



Fairhaven Board of Selectmen

September 28, 2015 Meeting Minutes

Present: Chairman Geoffrey Haworth, Vice Chairman Charles K. Murphy, Sr., Clerk Robert Espindola, Executive Secretary Jeffrey Osuch, and Administrative Assistant Anne Kakley.

Chairman Geoffrey Haworth called the meeting to order in the Town Hall Banquet Room at 6:41 p.m. The meeting was audio recorded by the Selectmen's Office and video recorded by the Government Access channel.

MINUTES

- Mr. Murphy motioned to approve the minutes of the **September 14, 2015** meeting, **open** session. Mr. Espindola seconded. Vote was unanimous. (3-0).
- Mr. Murphy motioned to approve the minutes of the **September 14, 2015** meeting, **executive** session. Mr. Espindola seconded. Vote was unanimous. (3-0).
- The executive session minutes of the **July 6, 2015** meeting were tabled by Mr. Murphy, who had questions for Town Counsel regarding the contents of the minutes.

EXECUTIVE SECRETARY'S REPORT

In his report, Mr. Osuch updated the Selectmen on the following meetings and events:

- Tuesday, **September 29**
 - 9:00 a.m. – Alex Stylos – Oxford and Rogers School
 - 3:00 p.m. – Sidewalk Job Meeting
- Wednesday, **September 30**
 - 9:30 a.m. – Union Wharf job meeting
 - 10:00 a.m. – Retirement Board training class
 - 1:00 p.m. – BBAC Subcommittee meeting – Marion
- Thursday, **October 1**
 - 8 to 9:30 a.m. – Forum meeting in New Bedford
- Friday, **October 2**
 - 10:00 a.m. – Water Plant meeting with Eversource at Plant in Mattapoisett
- Wednesday, **October 7**
 - 8:00 a.m. – Open Oxford School – crane review
 - 6:30 p.m. – Selectmen's Meeting
- Saturday, **October 10**

- 10:00 a.m. – Remove Oxford School bell

CDBG DR CONTRACT TIME EXTENSION

The Board met with Bill Roth for several CDBG items, the first of which was a contract extension for the CDBG DR MacLean's Seafood Building demolition. The contract extension would be October 31, 2015. Mr. Murphy motioned to approve the contract extension as requested. Mr. Espindola seconded. Vote was unanimous. (3-0).

CDBG14 FRANCIS STREET – GCG CHANGE ORDER

The Board reviewed Change Order #1 for Additional Inspection services with GCG as a part of CDBG14 – Francis Street. Mr. Roth advised that the difference would come out of the CDBG grant. Mr. Murphy motioned to approve the change order in the amount of \$70,200 (a \$7,200 increase from the previous figure). Mr. Espindola seconded. Vote was unanimous. (3-0).

CDBG13 ELLIOT LANE CONTRACT EXTENSION

Mr. Roth said that there was still roughly \$2,000 remaining in the housing rehab portion of the CDBG13 Elliot Lane grant. He said that the State informed him that he could use the funds with a contract extension. Mr. Murphy motioned to extend the CDBG13 Elliot Lane grant contract to December 31, 2015. Mr. Espindola seconded. Vote was unanimous. (3-0).

SRPEDD CONTRACT AMENDMENT #1 – SCOPE MODIFICATION

The Board reviewed a scope modification for the Town's SRPEDD contract to include work on the South Coast Rail Technical Assistance Grant. The scope change will be to add draft zoning language for affected regions. There is no financial impact on the contract. Mr. Murphy motioned to approve SRPEDD contract amendment #1. Mr. Espindola seconded. Vote was unanimous. (3-0).

FAIRHAVEN BELL COMMITTEE

The Board reviewed letters of interest for five additional members of the Fairhaven Bell Committee, a committee charged with overseeing the removal and storage of the Paul Revere bell from the Oxford School. There are currently only four vacancies on the nine-member committee, so the appointments were made in order of receipt, as the Board deemed all the applicants to be good additions to the committee.

Mr. Murphy motioned to appoint Lee Baumgartner, Susan Loo, Jacqueline Kenworthy and Nancy Perry as full members of the Fairhaven Bell Committee, and for John Rogers to serve as an associate. Mr. Espindola seconded. Vote was unanimous. (3-0).

BEAUTIFICATION COMMITTEE GIFT ACCOUNT

The Board reviewed a request from the Beautification Committee to create a gift account for general purposes related thereto. A \$200 donation from Gayla Reilly will establish the account. The Board thanked Ms. Reilly for her donation. Mr. Murphy motioned to approve the creation of said account. Mr. Espindola seconded. Vote was unanimous. (3-0).

FEMA AUTHORIZATION FORM

The Board reviewed a FEMA reimbursement and authorization application for curb damage sustained in the blizzard of January 26-28, 2015. Mr. Murphy motioned to authorize Mr. Osuch as signatory. Mr. Espindola seconded. Vote was unanimous. (3-0).

SPRING STREET AUTO

At 7:01 p.m. the Board met with Richard Dussault, Carol Dussault, and Atty. Joseph Michaud to discuss the clean-up efforts and continued license hearing for Spring Street Auto. Also present was Town Counsel Atty. Thomas Crotty.

Atty. Crotty said that when the date was set for a continued hearing, at the time it was mutually agreed upon that the Dussaults would make a significant effort to clean up the lot. The Selectmen's Office has since been made aware that the Dussaults are significantly in arrears in their taxes and have not been making payments. Atty. Crotty suggested that the Board could hold off on continuing the hearing and use the appointment as a status report for the state of the property, and then reissue a letter to the Dussaults putting them on notice for their back taxes in addition to the other unresolved issues. He said that the failure to pay taxes was grounds for taking action on the Spring Street Garage license, either with revocation or suspension.

Mr. Murphy disclosed that Atty. Michaud is his attorney for personal use and that Atty. Michaud sits on the Human Rights committee for M.O.L.I.F.E. Mr. Murphy said that he was able to participate in the appointment without conflict.

Atty. Michaud said that he and his clients have reviewed the letter sent by the Selectmen's Office on August 25, 2015 and have cleaned the lot "substantially". 22 vehicles have been removed, and the front of the lot has been cleaned of debris. Atty. Michaud said that his clients were aware of the back taxes owed, and that they have been dealing with a serious family illness that has made it difficult to stay current with payments. Additionally, Atty. Michaud said that his clients have experienced a decline in business that he claimed may be the result of the Town's actions against the Dussaults.

Mr. Haworth stated that the front of the building is looking "much better" with 11 vehicles in the front that are evenly spaced. He said an effort has been made, but that certain vehicles discussed, like the bookmobile, are still on the premises. He said that the Board would continue the hearing for a date to be later determined. The Board will inform the Dussaults of that date when it is scheduled. Atty. Michaud said that he would continue to work with Mr. Osuch and Atty. Crotty on the matter.

Mr. Murphy and Mr. Espindola were comfortable with the continuation. Mr. Espindola suggested sending the Building Commission on a site visit. Atty. Michaud said that the Building Commissioner has already completed site visits but that his clients would welcome an additional visit.

Mr. Murphy motioned to reschedule and notify Atty. Michaud and the Dussaults of the continuation date, and to give the Chairman the authority to pick the date. Mr. Espindola seconded. Vote was unanimous. (3-0).

ROGERS/OXFORD SCHOOL PROPOSALS

Mr. Osuch updated the public to the results of the recent Rogers/Oxford School RFP. Mr. Osuch said that there were two proposals received for the Oxford School, and no proposals received for the Rogers School. The Stratford Group submitted one proposal for senior housing for the Oxford School; the proposal would include 63 units of housing and their offer is \$325,000. Seniors would have to meet certain federal guidelines for income bracket qualifications, and 12 of the units would be rented at the market rate. The proposal included the payment of real estate taxes, and the historic main building would be preserved with the newer addition demolished and replaced. The second proposal came from Alex Stylos of Sherwood Construction of Fall River, MA. Mr. Stylos proposed keeping the building as-is and maintain similar use as an educational facility, a facility for community use (the gymnasium) and possibly use for non-profits such as food pantries. His proposed purchase price was \$25,000. He did not include schematics or financial information.

Mr. Murphy commented on the proposals. He said he did not support the Stratford Group proposal, citing already existing traffic issues in North Fairhaven. He said that the addition of the 55 parking spaces would exacerbate an already existing problem. At this time, Mr. Murphy was more inclined to favor the Sherwood Construction proposal because he was interested in a proposal that gave back to the community. Mr. Murphy said that he had been to one of the charter schools Mr. Stylos renovated and was impressed by it.

Mr. Espindola said that he had a “different perspective”. He said that the Board had set precedent previously by rejecting a proposal that was incomplete and that it would be difficult to allow a proposal that did not submit all the required information when they had already rejected a previous proposal for the same reason. Mr. Murphy answered that they had given NMI the chance to submit clarifications to its proposal, but that NMI had chosen to not submit the requested information. He said that they could afford the same opportunity to Sherwood.

Mr. Haworth said that his concern with the Stratford proposal was that there were a proposed 63 units and only 55 parking spaces. He did not think the parking would be adequate for the number of seniors who still drive. Mr. Haworth requested that a copy of the proposals be forwarded to the Planning Board chairman.

Nils Isaksen was recognized. Mr. Isaksen asked if they needed the Rogers/Oxford RFP Review Committee to give their opinion on the proposals submitted. Mr. Haworth said that the RFP review committee could review and give their opinion to the Board. The two proposals will be

placed on the Town website. A letter from the Board requesting clarification on the Sherwood Construction proposal will be submitted to Mr. Stylos with roughly the same time frame afford to NMI after their proposal.

BBAC – REQUEST FOR TOWN HALL LEASE

At 7:32 p.m., the Board met with Mike O'Reilly, Elizabeth Leidhold and Michael Gagne of the Buzzard's Bay Action Committee (BBAC) to discuss their request for Town Hall space.

Mr. O'Reilly gave a brief overview of the BBAC, which is the municipal "arm" of the Comprehensive Conservation Management Plan (CCMP). The BBAC represents a 13 member community of towns and cities along the coast of Buzzard's Bay and helps in the municipal implementation of the CCMP. BBAC has been awarded a grant from the EPA for a "stormwater collaborative" for Fairhaven, Mattapoisett, Wareham, Acushnet and Dartmouth, and using the Fairhaven Town Hall for office space would be ideal because it is centrally-located. The grant received is \$200,000 to map stormwater discharges using GIS and sample outfalls going into the Acushnet River and ocean. Public education will be another component to the project. The BBAC was hoping to negotiate \$550-600/month for the Town Hall space and would like a one year lease with an option to renew for another year, with a minimum anticipated use time of two years for the likely duration of the project (possibly longer).

Mr. Haworth said that he would want to know who had access to the building for security purposes. Mr. O'Reilly said that most of the time the office space would be used during regular Town Hall hours. If after hours access was required, the BBAC would work with the Selectmen's Office.

Al Benac was recognized. He asked the group if they had asked for office space from Mark Rasmussen at the BBC building in New Bedford. Mr. O'Reilly said that building did not have vacancies.

Mr. Murphy motioned to grant the Town Hall lease to the BBAC for \$600/month. Mr. Espindola seconded. Vote was unanimous. (3-0). Mr. Murphy motioned to allow the transfer of excess desks from the Tax Collector's office to the BBAC office for their use. Mr. Espindola seconded. Vote was unanimous. (3-0).

COMMUNITY CABLE ACCESS OFFICE

At 7:54 p.m., the Board met with Joseph Booth to discuss a feasibility study, to be completed by JM Booth and Associates, at the current EMA location on Scoticut Neck, to convert it into a shared space for EMA and Cable Access. The PEG access funds collected by the Town are currently used for educational access and government access, but not for public access television. The EMA building is currently in need of serious repair. The funds collected by the PEG access fees could be used for the feasibility study. Mr. Booth said that the study would look into creating a studio/office/conference space for the use of cable access, and would address an HVAC overhaul. Mr. Espindola said that he had spoken with cable attorney and advisor William

Solomon, who advised that the use of Cable funds for these purposes would be legal. Atty. Solomon is willing to put that into writing for the Board if it wants it.

Nils Isaksen was recognized. He asked if the Board would consider selling the EMA building and moving to the Rogers School and using the funds to renovate the school. Mr. Espindola said that the move had been previously considered but dismissed as unfeasible, as the school is far too large for their needs and significantly more expensive to fix.

Mr. Espindola said that regardless of their intentions, they will need a feasibility study before anything can be considered. Mr. Murphy motioned to approve the cable proposal with a change of language to read "EMA" in the text. Mr. Espindola seconded. Vote was unanimous. (3-0).

Mr. Murphy motioned to authorize the Chairman to sign the cable contract with Joe Booth when it is received. Mr. Espindola seconded. Vote was unanimous. (3-0).

HOUSING AUTHORITY APPOINTMENT

At 8:08 p.m., the Board met with the Housing Authority to fill a vacancy on that Board. Present were Jean Rousseau, Jay Simmons, Gregory Tutcik and Anne Silveira. The two candidates for the position were Thomas Arsenault and Edward Dorschied.

Mr. Arsenault and Mr. Dorschied's letters of interest were read into record. See Attachment A.

Mr. Murphy asked the Housing Authority if they had a preferred candidate. All but Mr. Tutcik preferred Mr. Dorschied. Mr. Tutcik preferred Mr. Arsenault, who is a resident of the Housing Authority. Mr. Tutcik, also a Housing Authority resident, said that it was mandated by State law to have a resident on the Housing Authority, but that they were not limited to just one resident. He thought that the addition of another resident would improve the balance on the Authority.

Roll call vote for Mr. Dorschied: Mr. Espindola in favor. Mr. Haworth in favor. Mr. Murphy in favor. Mr. Simmons in favor. Ms. Silveira in favor. Mr. Rousseau in favor. Mr. Tutcik abstained from voting. Mr. Dorschied was so appointed to the Housing Authority to complete a term until April, at which time he would have to run for the position to remain.

FISHING PIERS – CAUSEWAY

At 8:18 p.m., the Board met with Doug Cameron and Ross Kessler to discuss the proposed State fishing piers slated for the West Island Causeway. Mr. Cameron told the Board that they most recently went before the Board of Public Works. The BPW expressed concern for the proposed fishing piers, citing a need to rebuild the causeway in the coming years, and as such, the BPW does not support the project.

Mr. Cameron said that they had scoped out four other locations for the fishing pier: two locations on Bass Creek Road, one location on Shore Road and one location at Town Beach. All of the locations were deemed less advantageous than the Causeway location for various reasons, including flood zone designations, depth of water, rockiness of locations and anticipated costs.

The location that was closest to feasible was the Shore Road location, which Mr. Cameron said would cost significantly more due to the fact that the pier would have to be much longer than anticipated in order to reach water deep enough for fishing. \$25,000 in State funds has already been expended on the planning process for the Causeway fishing pier project.

JP Lemieux was recognized. Mr. Lemieux asked how many West Island residents were actually in favor of the project, adding that the addition to the causeway would “wreak havoc” on the daily commute of island residents, and that the piers would only serve to invite people from other communities to leave their trash behind.

Gary Lavalette was recognized. He said that at some point the causeway will have to be replaced and at that time, a temporary structure will have to run alongside the causeway that could interfere with the fishing piers.

Mr. Kessler said that speeding on the causeway and jumping into the water from the bridge are not related to the construction of a fishing pier and would get people off the slippery rocks.

Mike Ristuccia was recognized. Mr. Ristuccia recalled an incident a couple years ago when a motorist drove a vehicle off the road onto the beach. He said that he did not think the location was safe.

Rob Rizzo was recognized. He said that the residents of West Island would support a better location that is out of the way. He said that the proposed location had too many safety risks.

Bob Konicki was recognized. He said that it was disappointing that the alternate sites were not feasible, but that the residents of West Island did not support the fishing piers as presented.

Ted Lorentzen, Chairman of the Marine Resources Committee, spoke in defense of the fishing piers. He said that there were other people, like Mr. Konicki, who had attended previous informational hearings and did not present their concerns in a timely manner. He said that the fishing piers would bring people from other towns but those people would patronize local establishments.

Mr. Murphy said that he may have supported the general idea of a handicap-accessible fishing pier in its infancy stages in 2008, but that he could not support the plans as presented due to the safety issues presented, and the upset it would cause West Island residents.

Mr. Espindola asked Mr. Cameron if additional work could be done to vet out the Shore Drive location. Mr. Cameron said that he could perhaps arrange more staff time on it but that it was almost certain that the conclusion would be that the location was cost prohibitive.

Mr. Haworth said that he thought they could make the project on the causeway work, but that his job was to represent his constituents, who seemed to overwhelmingly oppose the project.

Mr. Cameron said that he would not withdraw the permits in front of the Army Corps of Engineers for the plan. He said that he would see the permits through to completion and hope that the infrastructure issues would change.

Mr. Murphy motioned to withdraw support for the project and that any permits site specific for a fishing pier on the causeway are not supported by the Board at this time. Mr. Espindola seconded. Vote was unanimous. (3-0).

ROGERS/OXFORD “TAG SALE”

The Board reviewed dates for two separate tag sales – one for the contents of the Rogers School and one for the contents of the Oxford School. Ms. Kakley and Mr. Espindola will work together to finalize the dates and will work on the details of pricing.

Doug Brady was recognized. He said that student records had been left behind and would need to be claimed or destroyed by the School department before the buildings should be opened to the public. The Board agreed and the Selectmen’s Office will contact the School department to address this.

LICENSE RENEWAL PROCESS

Mr. Haworth requested a discussion on the license renewal process, particularly for auto dealerships and car repairs facilities. He said that he thought the process should include bringing in the applicants occasionally instead of “rubber stamping” approvals. Moreover, if a facility does not complete the process by January 1, there should be no amnesty – they should be forced to remain closed until their renewal is complete.

The Board will ask Wayne Fostin and Bill Roth to put together a draft proposal for what they would like to see be a part of the license renewal process for car dealers and repair.

FRANK FOSTIN – EARLY RETIREMENT INCENTIVE

The Board reviewed a letter from Frank Fostin requesting Early Retirement Incentive with an anticipated retirement date of September 30, 2018. Mr. Murphy approved the Early Retirement Incentive for Mr. Fostin if he qualifies. Mr. Espindola seconded. Vote was unanimous. (3-0).

OXFORD BELL OPINION

The Board reviewed a letter from Town Counsel regarding the Town’s ability to enter an agreement that the Paul Revere bell, located in the cupola of the Oxford School, never be sold, traded or bartered. See Attachment B.

It was determined that the Board did not have the authority to grant such an agreement – only Town Meeting could.

The Board also addressed the issue of the cupola and the indemnification request from A1 Crane Company. Doug Brady said that the indemnification did not include injury or loss of life in the event of a crane operation error, but it was to keep the Town from holding the crane company liable in the event of the cupola being damaged or destroyed by its removal. Mr. Murphy motioned to indemnify the crane company from any damage sustained to the cupola. Mr. Espindola seconded. Vote was unanimous. (3-0).

WAYNE FOSTIN – VACATION DAYS

The Board reviewed a memo from Building Commissioner Wayne Fostin requesting the carry-over of four vacation days past his anniversary date. Mr. Murphy motioned to approve. Mr. Espindola seconded. Vote was unanimous. (3-0).

POLICE DEPT – EDUCATIONAL BENEFITS

The Board reviewed a memo from the Police Chief requesting permission to instate educational benefits to Matthew Sobral and Jerome Penha, per the Police Union contract, for their recently obtained Bachelor's degrees. Mr. Murphy motioned to approve the request. Mr. Espindola seconded. Vote was unanimous. (3-0).

BUILDING DEPARTMENT – LEGAL SERVICES

The Board reviewed a request for use of Town Counsel from the Building Department for an application related to the FEMA flood plain 50% rule. Mr. Murphy motioned to approve the use of Town Counsel in this matter. Mr. Espindola seconded. Vote was unanimous. (3-0).

BEAUTIFICATION COMMITTEE – BILL PAYMENT

The Board reviewed a memo from the Beautification Committee saying that it had obtained services requiring payment before the limitation of the use of the Median Strip account. Chairman Wayne Oliveira was now uncertain how the Committee was going to pay the bill to Sylvan Nursery in Westport. The Board indicated that it would support the use of the Median Strip account on the bill. Mr. Murphy motioned to pay the bill. Mr. Espindola seconded. Vote was unanimous. (3-0).

GOULART MEMORIAL DRIVE SPEEDING CONCERN

The Board reviewed an email from Patricia Baker regarding concerns about motorists speeding on Goulart Memorial Drive. Ms. Baker is requesting the placement of Speed Limit signs. The Board requested that the Selectmen's Office forward the email to the Police Department for its review and report.

BALSAM STREET – NO PARKING SIGNS

The Board reviewed a letter from Rob Sullivan of Balsam Street regarding the placement of two No Parking signs on Cherrystone Street at Balsam Street. Mr. Osuch said that the signs were

placed there without a vote of the Board of Selectmen and that a parking ticket had been voided by the Selectmen's Office because the signs were not legally placed. Moreover, there was no formal vote taken by the Board of Public Works – the signs were placed there without any approval. In addition, the land on which the signs were placed was unaccepted roadway and possibly private property.

Mr. Espindola suggested the Board send a letter to the BPW requesting the sign removal and a reminder that all No Parking signs need to be placed after the proper channels are followed. Mr. Murphy agreed, stating that the Police Department should be made aware of the situation too, so that the signs do not continue to result in invalid parking tickets.

OTHER BUSINESS

Under Other Business:

- Mr. Murphy offered condolences from the Board to the family of Alfred Cyr. Mr. Cyr, a Town resident, passed away recently
- Mr. Murphy wished Brian Rego a Happy Birthday
- Mr. Murphy said that the recent BPW auction raised \$5,000 for the Town
- Mr. Murphy reminded the public that the Manjiro festival was the next weekend, on October 3, 2015
- Mr. Murphy also reminded the public that there would be a Fire Department Open House on October 4, 2015
- Mr. Espindola said that the first meeting of the Town Administrator Screening Committee was scheduled for October 7. He recommended that the Board have the TASC members into a meeting of the Board of Selectmen that night to thank them for their time involved in the important process
- Mr. Espindola thanked everyone who went to the Matthew Rodriguez Winterfest the previous weekend
- Mr. Murphy thanked everyone who attended Katie's Walk the previous weekend

At 10:12 p.m. Mr. Murphy motioned to adjourn. Mr. Espindola seconded. Vote was unanimous. (3-0)

Respectfully,

Anne O'Brien-Kakley
Administrative Assistant
Minutes approved 10/07/2015

EDWARD DORSCHIED

TO HOUSING AUTHORITY BOARD

I RAN FOR ELECTION TO THE HOUSING AUTHORITY IN THE LAST ELECTION, AND I LOST TO A MISTER DAYS, I HAVE HEARD THAT HE RECENTLY LEFT THE BOARD, I AM NOTIFYING THE BOARD THAT I AM STILL INTERESTED IN THAT POSITION AND WOULD LIKE TO DONATE MY TIME IN HELPING THE TOWN OF FAIRHAVEN.

THANK YOU
Edward Dorschied

FAVN HOUSING AUTH.
RECEIVED
2015 SEP -2 AM 8:26

Thomas Arsenault
180 Adams Street B-60
Fairhaven, MA 02719

RECEIVED

2015 SEP 21 P 1:27

BOARD OF SELECTMAN
FAIRHAVEN MASS

To:
Board of selectmen Town of Fairhaven,
Fairhaven Housing Authority

Sept. 18, 2015

I understand that there is a vacancy on the Housing Board Authority.

I would like to submit my name for this temporary position.

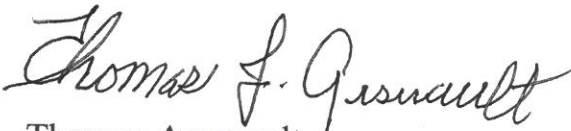
I am a long time resident of Fairhaven and also a tenant at Dana Courts.

I like to see more involvement from the residents in the planning and decisions making process.

I majored in Business Administration at U of Mass Dartmouth and feel this would be an asset to the Board.

Military service U.S. Marine, Vet Nam
Disable Veteran

Thank you



Thomas Arsenault

Attachment B
THOMAS P. CROTTY & ASSOCIATES, PLLC

LAW OFFICES
388 COUNTY STREET ~ THIRD FLOOR
NEW BEDFORD, MASSACHUSETTS 02740-4992

RECEIVED
2015 SEP 21 A 11:23

THOMAS P. CROTTY

SHELLEY D. COELHO
MATTHEW W. SCHUYLER

September 16, 2015

TELEPHONE 508.990.9101
FACSIMILE 508.990.9108
E-MAIL: info@tcrottylaw.com
www.tcrottylaw.com

Board of Selectmen
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

RE: Oxford School Bell

Gentlemen:

The Board has asked whether it has the authority to act to impose a perpetual restriction so that the Oxford School bell will never be bartered, sold or removed from the Town.

In my opinion the Board may not do so without Town Meeting approval.

The bell is now in the control of the Selectmen as a result of the transfer of the Oxford School from the School Department to the Selectmen. Under c. 40 §3 the board of selectmen has control of personal property not otherwise placed in the control of a specific board. But that law does not give the selectmen the authority to dispose of the property, or to impose a perpetual restriction on the disposition of the property. Only town meeting has that authority.

The goal of perpetual protection of the bell can best be achieved by having Town Meeting gift the bell to the Historical Commission pursuant to c. 40 §8D. That gift can include such conditions as the Town Meeting sees fit with respect to perpetually maintaining the bell within the Town, etc. (That gift of property from the Town to another town agency, the Historical Commission, is exempt from c. 30B, which otherwise would govern the disposal of Town property.)

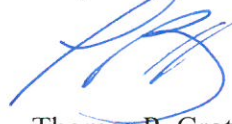
You have separately asked for my opinion as to whether the Board should agree to indemnify or release the various parties who are volunteering to remove the bell from the school cupola. I would advise against indemnifying those companies since the Board would be committing to expose the Town to unfunded, and probably uninsured, liability. (You have indicated that John Beauregard has advised that the Town could not add those parties as additional insureds on the Town's existing liability policy.)

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As far as releasing the parties for damage to the cupola, that is a judgment call for the Board. I understand that it is likely the cupola will be damaged or destroyed in the process of removing the bell, but that the parties doing the work would agree to make the roof weather-tight in its place. If that is an acceptable trade-off to the Board, I believe it is within your authority to enter into that release agreement. I would recommend that the obligation to make the roof weather-tight be subject to the approval of the building department or town engineer or a architect to ensure that the work has been properly done.

Please let me know if you have any other questions in this regard.

Very truly yours,



Thomas P. Crotty
Town Counsel

TPC/mch