

June 10, 2013

**BOARD OF SELECTMEN
MINUTES
JUNE 10, 2013**

Present: Thomas Creamer, Chairman
Priscilla Gimas
Mary Redetzke
Mary Blanchard
Mary Dowling
Shaun Suhoski, Town Administrator

The Chairman called the meeting to order at 5:45 p.m. at Tantasqua Regional High School Cafeteria

Consider Open Meeting Law Complaint filed on May 21, 2013 by Gerard Russell concerning the Board of Selectmen's April 22, 2013 Meeting.

The Chairman noted that the Board received an Open Meeting Law complaint on May 21, 2013 concerning its April 22, 2013 meeting alleging that, while in Executive Session to discuss charges against another employee, the Board discussed the temporary Administrative Aide to the Fire Chief position and a motion was made to eliminate the position. The complaint further alleged that the item was not posted on the agenda.

The Chairman reminded the Board that this complaint tracks the similar complaint – and therefore recommended findings – as the Board's response to Vernon Jackson's complaint. M. Blanchard asked whether the language was the same findings. S. Suhoski said it was the same as discussed with Town Counsel.

MOTION: That the Board of Selectmen make certain findings of fact and resolve the complaint as follows:

- 1. Mr. Russell's instant complaint is essentially identical to the one that was previously filed by Vernon Jackson on May 6, 2013 regarding the same meeting;**
- 2. As the Board previously noted at its May 22, 2013 meeting, the original agenda for the April 22, 2013 meeting was timely posted in accordance with the Open Meeting Law;**
- 3. A revised meeting notice was posted on April 19, 2013 to clarify the location of the meeting and to add the words "Open Session" immediately prior to the existing reference to the Executive Session;**

4. A proper and valid motion to enter Executive Session to consider the discipline or dismissal of, or to hear complaints or charges brought against a public officer, employee or individual was made and approved by the Board at the April 22, 2013 meeting;
5. The Board believed that it was in compliance with the requirements of the Open Meeting Law because the discussion and vote taken on the position of on-call Temporary Assistant to the Fire Chief was directly related to the Board's vote at that same meeting to place the Fire Chief on paid administrative leave;
6. However, even if the Board's actions were not in compliance with the Open Meeting Law, any potential violation has since been remedied where:
 - a. The Board included an item on the agenda for its May 22, 2013 meeting that clearly indicated that it would be revisiting its prior discussion regarding whether there was a continuing need for the position of on-call Temporary Assistant to the Fire Chief and the possible elimination of the position; and
 - b. The Board fully discussed the matter at its May 22, 2013 meeting and voted to ratify the action taken at the April 22, 2013 meeting to eliminate the on-call Temporary Assistant to the Fire Chief.

For these reasons, Mr. Russell's complaint fails to allege a violation of the Open Meeting Law and even if it did, any alleged violation has since been remedied by the Board's actions on the matter on May 22, 2013.

And further, Town Counsel is hereby directed to prepare a response to the Attorney General, copied to the complainant, consistent with the findings set forth above, by T. Creamer.

2nd: P. Gimas

Vote: Three in favor; M. Blanchard abstained; M. Dowling absent.

Consider whether to discontinue the Board of Selectmen's practice of receiving telephone calls from the public during the "Ask the Selectmen" portion of Board meetings and/or to change the manner in which such calls are received.

The Chairman outlined why this item arose due to an Open Meeting Law complaint filed by Gerard Russell of the Telegram & Gazette. The Board deliberated the right of the

public to hear questions versus the “anonymous” nature of telephone calls and potential for slanderous comments.

There was substantial discussion and agreement amongst the membership that discontinuance of the 20-year-plus practice was “unfortunate.” T. Creamer said that it was being forced upon the Board because of the Telegram & Gazette’s insistence upon bringing a personnel issue that is clearly protected by state law against public disclosure, so as to protect the rights of an employee, into the public domain where it did not belong. There was also some discussion with respect to the fact that current technology makes it infeasible to identify the party on the telephone with any certainty.

P. Gimas stated it was a tough quagmire for the Board. M. Blanchard said it was too bad, but, needed because the parties on the phone could not be identified. T. Creamer stated it was unfortunate that the luxury afforded the residents of the Town of Sturbridge calling in to Board of Selectmen meetings was taken away because of actions of the media, and that the complainant had done a disservice to the residents. M. Redetzke stated this was a sad day for Sturbridge.

MOTION: That the Board of Selectmen discontinue the practice of accepting telephone calls during its meetings, by T. Creamer.

2nd: P. Gimas

Vote: Four in favor; M. Dowling absent.

M. Dowling arrived at 5:54 p.m.

Consider Open Meeting Law complaint filed on May 21, 2013 by Gerard Russell concerning the Board of Selectmen’s May 13, 2013 meeting.

The Chairman advised that the Board received an Open Meeting Law complaint from Gerard Russell on May 21, 2013 concerning its May 13, 2013 meeting. The complaint alleged that the Vice Chair’s failure to repeat a question that was asked by a member of the public via telephone during the “Ask the Selectmen” portion of the Board’s meeting on the basis that it was a personnel issue violated the Open Meeting Law and further, that the Board’s practice of not utilizing a speakerphone when receiving calls from the public during said portion of its meetings also violates the Open Meeting Law.

MOTION: That the Board of Selectmen make certain findings of fact and resolve the complaint as follows:

- 1. The Board has maintained a practice for over 20 years of allowing members of the public to call into the Board’s regular meetings to ask the Board questions.**
- 2. The original intent behind this practice was to make participation in the Board’s meetings more accessible to the public.**

3. When taking telephone calls from the public, the Board's practice has been to repeat the caller's question to the audience prior to the Board undertaking a discussion of the matter.
4. At the Board's May 13, 2013 meeting, one of the questions the Vice Chair received from a caller related to a personnel matter.
5. Out of concern for the employee's potential right to privacy in the personnel matter, the Vice Chair announced that she would not be repeating the caller's question.
6. The Board believes that the Vice Chair's failure to repeat the question did not violate the provisions of the Open Meeting Law given the circumstances of this case and her reasonable concern for the employee's potential rights.
7. Further, the Board is also of the belief that its practice of not using a speakerphone to receive calls from the public during its meetings and having a member of the Board repeat them instead does not constitute a violation of the Open Meeting Law.
8. However, even if the Vice Chair's and/or Board of Selectmen's actions were not in compliance with the Open Meeting Law, any potential violations were unintentional and have since been remedied by the following:
 - a. In the interests of transparency and in light of the fact that the subject matter of the caller's question has since become public knowledge, the Board will publicly repeat the May 13, 2013 caller's question at this time which was as follows: "Has the Fire Chief given his letter of resignation/retirement?"
 - b. The Board included an earlier item on the agenda for its meeting tonight in which it considered whether to discontinue the Board's practice of receiving telephone calls from the public during the "Ask the Selectmen" portion of its meetings and/or whether to change the manner in which such calls are received.

- c. **The Board fully discussed the matter and, given the concerns that have been raised over the Board's practice of not utilizing a speakerphone and its desire to ensure transparency in its deliberations, the Board has decided to discontinue acceptance of telephone calls during its meetings.**

For these reasons, Mr. Russell's complaint fails to allege a violation of the Open Meeting Law and even if it did, any alleged violation has since been remedied by the Board's actions on the matter this evening.

And further, Town Counsel is hereby directed to prepare a response to the Attorney General, copied to the complainant, consistent with the findings set forth herein, by T. Creamer.

2nd: P. Gimas

Vote: Four in favor; M. Dowling abstained.

T. Creamer inquired whether the Town Administrator would process the Board's actions the next day. S. Suhoski said that he would.

Cumberland Farms – Wetland Protection Vote

S. Suhoski noted that the Board had previously seen preliminary plans for a redeveloped Cumberland Farms operation at 506 Main Street. The Board had also reviewed the detailed, three-page explanation of the site and fuel storage improvements that were associated with the proposed redevelopment. Based upon the Board's review, and the recommendation of the Town Planner, DPW Director and Town Administrator the Board took the following action:

MOTION: That the Board of Selectmen support granting of a special permit by the Planning Board as relates to the fuel storage component of the proposed redevelopment of 506 Main Street and to execute the letter dated June 10, 2013 to the Planning Board regarding same, by M. Blanchard.

2nd: P. Gimas

Vote: All in favor.

Review of Outstanding Town Meeting Items

T. Creamer reviewed his rationale for presenting a request that the Board of Selectmen rescind their "holds" on a series of budget line items. These items are discussed in a June 10, 2013 email to the members of the Board. There was discussion by the Board.

MOTION: To remove the holds on the following budget line itemsin : Article 8, lines 6, 7, 8, 16, 17, 21, 22, 23, 27, 28, 36, 37, 45, 46, 47, 51, 52, 53, 73,

74, 75, 79, 80, 81, 82, 83, 84, 86, 87, 88, 96, 100, 105, 106, 107, 117, 121, 122, 123, 129, 132, 133, 138, 145, 146, 149, 151 and 152, by T. Creamer.

2nd: P. Gimás

Through discussion, the motion was amended by the maker (T. Creamer) and seconded (P. Gimás) to remove line items:

81 – Fire Dept. Wages: to reflect 6/3/13 vote of BOS for substitute motion.

86 – Building Dept. Purch. Of Svc.: to reflect 6/3/13 vote of BOS for substitute motion.

100 – Burgess Elementary: determined to not be a “hold” of Selectmen.

There was additional discussion prior to the vote being called on the amended motion. M. Redetzke stated she noted in favor of the holds, and therefore could not support the removal of the holds. M. Dowling said that she did not vote in favor of the holds, so she would abstain from the motion to remove them.

Vote: Three in favor; M. Redetzke opposed; M. Dowling abstained.

Withdraw Substitute Motion re: Article 20

T. Creamer requested the Board to withdraw its substitute motion regarding Article 20 in favor of the Finance Committee main motion.

MOTION: That the Board of Selectmen authorize the Chairman to withdraw the substitute motion regarding Article 20 of the Annual Town Meeting (Stabilization Fund) and allow the Finance Committee motion to proceed, by T. Creamer.

2nd: M. Blanchard

Vote: Three in favor; M. Redetzke opposed; M. Dowling abstained.

Fleet Vehicle Access by Town Administrator

T. Creamer advised that he had reviewed the contract between the Town and the Town Administrator as suggested by MB and in light of same requested the Board to reconsider its prior vote to authorize the Town Administrator to have access to fleet vehicles at his discretion. There was discussion amongst the Board.

M. Dowling stated that the subject would have been raised by her in executive session to re-negotiate the terms of the Town Administrator’s employment contract.

MOTION: That the Board reconsider its vote to authorize the Town Administrator to have access to fleet vehicles at his discretion, by T. Creamer.

2nd: M. Blanchard

Vote: All in favor.

The Board then discussed the underlying vote under reconsideration. S. Suhoski stated that he had no objection to the Board's actions.

MOTION: That the Board rescind access to fleet vehicles for travel by the Town Administrator for any manner that is inconsistent with the Town Administrator's employment contract, by T. Creamer.

2nd: M. Redetzke

Vote: All in favor.

Other Business

M. Dowling stated that the meeting had been initially scheduled for 6:15 p.m. and that the change in time made it difficult for her to be on time.

MOTION: To adjourn, by M. Dowling

2nd: M. Blanchard

Vote: Four in favor; T. Creamer opposed.

The meeting adjourned at 6:25 p.m.

Respectfully submitted,

Judy Knowles

BOS Clerk

Date