With Mr. Dwyer, Ms. Glass and Mr. Craig all voting in the affirmative, the motion was approved by unanimous vote of the Board.

- Lincoln-Sudbury Environmental Club – Members of the L-S Environmental Club (Julie Concannon, Anjoli Das, Lucy Bergeron, and Nicole Garay) joined the meeting. The group shared the experience that they gained through outreach to various establishments in Town (i.e. Country Pizza, DeCordova, Trail's End Café, and Donelan's). Mr. Craig asked if the group was following the bill to ban all plastic bags with handles that is moving its way through the legislature and they responded that they were and understood that if that if it passed then all individual town bans would be superceded by the State law banning them which they felt was a good thing. The group then gave a presentation that they plan to present at Town Meeting which summarizes their two articles (plastic water bottles and plastic bags with handles). Mr. James White joined the conversation adding that he supports the two petitions that the L-S Environmental Club are proposing, but he states that his petition took it one step further and that would be banning the use of plastic water bottles on Town property. He explained that his petition made everyone in the Town part of the process and he felt would make a bigger statement. Mr. White respectfully asked the Board to refrain from taking a position on his article and the Board did not vote on his article at all. Ms. Glass then made a motion to endorse the Lincoln-Sudbury Environmental Club's Plastic Bag Ban article. Mr. Dwyer seconded the motion. It was unanimously approved. Ms. Glass made a motion to endorse the Lincoln-Sudbury Environmental Club's Plastic Water Bottle Ban article. Mr. Dwyer seconded the motion. Mr. Craig did not vote to endorse the article, but with a majority vote it was passed. Mr. Craig cited his concerns about fairness and economic impact to Lincoln's small businesses as the reasons behind his vote and further stated that he fully supports a statewide Plastic Water Bottle ban and encouraged the students to continue their efforts in that regard. Mr. Higgins reported on how well received the L-S Environmental Club was after their presentation at Town Meeting last year and how they have reached out to the various boards, committees, and businesses since then to go through the process more fully and be prepared for the upcoming Annual Town Meeting.
- Grant of Location Verizon Wireless – Attorney Dan Klasnik representing Verizon Wireless joined the meeting. Attorney Klasnik explained that Verizon Wireless was seeking a Grant of Location to install small cell equipment. Mr. Dwyer moved to open the public hearing for

the grant of location application. Ms. Glass seconded. It was unanimously approved. It was confirmed that the abutters were notified by certified mail of the public hearing and the green return receipts have been received. Attorney Klasnik reviewed both the size of the equipment Verizon Wireless would be installing as well as the process and timeline of installation. He added that the installation of the equipment will provide coverage in an area where there is not really available currently. The Board then opened the hearing for public comments and abutter Douglas Stinson voiced his approval of the small cell installation as much needed to improve cell coverage in the Route 126/117 area. Mr. Dwyer made a motion to close the public hearing. Ms. Glass seconded the motion. It was unanimously approved. Ms. Glass made a motion to approve the application for the small cell installation as presented. Mr. Dwyer seconded. It was unanimously approved.

OPEN FORUM:

- None.

TOWN ADMINISTRATOR'S REPORT:

- FY19 Town Budget Development – Mr. Higgins reported that after a recent meeting with Fincom that the FY19 budget now includes the preferred budget items. He added that all stakeholders have been notified. Mr. Higgins also confirmed the Board of Selectmen's support for a \$15,000 increase in the Senior Tax Work-Off Program.
- Annual Town Meeting Warrant – Mr. Higgins reported that the Town Meeting Warrant has been finalized and it is ready for the Board of Selectmen's signature tonight. This will be an Action Item.
- Confirm Receipt of Letter from Sudbury Board of Selectmen – Sudbury Board of Selectmen would like to meet with the Lincoln Board of Selectmen to discuss the formation of a Committee to explore opportunities for improvements among Sudbury and Lincoln schools.

DISCUSSION:

- Preliminary Planning and Design Committee (PPDC) – Mr. Dwyer reported that there was a meeting tomorrow afternoon, February 27, 2018, at 4:45 PM at the Parks & Recreation office. The group will be looking at Smith as a location and working towards the workshops being held both in the morning and the afternoon on March 13, 2018.
- School Building Committee – Ms. Glass reported that there will be a meeting Wednesday afternoon, February 28, 2018.
- Marijuana Study Group – Mr. Higgins reported that the latest meeting focused on creating a FAQ document. He added that there was great collaboration and he hoped that the FAQ would be ready for distribution at Town Meeting. Mr. Dwyer commented that there were so many qualified people who volunteered to serve on the committee and he asked if any of those that were not appointed were helping out in the process. Mr. Higgins responded that there was one individual that had great expertise and is helping out in the development of

the FAQ document. Mr. Higgins then reported that as they plan the first public forum on the topic, that rather than have someone presenting, they are looking into holding a panel discussion and having someone with a healthcare background, an industry person, and a public safety person and organize the forum that way. The panel would then answer any questions the public might have. Mr. Higgins hopes that the person with the Industry experience would sit on the panel for the public forum.

- Liaison Reports:

Ms. Glass reported that she will be attending the Lincoln-Sudbury School Committee Meeting tomorrow night. Police Chief Kennedy will be there. They will be discussing school safety and she will report back.

Mr. Craig reported that he will be attending the Housing Options Working (HOW) Group public forum being held in the Donaldson Room tomorrow night at 7:00PM.

ACTION ITEMS:

- Selectmen's Newsletter - Mr. Dwyer moved to approve the March 2018 newsletter. Ms. Glass seconded. It was unanimously approved.
- Constable Re-Appointment - Ms. Glass moved to re-appoint Robert P. Millian, Jr. and Joseph Topol to the position of Constable. Mr. Dwyer seconded. It was unanimously approved.
- Road Closure for Annual Amphibian Migration – Ms. Glass moved to approve the road closures of Silver Hill Road, Conant Road, and Lexington Road for the annual amphibian migration, weather permitting, sometime in March or early April. Mr. Dwyer seconded. It was unanimously approved.
- Warrants – Mr. Dwyer moved to approve the Warrants. Ms. Glass seconded. It was unanimously approved.
- Annual Town Meeting Warrant – Ms. Glass moved to sign the warrant for the March 24, 2018 Annual Town Meeting with the exclusion of Articles 25 and 26. Mr. Dwyer seconded the motion. It was unanimously approved.

CORRESPONDENCE:

- None

MEETING MINUTES:

- January 22, 2018 – Mr. Dwyer moved to approve the minutes of January 22, 2018. Ms. Glass seconded. They were unanimously approved.

- February 5, 2018 – Ms. Glass moved to approve the minutes of February 5, 2018. Mr. Dwyer seconded. They were unanimously approved.
- February 16, 2018 – Ms. Glass moved to approve the minutes of February 16, 2018. Mr. Dwyer seconded. With Mr. Craig abstaining from the vote, the minutes were approved.

A motion was made by Ms. Glass moved to adjourn. Mr. Dwyer seconded. It was unanimously approved. The meeting adjourned at 9:50 P.M.

Submitted by Peggy Elder
Approved 4/09/18