

APPROVED ON 9/18/13

Board of Selectmen – Minutes of Meeting

BOARD OF SELECTMEN
MINUTES OF MEETING – AUGUST 20, 2013

Present: Gordon D. Bailey, Chairman, Patricia D. Carlino and David Consolati, Board of Selectmen, Robert Nason, Town Administrator and Jeremia Pollard, Town Counsel.

The Chair, Gordon D. Bailey called the meeting to order at 7:00 PM.

1. **Approval of Minutes:** The Board members voted unanimously to approve the Public and the Executive Session Minutes of the August 6, 2013 meeting.
2. **Public Hearing: Suspension of Police Chief** - Under the terms of his employment agreement, Mr. Buffis' suspension is subject to the review and approval of the Select Board after a public hearing which was opened by the Chair at 7:05 PM. Mr. Buffis' attorney, Lori Levinson, came before the Board and stated that, on her advice, Mr. Buffis would not be attending the hearing and she would speak on his behalf. She stated that Mr. Buffis should not be without pay or benefits as he is "accused, not convicted" and the presumption of innocence until proven guilty should prevail. She is asking that the Board not suspend him without benefits as he served proudly and well for over 34 years in the police department. Mr. Nason cited his August 9, 2013 letter suspending Mr. Buffis without pay or benefits because he had been indicted by a Federal Grand Jury on August 8, 2013 for extortion by wrongful use of fear and under color of official right (one count) and money laundering (3 counts).

Then, Mr. Nason read his August 20, 2013 memo wherein he reported that he was compelled to terminate, subject to the Board's approval, the employment of suspended Police Chief Buffis. He stated the basis for his firing is not his federal indictment, but results from our discovery of a misappropriation of Town funds to provide cell phone and service to his wife and children, dating back to the fall of 2011 and amounting to approximately \$5,000.00. David Consolati stated that no one had any idea of the misuse of funds and that it is a horrible offense, to which Patty Carlino stated that it is "with a heavy heart" that a decision has to be made. Attorney Levinson's defense to the allegation of the misappropriation of funds is Mr. Buffis' statement to her that when he met with Mr. Nason regarding his compensation, his phone plan would be paid for by the Town and that Mr. Nason approved and paid for every phone bill for every month he was employed. Mr. Nason stated that the phone plan was never discussed and he is amazed that Mr. Buffis thought this was okay. In answer to Mr. Consolati's question as to whether the DPW or building dept. or any other department's family phone plans were paid for Mr. Nason stated emphatically that no one had a family's phone plan paid for by the town. When Mr. Nason asked Buffis about the bill, Mr. Buffis

responded that it must be a "billing error". Chairman, Gordon Bailey recommended that the Board support Mr. Nason's termination without pay or benefits.

Upon a motion duly made and seconded, the Board members voted unanimously to support the Administrator's termination of Mr. Buffis without pay or benefits

At this point in the meeting Gordon Bailey asked Town Counsel, Jeremia Pollard, if the Board had met all the requirements for a public hearing regarding the Police Chief's suspension and Attorney Pollard stated that it had.

Upon a motion duly made and seconded, the Board members voted unanimously to support the Administrator's suspension of Mr. Buffis without pay for the 10 days of his suspension (Aug. 10, 2013 – August 20, 2013) subject to Chapter 268.A, Section 25. (If exonerated of the federal charges, Mr. Buffis will receive a cash payment equal to the salary and benefits that he would have earned during the suspension period.)

The Chair closed the Public Hearing Session of the meeting at 7:20 PM and a five minute break was taken to reorganize for the rest of the meeting.

At 7:25 PM the meeting resumed. The Chair stated that they held the public hearing and per Town Counsel, met all requirements under Mr. Buffis' contract. Mr. Bailey stated that although suspension under the indictment is allowed, they were not acting on the indictment, but on the misappropriation of funds as the payment of his family's cell phones without permission was not in Mr. Buffis' contract.

Dee Dee Consolati interrupted the meeting with a "Point of Order" stating that the hearing was null and void. She stated that Mr. Buffis worked for over 30 years and that this could just be a misunderstanding that could ruin him.

Bev Trombley stated that the town paid for the four phones for a number of months. Mr. Nason stated that the phones were in Joe's name for him to distribute for police duties and this is more than a difference of opinion. The phone usage by Buffis' family was not in his contract. Mr. Bailey stated that when Buffis was approached about the cell phone usage, he gave three different excuses and his explanations didn't meet muster; he inappropriately utilized town funds in an amount of approximately \$5,000.00.

Ellen Mary Dagostino thanked the Board members for their vote as there needs to be accountability.

Greg Juskalian and Jack Shauneghsey came before the Board in Mr. Buffis' defense.

Kathy Griffin came before the Board to thank them for making the decision. She stated that she agreed that it is not a personal issue, it is not about the person – it is a moral decision and the Board had no other choice, as a Police Chief is held to a higher standard.

When presented with the question of why Ronald Glidden was hired to fill in temporarily, Gordon Bailey stated that hiring Mr. Glidden was a contingency plan set up long ago and now we have to create a committee to find a new chief.

Bill Navin stated that he thinks Joe is a great guy and wanted to know if there is anything Joe can do and Mr. Nason stated that he has legal remedy.

Dee Dee Consolati said that the town is in mourning.

Dayton Delorme said we were all "buffaloed" and he is deeply discouraged as he stood up for Joe in the initial search for a police chief upon Ron Glidden's retirement and that he is terribly disappointed.

Peg Biron came before the Board and stated that this was very sad and tough decisions had to be made. In her opinion the right decision was made, but it is difficult for everyone.

David Consolati stated that we rely on our department heads and if they see something alarming they pass it on to Bob. He then makes sure things are corrected and paid timely. It is ridiculous to blame Bob. We look at all the budgets very closely, whether it is the Beach budget, DPW budget, etc. Patty stated that this was not an easy decision to make and it can't be okay because he's a nice guy. "It's your taxpayer money".

The Board recessed for 2 minutes and resumed the meeting at 8:00 PM.

3. **General Business: Tyringham Road Improvements Project** -. Town Counsel Jeremia Pollard, came before the Board to discuss the permanent drainage and temporary construction easements for the long and eagerly awaited improvements to Tyringham Road. The Order of Taking of the easements must be approved and signed by the Board members before going ahead with the project. With a full understanding of the process all the property owners have donated the easements. *The Board members unanimously agreed to accept the Order of Taking for the construction of the Tyringham Road Improvement Project.*

Highway/Cemetery Division Worker Grievance, Step 3 Appeal Chairman Bailey recalled that the members had heard the grievance at a prior (July 16, 2013) meeting and that they had committed to resolve the grievance by August 30th. The grievance was filed by Truck Driver/Laborer Dick Neales who believes that the collective bargaining agreement between the Town and Teamsters Local 404, representing the Highway/Cemetery and Water Distribution workers, requires that the seasonal (mid April to mid November) assignment of two Truck Drivers/Laborers to work at the Town's Fairmount Cemetery must be made by seniority. Municipal management believes that preference to work assignments in the Truck Driver/Laborer classification is limited to driving, and that it has been management's prerogative and practice to assign workers to the cemetery without regard to seniority. Teamsters Local 404 Business Agent Ralph Galarneau believes that the seasonal assignment is a position that must be filled by seniority and that Management has filled the position by seniority in the past. Testimony, written and verbal, about past practice was contested.

Ralph Galarneau stated that the major issue is the contract language of the job classification for Truck Driver/Laborer and whether the cemetery work is an assignment or a job to be bid on by seniority. Mr. Galarneau stated that past practice and the testimony of long term employees is that it is a job to be bid on with seniority taking precedence. Assistant Superintendent of Public Works and long-time (39 years) Public Works employee Dennis Kelly replied that the assignment had never been made by seniority. There being no further offer of new information, the members stated their opinions. Patty Carlino stated that she believes that the cemetery work should be assigned by seniority. David Consolati and Gordon Bailey stated that they believe that the cemetery work assignment is not subject to seniority. *Accordingly, by a vote of two to one, the Board members upheld Mr. Nason's denial of Mr. Neales' request that the seasonal cemetery assignments be based on seniority.*

Subsequent to the vote, Gordon Bailey suggested that Mr. Galarneau bring the issue to the negotiating table and Dick Neales stated that he would bring the issue to arbitration.

Employment Agreement with Interim Police Chief, Ronald Glidden - *The Board members voted unanimously to accept the agreement for the interim police chief, subject to the Town Counsel's approval as to form.*

Oak N Spruce Speed Hump Request - Bob Fornier of SK Design notified the Board earlier in the day that they would not be at the meeting and they will withdraw their request for speed humps and will comply with the traffic commission's recommendations regarding the speed humps at Oak N Spruce as follows:

The resort management should extend the three opening sidewalk intersecting points On Meadow Street with legal crosswalk painting from one side to the other. Meadow Street is at the widest part in the road that abuts the resort property so there is no need For speed bumps. The safety of pedestrians is a major concern always and placement Of "Yield for Pedestrians" signs in the center of crosswalks is also recommended for Summer use.

The DPW will install a "25 MPH" sign on post that reads one lane on the east side of Temporary bridge to match speed sign on west side of Meadow Street. This will Provide the proper speed limit for resort property.

The Board members voted unanimously to the installation of speed limit signs as proposed by the Traffic Commission.

Disposition of School Vans - *The Board members voted unanimously to accept the bid submitted by Sayers' Auto Wrecking Inc., for the purchase of two vans in the amount of \$350.00 for the 1997 Chevy Van and the bid of \$350.00 for the 2003 Ford Van, as accepted by the School Committee at their August 6, 2013 meeting.*

Access Corporation Agreement between Community Television for Southern Berkshire (CTSB) and the Towns of Great Barrington, Lee, Lenox, Sheffield & Stockbridge - *The Board members voted*

unanimously to approve the agreement upon execution of the related Time Warner License Agreement and to authorize the Chair to sign it.

Baja Charlie's – Founder's Weekend – application for entertainment license – Kelly DeVarennnes came before the Board to request an entertainment license Founder's Weekend on Friday (9/20) and Saturday (9/21) from 11:00 AM to midnight and for Sunday (9/22) from Noon to midnight. David Consolati reminded Ms. DeVarennnes of the outdoor sound requirements and she stated there would only be two amplified speakers. Mr. Consolati also asked her if the restaurant would remain open for use of the restrooms and she replied that it would. *The Board members voted unanimously to grant the Entertainment License to Baja Charlie's for Founder's Weekend (9/20 – 9/22).*

Baja Charlie's – Founder's Weekend – Application for one day beer & wine license (for lawn) – Kelly DeVarennnes came before the Board to request a one day beer & wine license for the lawn for Founder's Weekend. *The Board members voted unanimously to grant a one day beer & wine license to Baja Charlie's for Founder's Weekend (9/20 – 9/23) with an extra day added on to the license for the purpose of returning any unused alcohol.*

Energy Efficiency Advisory Committee (EEAC) Appointment – Upon the passing of Bill Maroney, the Board extended their condolences to his family and commented that he served the Town well. EEAC Chairman, Tom Wickham spoke highly of Bill and also said that Bob Turtz would be a good fit. *The Board members voted unanimously to support Mr. Nason's and the EEAC Chair's recommendation to appoint alternate member, Robert Turtz as a regular member.* Gordon Bailey reminded everyone that there is now an alternate slot open on the EEAC.

Berkshire Gas Company – *The Board members voted unanimously to grant to the Berkshire Gas Company permits to install new gas services at 45 Davis Street and 75 Marble Street.*

Temporary Sign Permit – Lee Lion's Club – *The Board members voted unanimously to grant the temporary sign permit to the Lee Lion's Club for their September 14th toll stop and to waive the fee.*

Application for Street or Sidewalk Blocking Date Change – *The Board members voted unanimously to approve the date change for the Street or Sidewalk Blocking for Gary Silkey Company from August 19, 2013 to August 26, 2013.*

4. Pending Business:

- a. Summer 2013 Mini-site Collection – Saturday, Sept. 7, 2013 at 9:00 AM – 11:00 AM at Lenox Dept. of Public Works.
- b. Planning Board – Public Review – Mon., Aug. 26, 2013 at 6:15 PM – Site Plan Review – Jay Wise, DDS.
- c. Planning Board - Public Review – Mon., Aug. 26, 2013 at 7:00 PM – Site Plan Review – Betnr Construction.

d. Planning Board - -- Public Hearing – Mon., Sept. 9, 2013 at 6:15 – Special Permit – Installation of Solar Energy System at 385 Pleasant St. (Wastewater Treatment Facility)

5. **Town Administrator:** Mr. Nason announced his appointment effective 8/21/13 of Keeley Farnam as a Sandy Beach Lifeguard to cover for 13 days of vacancy left open by college students returning to school early. *The Board members voted unanimously to accept Mr. Nason's appointment of Keeley Farnam as a Sandy Beach Lifeguard effective 8/21/13.*

Patty Carlino announced the passing of Helen Gasparian and the Board extended their condolences to her family and friends.

6. **Public Comments:**

Peg Biron came before the Board to commend them on a very controlled, difficult meeting. She also commented that the town looks beautiful as once again the flowers lining the Main Street look great and as a Town we should concentrate on the good things.

7. **Next Regular Meeting:** The next regular meeting will be September 3, 2013 at 7:00 PM in the Courtroom.

8. **Motion to Adjourn:** *The Board members voted unanimously to adjourn the public session of the meeting at 8:55 PM and to convene in Executive Session for the purpose of discussing strategy with respect to collective bargaining and anticipated litigation, because deliberating in open session may have a detrimental effect on the town's bargaining or litigation position. The members will not reconvene in public session. Upon a motion duly made, seconded and unanimously approved by roll call as follows:*

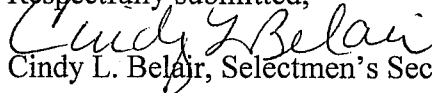
AYES

Patricia Carlino
Gordon Bailey
David Consolati

NAYS

None

Respectfully submitted,


Cindy L. Belair, Selectmen's Secretary

Notice of Website Posting Sent to:

Board of Selectmen
Town Administrator
Town Clerk
Town Collector
Planning Board

Board of Assessors
Board of Health
Conservation Commission
Police Chief
Building Inspector

Dept. of Public Works
Town Treasurer
Town Reps. District Chairmen
Superintendent of Schools
Town Accountant