

**TOWN OF ASHBURNHAM  
BOARD OF SELECTMEN – SPECIAL MEETING  
DECEMBER 3, 2008  
OAKMONT REGIONAL HIGH SCHOOL – AUDITORIUM**

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PRESENT: Chris Gagnon, Chair, Jonathan Dennehy, Member and Maggie Whitney, Clerk. Kevin Paicos, Deb Phillips, Town Counsel and Sylvia Turcotte, Assistant to the Town Administrator. Also present: Bill Johnson, Dottie Munroe, Jamie Piedrafite, Belden DiVito as well as Jim Shanahan, Dave Christianson and Mike Zapantis.

The meeting convened at 6:10 p.m. with a discussion on Article 3 of the STM Warrant.

Gagnon explained the handout and that they would basically be voting on the column titled FY09 TA Recommend with the total budget amount of \$14,010,698. He added that this amount included the \$250k override just passed by the voters on Monday.

Discussion followed on the motion and it was decided to go with the amended motion that the Town Administrator composed. Paicos noted that the override amount of \$250k basically went to the Regional School District, the Overlay account and Snow and Ice.

Gagnon then asked Town Counsel, Deb Phillips for her opinion on the fuel oil bid situation, giving a brief history of the events leading up to this. She proceeded to give this opinion noting that there was no record or municipal agreement with this vendor. She also noted that there was no formal memo from the Board of Selectmen accepting this bid.

Gagnon asked about the possibility of litigation and Phillips noted that this could occur but that they could only get their loss profit, nothing else. She stated many times during the discussion that the Town had never experienced a problem with the oil bid before but now that we experienced problems and looked into it further it was found that this was clearly a breach of contract. She did add that there was never a problem in the past so it was never an issue.

Phillips also noted that the Town's defense is that there is nothing signed and that in her opinion they have the right to cancel the contract. She noted that after all, this is the taxpayers' money.

More discussion followed regarding what effect this would have on the school district and how they would be subject to litigation as well.

Dennehy noted that the majority of the Board of Selectmen didn't seem to want to get out of this contract. Gagnon stated that the Town should meet their obligations.

Paicos asked what the vendor needed to do for the Board to get out of this contract as the vendor had already breached the contract on two separate occasions. Gagnon stated that a letter should be sent to the vendor clearly stating that "if there is one more mistake, then they're out". Paicos asked for a motion.

Whitney made the motion as follows. "The Town will maintain the fuel oil contract with the current vendor negotiated with the School District with the provision that the vendor be warned

in writing that one more breach of contract would result in the cessation of the contract.” Gagnon seconded. An amendment was made to this motion by Whitney as follows. “and to further provide that the Library oil delivery on October 30, 2008 be free of charge.” Gagnon seconded this amendment to the motion.

Discussion followed regarding the fact that it must be made clear that the Town Accountant would pay the invoices from this vendor as there was no contract. Shanahan noted that this would be a problem in the audit report as a comment without a contract to show the auditors. It was noted that Shanahan would receive a copy of the school’s paperwork on the bid.

Dennehy wanted it known that he thought Town Counsel presented solid legal grounds on behalf of the Town, and that substantial savings would have resulted. He added that he was in favor of this opinion but that because the school wouldn’t cooperate then it’s just not possible.

Gagnon then asked if all were in favor and it was a unanimous “aye”.

At 6:59 p.m. Whitney motioned to adjourn and was seconded by Dennehy.

Respectfully submitted,  
Sylvia Turcotte  
Assistant to the Town Administrator