



**BOARD OF SELECTMEN  
AGENDA**

**December 17, 2012**

- 5:30 P.M. - Call meeting to order  
All stand for Pledge of Allegiance**
- 5:30 P.M. - Executive Session pursuant to G.L. c. 30A, Sec. 21(a) (1)  
for continuation of November 13<sup>th</sup> and November 26<sup>th</sup>, 2012  
Grievance Hearing regarding termination of employment of  
Tracy Dalton as Confidential Secretary to the Chief of Police;  
Vote(s) may be taken**
- 6:15 P.M. - Fire Chief John Clement and Board of Fire Engineers to discuss  
Process for filling the position of the Fire Chief**
- 6:45 P.M. - Executive Session pursuant to G. L. c. 30A, Sec. 21(a) (6) to  
Consider the purchase, exchange, lease, or value of real property  
off Center Street, vote(s) may be taken**

**Approve Minutes: Open Session November 5, 2012**

**Approve Warrants:**

PW # 13-24	\$ 166,032.17
DW #13-22A	\$ 21,425.33
BW # 13-231	\$ 818,188.28

**NEEDS ATTENTION**

**Chairman, sign Bagnall Building bill submittal forms, if any**

**Vote to approve Chairman Darke signing contract between Town and Comcast for Electric Company's use of land for solar project**

**Sign Licenses for Liquor and Common Victualler that need to be deliver by the 1<sup>st</sup> of the Yr.**

**BOARD'S NEXT REGULAR MEETING: Monday, January 14, 2013 @ 6:15 p.m.**

**Merry Christmas & Happy New Year to all!**

MINUTES  
BOARD OF SELECTMEN  
DECEMBER 17, 2012

Meeting called to order at 7:00 P.M.

**Present** Selectmen Elizabeth Gorski, Donald N. Greaney and Chairman William H. Darke, Town Counsel Brian Maser, Chief Robert Kiremelwicz, Deputy Chief Jeff Gillen, Attorney Stephen Colella representing Tracy Dalton, Tracy Dalton, Anthony Dalton Tracy's aunt Susan, and Eric Gorski.

All stood for the pledge of allegiance. A moment of silence was held in memory of those killed at the Sandy Hook Elementary School in Connecticut.

Attorney Colella requested the meeting be held in Open Session.

The Board reviewed the information their Assistant provided from MIIA insurance regarding the Board's interest in some sort of counseling/training for employees/department heads. Selectman Greaney made copies for the Chief and Attorney Colella.

Selectman Gorski commented that there are some things on the list provided that strike her as being very helpful and when asked what they were, read off the following: Coping with conflict; Creating a respectful workplace; Meeting each other half way; Delivering difficult messages; Drawing the line, setting professional boundaries in difficult situations; Preventing workplace harassment; Email etiquette; Talking the talk, effective communication in the workplace, and several others.

Darke stated that the last time the Board met on this the parties discussed which set of rules Ms. Dalton comes under (Personnel Policy or Police Department Rules & Regulations); and whether what happened constituted a reason for firing. Attorney Colella agreed and stated that his client is willing to find some sort of solution; that his client is prepared to try to explore some sort of resolution.

Selectman Gorski stated she had put something together to say and told the Board that if they make this decision that they put in place supports for both the Chief and Tracy. Gorski stated it's assumed the Chief has the management skills to adapt and coach Ms. Dalton on any performance issues she may have to make; that this Board bears some responsibilities that such an environment should exist, a good working environment for all people at the Police Department. Gorski recommended that the Board provide additional support by bringing in an outside entity at the Board's discretion to assist both parties as they return to work and ensure that their transition is successful. Gorski stated that the outside entity would have experience working with Police Departments, stating that she doesn't know if MIIA does, and would provide coaching and support to the Chief and to Mrs. Dalton and the Board should provide the money and it should not be an issue; that they should do what they need to do to resolve this. Gorski ended by saying she stated her opinion with all due respect. Gorski then told the Board to remember that they have other things pending and that she would like to show good faith that they are able to work out their difficulties and move forward with people in this room.

Selectman Greaney stated that the only thing where there is a law suit pending, from what he's always learned in business is that it's tough to negotiate something with a lawsuit pending against the town; that the Selectmen have to represent the town and if they go into a situation that is going to further cause a conflict, he has concerns. He told Selectman Gorski he likes her idea of finding a way of mediating the situation; that that sounds like a very good idea, then stated he thinks they might need an Executive Session and until the pending lawsuit is resolved he doesn't think they should do anything.

Attorney Maser said the specter of the lawsuit obviously hangs over this process and the discussions that Ms. Dalton's counsel has brought forth this evening. Maser said he thinks it would be beneficial to step outside of the room with Attorney Colella to get a sense where they are at in regards to the MCAD case before the Board continues with its deliberations and decides what to do. Maser said he thinks that it would be beneficial for the Board to know in terms of what their position is in moving forward with that litigation, whether or not they want to continue with that litigation or whether or not we can bundle everything together and resolve everything now.

Attorney Colella responded that he thinks that's what negotiation is all about, coming up with a solution that satisfies all parties concerns, but if this is a suggestion that somehow litigation should be dropped while they are negotiating it's foolish for him to say that she should negotiate however if negotiations don't work out she gets her job back, and Selectman Greaney responded that was not what he was saying. Greaney repeated that the Board represents the town and if there is a law suit against the town and the Board attempts to do something that could potentially cause more lawsuits by resolving the other side of this, he would think that they are acting improper. Colella said he doesn't know that the town would necessarily be put in that position but that's why the Board has counsel to rely upon, and he certainly wouldn't let the board put themselves in that kind of position.

Selectman Gorski asked shouldn't they all be coming to the table in the hopes of finding a solution for both parties; that it's like either or. Gorski said why can't they work this one out and get it resolved somehow; that they have enough legal minds here..... Darke responded that he has always tried to work things out if there is a way to work them out.

Attorney Maser stated it would be preferred if it could all get wrapped up; that it would be nice if everything could get resolved here and if it's a situation where the MCAD filing could be dismissed in exchange for some sort of return to work agreement and then there could be tools offered by the town's insurer to better the working relationship on a going forward basis; that would be something he thinks the Board would be duty bound to explore but he certainly would not advocate or push that they don't discuss or don't even consider undoing what's been done in this case simply off of Ms. Daltons position with respect to the MCAD litigation because you could be traversing down additional roads that you don't want to go down at MCAD if that's your position with respect to that litigation. Attorney Maser said that he thinks that the elephant in the room and the question that needs to be asked is if Ms. Dalton would even consider withdrawing the MCAD right now in exchange for some sort of agreement to return to work for the Town of Groveland; that question he doesn't think has been asked yet. Darke asked Dalton's attorney if it had been asked to him. Attorney Colella responded that his client would like to go back to a work situation that is going to be modified, monitored, have some sort of redress, she doesn't want to go back in to the same problems without having addressed them and from her

perspective they need to have that issue addressed as part of a settlement or inducement to get rid of the MCAD complaint, as well as a monetary component to this; that he hasn't even sat and contemplated what the lost wages are and so forth; that that's what he would explore in a separate discussion, try and work it all out. Colella said that is certainly something that is on the table. Chairman Darke asked Attorney Maser how that conversation happens, do the attorneys all talk? Darke commented that the Board can't talk without violating the open meeting law and Colella agreed and said he didn't know if they could speak through counsel. Darke responded that Attorney Maser could get information and report back to the Selectmen. Maser agreed and stated if they have to continue this until a meeting after the holiday and come back and report to the Board they were able to work something out, or here's the recommendation, here's the proposal, they could do that; that he feels if they start the process tonight Ms. Dalton's attorney is talking about a monetary component, working conditions upon her return to work; that he didn't think the Board's time would be best spent by sitting around and waiting for that to be flushed out that evening. Attorney Colella stated he agreed; that he should be able to formulated after spending some time with his client what her concerns are, and what's going to motivate her to resolve all issues in a global fashion. Colella stated he feels the information from MIIA is interesting and is a resource that is available; that he does not feel the meeting has been an effort in fertility.

Selectman Greaney suggested that Attorney Maser could then speak with the Chief in regards to a resolution on that side as well, then report back to the Board. Attorney Colella replied that you would have a frame work of where you are going and you will never have to pull the trigger whether her conduct constituted the firing. Maser said the meeting to discuss any settlement proposal would be held in Executive Session, then the vote to either accept or deny would be in open session. Maser said there may be a reason to meet if an agreement to bring back to the board can't be met, then they would need to decide as to whether or not the alleged conduct that the Chief has presented to the Board is worthy of Ms. Dalton's dismissal from employment with the town.

Chairman Darke asked what a reasonable time frame would be due to the holiday season and Attorney Maser responded that he will be available whenever Ms. Dalton's attorney has had an opportunity to speak to Ms. Dalton with respect to what would be their proposal and then he could meet with the Board whenever they would next meet to communicate the information to them. The Board's next meeting will be January 14, 2013 and Attorney Maser stated that that is more than enough time to see whether or not it's going to be a situation where minds can come together or not. Selectman Greaney asked the Chief to contact the insurance company and inquire about the programs they offer. Attorney Colella asked if he would have access to talking to the town's insurance company about the programs and Attorney Maser wasn't sure they would talk to him; that they would probably intend to only want to speak to the town with issues like that. Colella asked if he could send questions through the Board's Assistant and was told that he could. Darke said he thinks that they should somehow let MIIA know they are trying to resolve a situation and ask if they would be willing to speak with Attorney Colella. Selectman Gorski agreed and stated that the Chairman could authorize MIIA to speak with Ms. Dalton's attorney.

The parties agreed to meet again on this issue on January 14<sup>th</sup> at 6:00 P.M.

**Warrants**

Moved Greaney, seconded Darke, and it was

**VOTED:** To approve Payroll Warrant #13-18. 2-1 - Gorski abstain

Moved Greaney, seconded Gorski, and it was

**VOTED:** To approve Deduction Warrant #13-16A and Bill  
Warrants #13-17. 3-0

**Town's Cable Recording Equipment**

The Board discussed the problems there have been with recording meetings of the town. Chairman Darke suggested speaking with Charlie Mendez about Georgetown's equipment and that it may be worthwhile to look at Georgetown's equipment. Tracy Gilford told the Board that he has talked to Ken Hamilton to look at all of Groveland's equipment and replace it all and start from scratch.

**Board of Fire Engineers**

Chief Clement told the Board that some question has been raised over the past few years as to how the town not only appoints the Fire Chief but more of whether the town has a strong Chief, weak Chief, is he appointed by the Board of Fire Engineers, or is he appointed by the Board of Selectmen; that they have never got an answer to that and don't know if the Selectmen have the answer to that. Selectman Greaney asked who appointed John and he responded the Selectmen did; that the Chief prior to Clement was also appointed by the Selectmen but he believes there were some issues that were brought up at that time that were left unresolved. The Chief agreed that this has been the process but felt there may be some underlying legal issues as to how that appointment takes place at least according to State law. Town Counsel Maser was present and Clement asked if he had been asked to research the question. Chairman Darke told the Chief that Maser had not, and that Darke does not remember the question ever being asked to the Selectmen all the years he has served on the Board. Fire Engineer Watson said he thinks John's name was initially submitted to the Board of Selectmen when the other firefighters were in 1993. Darke said he does not remember being asked the question until now; that he has always assumed that the Selectmen were the appointing authority and the board has always received the list of firefighters and the Chief at appointment time. Darke asked Attorney Maser to speak on the matter.

Attorney Maser stated that if the town has not accepted Chapter 48, Section 42 or 42A, which are the statutes that create a fire department at the direction of the Selectmen, 41 is the strong Chief statute which provides the Chief with the appointing authority within the department, 42A the weak Chief statute which doesn't have appointing authority for the Chief's position; that it rests with the Board of Selectmen. If neither of those sections have been accepted then you have to turn to Chapter 48, Section 47 which talks about the Board of Fire Engineers which you have here in town; that the statute explicitly states that the Engineers perform the duties of the Selectmen and they appoint the men that they deem expedient for the operations of the fire department. The Board of Fire Engineers would be the appointing authority for the call firefighters in town and if they deem it expedient to have a Chief, then they would create that

position and seek funding from Town Meeting to fund that position. Maser told the Selectmen that a Board of Fire Engineers is a somewhat dated way of operating a fire department, and historically what you saw was the Board of Fire Engineers would designate one of their own as the Chief of the department. Maser told the board that after a review of the town's historical records there is no indication that Chapter 48, Section 42 or 42A have been accepted by the town.

Engineer Dower stated that the town would have had to accept Sections 45, 46 and 47 when creating the Board of Engineers and agreed with counsel that the Engineers is an archaic way of doing things. Maser responded that the Engineers statutes do not have to be accepted by the town and that the Board of Selectmen some time ago established the Board of Engineers which doesn't require any type of town meeting vote or ballot question. Dower noted the appointment should be made by the Engineers each April and suggested guidelines need to be established as to how they are going to operate; that the Selectmen do a little, the Engineers do a little. Dower said he was told if the Engineers don't have a quorum to meet the Chief can sign the payroll and the Selectmen will accept it, and asked if they really have a Board of Fire Engineers that mean anything, or would it just be better to go with Chapter 48, Section 42 and just have the Board of Selectmen appoint a Chief, set up the rules and regulations with the Chief, and let him appoint his men/officers and bring forth to the Selectmen his recommendations. Selectman Greaney noted that would be like the Police Department and Dower agreed. Dower said they had been talking about this and wanted to meet with the Board to get something going due to Chief Clement retiring next year. Darke told Dower he agrees with him that it's an old time way of doing things and that he thinks the Board of Selectmen should hire the Fire Chief and the Fire Chief runs his/her department. Darke said he thinks where the Chief is retiring, they can decide what they want the Chief's job description to be. Dower commented you can do a contract with a Call Chief now, that they did that in Georgetown and Essex. Dower said his feeling is it needs to be a para-military organization with a strong leader to make sure what needs to get done gets done on time; that the town has been fortunate that the Engineers all worked well together and let the Chief do what he had to do.

Selectman Greaney asked counsel what they need to do and Attorney Maser responded an Article for town meeting would be needed either for Section 42 or 42A, depending on whether the Selectmen would want to maintain appointing authority of the men or not. If the Selectmen want a strong Chief, he/she would be the appointing and firing authority, not the Selectmen. The only appointment the Board would make under Section 42 is for the Chief. Selectmen stated they have no problem with that change and will work on preparing an Article for town Meeting.

Finance Director told the Board they also need to deal with the Fire Clerk issue; that the Chief has been acting as the Clerk but you can't get two pay checks. Labrecque said the easiest way to allow this would be to change the Chief's job description and add the duties previously done by the Clerk and then transfer at town meeting the remaining Clerk's wages into the Chief's Salary line item. Labrecque said because John is a benefit eligible employee, he can't hold two jobs at the same time and get paid for them. Town Counsel acknowledged Labrecque was correct; that he had reviewed the Conflict of Interest laws and the Chief would not be able to assume the duties without the town rolling the duties into the Chief's job description and transferring the Clerk's salary line item to the Chief's salary line item at a town meeting.

MINUTES-PAGE #6  
DECEMBER 17, 2012

Labrecque asked the Engineers to amend the current Fire Chief job description to include the duties of the former Clerk and send Labrecque a letter stating that he will be performing those duties; that a transfer will be asked for at special town meeting.

Moved Greaney, seconded Gorski, and it was

**VOTED:** To enter Executive Session in accordance with the provisions of MGL Chapter 30A, Section 21 (a) sub section (6) to consider the purchase, exchange, lease, or value of real property off Center Street.

Chairman Darke declared to conduct the discussion in open session could have a detrimental effect on the negotiating position of the town.

Executive Session was entered at 6:58 p.m. and closed at 7:23 p.m. The Board announced it will return to Open Session at the close of Executive Session for the sole purpose of adjourning the meeting. A copy of the Board's Executive Session Minutes is on file in a separate binder in the Administrative Assistant's Office.


**Adjournment**

Moved Gorski, seconded Greaney, and it was

**VOTED:** To adjourn. 3-0

Adjourned at 7:24 p.m.

Respectfully submitted,

  
Nancy Lewandowski  
Administrative Assistant