

Holbrook Board of Selectmen  
Minutes of the Regular Session of  
Wednesday, November 5, 2014

Present: Timothy J. Gordon, Chairman  
Matthew V. Moore, Vice-Chairman (Arrived at 7:53 pm)  
Kevin J. Sheehan, Clerk  
Richard B. McGaughey, Associate  
Daniel F. Moriarty, III, Associate

In attendance: William J. Phelan, Town Administrator  
Benjamin Ecord, Superintendent of Public Works  
Luke McFadden, Fire Chief  
William Smith, Acting Chief of Police  
Marjorie E. Godfrey, Assistant Town Administrator

The meeting was called to order at 7:00 p.m. by Chairman Gordon, in the Selectmen's Meeting Room, Holbrook Town Hall, Floor 3R, 50 North Franklin Street, Holbrook, MA 02343, and began with the Pledge of Allegiance.

Chairman Gordon announced that 67% of Town voters turned out for the election yesterday, and the Proposition 2 ½ override question for the funding of the new Pre K through Grade 12 school passed with 74% of the votes in favor. Everyone involved with this process was thanked for their work.

MINUTES:

MOTION: By Mr. Sheehan, second by Mr. McGaughey, to accept the minutes of the regular session of Wednesday, September 24, 2014, as printed

VOTE: 3:0:1 (Mr. Gordon abstained)

MOTION: By Mr. Moriarty, second by Mr. Sheehan, to accept the minutes of the executive session of Wednesday, September 24, 2014, as printed

VOTE: 3:0:1 (Mr. Gordon abstained)

It was announced that there will be a HAZARDOUS WASTE COLLECTION day held on Saturday, November 22<sup>nd</sup>, at the Junior-Senior High School.

Selectman Sheehan reported that cars parked on the side of the road in the vicinity of OVERLOOK AND LEON Roads are making it difficult for emergency vehicles to pass through. Chief Smith will follow up on the situation. The winter parking policy was discussed. There is no on-street parking allowed. Chief Smith said that a window sticker warning the owner is left on the car prior to ticketing.

Mr. Phelan reported that:

- Departments are working on getting the tax rate certified. The new valuations are complete.
- Last year, it was recommended that the water and sewer enterprise funds be combined so that if one were short, the other would make up the difference. That did not pass town meeting. Now, the sewer rates will need to be increased after they were decreased a couple of years ago. The

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fund needs revenue to meet the expenditures. There is a shortage estimated between \$90,000 and \$100,000. There are no retained earnings, and the increase in the rates could be 10%.

Terry Grady, the Municipal Services Manager for REPUBLIC SERVICES/ALLIED WASTE, presented the Town with a \$1,200.00 donation for the Festival of Lights celebration. It was noted that Republic Services also supports the Town for Holbrook Pride Day, and they recently made a generous donation for Holbrook's Memorial Day celebration.

MOTION: By Mr. Moriarty, second by Mr. McGaughey, to accept the generous donation of Republic Services, in the amount of one thousand two hundred dollars (\$1,200.00) for the benefit of the Town's Festival of Lights fund

VOTE: 4:0

Second public hearing on the application of TBD PIZZA, INC. DBA DOMINO'S PIZZA (Robert Rivard, President) for a Common Victualler's License for the purpose of serving prepared foods at 2 Norfolk Road:

The hearing notice was read. Mr. Bill Mohan and Mr. Robert Rivard, President of Domino's, were present.

MOTION: At 7:15 pm, by Mr. Moriarty, second by Mr. Sheehan, to open the public hearing on TBD Pizza, Inc. dba Domino's Pizza

VOTE: 4:0

The applicants said they have received calls from residents about jobs and in support of their plan, and felt that they came unprepared for the last hearing. Being a franchise, they are expected to become involved with the community and have to follow the strict rules of the national company. It was discussed that delivery cars would enter and exit to South Franklin Street only, and would use the two parking spaces on the left side of the entry on South Franklin Street. An area behind Walgreen's has been cleaned and the manager of Walgreen's will see that it is cleaned going forward. A sign has been put up asking cars not to block Norfolk Road, similar to the one at the Library. They explained they have 8 parking spaces in the rear, 1 handicapped space, 2 more spaces in front, and an arrangement with Walgreen's.

Health Agent Arthur Boyle explained that Domino's could open with no seating and no common victualler license as a matter of right. Then, the Board would have no oversight over their hours. The Board of Health records on Walgreen's were checked after the last hearing, and from 2010 until October of 2014, they have had a clean operation with no complaints received. There have been no violations in a 5 year period.

Residents of Norfolk Road who oppose Domino's plans commented on potential issues with blocked driveways, the traffic being made worse, the number of pizza shops in Holbrook, that there was a Domino's in Holbrook previously, that there are too many dumpsters in the area, and that delivery trucks arrive early. Another resident commented that the building has been empty, and he would like to see taxes being paid, and jobs for young people. It was reported that Walgreen's has not replaced the "do not enter" signs along Norfolk Road.

It was discussed that 2 Norfolk Road is zoned for business, the Selectmen are also concerned with the vacant building, and some feel that free enterprise should not be managed. Domino's has the right to go there if they have no seating, but the Town will be able to set hours of operation under a common victualler's license, and Domino's wants to work with the Town. In answer to a question about why

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Domino's was allowed to come back about a license, it was explained that the Board did not take a vote to deny the license.

7:53 – Mr. Moore arrived.

Mr. Phelan summarized the situation and the alternatives available to the Board. Mr. Mohan said he would investigate the idea of sharing a dumpster with another business.

Discussion took place regarding the hours of operation Domino's was requesting. Mr. Rivard said he would want the dining room open from 10 am to 10 pm, 7 days a week. Delivery would be available from 10 am to 11 pm, Sunday through Thursday, and until midnight on Friday and Saturday.

MOTION: At 8:17 pm, by Mr. Moriarty, second by Mr. Moore, to close the hearing on the common victualler's license for Domino's at 2 Norfolk Road

VOTE: 4:0:1 (Mr. McGaughey abstained)

The Board discussed continuing to deliberate over the conditions at the next meeting, and comparing the requested hours to those of other businesses. Mr. Phelan and Mr. Boyle were asked to walk the property. Mr. Mohan was asked to get a formal agreement with Walgreen's on the parking and to look into sharing a dumpster.

Ms. Cindy Reardon and Mr. Paul Stec were present asking for a Common Victualler's License in the name of BROOKVILLE RESTAURANT GROUP, LLC dba BROOKVILLE HOUSE OF PIZZA, at 777 South Franklin Street.

MOTION: At 8:20 pm, by Mr. Moriarty, second by Mr. Sheehan, to open the hearing on a Common Victualler License for Brookville Restaurant Group, LLC

VOTE: 5:0

The applicants explained that they are helping their brother with the financing of the purchase of a business where he has been working for a long time. They will be keeping the same hours.

MOTION: By Mr. Moriarty, second by Mr. Sheehan, that the Board of Selectmen grant the request for a Common Victualler's License in the name of Brookville Restaurant Group, LLC dba Brookville House of Pizza at 777 South Franklin Street

VOTE: 5:0

**DOG COMPLAINT HEARING – 37 WEST SHORE ROAD:**

Selectman Sheehan recused himself and left the room.

Mr. Carl J. Mueller and Ms. Yvette Buehler were present.

Animal Control Officer Laurice Hedges was present.

The hearing notice letter, dated October 15, 2014, and mailed by certified mail, return receipt, to Mr. Mueller, was read.

MOTION: At 8:29 pm, by Mr. Moore, second by Mr. Moriarty, to open the dog complaint hearing for the dog at 37 West Shore Road

VOTE: 4:0

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ACO Hedges discussed the complaints and reports of incidents received by her office and the Police Department. She explained that the first of two bites occurred in 2011. There was a police officer present when the ACO arrived at 37 West Shore Road. The dog was not licensed, and had not been vaccinated for rabies, so it was placed on a 10-day quarantine, and the owner was ordered to get the rabies shot and license the dog. The owner got the rabies shot, but not the license, and a fine is pending. Ms. Hedges said the first person attacked was a male cable television employee who was in the house. There have also been eight (8) calls reporting the dog loose on Valley Road, including scaring people and growling at them. The next bite incident happened to a man walking with a female on West Shore Road. The dog latched on to his hand. When he hit the dog to get it off of him, the dog came back at him.

Ms. Hedges recommended that the dog be euthanized or that an enclosure be used. She explained that a kennel would be required to have a top and bottom secured to the kennel or it would need to be set two feet into the ground. The dog would have to be muzzled when being moved from the house to the kennel or back again. She noted that this is a big dog, a Mastiff. She advised that Mr. Mueller has the right of appeal in district court relative to any action taken by the Board of Selectmen.

Mr. Mueller explained that the dog got away from him when the man was walking by on the street. The guy hit him, and Mr. Mueller questioned whether he got a tooth in his hand as a result of hitting the dog, and not that the dog bit the man. Mr. Mueller said when the dog is on a chain, his disposition changes and he becomes aggressive. He said that the repairman who was bitten in the house caught the dog by surprise and the dog just went for the man. Mr. Gordon noted that there have been other calls about the dog being loose also.

Selectman Moriarty noted that the Sears repairman was walking to his truck when the dog went after him, and the other gentleman was walking by the house, the dog seems to come up behind people. ACO Hedges said she is concerned about safety because of the way the attacks happened.

Mr. Mueller said he understands it is a safety issue, he knows the dog bit one guy, and he cannot trust him 100%. The ACO advised that the dog either be kept in a kennel or be euthanized.

MOTION: By Mr. Gordon, second by Mr. Moore, that the dog at 37 West Shore Road be euthanized in accordance with Town of Holbrook By-Laws, Section 12-1 Animal Control Laws, and Mass. General Laws, Chapter 140, Section 157

VOTE: 4:0 (Mr. Sheehan was recused)

Mr. Mueller said that he cannot put the dog in a cage at his age. It was explained that he was being ordered to have the dog euthanized, and he was required to take the dog to a veterinarian to have the dog put down humanely. The Animal Control Officer must be given acceptable proof that Mr. Mueller had followed the order. He was again advised that the order was appealable in district court within 10 days.

MOTION: At 9:01 pm, by Mr. Moriarty, second by Mr. Moore, to close the public hearing on the dog at 37 West Shore Road

VOTE: 4:0

Selectman Sheehan returned to the room.

APPROVAL OF 10 AM SUNDAY OPENING AT PACKAGE STORES:

MOTION: By Mr. Moore, second by Mr. Moriarty, that the Board of Selectmen approve the request of HaHai Liquor, Inc. dba Holbrook Liquors, 4 South Franklin Street, for a 10:00 am opening on Sundays, per MGL c136 §6(52) as amended

VOTE: 5:0

MOTION: By Mr. Moriarty, second by Mr. Moore, that the Board of Selectmen approve the request of Shiv C. Lillaney dba Fast Lane Convenience, 230 Union Street, for a 10:00 am opening on Sundays, per MGL c136 §6(52) as amended

VOTE: 5:0

Gretchen Hawley, the Principal of St. Joseph's School, applied for a ONE DAY SPECIAL LICENSE for the sale of alcohol for a fundraiser for the parent organization.

MOTION: By Mr. Moriarty, second by Mr. Moore, to grant the request of Gretchen Hawley, Principal of St. Joseph's School, for a One Day Special License for the sale of all alcohol on November 15, 2014, from 7 pm to 11 pm for a fundraiser comedy night for the parent organization at St. Joseph's School Auditorium

VOTE: 5:0

The Board considered the AMBULANCE ABATEMENTS submitted by Fire Chief Luke McFadden on behalf of New England Medical Billing.

MOTION: By Mr. Moore, second by Mr. McGaughey, to approve the recommendation of Chief McFadden to grant the ambulance abatements for the quarter including July 1, 2014 through September 30, 2014, in the amount of One Hundred Twenty-Eight Thousand Four Hundred Eighty Six Dollars and ninety-two cents (\$128,486.92) as submitted by New England Medical Billing

VOTE: 5:0

Discussion took place about appointments to the ZONING BOARD OF APPEALS. The ZBA interviewed three ASSOCIATE MEMBER applicants and forwarded their names to the Selectmen.

MOTION: By Mr. Moore, second by Mr. Sheehan, to appoint Kimberly Allard-Moccia as an Associate Member of the Zoning Board of Appeals

Discussion: Mr. Moriarty said that he does not believe that people in real estate should be appointed to boards that have to do with decisions on properties.

VOTE: 2:2:1 (Mr. Gordon and Mr. Moriarty against; Mr. McGaughey abstained) VOTE FAILED

Applicant Michael Mihalow is currently serving on the Economic Development Advisory Board.

MOTION: By Mr. Moriarty, second by Mr. McGaughey, to appoint Scott McLellan as an Associate Member of the Zoning Board of Appeals until June 30, 2015

VOTE: 5:0

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Stephanie Trowbridge, the Chairman of the HOLBROOK LOCAL CULTURAL COUNCIL, asked that the Board appoint Mr. Eryc B. Fults as a new member of the LCC. Mr. Fults was present and explained that he is a glass artist.

MOTION: By Mr. Moore, second by Mr. McGaughey, to appoint Eryc B. Fults to the Local Cultural Council, with a term to expire on November 5, 2017

VOTE: 5:0

Public Works Superintendent Benjamin Ecord recommended that the Board award the contract for WASHED SAND FOR ICE CONTROL, based on the results of the bid opening of October 21, 2014, as presented.

MOTION: By Mr. Sheehan, second by Mr. Moriarty, that the Board of Selectmen award the washed sand bid for ice control to TL Edwards, 100 Wales Avenue, Avon, MA 02322, and authorize the Chairman to execute the contract for FY2015

VOTE: 5:0

Supt. Ecord recommended that the Board award the contract for the PLYMOUTH STREET SEWER EXTENSION project to the lowest responsible bidder, per the results of the bid opening on September 18, 2014, as presented.

MOTION: By Mr. Moore, second by Mr. Moriarty, to award the Plymouth Street Sewer Extension bid and execute the contract with Tom Gioioso Construction in the amount of \$347,411.85

VOTE: 5:0

Supt. Ecord reported that he contacted MassDOT about additional signage on North Franklin Street, and he asked about the sidewalks being replaced along the State Highway, including North and South Franklin Streets. MassDOT responded that the sidewalks have been investigated and it was found that they are need of reconstruction and should be included for consideration in the future. MassDOT sent an agreement to be signed by the Board. Mr. Phelan said they are acknowledging that they should be repaired, so they should fix them without holding the Town responsible for maintaining them. Mr. Ecord said the town currently plows and sweeps them.

MOTION: By Mr. Moore, second by Mr. Sheehan, to execute a request to authorize MassDOT to reconstruct the sidewalks along the state highway

VOTE: 5:0

William Smith, Acting Chief of Police, notified the Board that he had written a letter of commendation for DETECTIVE KEYSHA MITCHELL for her actions following an armed robbery at 204 South Franklin Street on October 19, 2014. Det. Mitchell observed the car involved, arrested the driver, and located the weapon, a gun, in the vehicle.

Fire Chief Luke McFadden reported that the municipal FIRE ALARM SYSTEM recently suffered storm damage. Mr. Ken Terrill was recently selected as an emergency medical DISPATCHER by Communications Director Steve Hooke.

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The Town's TAX TITLE ATTORNEY will attend an upcoming meeting relative to the tax title and foreclosure process.

Mr. Phelan and Health Agent Arthur Boyle will be meeting with the Environmental Protection Agency (EPA) about the recent report on BAIRD & MCGUIRE.

ADJOURN TO EXECUTIVE SESSION:

MOTION: At 9:30 pm, to adjourn to executive session to discuss strategy as it relates to ongoing litigation (Gioioso), and not return to open session

ROLL CALL VOTE: Mr. Moore – No – He recused himself  
Mr. Moriarty – Yes  
Mr. Gordon – Yes  
Mr. McGaughey – Yes  
Mr. Sheehan – Yes

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Kevin J. Sheehan, Clerk

Documents:

Agenda  
Minutes  
Special License application  
Ambulance abatement list  
ZBA appointment requests  
LCC appointment request  
10AM Sunday opening requests  
Sand bid recommendation  
Plymouth St. Sewer Extension recommendation  
MassDOT request letter & recommendation  
Republic Services donation letter  
Domino's Pizza hearing notice & application  
Brookville Restaurant Group hearing notice & application  
Dog complaint letter to owner & backup information