

**TOWN OF WINCHENDON**  
**BOARD OF SELECTMEN EXECUTIVE SESSION MINUTES**  
**Monday June 17, 2013**  
**Town Hall, 109 Front Street, Winchendon, MA**  
**2<sup>nd</sup> floor Auditorium**

Present: Elizabeth R. Hunt, Vice- Chairwomen  
Keith Barrows  
Fedor Berndt  
Jack Blair-Remote Participation

James M. Kreidler, Jr., Town Manager  
Margaret Giacobone, Admin. Assistant

Absent: Robert O'Keefe, Chairman  
Linda Daigle, Executive Assistant

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List of Document Presented at Meeting:

- Donna Allard's Resume (filed)
  - Purchase and Sales Agreement (filed)
  - Atty. Giorgio's email to Bob O'Keefe dated June 7, 2013 (attached)
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Beth Hunt as acting Chairman called the Executive Session Meeting to order at 7:05 PM.

Keith asked if Donna Allard's supervisor would be able to give her weaknesses.

The Town Manager mentioned that after speaking to Karen (the Town Administrator in Westminster) that Donna Allard's weakness is that she knows the law very well and is very detailed oriented, but in Westminster they have a very decentralized government structure as far as who is responsible to and who can direct her so it is very frustrating to Donna to have everybody think that they were her boss. So her weakness would be resolved by our structure where there is a very defined charter and form of government where she has a direct line of reporting responsibility to the select board and just a dotted line to the Town Manager. So the weakness Karen mentioned could be a spin as a strength.

Some discussion ensued.

Fedor liked her resume and felt that she had a strong background.

Keith felt that when asked about a time she failed and what she learned from it that Donna was very quick to not be afraid to talk about it and that she learned from her failures.

Beth said that she felt that Donna wasn't going to let Munis get to her and that she adapted very quickly to other programs and Beth liked that she is strong and seemed to learn fast. She felt that Donna and Charlotte had a lot in common which she felt was a great thing as Charlotte has a great reputation. Beth also was glad that she brought up the school system and felt that she would work well with the school business manager. The

Town Manager mentioned that the Superintendent was one of the unanimous votes for Donna from the Search Committee.

Keith asked the Board if they were in agreement and if they wanted to move forward. Fedor stated that he wanted to move forward. Jack felt that her resume was impressive and that he would be willing to give her a shot at the job.

The Town Manager stated that procedurally there has been a standard contract which he was given clear direction from the Board on the areas that are no longer to be standard especially sick leave buy back. He said that he would be happy to draft up the standard contract for the Board's eyes. He said that the position in our compensation and classification plan is a grade 10. Range is predetermined in this plan. He knows that Charlotte was at the top of the plan and that Donna's current salary is around our first step in the plan. We have budgeted the third step in the plan at \$62,000. She is currently making \$56,000. The Town Manager stated that Donna is not interested in making a move for lateral economics but she is interested in getting out of Westminster and coming to Winchendon.

The Town Manager asked the Board if they had a sense on how they wanted to handle the actual negotiations with her. Did they want a subcommittee of the board to do it.

Some Discussion ensued about vacation time and salary. The Town Manager felt that there was more room to hold her flat on benefits than salary in negotiations. He felt that the timing for her plays on our side as Donna gave notice six months ago pursuant to her contract that she wanted to negotiate and they have not yet begun until last week. He said that she might be able to negotiate an extension for a couple of months in Westminster. Her 3 year contract is up June 30, 2013.

The Board felt that 1 or 2 board members could go over the contract, iron it out and then present it to the full board.

Beth said she didn't mind being one of the two. Fedor said he won't mind helping out. Beth agreed. TM said he would be staff support. Keith felt at 10 percent increase from what Donna is making would be below the \$62,000 that we have budgeted and that would keep us below our target. He said that 10 to 15 percent is usually a good spot to jump to another job. The Town Manager stated that he didn't know what Donna's expectation was.

There was some discussion on when the Board would finalize the decision. Keith suggested that the subgroup could meet with her and suggested that the Board could then vote on the outcome at its July 8 meeting.

Keith made a motion that Fedor Berndt and Beth Hunt be appointed as the subcommittee to negotiate contract terms with Donna Allard for the position of Town Accountant. Mr. Blair seconded the motion. All 4 selectmen voted eye.

The Town Manager said that the next item on the agenda would fall under exemption 6. Consideration of real estate. He said that we have received just this evening the final version of the purchase and sales agreement for the Court House pursuant to the Board's vote at their last meeting to move forward and accept the Police Station Studies Committee unanimous recommendation that the bid of Winchendon Court LLC be accepted, moved upon, purchase and sales executed and move toward actual real estate closing. The document was negotiated by Town Counsel Kopelman & Paige for our interest and there were two other attorneys involved representing Winchendon Court, LLC and the Athol Savings Bank respectively.

The Town Manager stated that there were several bumps along the way that he thought Town Counsel and Chairman O'Keefe handled very well. The couple of bumps that existed have been effectively either addressed or protected against in this document that is in front of the Board.

The two issues specific were related to hazardous material. The committee asked each of the respondents to the RFP, prior to making the recommendation to the Board, to provide information regarding testing that had been done on the property relative to hazardous materials. The Winchendon Court, LLC the bid that was accepted and recommended information was provided in the form of a Phase I evaluation that was done by a licensed site professional. A Phase I evaluation in Massachusetts is a document review. You are able to go through EPA, DEP and a variety of other state and local agencies and offices to determine what the historical uses of the property have been and what issues if any were discovered and what remediation if any was taken against those issues. This document is from the perspective of the property outside of the building. There had been an underground storage tank, petroleum oil that had been removed under the auspices of the local fire department back in 1999 signed off on by the state as well as local fire dept. No other issues presented themselves.

The one thing that jumped out however was the 21e Phase I evaluation was at best silent on whether there were any other issues inside the building at worst it referenced very narrowly that the now decommissioned boiler in the basement had piping on which was a material that they in the report would not certify that it was or wasn't asbestos. The report itself didn't require them to even mention that information because it was really a property not building document. It did raise a red flag issue. So the RFP that the committee put out required that they provide evidence that there were no hazardous materials involved in the submittal. So that is the land as well as the building. There is a provision in the purchase and sales that says once you presented all your final documents if the town has any questions and wants an additional study done we can do the study and if there is anything found in the study they must do an abatement at their expense. If they refuse to do that we are not obligated to move forward. It has already been discussed between counsels that there is at least going to be a question as to what the material is on the piping at the boiler. There would be a licensed site professional that would do the other usually and customary locations for testing. One of the concerns publically is that this is a 100 year old building so of course there must be something in this building. The counter argument to that is that in 1999 thru 2000, the building was in essence gutted. Town Counsel has in its possession hundreds of photographs taken by DCAM, the state agency that does capital procurement, that when the conversion was being done for the building to become the court house proper up and down, everything down to metal studs and sheet rock was done at the time. The only potential concerns that licensed site professionals that have looked foresee would be the old boiler and potentially whether or not any of the two front offices on the second floor that were not gutted out that have natural varnish wood work contain lead. If so is it encapsulated efficiently that you would preserve the historic nature of it and it would be sufficient. Those would be the issues that that the town would be required to be addressed prior to closing. This will give them the assurance of a purchase and sale that says yes we are going to purchase it if you do these things giving them the assurance that if they do those certain things the purchase would be consummated. The other thing that was not addressed and clearly needed to be clarified prior to P&S was that a caveat was offered in the proposal that was made from Winchendon courthouse LLC that the property owner would like to retain easement to some number of parking spaces in parcel 72. This is the lot to the left hand side of the courthouse if you are standing on Central street looking at it and specially along the brick wall of the adjacent building. The purpose for which the owner wanted to keep this easement was apparently for a building away between the vacant lot there is one commercial building and the next commercial building moving towards Front Street. He has tenants there including a pizza place, a Chinese restaurant, a church and a diner. He had agreement with those tenants that they could have access to parking in that lot. This became a pretty significant sticking point because the RFP said

expressly that the property must be conveyed without any easement that impacts the towns intended use of the property for a police station.

The Town Manager said that after a long bit of back and forth with respective counsels and Chairman O'Keefe commenting, the decision is made that there is sufficient parking space in the lot behind the courthouse up to Mr. Otto's property on Pleasant for police vehicle and staff vehicles and there would be sufficient space in the lot left of the courthouse for police use such that you could make the entire row of left hand parking adjacent to that brick wall of the adjoining property general public parking use. Basically downtown off street parking. The argument being it is still available for police use but also toward the benefit of the economic development of down town to provide off street parking for those businesses up and down central on that end. In doing so you have effectively created public space that anyone be it a tenant or customer in another building on the other side of the street could park. First come first serve as is available. That seemed to satisfy that concern.

The Town Manager said there is one remaining issue revolving around that side of the lot that just came up today that is not able to be resolved. If you are standing on the sidewalk looking into the lot in the far left hand corner in that lot, tucked in almost behind the adjacent corner of the building, is a dumpster. That dumpster is utilized by tenants in the building two buildings down that the owner of the courthouse has tenants in. At least once a week a waste truck drives into that lot emptying that dumpster. The Town Manager stated that it would be a potential problem if this garbage truck pulls in and the police needing to get out at the same time. What was pushed back to the proposer this afternoon was the concept of having general municipal parking along the wall without providing any benefit to him or his tenants specifically but no dumpster period. Toward that point, historically there appears to have been an arrangement that the owner of that property negotiated with the old Winchendon hospital building, the old multifamily unit on Pleasant street, where they had a dumpster on that site all the way at the end of their driveway which is behind the restaurant block as a quid pro quo as the owner of the courthouse who is the owner of the restaurant block was allowed access to that driveway for the dumpster to be removed. In return they provided dumpster service for the tenants of that building. That is something that they have to work out that is their problem but it cannot be rolled into any fashion to that parking lot because it cannot be said that such a use is public and such a use doesn't have an impact on the intended use of the property. Town Manager said that the email that he received from Town Counsel just this evening was that the Attorney for Winchendon Court LLC said that while his expectation is that all that is agreeable, his client was not able to be reached this afternoon and it maybe that he has an issue with it tomorrow and we find out that the deal before you tonight being executed is not agreeable to him. But in order to not have to go through the issue of reconvening another select board meeting execute it this evening if it your wish with the belief that it will be agreeable and it be executed tomorrow. Town Manager thinks Board executing it gives Board far more leverage then your not, if not executed it implies still wide open.

Beth wanted to go over Page 4 of the Purchase and Sale agreement. She said that the bottom line is that we meet all safety needs, structure, internal, exterior, and interior. She doesn't want to go back to this town and ask for one more penny to make this happen. She is assuming that statement on Page 7 is what is going to cover us just in case something surfaces during inspection. The Town Manger said there are a couple of places that that issue is addressed Page 5 Section 16 d, Page 6 subsection I and Sections 20 & 21. He said that all these conditions have to be met in order to close. So if we are not satisfied that it has conforms completely then there no deal. He said we are not obligating ourselves to do anything. We need to be satisfied. He said that if the Board is not satisfied prior to closing, you can walk away.

Beth asked if there was any activity on the right side of the building. Town Manager stated that the right side of the building from within 6 inches of the bricks and toward the bank is owned by Athol Savings Bank. He said that at the Planning Board meeting two weeks ago, a ANR (approval not required) was submitted to the Board

and endorsed that cutoff that driveway that exists on the right hand side of courthouse building. There was a separate real estate transaction between the bank and Winchendon Court LLC which is that Winchendon Court LLC has purchased that strip of land. They were required to give us that access. They had to go and get it and they have done that and it has been approved so it is a standalone parcel to be appended to the Winchendon courthouse proper.

The Town Manager mentioned that there is a provision in this document that provides the bank the temporary construction easement right for a 6 month period from the execution of the sale out for six months. They have a right after giving us notice, for a six week period, to be able to stand on or mobilize from that drive way when they are redoing their parking lot. They are responsible for anything that happens such as an accident etc. while they are using it.

Town Manager said that he wanted it on the record that this was all negotiated between the parties respective counsels and that he was playing an administrative role that whenever a bump was reached he would communicate it back to the Chairman so that he could address it. The reason he stated this was that as the Board knows, he delegated his procurement authority for this project purpose to the Board/Chairman back when the process started and only pursuant to the Board's vote has he become involved in it now and solely in an administrative or ministerial capacity. He is not making decisions or negotiating. He is merely doing the administration.

Jack had a question about something that happened at a previous meeting regarding a letter from the Inspector General's office that was distributed to the Board. Jack said at that meeting that the Chairman asked for permission to respond on Select Board stationary and that he has requested to see a copy of that letter that was sent and has not received it. He asked if any response went out to the IG about his concerns about the court house and our decisions and if so when.

The Town Manager said that Chairman O'Keefe drafted a letter and presented it to counsel for review. Counsel strongly recommended such a letter not be sent and no letter has been sent. Jack then asked if anybody responded to the Inspector General's concern about the decisions of the Board of Selectmen's vote to move forward on the decision they are making tonight. The Town Manager said that he wanted to share a letter just received from Town Counsel that was sent to Chairman O'Keefe from Town Counsel John Giorgio who is the direct contact with the IG's office. The Town Manager read the letter. (Letter attached). Jack said that was helpful and thanked Jim.

The Town Manger said that anyone can sue anyone for anything. So let's just say this purchase and sale agreement gets executed by the board and by the seller and prior to the sale being closed the Inspector General's Office changes its mind and issues a directive. If they were to do that they would need to seek backing from the Attorney General's office for enforcement. But if that happened there is nothing in this purchase and sales agreement that would stop the seller from bringing a cause against us if we were to back out. The Town Manager stated just so the Board knows, Town Counsel believes that our action would be defensible and would prevail because we would have an inability to consummate the transaction because of an order presumably from an authority that is higher and greater than us. He wanted to be clear because he had asked counsel specifically, does this in any way prohibit the seller from bringing a cause against us if the Inspector General says don't go forward and the Attorney General enforces such a recommendation. The answer is no. Jack said the obvious question that we should ask is what are the pros and cons of waiting for the Inspector General to issue his decisions. We are voting tonight based on our counsel thinks it might be. Is there any advantage in finding out what the IG's concern is.

The Town Manager said he can answer Jack by recounting the history a year ago when the Inspector General's office was very actively engaged in similar document requests regarding Hillview. At selectmen Hunts recommendation we have very nearly compiled everyone's hours and associated expense. We have been close to 15 months since they started that and we have been coming on 10 and 1/2 months since we have last heard anything from them on it. The Town Manager said his experience is they get called, someone is wound up, and they put us through the wringer and at the end of the day nothing is there and nothing is ever said again. Using that as the experience specifically, he would say there is no guarantee that we will hear anything from this question from the Inspector General. Jack said his question was satisfied. Keith and Beth agreed with Jim.

Jack said that we now have in our minutes and on record that we addressed and considered the Inspector General stated concerns, that we have a recommendation from town counsel and that we are faced with either a very long and probably very difficult delay waiting from uncertainty and that has to be weighed against the conditions under which the Winchendon police are currently operating and have been operating since we first started discussing this long ago. He felt that anybody that wants to second guess the decision and looks back on it will see that we did our due diligence and we are about to make a decision based on the information that we have and in the best interest of the town.

Keith said he happened to notice that there is a date of closing that states the date as May 31, 2013. The Town Manager said that was an excellent catch and it should be no later than 60 days from the execution. With a caveat in your motion that this be amended for that purpose and you be allowed to come in and sign off cycle you are authorizing the vote and the signature. The Town Manager mentioned that the Board cannot vote to execute this Purchase and Sale in executive session. We would have to discontinue the executive session and reconvene the open for such a motion and vote to take place. But for consideration of your vote having counsel change the closing date to appropriately reflect the terms of the RFP which is 60 days of the execution.

Keith motioned to close executive session and go back into open session. Fedor seconded the motion. Roll call vote Keith Aye, Fedor, Aye, Jack Blair Aye, and Beth Aye.  
Executive session was closed at 8:00PM

Respectfully Submitted,

Margaret Giacobone  
Administrative Assistant