

**BOARD OF SELECTMEN
MINUTES
December 16, 2013
Slade Building**

Members present: Matthew Castriotta, Chairman
Michael Stauder, Vice Chairman
Christopher Norcross, Clerk
Daniel Galante
Jeffrey Williams

Staff present: Anita Scheipers, Town Administrator; Elaine Peterson, Town Secretary

Other present: Jon Jonsson, Ed Blanchard, Jassy Bratko, Tom Bratko, Kris Pareago

Meeting commenced at 6:30 p.m.

Open Agenda:

Mr. Jonsson, who has a lapsed Class II auto dealer license, came in to report that he has gotten signoffs from the tax collector and fire chief and has done some yard cleanup and should be down to 44 vehicles on the property when he leaves town tomorrow. The original number agreed upon between the Board and Mr. Jonsson was to get down to 30 vehicles. Mr. Jonsson asked if it was okay to get the number down to 40 instead of 30. He stated he has removed 19 vehicles. After some discussion, it was agreed to get down to 40 vehicles by the end of this week and down to 30 vehicles by the end of April 2014. Mr. Jonsson will return to the Board in late January with his application and proof of bond.

Town Administrator Report-

The Board reviewed Ms. Scheiper's report. --see attached.

Ms. Scheipers reported the public hearing for the **Mass/DOT Burnshirt Road bridge repair** was held last Friday. She and DPW Director Kilhart were the only attendees. MassDOT has provided 75% of the design plans which Mr. Kilhart will review. DOT reported the bridge repair is scheduled as a two year project with one side of the bridge being done at a time. There will be a signal light to control the one way traffic. The project will be going out to bid in March 2014.

Severe Weather Closing Policy -

Ms. Scheipers reported this policy needs to be updated due to the Town Charter implementation. She asked if the Chairman wants to continue the current process of notification or have the Town Administrator take over.

Motion: J. Williams

2nd: M. Stauder

To amend the severe weather closing policy to authorize the Town Administrator to consult with the DPW Director on severe weather situations

Vote: All in Favor

FY'12 Audit Findings- Ms. Scheipers reported the management letter has been received from the auditing firm; there were a number of weaknesses found in the FY'12 process. She was

*Board of Selectmen
December 16, 2013*

pleased to report a lot of the suggestions from the auditors' report have already been implemented by the new Town Accountant and new Treasurer. She added they are taking specific information from the auditors' recommendations and making sure they are being inserted into the draft fiscal policies they are creating. It may not be reflected soon enough to show up in the FY'13 audit which is starting sometime in January/February 2014.

Ramirez Land Taking update-

Ms. Scheipers asked the DPW Director to see if any drainage structures exist on the Seminole Avenue property and they do. There is a culvert coming off an intersection from Seminole Road upland of the property and the pipe almost bisects the property and goes down towards wetlands that are on the lower elevation. The property should be acquired by the town to maintain drainage for the area. The next step is a required town meeting vote to go forward.

Agricultural Preservation Restriction Program (APR)

Ms. Scheipers reported the Town has been notified of the APR application by owner Cynthia Richards of W. Swanzey, N.H., for her property located on George Howard Road, (Map 11, lots 23 and 26). Massachusetts Department of Agricultural Resources (MDAR) has requested if the Town is supportive of its agricultural resources and whether it is willing to contribute towards the APR acquisition. A cash contribution enables the Town to be a co-holder of the restriction. Jassy Bratko, Open Space Chair, stated the committee had not met regarding this but as Chair she recommends the Board supports Ms. Richard's application for the following reasons;

- 1) The land is shown on the Hubbardston Land Protection Priority map as being of top priority for protection.
- 2) The town's current Open Space and Recreation Plan lists protection agricultural resources as a priority. This parcel has one of the largest acreages of agricultural land in Hubbardston.
- 3) The forested portion of the land has been approved for protection through the Forest Legacy program.
- 4) The agricultural portion of the property has beautiful, scenic vistas overlooking Mt. Wachusett.
- 5) The land provides a greenway corridor by connecting hundreds of acres of previously protected land in Hubbardston and Princeton
- 6) There would be no loss of tax revenue because the land would still be taxable as farmland.

Planning Board member Vincent Ritchie had also endorsed the town contribution via email, "Acceptance of the APR on this property would eliminate the threat of any subdivision being built on this property. Continued "smart growth" planning for our town means that we must entertain these types of proposals and embrace them, especially when we can do so without tremendous cost to the town by utilizing the CPA funds available. Hubbardston has enthusiastically adopted the "Right to Farm" bylaw and our citizens are proud to live with this principle. Let us support this APR proposal and proactively manage our lands in the spirit and principle our citizenry desire."

Motion: D. Galante

To make municipal contribution conditional upon Town Meeting approval of CPA funding
Vote: All in Favor

2nd: M. Stauder

Motion: C. Norcross

2nd: J. Williams

To authorize Town Administrator to sign the APR municipal contribution form

Vote: All in Favor

Surplus Property Declaration:

Motion: M. Stauder

2nd: C. Norcross

To declare the attached listed property as surplus

Vote: All in Favor

Mileage reimbursement rate discussion was moved until the next Selectboard meeting.

Motion: J. Williams

2nd: M. Stauder

To appoint Hank Stolz to the Bylaws Review committee with a term to expire June 30, 2014

Vote: All in Favor

Wage Authorizations:

Ms. Scheipers reported there are two wage authorizations for Officer Scott Chatigny. The first is due to his graduation from Police Academy. The second is for completion of his probationary period.

The wage authorization for Officer Christopher Kusz is for completion of his probationary period.

Scott Chatigny- \$18.17 per hour effective November 29, 2013

\$19.62 per hour effective December 30, 2013

Christopher Kusz- \$19.62 per hour effective November 6, 2013

Motion: M. Stauder

2nd: C. Norcross

To confirm the Town Administrator's wage authorizations

Vote: All in Favor

Ms. Peterson reported there was another license renewal for Sterling Machine & Mold at 56 Gardner Road for his Class I Auto Dealer's license.

Motion: J. Williams

2nd: C. Norcross

To approve the license renewal as submitted

Vote: All in Favor

Town Easement at 36 Main Street

Brian Bortle, who owns property located at 36 Main Street, has been before the Conservation Commission to request to extend a culvert which is located on a town easement. There is also an open ditch on the property that he would like to fill in for liability purposes. The Conservation Commission has referred him to the Selectboard as it concerns the town's easement. DPW Director Kilhart has visited the site and has recommended Mr. Bortle be allowed to extend the culvert at whatever length the Conservation Commission approves. He also recommended the pipe be 15" reinforced concrete to match the existing pipe and Mr. Bortle be allowed to place a screen on the inlet that he must keep free of debris. The DPW Director will inspect the installation before backfilling occurs. The Town will maintain the rights of easement for future maintenance of the culvert pipe.

Motion: J. Williams

2nd: M. Stauder

To approve the alteration to the culvert according to DPW Director and Conservation Commission recommendations

Vote: All in Favor

Minutes Approval

Motion: D. Galante

2nd: J. Williams

To approve December 2, 2013 Minutes as presented

Vote: Mr. Castriotta-yes, Mr. Williams – yes, Mr. Galante- yes; Mr. Stauder and Mr.

Norcross abstained

Mr. Stauder asked what the rationale was to not going out for bid for legal services. Mr. Galante stated after some discussion regarding the use of a law firm familiar with Hubbardston and the variety of expertise on certain issues in one firm was a factor. Mr. Williams added he found the going hourly rate for legal services was on target with what other communities are being charged. Ms. Scheipers stated she had a follow up conversation with Joel Bard of Kopelman & Paige, PC, due to the retirement of Leonard Kopelman and reorganization had taken place a year ago. She stated she preferred to stay with a law firm that was multi-disciplined.

Mr. Stauder asked about the new meeting agenda format. Ms. Scheipers stated the format allows the Chairperson the ability on how the meeting process is run. It depends on the issue being discussed and the level of appropriateness of getting public feedback. If there is an issue that requires public feedback, the Chair will make the decision on opening it up to comments and questions from the public. There are other times the Chair may choose not to take comments or questions from the public. There is also opportunity at the beginning of the meeting during Open Agenda and the end of the meeting for questions from the public. If anyone cannot stay they can email or telephone the Town Administrator or the Chairperson for more information afterwards. Mr. Stauder expressed his objection to the new format of the agenda stating it does not fit with the character of the Town. Mr. Stauder stated that the public should be allowed to comment and ask questions on issues before the board. It should be the exception rather than the rule to limit public input. It decreases our credibility and serves to add mistrust in the public eye. We should not be limiting public discussion in any way, unless there are rare, specific issues that would require more formalized organization to public comments: changing the public comment precedent does not fit with the historical nature and character of our meetings and the small group of citizens involved in our meetings.

Mr. Castriotta stated there is opportunity for public input but reiterated the process has been tightened up for a more efficient format.

Public Q & A –

Mr. Blanchard asked who proposed the new agenda format. Mr. Castriotta stated he had a conversation with Ms. Scheipers and that prompted the new format.

Mr. Blanchard asked what we could lose going to out to bid for legal services. He stated he hadn't heard much concern from the Board on the costs for certain legal cases. Mr. Williams stated he had been concerned but after reviewing the information presented, he believed we should stay with the current legal counsel. Mr. Stauder stated the town has been criticized for not proceeding with enough enforcement at times and how do you stop halfway through a case? He added Mr. Bard had stated at the November Special Town Meeting that you never know how long a case will run.

Ms. Scheipers stated going forward the town has several opportunities along the way to make decisions on how any legal case is going to be managed. When any case is first presented, the Town Administrator should ask the Board to go into Executive Session to discuss the merits of the case and strategy to be used. As the case moves forward there are key points when Executive Session may be needed again for further discussion. The question was raised on whether to retain two firms for legal services. Ms. Scheipers stated she did not see the need for that as Kopelman & Paige's' fees are cost effective for the area and they have the expertise in all legal areas. Mr. Blanchard stated his opposition to the new agenda format as the general public must wait until the end of the meeting to make comments. Mr. Williams reiterated it will be taken on a case by case basis by the Chairman and has nothing to do with keeping anyone out of the conversation.

Mr. Williams brought up the fact that the school bus company being used by Quabbin Regional School District is going bankrupt. He spoke to the bus driver on his son's bus route. The bus driver had informed him that he would be laid off the end of December.

Carolers entered the meeting with Center School music teacher Mrs. Afonso and sang some carols. All present thanked them and the carolers exited the meeting.

Mr. Williams continued the previous conversation and stated the School Committee is meeting on Thursday to open new bids for transportation. He requested the Board request when the new contract is awarded that the new bus company keep the current bus drivers. The Board took no action as the bid criteria and process has already been finalized.

Mr. Norcross requested an exit interview be requested of a police officer that is going to work for the Town of Harvard. Ms. Scheipers stated she would follow up.

Motion: M. Stauder
To adjourn the meeting at 7:51 p.m.

2nd: J. Williams
Vote: All in Favor

Respectfully submitted,

Elaine M. Peterson
Town Secretary

Approved: January 13, 2014.



To: Hubbardston Board of Selectmen

From: Anita Scheipers, Town Administrator

Date: December 16, 2013

Re: Bi-weekly Town Administrator Report

The following is a summary of key issues handled during the past two weeks:

1. **Use of Cable Fees:** At the request of the Chair, I have asked for and received the attached summary from K&P Attorney Bill Hewig. Bill's memo explains the use of the funds depends on whether they are franchise fees paid to the Town or License Fees; with license fees allowing the most flexible of use by the Town. I have asked the Treasurer to identify the breakdown of the current balance of funds to determine how many dollars are franchise fee related, and how many are license fee related. There is a very good chance that she will be unable to differentiate cleanly the values of either type, so we may be forced to make assumptions based on the current rate of payment of the license fees. I will keep the board apprised of this process. The newly appointed cable Committee will begin meeting in January, and will assist in this process.
2. **Begley Update:** Tim Kilhart, Chris Norcross and I will be meeting with Ms. Begley on site later this week. Based on the limited email discussion I have had with Ms. Begley to date, I anticipate we will be productive in identifying appropriate ways to address her concerns while still maintaining safe passage along Streeter Road for all residents.
3. **Status of Massachusetts Historic Commission Review of Church Documents:** Since our recent learning of the MHC's receipt of the necessary documents from the Church, I have been contacting the MHC weekly to get an update on their review, and basically being forced to leave messages regarding our concern that this issue get resolved quickly. I finally heard back from Mike Steinitz of the MHC last week. He stated he is in the process of reviewing the packet and should have this wrapped up within the week. Given that the holidays are almost upon us, it seems likely that the earliest we will receive confirmation of the status of their acceptance of the documents will be in early January. I will keep the Board apprised of any changes in status.
4. **MMA Annual Conference:**
 - a. **Designation of Town's voter for the MMA business meeting.** We have been asked by the MMA to identify who will be attending the Saturday morning business meeting on behalf of the Town. Since I will be present at the conference on Saturday, I will be glad act as the designated voter for the Town if you wish, and if you make such authorization.
 - b. **MMMA Workshop:** Each year, the Managers Association conducts one or more workshops for the varied attendees of the conference. This year the Managers Association will conduct one coaching workshop on "Building Your Professional Network". I have been asked, and gladly agreed, to be part of that coaching workshop. It is rewarding to get such professional recognition from my colleagues in this business.
5. **2013 Annual Report:** I will be glad to draft the Selectmen's 2013 annual report, and will do so based on key items known to be addressed by the board during that calendar year. If there are any specific items you want to be sure are mentioned in this draft, please send me an email ASAP.
6. **Monty Tech Assistance:** Monty Tech has confirmed that they are able to help us with several projects for the Slade Building in this fiscal year: Construction of small shed for exterior storage of Police Dept. equipment and supplies; repair of the metal railing on the south and west sides of the building; repair of sections of wooden siding, and construction of an updated road-side sign identifying the town offices, Senior Center and police department. The misc. supplies are to be paid by the town, and all labor will be provided free by the students. Installation of items will be completed in the spring.

Anita Scheipers

From: William Hewig <WHewig@k-plaw.com>
Sent: Thursday, December 05, 2013 5:31 PM
To: Town Administrator
Cc: Joel Bard
Subject: Charter Cable Funds

Good Afternoon, Anita,

You have asked for an opinion about how the funding or proceeds received by a town from a cable television license may be spent. Charter is not completely legally correct in saying, as reported in your email, that such funding may be used "any way (you) want – within reason". To begin with, there are two categories of funding paid to municipalities which have their origins in cable licenses, and the rules are different for each one. The first category is called "Franchise Fees". These are the funds specifically negotiated for by the selectmen (or their designees), and agreed to by the cable operator in exchange for the granting of the license. These funds are paid essentially as a matter of contract, and the laws of contract, both express and implied, generally govern. The second category of funding paid to communities is called "License Fees". These fees are an obligation of Massachusetts law and are therefore governed by statute. And, as I noted above, the rules for spending are different for each category.

- (a) Franchise Fees: As a general rule, it is well established in Massachusetts in that "Franchise Fees" paid pursuant to the obligations in a cable license must be used for "cable-related" purposes only. Moreover, in some cases, the spending constraints may be even more restrictive – for example, the spending may be restricted by the license language to the purchase of certain specified items of equipment; or for the wiring of a meeting room with cameras, microphones and lights, etc. The first place to look is the license itself. The "Franchise Fee" funding language is usually found in the section or sections generally titled "PEG Access Support", or "Community Programming" or something similar to that. In Charter licenses, this is usually (but not always) found in section 13, or sometimes 12. I do not have a copy of your license before me, but in some Charter licenses, I find grants of funding wording with restrictive language such as: "(t)o be used to purchase, lease, and/or improve PEG Access equipment and facilities."; or "for PEG operations and related purposes". It goes without saying that where the license language imposes such spending restrictions, the restrictions must be followed as a matter of contract. Older licenses sometimes granted money for the construction of an "I-Net" or an "I-Loop"; and in those cases, of course, the spending there had to be so directed. Many licenses now are slightly more general in their wording. If your license limits spending more generally to "PEG Access" (meaning Public, Educational or Governmental Access) purposes, that means that it is intended to be spent for the town's cable access equipment, programs and facilities only (but including stipends or salaries to employees). If the license contains no such limitations for some, or all of the Franchise Fee funding, you are then free to spend the unrestricted Franchise Fees for more the more general category of "cable-related" purposes. That may go beyond strictly cable access purposes, such as, for example, the purchase of TV monitors or computers for schools or libraries, provided that they still have some relation to cable, such as being connected to cable TV (but they could, of course, also be connected to the internet). Some older licenses also used to have "Technology Grants" and it was understood that that funding could be spent for an even broader category of "cable" technology that might not necessarily be connected to TV (such as computers for internet only). If your license has any unusual wording anomalies, I would be pleased to help you decipher it, but most current licenses today do tend to be reasonably plain and uniform on this point. But as a guiding principle it is, at its heart, a principle of contract law: both parties understand that the cable operator collects the Franchise Fees from its subscribers, and because of that there is a presumption that the such fees somehow go to advance cable purposes in the town. Cable operators do not intend or agree to collect from their subscribers \$2 or \$3 per month, or more, only to have the money go for filling potholes. Franchise Fees are not intended to be a substitute for public taxation.

(b) License Fees: MGL c. 166A sec. 9 requires all cable operators to pay to the municipality an annual License Fee calculated at \$.50 per subscriber. This is payable on or before March 15 every year. There are no restrictions within the statute, or any of the cable regulations, on the spending of these fees; and they may accordingly be spent for any lawful public purpose whatsoever, whether cable-related or not - including filling potholes. But these amounts are, of course, relatively small in comparison the usually much larger Franchise Fees which most municipalities negotiate.

I trust that this will be of assistance to you. Please feel free to contact me if you should have any further questions.

Best Regards,

Bill

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2013 List of Surplus Property

Item	Dept	Estimated Value	Comments
HP fax machine	Town Clerk	\$20	
HP LaserJet 4000T printer	Tax Collector	\$50	Not needed w new shared copier/scanner/fax machine
Cannon Copier	COA	\$200	No longer compatible with newer computers
Brother Intellifax 1270e	Police	\$75	Needs major repair. Parts harder to get.
Cannon ImageCLASS D680	Police	\$25	Discontinued
14" Quasar Video Viewer TV	Police	\$10	
Smith Corona Wordsmith 100 Typewriter	Police	\$75	
Kodak ESP 7250	Police	\$100	
Brother MFC-210C Inkjet Multifunction	Police	\$125	printer/scanner/fax/copier
1991 Honda Civic - Blue	Police	\$500	drug related seizure
1995 Oldmobile 88 - Green	Police	\$500	drug related seizure