

**TOWN OF ASHBURNHAM
BOARD OF SELECTMEN MINUTES
EXECUTIVE SESSION
FEBRUARY 20, 2007
SELECTMEN'S OFFICE, TOWN HALL**

PRESENT: Jonathan Dennehy, Chairman, Chris Gagnon, Clerk, Mark Carlisle, Member, Kevin Paicos, Town Administrator and Sylvia Turcotte, Assistant to the Town Administrator. Also present – Debbie Phillips, Town Counsel.

Member meeting being duly posted, Carlisle moved to enter into executive session at 8:07 p.m. to deliberate upon matters which, if done in open meeting could detrimentally affect the position of the Town regarding the strategy of pending litigation and to not reconvene into regular session. Gagnon seconded and the motion carried. Roll call was taken.

There was a short discussion on the contract situation with Kang Associates. Dennehy inquired if any of the questions on this contract were significant enough to not allow the work to continue and Phillips stated “not really”. Paicos agreed. Phillips stated that Kaffee Kang is very conscientious to the extreme.

Paicos stated that someone is making this an important issue to make him look bad, and that’s the bottom line. Gagnon stated that the inconsistencies in the by-laws upset him and he feels they need to review them. Carlisle agreed with Gagnon.

Paicos stated that this wasn’t an urgent matter as Phillips has stated and agreed. Dennehy noted that if this was what Paicos wanted to deal with then it was his responsibility if things happen.

Dennehy then stated that there has been a request for a copy of the Town Accountant’s contract and Debbie Phillips stated that everything is a public document unless there’s an exception. Dennehy asked Sylvia to send a copy to Maggie Whitney. Carlisle stated that we are officially obligated. Paicos noted that a copy of the detail memo would also be sent.

Paicos then touched on the subject of Mark Dymek and the policy decision on whether he could get a permit if he pays a certain amount to the City of Gardner.

Paicos stated that we are looking at two questions:

1. Enough capacity? He noted that all agree “yes”. Phillips stated that “not really” this could be an issue and we need to get this established. Paicos stated that we need to get the engineers together to assess this.
2. Gardner’s permission? Paicos stated that the answer is “yes”.

Paicos stated that Dymek can’t pay both Gardner and Ashburnham the \$500k fee and this combination of fees could be what he appeals. Phillips stated that there are no cases that DEP has allowed a permit to happen where a case was allowed with the host community denying.

Phillips stated that she would need a list of everything paid out to Gardner on this but she understood that it wasn’t available tonight. Paicos stated that this is a lot more complex than we thought. Phillips stated that she has already taken Special Counsel John Shea on to help her with this issue and that she needs the Board of Selectmen to approve this. She added that Shea normally gets \$400 an hour but he is doing this for her at \$300 an hour. Paicos stated that we really need Shea and that he would be paid out of Water/Sewer funds.

Carlisle motioned to authorize Matthew, Shea and O’Brien as Special Counsel and to authorize Jonathan Dennehy as signatory. Gagnon seconded and the motion carried.

Paicos stated that he has been authorized to contact Leo Collette to get information that has been requested by John Shea. He stated that we should keep it low key and keep costs down and have our DPW Director do a courtesy call to the Gardner DPW Director. He added that a meeting could be set up at that point without the

lawyers and timing is important.

Phillips stated that there is a deadline but that we could get an extension. Paicos stated that Dymek is not suing us and that the \$1m fees he would pay could force him into appeal, but that Dick Heaton says if all the units are sold, we could see \$1.5m come to the Town. He noted that it's good public policy and the income potential is significant for a relative low cost.

Phillips added that we don't want to alienate our relationship with Gardner. She stated that if the Board is satisfied with the plan that she has set forth it would be helpful. Dennehy stated that this is a good course of action, to get out there fact finding. Phillips added that they may have new people in Gardner who don't know our agreement and what has been paid. Carlisle stated that we should give them the benefit of the doubt.

Carlisle inquired about the Nextel issue and Phillips stated that she thinks that it's done as they did provide the exhibits for the lease.

With no further discussion, at 9:17 p.m. it was unanimously voted to come out of executive session and to not reconvene to regular session.

Respectfully submitted,

Sylvia Turcotte
Assistant to the Town Administrator