

CONFIDENTIAL

DRAFT

Town of Shirley

BOARD OF SELECTMEN



7 KEADY WAY – SHIRLEY, MASSACHUSETTS - 01464-2812

Kendra J. Dumont, Chair

Robert E. Prescott, Jr, Vice Chair

Enrico C. Cappucci, Clerk

BOARD OF SELECTMEN

Executive Session MINUTES

July 11th, 2016

TOWN OFFICES

Chair Dumont moves to go into Executive Session under Massachusetts General Law Chapter 30A, Section 21, Paragraph 1A. Mr. Prescott, Aye. Mrs. Dumont, Aye. Mr. Cappucci, Aye. All in favor.

Chair Dumont opened the Executive Session at 9:20p.m. at the Town Offices with Selectmen Kendra Dumont, Selectmen Robert Prescott, Selectmen Enrico Cappucci, Town Administrator Patrice Garvin, and Executive Assistant Nathan Boudreau in attendance

Selectmen Cappucci began by stating that he requested the Executive Session be held to discuss what he believes is misconduct of the Town Administrator. Selectmen Cappucci states he called Town Counsel to find out if it was illegal for litigants in cases against the Town to serve the Town on Boards, Commissions, or Committees. He states he got a return call from Attorney Brian Maser and he asked if there was anything written or verbally stated by Kopelman and Paige that states litigants cannot serve. Cappucci says he did not speak about the impending case and does not care about the case as he will let the court make their decision one way or another. Attorney Maser stated that there is nothing formal and that the decision is solely up the Selectmen, the appointing authority in the Town. Cappucci states that the Chair of the Planning Board who also asked this question to the Commonwealth of Massachusetts Ethics Commission, received an answer stating that if anyone that was a litigant had a personal objective or was personally involved in the process then they should not be serving.

Cappucci states Garvin sent an email to Town Counsel stating that Selectmen Cappucci was requesting an opinion regarding discussing litigation in public, which he states was a question he never asked. Second he states Garvin told him that Town Counsel has responded to her on how to respond when litigants ask questions regarding the case and the answer was that all town officials should not discuss pending legal matters. Cappucci states again that he does not discuss the case, does not care about that case, and was simply against the litigants not being able to serve the Town. Cappucci states that he has never discussed pending legal matters and that Town Administrator Garvin's insinuation that he had goes way beyond the means of her position.

Town Administrator Garvin says she believes Selectmen Cappucci is misunderstanding that there are two different attorneys, to which Cappucci states he is only telling her what he is reading.

Chair Dumont states that she would like to summarize the situation. Cappucci requested something in writing where counsel suggests that the selectmen not speak to the litigants regarding open litigation. This comes from the meeting where Cappucci stated he was going to do what he wishes and Town Counsel was not going to dictate his actions. Garvin sent the request to Counsel. Cappucci states that he got no answer until he called Attorney Maser directly. Cappucci states the other two selectmen have all rights to not appoint the litigants but not to put words in his mouth. Garvin states the only thing she did was forward his request to Attorney John Eichman, attorney Maser is not the attorney she dealt with on the matter.

Town Administrator Garvin read the following:

“Dear Members of the Shirley Board of Selectmen:

I offer this letter as a response to the request made by Selectman Cappucci to hold a hearing in Executive Session in order to “reprimand” me for an email I sent to Town Counsel. *(Attached: dated Friday, July 1, 2016)*

The allegation is that I “attempted to mislead attorneys at K/P on a pending court case in the land court.” This is a gross misrepresentation of my actions and I disagree with Selectman Cappucci’s accusation and this frivolous request for a hearing.

I have attached the emails that document all my exchanges with counsel. The exchanges are based on a request for an opinion sent by Selectman Cappucci. *(Attached/see below)*

From: ecappucci12@comcast.net [mailto:ecappucci12@comcast.net]

Sent: Saturday, June 18, 2016 6:12 PM

To: Garvin, Patrice

Cc: prescott, bob; Dumont, Kendra

Subject:

Hi:

I am requesting something in writing in which Town Counsel explains the need not to talk or address the residents that have issues with Patterson road.

I forwarded the above email to Town Counsel *(Attached: dated Wednesday, June 22, 2016)*, with some additional context, given the question was short and a little vague. Nothing I stated was incorrect, or misleading. It is my job to inform counsel of what is going on in the community and also within the internal workings of the Board of Selectmen.

The original request for an opinion was sent to the Board of Selectmen after an open meeting held on Wednesday, June 15, 2016, when the Patterson Road litigants issue arose. Counsel needed to be informed of this because there have been numerous discussions regarding litigants; in terms of what to say or not say. None of my comments were misleading but only defining to the issue at

hand. My intent was to make sure counsel had all the information he needed when drafting his opinion.

Also, it is my understanding that Selectman Cappucci is speaking to the litigants. This has been confirmed to me by numerous people and by Selectman Cappucci himself. Selectman Cappucci told me that he spoke to one of the litigants when she did not get reappointed to a Board in Town. In addition, at the selectmen's meeting on Wednesday, June 15, 2016 the Patterson Road litigants were speaking to the Board when I advised that counsel may not agree with discussing the issue. To that Selectman Cappucci stated he would not be told by counsel whom he could and could not speak to. These are just a few examples that lead to my understanding of events, and why I felt it necessary to include this comment in the email to Town Counsel.

Subsequently, counsel sent his opinion on Thursday, June 30, 2016, which I forwarded to the Board of Selectmen on Friday, July 1, 2016; Selectmen Cappucci responded later that afternoon. It must be stated that I find it egregious that Selectman Cappucci's first reaction was to attempt to "reprimand me" through an email, without any input from the Board of Selectmen. I find this behavior to be unprofessional and showing a clear lack of knowledge on how to deal with employees under M.G.L. He is one member of a Board, and I answer to the Board as a collective body. If Selectman Cappucci had an issue with something I wrote to counsel it could have been remedied through a simple conversation, but to claim malfeasance and to immediately call for a hearing is troubling.

I find Selectman Cappucci's behavior on Thursday, July 7, 2016 to be extremely inappropriate when I overheard him discussing this hearing with the Executive Assistant, Nate Boudreau. Selectman Cappucci entered the office around noon and asked if there was an Executive Session, regarding his complaint. After Mr. Boudreau confirmed it was on the agenda, Selectman Cappucci stated, "She was wrong". I find this behavior to be a violation of my rights as an employee and request that this type of behavior cease.

I serve as always at the pleasure of the Board of Selectmen, and I do my job with the utmost professionalism. I consider this accusation of malfeasance as a signal of more to come, due to its lack of substance and the immediate call to have a hearing. The accusation of "intent to mislead Town Counsel" by Selectman Cappucci is clearly farcical in nature and without merit, and should be deemed unfounded."

Cappucci states again that he did not discuss the case and only discussed the litigant's rights to be on committees.

Chair Dumont states that she stands by her decision to not allow litigants to serve on Town Boards and Committees, does not care who Selectmen Cappucci talks to or what about, but she he needs to stop harassing TA Garvin.

Selectmen Prescott states that Cappucci requested that TA Garvin do something for him, and then when he did he chastised her for it. Which he states is ludacris.

Chair Dumont states that Selectmen Cappucci does not hear many things on the ground level because he will not come in and have a conversation with TA Garvin and will not allow her to update him on issues.

TA Garvin states that she did not know Cappucci had a conversation with Attorney Maser and that when she received Selectman Cappucci's request she forwarded it to the proper Attorney Eichman, who is handling that matter. She believes this is a misunderstanding between two attorneys.

TA Garvin read multiple times the email she received from Selectman Cappucci, asking for a written opinion from counsel.

Email from Selectman Cappucci: "I am requesting something in writing in which Town Counsel explains the need not to talk or address the residents that have issues with Patterson road."

Cappucci again states all he wanted to know was if there was anything written or verbally states that Selectmen cannot speak with litigants in open cases against the Town. TA Garvin stated that the written opinion from counsel was derived from the second question sent by email from Selectman Cappucci and he is confusing the two questions.

Selectmen Prescott states that TA Garvin only implemented a request.

Selectmen Cappucci again states he does not care about the pending case and has never been briefed.

Chair Dumont states that Cappucci should care and the reason he has never been briefed is because he will not come and speak with TA Garvin.

Selectmen Cappucci states that he does not wish to be briefed because he doesn't want to know. He states there is nothing that can be done and it is out of their hands.

Chair Dumont states that Cappucci could jeopardize the case by talking to the litigants about it.

Selectmen Cappucci reiterates that he only talked to litigants about appointments. TA Garvin states that she has never spoken with counsel about appointments and only spoke with them regarding Selectmen Cappucci's emailed question.

Attorney Maser states that when counsel provides opinions it is just an opinion of what could happen if certain actions are taken and it is simply an opinion.

Selectmen Cappucci asks the Board to remember that he originally voted with the majority to not allow the litigants to serve until he received so much slack it made him rethink his actions.

TA Garvin states that any time a selectmen requests she contact Counsel, she does.

Selectmen Prescott states that you cannot reprimand someone because an attorney did not return his call.

Selectmen Cappucci states that this is between TA Garvin and himself who simply took two different roads to get their answer, and when he did not get his answer he took it into his own hands and contacted two different attorneys. One who responded and on who did not.

TA Garvin states that she has no clue why Attorney Eichman didn't respond to Selectmen Cappucci email but she wishes she had known that he was going to contact another member of counsel.

Selectmen Prescott asks what Selectmen Cappucci wants to reprimand TA Garvin for. Prescott states that she attempted to answer the question and here we are tonight to reprimand someone for doing their job.

Dumont states that she wants the nonsense to stop and that Selectmen Cappucci cannot be talking to employees about TA Garvin. Dumont states that Cappucci asked Nate Boudreau if this Executive Session was going to be on the agenda and stated that TA Garvin was wrong.

Selectmen Cappucci asks Boudreau if he told her he said that. TA Garvin states she heard this conversation through the door to which Cappucci compared Garvin to prior administrators and their actions. Garvin states that Selectmen Cappucci is not going to treat her like he did employees during his last run as Selectmen. Cappucci states that he did not treat anyone poorly and only seems to remember all the former employees holding his signs during this past election.

Dumont states former employees essentially filed hostile work environment forms against him. Garvin states that she would appreciate to not to be compared to past criminally charged administrators.

Dumont states that Garvin is not bad and that Cappucci has shown up to meetings unprepared due to not being up to date.

Cappucci states that all he wanted was an answer from counsel. Garvin says that she cannot force attorneys to call him and that he contacted the wrong attorney.

Cappucci states that he will drop this and it will not go out of this room. Garvin states that she will not take Cappucci on his word as she does not know who he is talking to and what about.

Chair Dumont states that Cappucci needs to work on his relationship with Garvin if he wishes to be successful.

Cappucci states that he is here to do the job of the people. He doesn't know the people, hang with the people, or party with the people, but he is here as a Selectmen doing the job of the people and he tried to help them all.

Garvin states that she does not mind the Selectmen holding her feet to the fire but there needs to be an open level of conversation.

Cappucci states that their relationship is strained because on day one Garvin stated that Cappucci needed to go through her to speak with the employees.

Garvin states that she did not say that and meant that she wanted to be on the same level of information as Selectmen Cappucci. What she was asking is Selectmen Cappucci to ask her for the information first.

Dumont states that this relationship needs to be worked on and that would really help the entire board.

Selectmen Prescott mentions that the Executive Session Notice be removed from Town Administrator Garvin's file. Seconded by Selectmen Cappucci. All in favor. Motion Passes.

TA Garvin stated that she would be available every morning this week as an olive branch if Selectmen Cappucci would like an update.

Selectmen Cappucci motions to withdraw his complaint. Selectmen Prescott seconded. Mr. Prescott, Aye. Mrs. Dumont, Aye. Mr. Cappucci, Aye. All in favor.


Selectmen Prescott Motioned to adjourn at 10:10pm on 7/11/2016. Mr. Prescott, Aye. Mrs. Dumont, Aye. Mr. Cappucci, Aye. All in favor.

Respectfully submitted Nathan R. Boudreau

Date accepted: 8/16/2016


Kendra Dumont, Chairman


Robert Prescott, Vice-Chairman


Enrico Cappucci, Clerk

Town of Shirley

BOARD OF SELECTMEN



7 KEADY WAY – SHIRLEY, MASSACHUSETTS - 01464-2812

Patrice Garvin, Town Administrator

TEL: (978) 425-2600, x121
Fax: (978) 425-2602

July 11, 2016

Shirley Board of Selectmen
7 Keady Way
Shirley, MA 01464

Re: Response to Notice of Executive Session

Dear Members of the Shirley Board of Selectmen:

I offer this letter as a response to the request made by Selectman Cappucci to hold a hearing in Executive Session in order to "reprimand" me for an email I sent to Town Counsel. (*Attached: dated Friday, July 1, 2016*)

The allegation is that I "attempted to mislead attorneys at K/P on a pending court case in the land court." This is a gross misrepresentation of my actions and I disagree with Selectman Cappucci's accusation and this frivolous request for a hearing.

I have attached the emails that document all my exchanges with counsel. The exchanges are based on a request for an opinion sent by Selectman Cappucci. (*Attached/see below*)

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arose. Counsel needed to be informed of this because there have been numerous discussions regarding litigants; in terms of what to say or not say. None of my comments were misleading but only defining to the issue at hand. My intent was to make sure counsel had all the information he needed when drafting his opinion.

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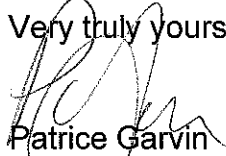
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Thank you.

Very truly yours,


Patrice Garvin
Town Administrator
Town of Shirley

Garvin, Patrice

From: ecappucci12@comcast.net
Sent: Friday, July 01, 2016 1:22 PM
To: Garvin, Patrice
Subject: Re: Counsel's Opinion Regarding Litigation

Not sure what you are talking about. I understood that you may not discuss legal matters with the people involved in litigation. My questioned did not address that issue at all and do not appreciate indicating it did. I really must reprimand you through this email so if you wish to challenge this reprimand please do. I shall keep a record of this as I would believe you should also.

----- Original Message -----

From: Patrice Garvin <pgarvin@shirley-ma.gov>
To: Kendra Dumont <my5dogs@comcast.net>, bob prescott (Bob.prescott@comcast.net) <Bob.prescott@comcast.net>, Encerio Cappucci <ecappucci12@comcast.net>
Sent: Fri, 01 Jul 2016 12:01:54 -0000 (UTC)
Subject: Counsel's Opinion Regarding Litigation

Good morning,

Selectman Cappucci requested an opinion from counsel regarding discussing litigation in public. Below is counsels opinion.

On a similar note Ms. Slocum has been repeatedly been asking for information regarding Patterson Road. I have been forwarding her emails to counsel, and I am answering as much as I can. Counsel has advised me how to respond to her, but those answers are not satisfying Ms. Slocum. Ms. Slocum seems to want to debate, which counsel has strongly suggested not undertaking due to the litigation. If you would like to see this back and forth correspondence I am more than happy to show you. I do not want it to be reported to you that this office is not answering questions. I will continue to follow counsel's advice, until I am told otherwise by the majority of the Board of Selectmen.

Please let me know if you need anything further.

Patrice Garvin

Town Administrator

7 Keady Way

Shirley, MA 01464

978-425-2600 Ext. 121

pgarvin@shirley-ma.gov

From: Jonathan D. Eichman [mailto:JEichman@k-plaw.com]

Sent: Thursday, June 30, 2016 4:19 PM

To: Garvin, Patrice

Cc: Carolyn M. Murray; Lauren F. Goldberg

Subject: RE: Patterson Road

Patrice:

You asked why Town officials should not discuss pending litigation and related legal issues in public. The validity of the Town's lease and permitting of the Patterson Road solar project is the subject of pending litigation in the Land Court where the Town's Board of Appeals is a defendant. As we would with any litigation where the Town is a defendant, we advise that Town officials not discuss the litigation or legal issues that may relate in any way to the litigation, either amongst themselves (outside of executive session with counsel) or with the public or the press. Such discussion can unwittingly compromise the Town's legal position and strategy in the litigation and can also expose the Town to new and unexpected liability related to the pending appeal. Most importantly, such discussions are subject to discovery, such as depositions, and are not protected by the attorney-client privilege. Incorrect or unproven assertions or speculation may not ultimately result in a provable claim against the Town, but airing such issues in public can certainly generate interest in further investigation and subsequent filing of claims that, even if ultimately dismissed, will require a substantial expenditure of time and Town funds to defend. Further, generating public discussion on the issues can have the effect of influencing witnesses, both factual and expert, who have not yet answered questions or rendered opinions under oath, and can in some instances dissuade witnesses from testifying. For these and other reasons, we strongly recommend that Town officials not discuss pending litigation or related legal issues in any manner without the presence and/or guidance of counsel.

Please contact me if you have further questions of concerns.

Jonathan D. Eichman, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

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jeichman@k-plaw.com
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From: Garvin, Patrice [<mailto:pgarvin@shirley-ma.gov>]

Sent: Wednesday, June 22, 2016 9:55 AM

To: Jonathan D. Eichman

Subject: FW:

Hi Jon,

The selectman has a question below. I think this comes from an open televised selectmen meeting where the litigants started to discuss with the members of the Board certain aspects of the case, to which I advised the selectmen that this may not be a good idea. Also, it is my understanding that the selectman below has been interacting frequently with litigants discussing the Patterson Road matter.

Patrice Garvin

Town Administrator

7 Keady Way

Shirley, MA 01464

978-425-2600 Ext. 121

pgarvin@shirley-ma.gov

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