

**TOWN OF WINCHENDON
BOARD OF SELECTMEN EXECUTIVE SESSION MINUTES
WEDNESDAY, OCTOBER 15, 2014**

**4th Floor Robinson-Broadhurst Conference Room
109 Front Street, Winchendon, Mass.**

Present: Fedor Berndt, Chairman
Elizabeth R. Hunt, Vice-Chair
Robert O'Keefe
Keith Barrows

James M. Kreidler, Jr., Town Manager
Linda A. Daigle, Executive Assistan

Absent: C. Jackson Blair

List of Documents Presented at Meeting:

- Town Counsel Opinion Email dated 10/14/14 RE: Kwik Stop Liquors ABCC Appeal Decision
 - Draft Town Manager's Contract
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Chairman Berndt called Executive Session to order at 9:56 p.m.

Exemption No. 3 "To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares." Subject: ABCC Appeal Decision: Vasta, Inc., d/b/a Kwik Stop Liquors – 18-20 Railroad St.

The Town Manager reviewed with the Board the three options provided by Town Counsel regarding the ABCC decision to disapprove the Board's decision to revoke the liquor license of Vasta, Inc., d/b/a Kwik Stop Liquors. The three options were:

- 1) Not pursue an appeal and restore the license to Ms. Halkiadakis and then to approve the corporate officer changes as well.
- 2) Appeal the ABCC decision in Superior Court.
- 3) Conduct a new hearing supplying stronger evidence.

O'Keefe voted for Option 1 to let them re-open. Selectwoman Hunt agreed. O'Keefe said the ABCC sat on this for about ten months. They knew how to make their decision nine months ago and couldn't speculate why it took so long. He didn't want to punish her any longer stating enough is enough. She is moving forward with change of ownership in her sole name and is moving on. It's time to get this business open again.

There was concern that she needs to understand as the licensed Manager the hours she needs to dedicate to the store. The Board would make clear at the public hearing later this month. O'Keefe commented he had driven by the store this past weekend and saw her and her son there and how immaculate the store

looked. It showed that kind of owner she is. The issues that had occurred are related to another individual and feels it's time for the store to reopen.

O'Keefe moved for Option 1; Barrows seconded for discussion. He asked the Board if they felt comfortable with that. This guy is out of her life, she made the mistake by not being the Manager, and she's paid a ten month penalty. He doesn't think she will ever make that mistake again and is willing to give her a second try. The Board discussed returning her license as it exists and addressing the appropriate corporate changes at their next meeting. The ABCC has noted in the decision that they support her application for the changes. The Board wants to get on record at the next meeting who is going to be the Manager at the store. The Public Hearing notice will be placed in the paper on Friday for the Oct. 27th hearing. O'Keefe stated they had revoked her license for the safety of the people of Winchendon; considering the person allegedly committing the offenses is not going to be associated with the business any longer, he doesn't see any danger. By a roll call vote of all aye, the motion carried unanimously.

Exemption No. 2 "To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel."
Subject: Town Manager's Contract

The Town Manager recapped the meeting from last week to update Chairman Berndt who was absent. He had asked the Board at that meeting if they wanted him to resign and the answer was no. The options for his contract were:

- 1) Not renew, triggering severance
- 2) To Negotiate
- 3) To do nothing and let it automatically roll
- 4) To be Fired

A motion was made at the last meeting to not renew and there was no second. What is left to do is nothing or to negotiate. No one wants the existing contract to roll over so we are now at negotiating. We then talked about terms. The package on the table at the time was:

- 1) 3 years on the table instead of five
- 2) No raises
- 3) The vehicle he uses being identified and not be swapped out
- 4) He proposed a 3% reduction even though he hadn't received a 3% raise but felt it was important in light of what he is asking employees to do
- 5) He also offered if he were to get in an accident and it is his fault, he will cover the cost of the deductible

As requested at the last meeting, he did an analysis on the car. What is the value and impact of the car? Back in 2006 when the car was first negotiated in the contract, it was done entirely for money. It was a way to put money on the table without it being money. Figuring in lease cost, insurance cost, gas, excise and maintenance costs it comes to \$860/month; it would cost him \$10,320 to give up the car. He can't possible recoup that expense with mileage reimbursements. O'Keefe and Berndt both said they would rather take away the 3% than the car. Questions of the car were asked. It has 95,000 miles on it, it is well maintained and has been reliable including getting around in the winter. It was decided if the car has to undergo maintenance or in an emergency, he would notify the Chair and he would be allowed to use another vehicle.

O'Keefe reported back the five things they had discussed:

- 1) Term would be three years
- 2) No raises

- 3) An actual 3% reduction
- 4) Vehicle Identified
- 5) Future accidents involving the Town vehicle with the Town Manager being responsible for, he would be responsible for the deductible

Discussion around vacation ensued. Kreidler stated his vacation was intentionally raised to put money on the table. It was never expected he was going to take seven weeks of vacation. The objective was to take five weeks to buy back as cash. It's always budgeted, it's not hidden. Any move to change this, is money out of his pocket. He said he is willing to give up 3%, to add additional conditions but he doesn't want to be asked to give something up because he hasn't done anything that would warrant this.

Sick time was then discussed. Kreidler explained he has a short term disability policy in place of sick leave. Short term is out of the budget. Before he had fifteen days a year of unlimited accumulation to call in sick funded through the budget; now it's the same thing but it no longer exists as a liability. Part of the contract read that short term disability "shall be self-insured and paid at 100% of the salary line through the normal payroll process said payment not to be deducted from the Manager's accrued time. Unlike accrued sick days under the former agreement, days under this plan shall have no accrual value and shall create no post-employment benefit to the Town Manager."

O'Keefe asked the Town Manager if he agreed with items he recapped. Kreidler wanted to talk about the three year contract. He hates what this brings; the majority of the people in the room this evening weren't there about the budget or the audit, they were there because there was blood in the water and they think they are getting traction and they were there about his contract that's why you heard what we did at the end of the public session. Kreidler knows there is not an appetite for a five year contract and gets it. The Board agreed on a three year contract with a negative 3% reduction and 0, 0 increase the following two years.

Kreidler passed out a draft contract with the discussions from last week with the changes tracked. They reviewed.

O'Keefe noticed on Page 3 the word increase wondering if it should be now deleted and read "shall be reduced." It was agreed

On Page 3 under III Compensation No. 3) which list a 3% raise for each year thereafter, the question came up on the need to include this into this contract with it being terms beyond the three year contract. Kreidler explained even though it goes beyond the term of this contract it was language he wanted to keep in there just to have as something in the future if he is here for another contract beyond this. It would be a place for him to start from.

Page 8 the vehicle is identified with a noted exception the Town Manager shall have the right to use another vehicle if his vehicle is out of service and in an emergency with notice to the Chairman. A footnote has been inserted stating if the Town Manager is in an accident with it being his fault, he would pay the insurance deductible. The Town Manger would be responsible for any tickets he received.

Page 13, Kreidler added this footnote for clarification saying there has been a lot of discussion around the 4/5ths vote. What people haven't really looked at but that we talked about five years ago and is helpful to put in writing is this: Pursuant to Winchendon's Home Rule Charter, Section 7.7.G, the words "majority vote" are defined as "shall mean a majority of those present and voting, provided a quorum is present when the vote is taken, unless a higher number is required by law or by its own rules." This will clear things up for some people, Kreidler explained. The Board has the right to set their own rule, pursuant to the language of the charter. For the two purposes, resignation or discipline, the rule defines

majority is 4/5ths. This adds another layer of information that ties back to the Charter. O’Keefe said according to the Charter, the definition of a majority shall mean the majority of those present as long as there is a quorum. But we’re inserting 4/5ths. If there are three members present, three members are a quorum. Those three are unanimous. Four people will also require all four to be unanimous. It depends on what the population of the quorum is that day. Under the contract the Board is saying, your rule defining the majority vote for termination or suspension is 4/5ths. The Charter gives you the right to do that.

Barrows wanted everyone to be comfortable before executing the contract. “Now more than ever, there needs to be unity”, he said. Berndt wanted to move forward. O’Keefe stated these were the terms they discussed a week and half ago. Barrows said before, and will say again, he was in favor of the five year contract but he is taking into consideration some concerns that have been voiced by the community. Kreidler said no matter what they do, there will be those people who will always be unhappy.

O’Keefe moved to accept the contract; Berndt seconded. Kreidler asked for Selectwoman’s Hunt’s thoughts. She talked about the term of the contract. Kreidler explained that this same thing will happen three years from now if he is at the table. Those same people will be out no matter what is going on. It happened five years ago when things were going great; it’s happening now and it will happen three years from now.

By a roll call vote of all aye, the Town Manager’s draft contract was approved unanimously.

O’Keefe moved to adjourn from Executive Session to Open Session; Berndt seconded. By roll call vote of all aye, the Board adjourned from Executive Session at 10:30 p.m.

Respectfully submitted,

Linda Daigle
Executive Assistant