

## **SELECT BOARD MEETING**

Monday April 26, 6:30 p.m.

Town Room, Town Hall

### **MINUTES**

#### **Attendance:**

Present: Stephanie O'Keeffe (Chair), Alisa Brewer, Aaron Hayden (Clerk pro-tem), Diana Stein, Jim Wald, Larry Shaffer (Town Manager),

Also presenting: Jason Skeels , Nancy Gregg (Chair Fair Housing Committee), Chris Hoffman (Fair Housing Committee ) Roy Rosenblatt, Bonnie Isman, Diane Feruarca, Sal Danasky, Scott Livingstone (APD Chief), John Musante (Asst. Town Manager), Carol Gray

#### **Call to order:**

Meeting was called to order by Ms. O'Keeffe at 6:30 p.m.

#### **Announcements:**

Alisa Brewer reminded us that on May 4<sup>th</sup> at 7:00 the Public Works Committee will have a hearing on the work at the intersection of Eastman Drive and North Pleasant St. All the details are on the Town web page.

Nancy Gregg announced that this Fair Housing Month and Ann Whalen Apts will be showing off their Photo Voltaic panels.

#### **Public Comment**

##### **6:50 Parking Request – Bike Commute Week**

Jason Skeels presented the request to close the Spring Street parking lot – he described the bike rodeo to be held there as a skills test for youngsters that needed a closed course like the parking lot. The day requested is after the colleges are out and demand for parking is somewhat eased.

Aaron Hayden asked whether the Amherst Chamber of Commerce was notified – not directly but the CoC will get the notice in time for us to reconsider the request.

Aaron Hayden moved to approve closing the Spring Street parking lot on Wednesday May 19<sup>th</sup>, from 7 am to 5pm, for their Bike Rodeo during Bike Commute Week. Alisa Brewer seconded and the motion passed unanimously.

##### **7:00 Voting and assigning Select Board Positions on Town Meeting Warrant Articles**

##### **Article 18 – Disposition of Olympia Drive:**

Nancy Gregg and Chris Hoffman presented the article: This request comes after a long process. The FHC looked for at least 30 affordable units on Olympia Drive. An RFP got

five responses and Kuhn Riddle Architects were selected to design the project. In the end ownership needed to be subsidized so the final project is rental. Because there is no frontage, zoning doesn't allow any development so FHC will be using a 40B approval from the ZBA.

Alisa Brewer: The timeline is organized so the developer's response to the RFP is due before TM the Town's response can be contingent on the vote.

Roy Rosenblatt explained the parcel will be leased long term to the developer.

Diana Stein moved to recommend Article 18 – Disposition of Olympia Drive – to Town Meeting for approval. Aaron Hayden seconded and the motion passed unanimously.

#### **Article 9 – FY 2011 Operating Budget: Library Services**

Bonnie Isman presented the library's budget request: With this request the Library can maintain the level of services of last year and qualifies the Jones for accreditation and participation in state programs.

Aaron Hayden moved to recommend Article 9 – to appropriate \$1,542,736 for FY 2011 Operating Budget: Library Services to Town Meeting for approval. Diana Stein seconded and the motion passed unanimously.

Stephanie O'Keefe presented the next three articles which bring the fines for violating the open container, keg licensing and unlawful noise bylaws to the state maximum: The Community Coalition brought the proposal to the SB and the SB had a public hearing that developed some questions about levels of enforcement, among others, that were subsequently answered in a letter to the SB.

Sal Danasky presented the Community Coalition's response to the proposal. The proposal was based on research and knowledge of best practices. Research shows consistent enforcement can reduce destructive activity. Students do support policy to hold peers accountable to their violations. The deterrent of the raised fines is shown to be effective.

Scott Livingstone presented APD's response to proposal: Fines haven't changed in decades and the deterrence of current bylaws is not great. APD is looking for some avenues to increase deterrence at the same time as APD works with the Community Coalition on community programs and education of students and their parents.

Diana Stein feels this will discourage the negative activities. She noted that different by-laws have different fines and that this will give all of these dangerous and unlawful behaviors the same fine.

Stephanie O'Keefe noted the different dates when each by-law was enacted and their different levels of fines.

Aaron Hayden appreciated the work to fill out the details of community outreach and education as well as policies that help students behave better to the Select Board and noted it really isn't just about raising money.

**Article 28 – General Bylaws Amendment – Open Containers**

Diana Stein moved to recommend Article 28 – General Bylaws Amendment – which raises the fine from \$50 to \$300 for violations of the Open Container bylaw. Aaron Hayden seconded and the motion passed unanimously.

Alisa Brewer wanted to know how a student's record will be affected if they go to court.

Sal Danasky answered that they will get meaningful intervention before anything goes on their record.

Alisa Brewer asked if there is a permanent record only after an arrest? (Yes).

Chief Livingstone noted that courts are sensitive to issues of the student's future and rule accordingly.

**Article 29 – General Bylaws Amendment – Unlawful Noise**

Diana Stein moved to recommend Article 29 – General Bylaws Amendment – to raise the fine to \$300 for all offenses of Unlawful Noise to Town Meeting for their approval. Jim Wald seconded and the motion passed unanimously.

**Article 30 – General Bylaws Amendment – Keg Licensing**

Diana Stein moved to recommend Article 30 – General Bylaws Amendment – to raise the fines for all Keg Licensing violations to \$300 to Town Meeting for their approval. . Jim Wald seconded and the motion passed unanimously.

John Musante presented the Capital Plan articles: He noted that no additional taxes from the Override were put toward the Capital Plan – The Financial Committee has recommended a certain percentage of tax levy be used for capital and without override dollars the percentage has decreased and saved about \$1m.

**Article 11 – Capital Program – Chapter 90**

This money comes from the state to support roadwork. An article in the paper noted that the cost of materials has increased dramatically while the funding has been held steady so the backlog of roadwork is increasing.

Diana Stein moved to recommend Article 11 – Capital Program – Chapter 90 funds for \$538,000, to Town Meeting for their approval. Aaron Hayden seconded and the motion passed unanimously.

**Article 12 – Capital Program – Equipment**

Diana Stein moved to recommend Article 12 – Capital Program – Equipment \$865,300 to Town Meeting for their approval. Aaron Hayden seconded and the motion passed unanimously.

### **Article 13 – Capital Program – Buildings and Facilities**

Alisa Brewer noted the Downtown way-finding system is not considered important by some and asked whether we have a sense of where we are with the sign program. John Musante recalling Jonathan Tucker's report: The first year was spent developing a consistent program so that money can be effectively applied to the program.

Larry Shaffer noted that it is important that we maintain the signs once they are installed. The Town is developing the in-house expertise to do the maintenance and updating.

Stephanie O'Keeffe noted that need for signs to help people appreciate our Town.

Diana Stein moved to recommend Article 13 – Capital Program – Building and Facilities for \$602,500 to Town Meeting for their approval. Aaron Hayden seconded and the motion passed unanimously.

### **Article 14 – Capital Program – Bond Authorization(s)**

Town Meeting authorizes spending this money and accept payments of principle and interest in the future debt service.

Diana Stein moved to recommend Article 14 – Capital Program – Bond Authorization to repair and renovate the South Amherst School for \$180,000 to Town Meeting for their approval. Aaron Hayden seconded and the motion passed unanimously.

### **Article 15 – Acceptance of MGL 43D**

Larry Shaffer presented the article: Accepting this article will signal to the State the Amherst is earnest to encourage acceptable development that will attract support from the State.

Alisa Brewer noted that there is not a lot of information about the article itself. Is there a separation of the zoning from a specific parcel..

Larry Shaffer responded that there can be but it is difficult to do.

Stephanie O'Keefe noted that the provisions of the State law do not make the whole town a priority development – the priority is only related to the particular parcel.

Carol Gray wanted to make a couple of points, that the order of articles should be different – if the Patterson Parcel is voted down than this article is useless. Also that TM has not received enough information and there has been no communication on the details of the law. She feels that his by-law overrides the town's by-law. She is concerned by implications of overriding the by-laws. She is worried by the possibility that wetland

protections might somehow be voided. She would like to know what parts of our by-law might be overridden. Also the article seems to apply to parcels that are not part of the Patterson parcels.

Larry Shaffer is committed to reaching out to the community to provide any information that people need and will help them understand the process. 43D is a process that is used in Town today for Lord Jeffery Inn and Boltwood projects. We put together teams of town hall people to address issues that might turn up as concerns to our regulatory boards. He wants to package the project that will assure its quality. The process exists today and will continue forward.

Information on whether we will circumvent any bylaws and all the steps in the 43D timeline mesh with the current by law approval timelines. It should not jeopardize the town at all; rather it will signal that we are serious about this work.

He noted that this article does not involve any parcel outside the 3 Paterson parcels.

Carol Gray rebutted that parcel 1D-1 is listed in Article 15 (this article) and not in Article 16 which deals with the Patterson parcels

Diana Stein, after working with Town counsel, would like to see a timeline with the liabilities and risks of the ground lease and 43D provisions. She wants to get more information on it and would like to suggest deferring vote on 15 and 16. She may not have enough information, if we haven't read the options or lease fully to know if we understand the implications.

Alisa Brewer suggested separating Articles 15 and 16 and not even getting to 16 even if we do 15 even though it wouldn't mean as much. We can keep them separate and have either be meaningful article to some extent.

Stephanie O'Keeffe would like to ask our representatives in Boston their opinion on this.

Mr. Shaffer has spoken with them in the past and they have been encouraging.

Diana Stein moved that article 15 - Acceptance of MGL 43D - for the 3 "Patterson" parcels 2C3 2C9 2C30 to Town meeting for approval. Alisa Brewer seconded and the motion carried unanimously.

### **Article 16 – Patterson Property - Acceptance of Option Agreement**

Diana Stein moved to defer consideration of Article 16

Larry Shaffer presented article describing the steps that have been taken and will need to be taken for it to be developed. He described how fundamentally it will get us started to developing this parcel with Town Meeting as gate keeper – Town Meeting has to approve any infrastructure improvements – An end user has to be found. Risk will be taken when

Town Meeting approves the conveyance of this parcel to that end user. Without Town Meeting taking a role in this project it seems unlikely anything will happen on it.

Stephanie O'Keefe notes that this project can be a game changer, it can bring in \$1.6m annually. There are no projects that have the same potential impact possible in Town. Getting all three years up front signals strongly the Town's intention in completing the project. Developers are willing to take certain level of risk that they can define. We can stop the payments whenever we decide there is no possibility for an end user.

Diana Stein has a concern that the Option is tied to the Ground Lease are attached. The Ground Lease needs to be considered at the same time. The lease requires all three parcels go together which is a significant risk.

Larry Shaffer notes that the option has to be taken to activate the ground lease – if we don't take the option we aren't responsible for the Ground Lease. We can indemnify ourselves of the risk of the lease by assigning it to the end user that takes over the property. Town Meeting will have to decide whether the Town is protected well enough before the final development agreement can be completed.

Stephanie O'Keefe noted that this is largely defining what the property owner doesn't need to do.

Larry Shaffer would like to be out of the lease completely but the property owner wanted that all the options covered and the lease formalizes the controls. It is complicated but it spells out in great detail what will happen going forward. The owner lives across the street from the site and kept control over what she would see.

Diana Stein thought the Town might get stuck with the lease if the deal goes sour. We want to get the timing on this right to be protected from the liability. Once we accept the lease we will need to layout 3x the cost of the option. We may decide it is a worthwhile risk but we owe it to ourselves to read what the lawyer will come up with. Diana Stein will have a flow chart to be clear on how we avoid accidental liabilities.

Larry Shaffer noted that the Town is on the hook until a 50k square foot facility is built on the site and the developer takes over. The builder would do the work simultaneously with the Town's improving the infrastructure. When the facility is done we transfer the lease and we are off the hook and don't need to pay any of the lease. We can organize the transfer of the lease in many ways – the issues will be worked out with the end user and the Development Agreement or by performance bond.

Stephanie O'Keefe notes the article only commits us to the \$120k nothing more.

Diana Stein is concerned that the ground lease is irrevocably tied to the option and we could get stuck with it. She wants to be sure we are protected – she feels it is not as simple as by voting it down when we think it is going in the wrong direction.

Jim Wald sees that the discussion is the hard part not the vote and is what has to happen when Ms. Everette (town counsel) goes over the document.

Larry Shaffer is getting answers for any concern he can find. The firm that supports the legal services to the Town has escalated their research to their highest levels and Ms Everette is providing detailed information on Diana Stein's concerns.

Carol Gray sees that the option is directly tied to the Ground Lease and there are risks. The ground lease has restrictions that are risks - like the owner has to approve parts of the agreement.

Stephanie O'Keeffe notes that material we are creating will clarify exposures to the town.

Carol presented her minority report to the JCPC in her single opposition to the proposal. She states it is not a capital project that it needs a feasibility study as mentioned by a book she read on economic development. She feels it is a bad deal for the future owner. How many teachers would the \$120k pay for? Infrastructure is too expensive and there is no requirement for the builder to share the costs of the infrastructure, it is too risky to rely on grants. She is shocked not to have an estimate on the infrastructure cost. She feels too many questions unanswered. She asked why are we doing this? No buyer for many years why not let it happen on its own - there is no one clamoring to buy it now. It is unwise for TM to allocate \$120 up front on such a risky adventure. We've also not spoken about smart growth, what will it look like 50 years from now. Read a passage about the cost of sprawl and need for town-centric development. (Her minority report is on line.)

Stephanie O'Keeffe is looking at individual issues, whether it is a capital expense the JCPC thinks so, Feasibility studies - this is the thing that kicks off a feasibility study, when the realities of the site are considered by a real project, Teacher jobs - if we didn't spend the money on this it would go to other capital spending not salaries

Jim Wald disagreed with the idea this project is counter to Smart Growth concepts, what goes here cannot go downtown. Here it doesn't take up conservation land and is attached to the North Amherst village center. Mr. Wald doesn't want to live in a town of rich people and this is a small price to pay to allow others to live here.

Alisa Brewer noted that we have never done this before, when we talk about the \$40k up front it puts Town Meeting in its right role, it makes the big decisions. TM can not all read the agreement but can look to the opinion of the Counsel. They need to ask if the information is trustworthy.

Diana Stein - If you look up definitions of capital project there are many and this fits. She needs time to go over the agreement.

Alisa Brewer is concerned with postponing our decision too long since there are so many details. If we wait too long there are open questions we should answer as soon as possible.

Stephanie O'Keefe noted that at our meeting on Wednesday we can to get a preliminary decision.

**Article 9 – FY 2011 Operating Budget: Debt Service**

Dina Stein moved to recommend Article 9 – FY 2011 Operating Budget Debt Service – to appropriate \$1,376,755 for Debt Service to Town Meeting for their approval. Aaron Hayden seconded and the motion passed unanimously.

**Article 20 – Free Cash**

Alisa Brewer moved to defer Article 20 – Free Cash.- to Town Meeting. Aaron Hayden seconded and the motion passed unanimously.

**Article 21 Stabilization Fund**

Diana Stein moved to recommend dismissing Article 21 – Stabilization Fund - to Town Meeting. Jim Wald seconded and the motion passed unanimously.

**Article 5 – FY 2010 Budget Amendments**

- A. Diana Stein moved to recommend Article 5 – FY 2010 Budget Amendments – transferring \$173,000 from General Government to Public Safety to Town Meeting for their approval. Aaron Hayden seconded and the motion passed unanimously.
- B. Diana Stein moved to recommend dismal of Article 5B Aaron Hayden Seconded and the motion carried unanimously.

**OTHER ITEMS**

**Consider Procedural Change re: Taxi and Special Liquor Licensing**

Stephanie O'Keefe suggested that during May applicants need not appear before the board, rather the applications are simply motions we vote on. Also we will ask Town Counsel whether we can designate the Town Manager as our replacement. Larry Shaffer noted that the Town Mgr is allowed to act on behalf of the Select Board for approving use of the Town Common.

**Consider new May meeting date for Liquor License Hearings**

Renewals and new licenses, proposal to have a special meeting to handle these licenses that doesn't interfere with Town Meeting on May 20 .

Diana Stein moved to approve the minutes of Feb22 as amended, March 1<sup>st</sup> and March 15 as amended. Alisa Brewer seconded and the motion passed 4 aye and one abstention (Jim Wald)



**Chair's report:**

Gateway project, Stephanie O'Keefe lives very close and so checked with the State Ethics Commission. After extensive conversations letters were filed with the finding that there is no conflict of interest.

**FY 11 quarterly budget review**

John Musante presented the report which is pretty much as expected.

Revenue is at or above expectations. Overall we should be OK, property tax collection is at 98%. The State Aid cuts that we have budgeted for are on track. LSSE had ambitious programming changes that need to be analyzed program by program as it moves to being self funded. Participation this fall was below estimates, probably related to eliminating a position in LSSE. The program could be \$80k-100k down but he is working with director to trim expenses and find enhancements like support from CDBG. Local option taxes are at 50% of our estimate at 3/4 of the way through the year. We may miss our estimate though the next quarter is expected to be larger. Mr. Musante will watch it carefully.

**Calendar Preview**

4/25-429 TMCC Precinct Meetings (schedule on Town Website)

4/27 TMCC info forum - How Public Works works: Purse Strings to Pot Holes, 7:30 at ACTV

4/30 Celebration for the Fight Against Child Violence- Flag Raising and Ceremony, 12:00 noon

5/03 Annual town Meeting Begins

**ADJOURNMENT**

Stephanie O'Keefe moved to adjourn meeting for an Executive Session to discuss collective bargaining at 10:02 p.m. Diana Stein seconded:

Stephanie O'Keefe Aye

Alisa Brewer, Aye

Aaron Hayden Aye

Diana Stein, Aye

Jim Wald, Aye

Comments and corrections encouraged;

Respectfully submitted;

*Aaron Hayden*