

Minutes

ATTENDANCE

Select Board

Present: Stephanie O’Keeffe, Jim Wald, Alisa Brewer, Diana Stein

Absent: Aaron Hayden

Staff: John Musante, Town Manager; David Ziomek, Assistant Town Manager

Other: Chenghui Zheng, Zeena Hutchinson, Jack Hirsch, Sean Burke, Karen Merrill, Ira Bryck, Nick Grabbe, Tom Baker, Ira Addis, Ellen Pile, Felicity Callahan, Barbara Ford, Bonnie MacCracken, Michael Levine, Van Kaynor, Chris Pile, Andy Churchill, Jenny Daniel, Marcie Sclove, Alison Wilson and Matthew Ingellis

Meeting called to order by Ms. O’Keeffe at 6:32 p.m.

No public comment offered.

Authorize Intermunicipal Agreements

Mr. Musante explained that formal approval by the Select Board of existing Intermunicipal agreements was recommended by Town Counsel. Some agreements have had such approval; others have not been approved recently. The Intermunicipal agreements recommended for approval cover ambulance service with Pelham, Leverett, Shutesbury, and Hadley; a municipal hearing officer position, a nurse/sanitarian position, police service, I.T. support, and a weights and measures position with Northampton; and veterans services with multiple municipalities in the region.

VOTED 4-0, 1 absent (Hayden) to authorize the Town Manager to enter into the Intermunicipal agreements, as outlined on the memorandum from the Town Manager to the Select Board for the authorization of Intermunicipal agreements dated July 26, 2013.

Clean Air Act Resolution

Ms. Stein explained the Clean Air Act Resolution requested for Select Board endorsement by a California college student from a group called Endangered Earth. Ms. Stein did some homework on the resolution and edited the text to make it accurate for Amherst, and recommended Select Board approval.

VOTED 4-0, 1 absent (Hayden) to urge the administrator of the Environmental Protection Agency and President Barack Obama to move swiftly to fully employ and enforce the Clean Air Act to do our part to reduce carbon in our atmosphere to no more than 350 parts per million and further, request the Town Clerk forward a copy of the Clean Air Act Resolution authorized this evening to the Administrator of the Environmental Protection Agency and President Barack Obama.

Parking Requests

Community Fair

VOTED 4-0, 1 absent (Hayden) to approve the closure of that section of Spring Street within the Spring Street parking lot from 2 p.m. Friday, August 22, 2013 to 12:00 a.m. Saturday, August 24, 2013 and again on Saturday, August 24, 2013 from 1:30 p.m., following the closure of the Farmers Market, to 12:00 a.m. Sunday, August 25, 2013, on behalf of the Rotary Club of Amherst for the Community Fair.

VOTED 4-0, 1 absent (Hayden) to approve the reservation of twenty one (21) metered parking spaces on the westerly side of Boltwood Avenue originating at College Street moving north towards Spring Street 8 a.m. Monday, August 19, 2013 through 12:00 a.m. Sunday, August 25, 2013; and the three (3) metered parking spaces on the easterly side of South Pleasant Street south of the taxi stand from 8 a.m. to 12:00 a.m. on Thursday, August 22, 2013, Friday, August 23, 2013 and Saturday, August 24, 2013 on behalf of the Rotary Club of Amherst for the Community Fair.

Tapestry Health

VOTED 4-0, 1 absent (Hayden) to approve reservation of four parking spaces on the west side of the Spring Street Parking lot, as shown on the GIS map entitled "Tapestry Mobile Health Van" from 3:00 p.m. to 9:00 p.m. on Tuesday, August 20, 2013 for the mobile health van to provide access to rapid HIV testing to the Amherst community.

Taxi Licenses

VOTED 4-0, 1 absent (Hayden) to approve a new 2013 taxi driver/chauffeur license for Cheikh O. Diedhiou of Easthampton, MA on behalf of Gottago Taxi.

Special Licenses

VOTED 4-0, 1 absent (Hayden) to approve a Special Wine and Malt License for Amherst Brewing Company Inc. for an anniversary celebration on August 17, 2013 in approximately 50' x 75' of the parking area in front of the Amherst Brewing Company patio from 12:00 – 6:00 p.m.; John P. Korpita, Owner/Manager.

VOTED 4-0, 1 absent (Hayden) to approve a Special Wine and Malt License for the Top of the Campus Inc. for a dinner/reception on August 22, 2013 at the Renaissance Center, UMass Amherst from 6:00 p.m. to 7:30 p.m.; Brenda Ryan-Newton, President.

New Common Victualler Licenses

Subway: Untimed item, without anyone from Subway being requested to attend.

VOTED 4-0, 1 absent (Hayden) to approve a Common Victualler License for KM Operations, LLC d/b/a Subway Restaurant, 308 College Street, Amherst, Sundays through Saturday, 7:00 a.m. to 11:00 p.m.; Sean McKenna, Manager.

Oriental Flavor: Timed item: Chenghui Zheng, Oriental Flavor Manager was present and provided an overview of the business; grand opening July 30, 2013.

VOTED 4-0, 1 absent (Hayden) to approve a Common Victualler License for Oriental Flavor Restaurant, 25 South Pleasant Street, Amherst Sundays through Saturday, 6:30 a.m. to 10:00 p.m.; Chenghui Zheng, Manager.

Minutes

VOTED 2-0-1 absent (Hayden) 1 Abstention (Wald) to approve the minutes of June 3, 2013 as presented and June 10, 2013 and June 24, 2013, as amended.

Legislative Letters

VOTED 4-0, 1 absent (Hayden) to approve letter of thanks to Senator Rosenberg and Representative Story, as presented.

Police Officers as Agents of the Select Board

VOTED 4-0, 1 absent (Hayden) to appoint the police officers presented by Chief Livingstone in a memorandum dated July 8, 2013 and approved by the Town Manager, as agents of the Select Board effective July 1, 2013 for a term to expire June 30, 2014.

Liquor License: Bertucci's Change of Officer & Director, Stock Transfer & Issuance

Public Hearing opened a 6:45 p.m., closing at 6:47 p.m. with no public comment offered. It had not been considered necessary to request that anyone from Bertucci's be present for the consideration, and none were. VOTED 4-0, 1 absent (Hayden) to approve the new officers/directors, new stockholder, stock transfer and issuances as presented in the petition for transfer of ownership dated May 21, 2013 for Bertucci's Restaurant Corporation doing business as Bertucci's Brick Oven Ristorante, 51 East Pleasant Street, Amherst; Shawn C. Jones, Manager.

New Secondhand Sales License – Art Alive

Owner/Manager Zeena Hutchinson presented an outline of the venture.

VOTED 4-0, 1 absent (Hayden) to approve a Secondhand Sales License for Art Alive, 35 South Pleasant Street, Amherst; Tuesdays through Thursday, 10 a.m. – 8 p.m., Friday and Saturdays 10 a.m. – 10 p.m. and Sundays 12-6 p.m.; Tamzeena Hutchinson, owner/manager.

Right of First Refusal

Cowls' Cushman Parcels

The Select Board considered the Town's Right of First Refusal under Chapter 61 for the Cowls Cushman parcels being sought for development of student housing by Landmark Properties. Ms. O'Keefe and Mr. Musante reviewed the process to date, detailing Town Counsel's consideration of the Purchase and Sale agreement and the Letter of Understanding between the Town and the property owner, which has been recorded with the deed. That agreement specifies triggers for a new ROFR process, requires that the parcels be developed as a cluster subdivision under this Purchase & Sale agreement, and specifies that open space surrounding the development be given to the Town. Andy Steinberg, Chair of the Finance Committee spoke, providing a memo detailing the Finance Committee position: that the Town can't afford to purchase the property.

Public Comment: Jack Hirsch, 400 Flat Hills Road cited Master Plan key concepts, noting the project does not maintain character of the neighborhood, concern that no public planning process had occurred to date and believed it to be premature before Town-Gown planning was completed. Sean Burke, 50 Henry Street questioned the bona fide offer and the time it took to approve the second Purchase and Sale, requesting a written explanation from legal counsel and their presence at the Select Board meeting scheduled for August 19, 2013; Select Board indicated intent to explain process that took place. Karen Merrill, Market Hill Road spoke about the lack of transparency and a reversal of Town Counsel's opinion, creating a loss of time for citizens to weigh in on the ROFR. Ms. Merrill cited Mt. Grace Land Trust best practices for ROFR process, citing appreciation for time spent on legal process, but requesting robust, transparent public process. Ira Bryck, 255 Strong Street cited NY Times article regarding peak enrollments and faculty senate comments on growth. Nick Grabbe, Eames Avenue presented list of Top 10 Reasons to not exercise ROFR, reading only eight, noted development may not even happen, loss of tax revenue, housing plan confirmed need for more housing, and lastly, noted needs of many outweigh needs of a few. Tom Baker, 137 Shutesbury Road indicated mockery of Master Plan, citing environmental concerns with 700 students there versus closer to University campus, services and transit. Ellen Pile submitted a handout, questioning how Select Board will offer comment to Planning Board during permit review and requested most limited waiver possible. Ira Addis, 192 Shutesbury Road spoke, urging Select Board to work with the University on legislation to provide more housing on campus, noting more than 200 families in the Cushman area; he indicated his belief that the Town Manager has not fulfilled his fiduciary responsibilities. Felicity Callahan, 21 Spaulding Street questioned how MOA binding on buyer. (Ms. O'Keefe clarified: Recordable instrument on file at Registry of Deeds.) Michael Levine of Jason Court criticized Jones stewardship of forestry land. Jack Hirsch and Barbara Ford, Flat Hills Road requested exercise of \$50,000 waiver. Bonnie MacCracken cited 40B concern regarding Rolling Ridge. Joe Swartz, 11 Meadow Street emphasized too costly for Town to purchase, noting empathy for neighbors. Van Kaynor cited environmental concerns related to spotted salamanders, submitting two requests to require independent review by biologists and to record a "Limited Waiver" for any changes to Purchase and Sale price or other changes in conditions. Chris Pile of Bridge Street also spoke in support of further tightening of the "limited waiver." Andy Churchill, Pine Street stated other Town priorities for \$6.5 million, South Amherst, School renovations, etc., opportunity cost; town chose not to approve zoning changes for better locations, i.e. Hope Church, Gateway, etc. A Grantwood Drive resident questioned the odds of development being approved and asked about timeline for permit review. Jenny Daniel, Attorney, requested limited waiver that would extend public review. Marcie Sclove asked for clarification on Planning Board's authority to change or stop the project.

Mr. Musante responded to question on \$50,000 liquidated damages in revised purchase and sale, noting that the Town has significant legal exposure beyond that figure. Town Counsel is not recommending limited waiver option; statute is clear that if there is material change, it will trigger a new ROFR. Ms. O'Keefe responded to comments, noting Select Board appreciation, noting will advocate on behalf of Town, critically important that negative impacts are reduced and mitigated to the best of our ability. Members each spoke, noting what's being accomplished versus

possible impacts, need for highest and best use of available funds, searching for better tools to shape outcome, all against supporting right of first refusal.

VOTED 4-0, 1 absent (Hayden), to not exercise or assign the Town of Amherst's right of first refusal under MGL c. 61, §8 to purchase from W.D. Cows, Inc. three parcels of land on Henry Street and Flat Hills Road, identified as Parcels 6A-91, 6A-96 and 6A-84 and classified under said MGL c. 61, which parcels are under contract to be sold under the April 23, 2013 Purchase and Sale Agreement between Cows and Markland LLC for consideration of \$6,500,000. VOTED 3-0, 1 absent (Hayden) to amend to read April 18, 2013 Purchase and Sale Agreement, as originally drafted.

Ms. Stein left the meeting at 8:45 p.m.

50 Station Road

Alison Wilson and Matthew Ingellis spoke about their intended purchase of the Station Road farm property and their desire to maintain the equestrian program there. The recommendation from Mr. Ziomek explaining the status of the land and recommending against exercising the Town's Right of First Refusal was reviewed.

VOTED 3-0, 2 absent (Hayden, Stein), not to exercise or assign the Town of Amherst's right of first refusal to purchase from Mares in Charge, Ltd. the property located at 50 Station Road pursuant to the Option to Purchase recorded with the Hampshire Registry of Deeds in Book 5877, Page 1, which property is under contract to be sold pursuant to the April 25, 2013 Purchase and Sale Agreement between Mares in Charge, Ltd. and Matthew Ingellis and Alison Wilson for consideration of \$300,000.

Update on Rolling Green and Town's Subsidized Housing Inventory

Mr. Musante spoke of recent and pending meetings seeking to preserve affordable units at Rolling Green, and the inability to provide concrete incentive to the property owner to extend the affordability beyond the mortgage terms which are near expiration. He reviewed the packet memo provided detailing the current situation and next steps, and he spoke about the legal consultation and analysis funded by Town Meeting to assess the situation, and said those assessment results were as described. Select Board members expressed concern that the conversations with the property owner about next steps seemed to be starting much later than they had assumed, and that their shared expectation had been that these had been happening long in advance of the affordability expiration. Mr. Musante said that the legal analysis had occurred in advance, and that the Town is committed to working with the property owner to try to preserve as many of the affordable units as possible. The Select Board concluded that more frequent updates on the status of such considerations and anything impacting the town's subsidized housing inventory percentage were necessary.

Update on Arizona Boycott

Mr. Musante said that the Town has largely upheld the financial boycott against the State of Arizona, per the Select Board's June 2010 resolution. An exception has been attendance at the International City Manager's Association conference in the fall of 2012 in Phoenix, for which there was no practical alternative. In answer to questions about how staff is informed and reminded about the resolution, Mr. Musante said it is among the procurement policies as handled by finance staff.

Town Manager's FY13 Performance Evaluation and FY14 Goal Setting

Ms. O'Keeffe reviewed the status of the performance evaluation process and timeline. Members had the opportunity to ask follow-up questions to Mr. Musante about his June 24th self-evaluation report. A new draft of the performance goals was reviewed with revisions to be incorporated for the August discussion.

Town Manager's Report

Mr. Musante reported on the following: the status of veto and reconciliation efforts between the Governor's transportation funding plan and that approved by the Senate; discussions with affordable housing officials and stakeholders about Echo Village; plans with the University for how to proceed with the Town-Gown consultant RFP

(Select Board members emphasized, and he agreed, that the community via the Select Board has a chance to see and weigh in on the RFP before it's issued); the status of the wetlands survey and RFP for site demolition and clean-up of the Hawthorne Property; that solicitations for membership on the Local Historic District Study Committee, per the State statute, has not yet taken place; that there is no status or progress to report regarding the Sweetser Fountain repair; good progress made on collective bargaining; and an update on the Gaylord Street parking situation.

Member Reports:

Select Board members reported on the activities and schedules of committees to which they serve as liaisons as follows: Ms. Brewer: Regional School District Planning Board and Housing & Sheltering Committee.

October to December Select Board Meeting Dates

VOTED 3-0, 2 absent (Hayden, Stein), to approve the following Select Board fall 2013 meeting dates: October 7, October 17, October 21, October 28, November 4, November 6, November 13, November 18, November 20, and December 2, and December 16, 2013, recognizing that additional meetings may be required for approval of special licenses or time sensitive public hearings.

Approve Amendment of Non-Union Classification Table

Mr. Musante explained the Personnel Board's recommendation to amend the table to remove several job titles that are now part of the new DPW Supervisors' union, per the memo provided.

VOTED 3-0, 2 absent (Hayden, Stein), to approve the Amendment to the Non-Union Classification Table as recommended by the Personnel Board at their meeting on July 17, 2013.

Committee Appointments

VOTED 3-0, 2 absent (Hayden, Stein) to approve Select Board appointments for those individuals to those positions listed in the July 29, 2013 agenda for terms as presented.

VOTED 3-0, 2 absent (Hayden, Stein) to confirm the Town Manager appointments to the Historical Commission for those individuals listed in the July 29, 2013 agenda for terms as presented.

VOTED at 10:33 p.m. to adjourn to Executive Session per MGL Chapter 30A §21a to discuss collective bargaining for police, fire and public works unions, with the intent to not return to public session at the conclusion; O'Keefe, aye; Wald, aye; Brewer, aye; 2 Absent (Hayden, Stein).

Submitted by John P. Musante, Town Manager

List of Documents Presented at the Meeting - Available in the Online Packet for the Meeting Date

2013-07-29 Agenda - final

2013-07-29 Draft Motions

2013-08-26 Draft Motions Amended

Public Hearing - Bertucci Change Officer, Director, Stock Track and Issuance_Redacted

Common Vic - Oriental Flavors

Secondhand Sales - Art Alive

Select Board Letter to Cinda Jones re Notice of Intent

Cowls Notice of Intent 04-23-13

Planning Board Letter of Recommendation

Planning Board Packet 7-17-13 re Cowls c61

MGL c61 s8 Conversion of Land

Planning Board Issues with Cowls C61 Withdrawal Notice

Conservation and Land Use Planning Excerpts RE Cowls Chapter 61 Removal

Planning Board Packet 7-17-13 letters and press re Cowls c61

Cinda Jones response to press on C61 proposal

Conservation Commission memo Cowls C61

Conservation Commission Natural Resources materials

Finance Committee Chair Statement on Retreat Project
Notice of Option 50 Station Road
Option to Purchase 50 Station Road
Memo from Asst TM re Notice of Intent Lot F Station Road
Notice of Interest to Purchase 50 Station Road
Rolling Green and SHI Update Memo 2013 07 29
Arizona Boycott vote
FY14 Goals
Discussion - 7-29-13
Town Manager Performance Goals Progress Report
House and Senate restore 177M to local aid
Staff Recognitions Leadership Supervisory Training
RSDPB Status Report July 26 2013
HSC Memo to RKG Associates
Attorney General issues guidance on contract approvals in relation to open meeting law MMA 07-25-13
Open Meeting Law FAQ Calculation of Quorum and Majority 05-23-13
Open Meeting Law FAQ Union and Non-Union Contracts printed 07-26-13
Oct - Dec 2013 proposal
Common Vic - KM Operations, LLC dba Subway Restaurant
Draft Minutes 06-03-2013, 06-10-2013, 06-24-2013
FY 14 Select Board Appointments 07.29.13
Legislative Thank you Rosenberg 2013 draft
Legislative Thank you Story 2013 draft
Agents of the Select Board
DRAFT Clean Air Cities Resolution
Memo to SB Approve Re Amendment to Non-Union Classification Table
Memo from TM to SB RE Intermunicipal Agreements
Rotary Club Community Fair Parking 08.19-24.13
Rotary Club Community Fair Parking Mapped
Tapestry Health Parking Request and Map
Redacted Taxi application Diedhiou C for Gottago Taxi
Special License Amherst Brewing Company 8-17-13
Special License UMass 08-22-13