

**TOWN OF WINCHENDON**  
**BOARD OF SELECTMEN EXECUTIVE SESSION MINUTES**  
**WEDNESDAY, MARCH 18, 2015 7:00 P.M.**  
**Town Hall, 4<sup>th</sup> Floor Town Manager's Office**  
**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 Assistant

Town Labor Counsel: Marc Terry, Esq., Mirick and O'Connell

---

List of Documents Presented at Meeting:

- Memo to Board of Selectmen from the Town Manager waiving his right to a 48 hour notice of Executive Session (attached)
  - 3/18/15 Draft Amendment to October 15, 2014 Employment Agreement between the Town of Winchendon and James M. Kreidler, Jr. (attached)
  - Draft Joint Statement (attached)
  - Board of Selectmen's Consideration of Discipline of Town Manager James M. Kreidler, Jr. (filed personnel file – confidential)
- 

**EXECUTIVE SESSION:**

7:05 p.m.

Exemption No. 1 to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or discuss the discipline or dismissal of, or complaints or charges against, a public officer, employee, staff member or individual.

The reason for Executive Session is two parts. One is to consider discipline for an employee, Mr. Kreidler. Kreidler presented a memo waiving his right to a forty-eight hour notice. Back in October, the Board voted to renew his contract. The options then where to let it automatically roll, to terminate, to negotiate or to non-renew. Automatic roll was taken off the table at the gate, non-renewal was motioned with no second which left terminate or negotiate. You determined there was no just cause to terminate and felt comfortable moving forward with negotiation. He said to them then and is reflected in the minutes that they were not losing the right to terminate him or discipline him anytime down the road. They would retain that right in the contract. That's been hanging since October 2014. The first part of this is consideration whether or not you believe there is just cause to terminate me. The Chair and Counsel have been working on a couple of documents toward that end. Atty. Marc Terry, the Town's labor counsel, introduced himself. He represents the town and in this context is the Board. Chairman Berndt had reached out to him. The Board is discussing something that is potentially adverse to Jim in terms as the Town Manager, an employee. He has been the Winchendon's labor counsel for over 18 years with the firm Mirick and O'Connell having served as the Town's Labor Counsel for over 30 years. Mr. Terry said any advice or guidance he offers tonight is for the Board. He is representing the Board and not Jim. He has been talking with Fedor about what is going on and what direction he wanted to at least talk about going in. That's why we are here tonight, to close any issues that are open and what to do moving forward. He's been made aware of what's going on in town. He has no vested interest and is here to advise to help the town make whatever decisions that are best for it. Kreidler pointed out that he

wanted to be clear that we keep a good line between the two issues that they are in for. One is consideration under Exemption 1 and the other is Exemption 2.

O'Keefe said you mentioned in October we voted then that there was no need to discipline, dismiss or terminate in any way. After that we have learned the Dept. of Revenue (DOR) has made certain comments, the auditors have completed all audits, as well as DOR doing their audits. Both parties, DOR and our auditors said you have done nothing wrong so that further reinforces the vote we took in October. There should be no need to dismiss for any performance or for any other action. Kreidler said his hope for this first part of Executive Session was to close this up as he did leave it open. He had said if something comes up and you want to discipline me, you always have that right. Now that the dust has settled on the audits, the DOR, the legislation, getting the borrowing, we are where we are. He wanted the opportunity to give them the chance to say, yeah, we screwed up and we think you should be disciplined or, no, we think we got it right then and we want to reaffirm any information that's come out since. This needs to get done and documented. He said this piece is left hanging open. Hunt asked about the other audit she thought was still going to be done. O'Keefe explained, no, it's done. It was explained that there is going to be somebody that looks at the reimbursements for health insurance to make sure we got all the reimbursements from the private insurance company. That's the only thing that's on the table currently. Hunt wanted to close this out when all the investigations have been done. O'Keefe explained this item open is unrelated to the Town Manager. We are checking to see whether we received all of our reimbursements. While we may have a chapter open in the review of our books, this is not a review of the Town Manager. Hunt is confident nothing will come out of it against Jim but felt we should wait. The money goes through our Treasurer's office who reports to Jim. Kreidler explained they are not auditing the Treasurer's Office. They are going to go back out to the insurance company that has our reinsurance and make sure they have given our Treasurer's office all reimbursements. O'Keefe pointed out if we found out an employee in the town made a mistake and made an error that would be up to the Manager to discipline. It's not up to them. They don't get into the day to day. If we found the Town Manager wasn't disciplining staff appropriately, it would be an issue for us. He doesn't see a need to leave open a chapter concerning whether or not Jim has performed correctly based on that audit and DOR. If the Treasurer made an error, it would fall to the Town Manager unless he, when finding out about it, failed to act. Hunt said she just looks at everything being closed. We are being scrutinized and we are scrutinizing everything we do now looking for improvements. She wants solidarity and to be team player that's why she voted approval of his contract in October but would have waited a bit longer. It was noted that Hunt never expressed those sentiments back in October. O'Keefe said the Board didn't rush into doing this. If they failed to act by December 31<sup>st</sup>, his contract would have renewed at the existing language. Them, acting in October, was in the best interest of the town. Had they waited until the books were closed, he would have had a five year contract and earning more than he is today. It was prudent for them to negotiate before December 31<sup>st</sup>. Hunt agreed, but said it could have been done in November. Berndt added the Dept. of Revenue wanted a definitive action by November 7; we didn't have that time frame and is why they moved forward and negotiated because they had a deadline to meet with the DOR and did all they needed to do. He feels confident in what he did. Hunt said she didn't regret what she did and has no issues and is just saying there is one little piece left. O'Keefe said that piece left wasn't even on the table. They discussed the forensic audit. O'Keefe said no auditing firm in the Commonwealth wanted to bid on it and the DOR said it was foolish between the existing audit and DOR everything had been looked at. It would be a waste of money. Berndt said some people believe we steered them away from doing an audit but that is far from the truth. He was at a meeting with the DOR who said everyone is looking at your books and if there was something there it would have been found. He told everyone you can do what you want but not to waste the money on a forensic audit and use the money for something else. Mr. Gerry Perry of the DOR was very thorough. Berndt felt the best thing for them now was to close this chapter and move forward.

O'Keefe moved the Board of Selectmen have no reason at this time to discipline the Town Manager; Barrows seconded asking the Chairman to lend his comments on this remaining piece of the review. He agrees with Beth the need to complete this review to determine if there are any reimbursements that are owed to the town. This is not a review of the Town Manager's action or inaction; it's a review of the Insurance Company's action or inaction. Did they provide us with the appropriate amount of reimbursements that were due to this community? Was the money in fact received? Was there an error on the insurer's part, not on the Town's part, in providing us a reimbursement? We had three audits, FY13, FY14 and then DOR came in that looked at our books and all internal practices and controls and all matters involving the Town Manager where he could have known something, should have known something, would have known something. Based on that review, they came back and said he couldn't have known, shouldn't have known and wouldn't have known. We've heard the issues that were involved; systems limitations, a lack of communications, and a great loss of a great deal of institutional knowledge over a very short period of time none of which the Town Manager had direct control over. He is in agreement that we can close this piece confidently and say the Town Manager has not done anything that would rise to the level of discipline. There was no malfeasance, no misfeasance and therefore does not rise to a level of discipline. We have to close out this part of the review because there are cash issues that the town can benefit from if in fact reimbursements are due to us. We will continue to address that but it is completely separate because it doesn't involve our employee. It involves what the insurance company was doing and whether or not they provided us with the reimbursements they should have. By roll call vote of all aye, the motion carried unanimously.

Atty. Terry suggested the Board consider putting together something that articulates their thoughts around this and lays out the thought process of why you got here and why you are doing what you're doing. It will serve to close out this chapter now that you made the vote to say that you are not imposing discipline. The document proper for the town's file for the personnel records is appropriate and a necessary step. He put together a detailed statement laying out a number of things not only what they just talked about but it goes further and talks about any prior issues. This is trying to put things behind you as you just voted to do. He passed out the draft document and said if acceptable to them, he suggested the Board vote to adopt this to be the final communication to be placed in Jim's personnel file. The Board took the time to review the document. Hunt asked if it was common practice to have this detail. Atty. Terry said it is more detailed because he is trying to understand what's going on out there and this really defends the Board's decision. It's as much about closing out the loop in saying there is no discipline with Jim but it is also laying out their logic and thought process. He said they could change whatever they wanted to in the document but he tried to lay out what was going on and to set the framework on why they were where they were and why they made the conclusion they did. O'Keefe said his motion was brief but in his head he was thinking of all these thoughts and appreciates the Attorney for getting all this down and agreed with what he had in his hand. Berndt also agreed. Hunt asked what the value of this document was and why she would want it. O'Keefe said this is our document from our Attorney. We are not going to be here forever and somebody in the future may want to know why the Board considered this when the Town Manager performed well. Why did they take a vote in October and another in March stating there is no reason to discipline? This lays it all out and goes in to a file that will be a permanent record here so in the future people can know why we did what we did. Atty. Terry added there is also a risk management perspective for the town. What he understands and what is part driving this is that there is a group of people in town putting up a board of candidates and they have made a point to say our agenda is to remove the Town Manager. What he fears for the town is if that group of people succeeds and this Board ceases to be the Board and makes good on promises to remove the Town Manager without process, without anything else, he feels the town will be exposed dramatically. It will be exposed dramatically to breach of contract claims, payment of wages claims. It is his job to look in the future at what might happen with potential of all sorts of claims if certain facts play out and if Mr. Kreidler were to decide to sue the Town, would leave you exposed. You have a certain amount of insurance that won't cover this potential. He has seen in other communities, the most dangerous thing people can do is to just come

steamrolling in and make decisions without thought or documentation. With this document he is trying to button up an issue so that it is closed and documented with the whole thought process behind it. He has written it this way so if it plays out and there are successors and folks trying to make good on their promises, there is something here that puts a line in the sand. The Board has already reached a conclusion on this. They thoughtfully deliberated over this issue and put an end. His hope is it will stop people from making really bad decisions for the town. This kind of litigation will rip the town apart. He's been through this before with another Town. It was a mess and took four to five years before the town was even able to move on. He hopes in laying this out it gets some people to cool their jets. Putting it in writing this way, what we are trying to say is you better slow down before you make a big mistake that exposes the town to a lot of liability. If they come in here and throw him out, for as long as the battle goes on if Jim chooses to pursue one, this is a live issue to keep you from doing anything. It goes back to the point of closure and moving on and healing wounds. There is something unique here driven by these facts. He estimated that it was worth laying out what the Board's thought were in making this decision. This is his recommendation to them looking at the facts and trying to protect the town. It is up to the four of them to decide what this is and is looking for any thoughts or tweaks to the document. Barrows asked in a most thoughtful, sensitive and sincere way, hopefully without any disrespect taken, the Town Manager and Executive Assistant could step out of the room so they could have time alone with Mr. Terry. Kreidler asked before he left if he could recommend in No. 4 to add the word "composite" in front of "annual" because Hunt made a point that some rated me less than "exceed expectations" but the composite evaluation, which the contract calls for you to do, always led at "exceed expectations." Kreidler and Daigle left the room at 7:34 p.m.

Barrows said for the topic being discussed is the potential risk and liability to the community should the Town Manager be terminated without due process and without cause. Atty. Terry said the risk, as he understands it, and the Board's determination tonight that no discipline is warranted for any performance of the Manager that has happened to date he thinks the risk to the town is tremendous. His contract is in effect for another 39 months and if a new Board gets in here and have a meeting and they each just vote to terminate, that is a breach of contract. There is no provision in his contract that gets him out right off the bat. We are talking minimally three years compensation and a breach of contract for any economic benefit like health insurance, any other insurance that's available to him. He advised that there is a state statute that if he doesn't get paid his salary a certain number of days after, there is the concern now of mandatory tripling the costs. You are potentially looking at \$1.9 million in triple damages for the three years plus lawyer's fees. Your insurance the Town has usually covers only around \$50,000 for the wage component. His contract also requires if he's terminated, it goes to American Arbitration Association (AAA). He will get paid with full benefits while it goes through arbitration and these kind of cases can easily run you 18 months; so there's 18 months of pay and benefits right there. Also not considered yet are concerns of civil rights violations for failure for due process. If they are deliberate it can result in punitive damages. This Board may not be here to be concerned about this but punitive damages cannot be insured against or indemnified against. Even acting in your official capacity and you take an action that is a willful, disregard of someone's rights that would be a fairly reasonable case to make, you cannot insure this. O'Keefe asked to clarify that this would fall to individual members of the Board. Atty. Terry said the individuals involved in making the decision. How does the Board deal with the issue so you don't have the fight on your hands? Forecasting what might happen he suggested the Board consider a working out a separation agreement with Jim which they will talk about later. A lot of what they are doing now will set the foundation for this agreement. This agreement is a new employment agreement with a firm end on it. He explained that it will be important to have several Whereas clauses showing how we got to this point if the Board is going to support it and present it and the potential risk the town has as well as putting in the Board's thinking generally on Jim's performance. He has had conversations with Jim on what he is looking for but it is up to them to decide on the numbers. He wanted them to see how the two documents fall into one another.

Barrows asked Atty. Terry to draw upon his experience and what he knows and asked him of the likelihood that the Town Manager would prevail. He replied if it plays out the way they talked about with the new Board coming in, there is almost no question that he will prevail. He is saying this because at this point in time, they have all looked into the situation and based on all the information they all know of, which is presumably a lot more than what people on the street know about, you have made a decision that discipline isn't warranted. If people come in and don't care what anyone else thinks saying I'm firing him, no cause, no reason, no process, he doesn't even know how he would try to defend that kind of case. He doesn't see it as a case the town would win. He doesn't usually say things in black and white terms but, based that the state has looked at the issue and didn't have anything, the problem is how do you even use that as a basis to let him go. When people start making commitments to doing something in the fall and a new Board comes in on that agenda having publicly stating that, basically without any regard what the facts are, that is a tough case to win.

O'Keefe had three questions with two answered already. Would we lose? You answered, yes. If we lose, what is the potential liability? The total ballpark number is around \$1.9 million. Atty. Terry added with the potential of interest added to that number. O'Keefe asked if a Board fired the Town Manager and fought him with arbitration and appealed everything, what is the worst case scenario potentially for how long this would take before ultimately the Town Manager won. Atty. Terry said there are a lot of variables but played it out for him the way it is supposed to. Let's say he gets fired in May, he files a petition with triple A for arbitration. In this form of arbitration, there can be discovery and disputes. If you fast tracked that, it might start nine to twelve months later. You are looking at this to finish eighteen months to two years later. At that time someone could decide to appeal that decision in Superior Court. That could take another six to nine months or more. If you go to the Appeals Court, you are talking about another year to eighteen months. If you go to the Supreme Judicial Court, you are talking about another year probably at that point. O'Keefe said so worst case is going up to five years. He knows the next section Marc was invited here by the Chairman to see what next steps can be taken to prevent this.

Barrows asked if this termination goes to arbitration does the seat remain vacant. If we go three to four years, it's going to be difficult to get somebody in that seat. Atty. Terry didn't believe there was anything in the contract that you couldn't try to do pragmatically. Here you won't be able to get someone to move forward with. The best you will be able to do most likely is get someone to sit here a few days a week as a retiree. The Board was concerned about the quality of the person and the amount of time that would be needed for the seat. Also it leaves the town in a precarious position where you would have to buy one of them out. If it's the Town Manager, you now have to write a check to go away looking at a huge number with the law's leverage behind him. Atty. Terry hoped this gave them a sense of why the detail is as it is because it will feed into the next document.

Mr. Kreidler and Ms. Daigle were invited back in to join the session at 8:01 p.m.

Hunt addressing the document compiled by counsel and the Chairman said it looks like you took the Town Manager's past reviews of fifteen years and listed them here in bullet paragraphs. She said she didn't know what might have happened in the past years before she was here. Atty. Terry explained to her unless the Board votes for something, it's not discipline. It would be written and in his personnel file and it doesn't exist. O'Keefe said Mr. Terry's firm has personnel knowledge than any other member of the Board as they have represented the town's labor issues for thirty years. Hunt mentioned that change in the wording on No. 4. Kreidler said Beth had raised the issue that on some of the singular reviews he had been rated less than exceeds expectations. He suggested "composite annual reviews" be listed in the paragraph. The Board continued to review the document. Hunt asked if Berndt had double checked all the dates in the document. Berndt replied yes. Barrows said everything from No. 7 on is since Sept. of 2014 and current. Barrows inquired about No. 6, interactions with other Committees, asking how that would be validated. Kreidler replied this is part of his annual performance review and has received not

less than a composite score of satisfactory. Barrows said he has been here since day 1 and was involved in hiring Jim. He told the Board that No 5, there has never been a vote, formal or informal, from the Board on a disciplinary matter. He can attest to the six years prior to Selectwoman Hunt's position on the Board that none of those occurred.

Barrows moved the Board approve the document which provides chronology around the decision to not discipline the Town Manager and that it be contingent upon one minor addition to No. 4 to insert the word "composite" between the words "received" and "annual". O'Keefe seconded and said this expands on the motion earlier that they approve that there is no reason to discipline or dismiss and it lays out why we make that statement so that in the future somebody doesn't just see the motion that they took but would have an understanding why we did this. Barrows added the companion to this is that we are going to contemplate a radical change to the employment agreement and this is clearly as to why we are doing it and what it is being done for and why. Atty. Terry said this document is a beginning to the next document. The intention of this document is plainly and clearly what the Board decided. By a roll call vote of all aye, the motion carried unanimously.

The document, "Board of Selectmen's Consideration of Discipline of Town Manager James M. Kreidler, Jr." was executed by the Board. The document cannot be released until the minutes are approved and released. Atty. Terry advised them that this document is part of a personnel file and certainly can be released but does not pertain to public records as it pertains to a personnel issue and can remain private forever. Jim can choose to release it. It is his decision, his personnel file, his confidentiality. Barrows offered that he wouldn't be in favor of that because he doesn't think it appropriate to change what we have done in the past. Atty. Terry said that is a personnel file document and it really isn't the Board's choice to release it. It's up to Jim and if people start to come after you and he is willing to say maybe this will help to put this out there, it is his choice. Once the other document gets executed, it has all the other same thoughts in it.

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.

The second issue Atty. Terry addressed was a conversation he had with Chairman Berndt and is fair to say the outcome of that conversation was recognition that this probably doesn't end well and now that the financial situation is stabilized this Board needs to take control of the situation to resolve it that is acceptable to them, to Jim and as much as possible to protect the town so we are not looking at the numbers we talked about before. His recommendation on these, and it is almost always his recommendation when relationships are broken and it appears to be what may be the case in a few months from now, it is far best to cut your losses, do the right thing and go your separate ways. From that lens, the fiscal part which is critical he advised them on the potential risk to this town if it goes the way it appears it will, is significant. So if they could come to an agreement with Jim to find a difference that's not going to put the town out there for \$1.9 million or whatever it is and a smaller number that can be agreed upon. The document before them as to form is his creation and what he can recommend in good conscious to the town recognizing some of the challenges. He was requested by Chairman Berndt to put something together to be talked about and something that is framed out to protect the town's interest. It is your decision for the number. If you're looking at a three year commitment and an ongoing battle for that period of time if he was going to stay here and you are worried about the detrimental effects of the town and looking at just the liability of contract, the worst case scenario is ball parked estimated at \$1.9 to \$2 million dollars. What is in here is a lot less. The number is not insignificant, just under \$300,000, but wanted them to seriously consider the number to be a much lower figure than what's likely to happen.

O'Keefe said maybe there is potential of a future board to act in a way that might open the town into all this liability, that's one thing. There is another thing. At the last Town Meeting they voters in attendance

took a non-binding vote to terminate the Town Manager. He's uncomfortable going to the next Town Meeting without them having done anything. Even non-binding, the Town has told us what they want and all elected officials have to listen to the people. He can't foresee the future but he's heard the past. They wanted them to terminate. We know he has does nothing to cause a termination so how do we come to some agreement so that Jim Kreidler is no longer the Town Manager recognizing that we cannot terminate for cause because there is no cause. He wanted to bring that up because that will be what drives him to do something.

Atty. Terry laid out what he had talked about with Fedor that when things look like they are to go bad not to leave things as is but for the Board to take control over it. He circulated the document and said he supports the amount in the document due to the potential liability and risk around \$1.9 million but said it is the Board's responsibility as they are in charge. The beginning pages of the document is what you see in that statement of discipline and determined there was no just cause for discipline or terminate the Town Manager. Page 3 is where you talk about the circumstances that lay out the risks with a 39 month agreement in place. The Board took some time to review the document. Atty. Terry said you, the Board, has the responsibility to look at the best interest of the town and has the authority to deal with these legal issues. He talked about the legal cost, you have some coverage but you will have to pay for his costs. You cannot fill the position of Town Manager during the appeal process. The chances of him succeeding in this legal process is very high. They spoke about the additional exposure to claims with a breach of contract, failure to pay wages, the intentional infliction of emotional distress, civil rights violations that he may be able to receive triple damages. You are looking at exposure to the town in the amount of \$1.9 million or more plus attorney's fees. The insurance the town has is \$50,000 against this huge number. It will come out of someone's pocket. O'Keefe pointed out the potential nightmare for the town in the next two to three years and asked how much it could cost the town with economic development not occurring and how many other ways the town would suffer. Atty. Terry said the last part is punitive damages to the Board members individually which cannot be insured against and are designed for circumstances where conduct is so egregious that it needs to be penalized. If you have an angry mob out there that is setting an agenda without looking at the facts, he couldn't see how it wouldn't be exposed to that. It's pretty significant set of facts out there and it is important for him to lay this all out. The Board is here to protect the town's interest not Jim's. He's here to advise them but they will make the decision. He spoke about the changes he has seen in the town since he was here a while ago and fifteen years ago before Jim was here. The town has progressed. With all of this for them to consider, it's a heavy weight on their shoulders and thought it important to point out that fact. It will be their selling point.

Marc continued, the intention would be an amendment to the prior agreement they did in the fall. All of this is contingent upon an affirmative vote at Town Meeting. You need the money, if not, the whole deal goes away. It's contingent in getting that funding in place. Stabilization is the only means you have and Kreidler said it should be put back in April.

They reviewed provisions in the amendment:

- Jim resigns May 1, 2015
- All the provisions of the current contract will continue to May 1. The other half of that he is willing to split the difference. Atty. Terry recommends the figure listed to them but it's up to them to decide. They are getting out of that \$1.9 million liability and basically paying about 45% of the contract. Kreidler said what is missing here is he is losing retirement service. He is turning over 39 months of credible service that he is losing.
- Cobra eligibility – Atty. Terry said there is only one criteria that can disqualify someone from COBRA and that is gross misconduct. It is important if someone makes that argument, he has never had an employer say they didn't want to give them COBRA with the biggest risk factor is

that you are on the hook. If the person is uncovered, they have no insurance. You are on the hook for whatever might happen with any serious health issues. You would be responsible. In this agreement, he continues to pay 40% and the town pays 60%. We are providing health insurance on the same terms somewhere between 18-36 months unless he chooses to walk away. It is most likely the 18 months but by statute it can be extended by things like disability, divorce and death. Kreidler can walk away from this if he doesn't want to pay his 40%. He will pay 100% of the dental premiums for the full duration of COBRA. Kreidler asked about the 18 months of COBRA Health Insurance asking how it benefits his family to walk away from the 39 months in his current contract. Atty. Terry said this is the amendment he is drafting and if something different is wanted, it can be changed. He is walking away from a really healthy contract and that there are concessions being made. He is representing the Board but wanted to acknowledge that for the Board. Health Insurance is a big thing today and people worry about it all the time. The Board can consider looking at this further. Kreidler asked for them to hold that topic until he leaves the room because it is a sensitive topic to him.

- No. 6 is a legal obligation to pay any employee under any circumstances what they have on the books for vacation. Kreidler believed he had two weeks.
- No. 7 was to help Jim move forward and is asking for a positive letter of recommendation from each of them.
- No. 8 is by executing this you will also put out a draft Joint Statement he included for them.
- No. 9 is what is called a non-disparaging clause. In order for him to move forward, you don't want future boards to come back and say disparaging things. This lets everyone move on and it becomes critical for the Town Manager's future and is a routine part for employment separations. Hunt asked to explain. Terry said the new Board needs to know this and will be bound by the agreement. This will be public record once signed. It can be posted, talked about so word gets out and the town's interest is protected. Kreidler asked about other agents and employees. Marc said you can get into first amendment issues here. If a matter of public concern, where he is comfortable limiting it is with the Board. Kreidler asked why it wasn't mutual on his part. The Attorney said he didn't think it would be a concern, but it makes sense to add it.
- No. 10 – Per contract Kreidler will keep the license plate he's had for a long time.
- No. 11 - Attorney Terry explained the mutual release of claims that contemplates at the end of the day on May 1, the Chairman is authorized to sign off on a document that says basically that he won't sue you and you won't sue him. It is a 4 page document. He will provide copies for them to look at. It's a boiler plate release for employment separations. Marc explained it.
- No. 12 – This paragraph speaks to future Boards. If somebody after the fact, someone down the road says, I'm going to notify the insurance carrier he is no longer eligible for coverage, this basically puts it back to square one. That would be a breach and this would give him the ability to go back to ground zero. It is designed to ensure that once signed everyone has a vested interest in fulfilling their obligations. Hunt asked would it be wise for someone to have the new Board read and sign this. O'Keefe said none of this will occur unless Town Meeting approves it. If not approved, it's null and void. Marc said it is absolutely imperative they be informed of this and suggests that if all this goes forward contingencies are met. With the last day being May 1<sup>st</sup> and the election a few days later, somebody should make a point Wednesday morning and get the document for everyone. Hunt was concerned that each Board member certifies that they have received and read the document. O'Keefe said this will be part of the minutes of this meeting and



on Monday we will make a determination if the need of Executive Session privilege still exists. If we are in agreement, he can't see why this won't become public in a few days. Marc said the final vote of the Board to approve it as an offer to Jim can be tonight but the vote to actually execute it is open to the public. What is important he said whoever is here after and is in a position to live with this agreement, is to be informed of it. It needs to be talked about at a later time. It can be signed off on, he could send something from his office stating they are labor counsel and make they are aware of it in order to protect against any inadvertent violations. It's important to make sure they are informed.

- No. 13 – Atty. Terry said this has been put in so none of it comes into play. If something comes into play, it will be because someone has violated what has been agreed to. It does slant towards Jim but it is for a purpose, to make sure that future people adhere to this. O'Keefe said that the overall agreement slants to the town. The Town Manager is giving up 55% of value of his contract and for that has asked some language to protect in case this contract is breached.
- No. 14 carries forward indemnification from the prior agreement.
- No. 15 is if something is deemed to be invalid or enforceable, it defaults back to the old agreement and starts over.

The remaining provisions are not unique to this agreement and are boiler plate in these types of agreements in Massachusetts.

- No. 18 no one is admitting any wrong doing, just mutually agreeing to walk away.
- No. 19, the last one, basically says this agreement will not be used in any side proceedings.

Atty. Terry recommended they go this course and that they decide on the dollar amount.

The Joint Statement was looked at and O'Keefe asked that the last sentence in the second paragraph would be better if it said the "citizens at the Nov. 24, 2014 Town Meeting." That would be changed as well as making No. 9 mutual.

Discussion was had about mentioning a figure for attorney's fees on average on both sides. Attorney Terry said he could see it running into the hundreds of thousands but it was decided to leave as is "having an undetermined an uncapped amount" with lawyers' fees having many variables.

Atty. Terry asked if they wanted to talk privately that might yield additional changes. Kreidler said his two concerns are health insurance and retirement service. Cobra is limited to 18 months and asked if there was a way for the separation not to be recognized until after 18 months that would get him at least 36 of the 39 months of coverage? For retirement, the years at his age are very important in the system. Berndt asked what the dollar value of that was. O'Keefe said knowing that number we can't affect what the retirement board will do. With a separation, your service terminates then. Marc talked about working with settlement agreements where it has all been around having certain amounts of money as credits on service. He said you have to be on some sort of pay status continuing some sort of pay after the lump sum. His concern is if parties are separating, then separate. He offered to make calls and figure out how to do it if the Board requested. Kreidler said it will change his retirement allowance presuming he works to age 65 and doesn't lose the three years, it gives him a number. If he works until 65 and has lost the three years, it comes to \$11,550 a year and is his loss for the rest of his life from age 65 on. O'Keefe said if we did something like Marc said to keep you on payroll for the full 39 months, it's not clean and the likelihood than of a potential breach becomes much higher. We are sitting here today to try and prevent a

future problem. Marc did not have an answer that he would be comfortable recommending to them. If the Board would like him to, he can look for those answers and check with the Executive Director of the Retirement Board but generally speaking pay has to tie in to a period of time. Discussion was had on having a couple days to get an answer and vote this at their Monday meeting.

Kreidler stepped out of the office. Marc said his availability is spotty over the next few days flying but he would get back to them with answers and work on the document. He asked them if they had questions about the document and where they wanted to go with it. COBRA was discussed. Marc said they didn't have the ability to extend COBRA anymore. They discussed what could be done beyond COBRA, offering to pay a percentage of a future health plan. He'd be able to get insurance through the State Connector Program. O'Keefe said he didn't have any trouble with COBRA. A future Board can't touch it. He was concerned with putting anything else in here besides COBRA because it leaves the possibility of a breach. Marc said that was the driving theme behind this draft was to not look at anything beyond what this Board could control. He didn't want to open any possibility of maliciousness and not put them in a position where things could be challenged.

Discussion of his retirement ensued. The thought was that he could pick up a job in another community, even just part time, to get his years of service. He is talented and a great guy. O'Keefe wished the Board didn't have to do any of this and that Jim was going to be with them for the next 39 months but thought we needed to make it clean. Something needs to be done but it needs to be clean. If the retirement board allows us to put some language in, than great, we can do it.

Marc offered another option for them to consider being a lump sum for him to buy his own insurance. A thought to consider was they are already putting a large lump sum and at what point would you be losing it passing at Town Meeting was a concern. It is fair dialogue for you to have with him.

O'Keefe said this document as is with the couple notes you have made, he would bring this to Town Meeting and tell people why this is the best interest of the community. It meets the requirements of the people at the last Town Meeting that wanted termination. If you want it, this is how you can get it. He thinks people will be happy they found a way to work with labor counsel and the Town Manager to find a way to make it happen. Berndt agreed.

Marc said when Jim comes back in, he suggested they lay out where they are at. He may need a couple days to think about it and is entitled to it. The Release has timeframes built into them that are dictated by statute. Jim knows the drill and knows what he's doing. He explained the terms of timing. You have the right to revoke your acceptance for seven days after you sign it. He said for them to call him if they had any questions to talk one on one or even through a conference call with Jim. He suggested they could take a vote to approve the offer to him tonight so he knows he has their support in this or not vote and continue to talk.

Kreidler was invited back into the Executive Session. Berndt said they have a motion in order. Hunt moved to approve and extend the offer contained in the document subject to the changes that have been proposed to paragraph 9 to be both mutual and to the Joint Statement to make reference to the November 24, 2014 Town Meeting in lieu of the reference to citizens towards the end of the second paragraph and to make changes that may be permissible to allow Jim to obtain credible service for retirement purposes assuming they don't require future payment beyond the preservation date; O'Keefe seconded.

Kreidler asked about the retirement part of the motion. Atty. Terry explained if the Board could come up with a structurally legal way to get you additional credible service, they will do it. O'Keefe said he didn't want to add any language that allows a future Board to violate this agreement. COBRA is by law and they can't violate that. If they were to put in a stipulation that you would stay on for 39 months for a token

sum, that not only gives an ability to breach this but it also takes their ability to go to Town Meeting and say you wanted us to terminate the Town Manager to be gone and he's not really gone; he still is around a little bit. Anything continuing to use your employment isn't really a clean break. He told Jim he rather he stayed but if they are going to do this, he wants to do it in a way it is very clean. With all of this he hoped his duration of unemployment is much shorter. Being able to show a future Board that you weren't just fired, that whatever issues occurred and you have documents that show you were not being dismissed for any cause can help. Each member would write him a reference. He said he would do anything to help him in the future. Berndt did so also. O'Keefe hoped that something like health care and retirement are not something that would impact him in the future but to put it in here might be making something that people wouldn't approve.

Marc explained the dialogue about the health insurance and how the town could do this without being in a position for others to interfere in the process. Jim said he gets it; it's just a matter of protection of retirement and health. Money is hard enough to walk away from but retirement and health are issues harder to walk away from the table. People fight harder and longer on those issues. He thought there should be some recognition in the document stating that he is giving that up. O'Keefe said language should be added because it is a lot to give up. When people look at this and make their decision, they should recognize the fact that this isn't him walking away with a pot of gold. You are suffering as well but we are all looking at doing this because it is the best interest of the community but not necessary the best interest for you and your family. Jim added to that point, what's going on this past six months is not in the best interest of my family. Not sleeping, not eating well, extreme tension in the house because of the stress, kids sensing something is not good. Marc asked for formality purposes if there was an offer of an amendment to the motion from someone to add a reference to Section 4 to the loss of retirement and health care coverage. O'Keefe moved and Hunt seconded. By roll call vote of all aye, the amendment was approved unanimously. The original motion was then taken up. By roll call vote of all aye, it passed unanimously.

Marc will follow up with the retirement board tomorrow and get replies tomorrow night and will brief the Chairman where he is tomorrow. Marc was thanked for his counsel this evening.

Hunt moved to adjourn from Executive Session into Open Session with the sole purpose of adjournment; O'Keefe seconded. By a roll call vote of all aye, the meeting adjourned into Open Session at 9:44 p.m.

Respectfully submitted,

Linda Daigle  
Executive Assistant