

January 17, 2017

The meeting of the Board of Selectmen held on Tuesday, January 17, 2017 beginning at 5:45 p.m. in the Selectmen's Conference Room, Town Hall.

Members Present: Chairman Brian Mannix, William Rooney, Manny Silva, Carmina Fernandes and Derek DeBarge

First Order of Business: Pledge of Allegiance

Visitation with Town Counsel represented by Rose Crowley and Mike Snider, regarding the Senior Center Building Committee and how 40B Projects and Prop 2 ½ works. Beginning with the Prop 2 ½, Ms. Crowley handed out some reference materials stating that we would like to build a Senior Center and fund it through a Debt Exclusion which would require a temporary increase in the tax levy and would require compliance with Proposition 2 ½. On the first page of the handout there is the language of the Debt Exclusion and the highlighted area is literally the form of the Ballot Question prescribed by Statute. These are 'magic words' they must be used when you put the question before the voters. The highlighted and italicized portion is where you would put the purpose for what the monies from the local issue would be used, (ex. To design, construct a senior center), also any land acquisition would also be included. Note. No dollar amount would be in the ballot question, and that is required by law, this is only in the case of a Debt Exclusion. You don't talk money on the ballot. So, in order to affect this debt exclusion and to effectively put it into your budget you need two things; approval of a Prop 2 ½ ballot question as set out in the requirements and a Town Meeting approval of the appropriation.

There are different ways you can obtain these two things; legislation has made it very flexible for Town governments. On the handout, there is a description of contingent appropriations which is a tool when you reach Town Meeting. On the final page is straight out of DOR is what is called 'sequencing options'. If either ballot or town meeting approval fails, you can go back and do it again. The chief thing to keep in mind is that the Ballot Question does not go before the citizens unless authorized by the Selectmen. The Board of Selectmen completely controls the timing of the ballots and requires a two-thirds vote of the Board of Selectmen which would be (4) four regardless of the quorum present, you must have a two-thirds vote of the 'entire' Board.

The Board controls the ballot, but also the appropriation because the Board also controls the Warrant. Mr. Rooney asked if there was any time-line requirement for changing a no to a yes. That depends on how you go about it, for example, suppose that you put the ballot question forward in the March election, and this passes. If the question passes, then you as the Board can decide if you want to seek the appropriation at the next Town Meeting or perhaps at a later Town Meeting. Case law has an appropriation being passed as far out as two years from the time of the ballot approval. The test as to how long you get to use that or delay that or go back again to get another ballot approval would be if the economy drastically changed or construction costs radically increased and this information could change the voter's decision. If the ballot question is no and you feel that the citizens need more cost information you could appropriate the money at Town Meeting with "two budgets" one with the appropriation and one without. Now if you have both those appropriations you can go back to the voters and put the ballot question to them again. If they say no, then you can fall back on the lower budget and if they say yes then you can use the higher budget.

If for some reason you pass both budget appropriations but you feel that you do not think it should go forward, you can just let it die and use the lower budget.

Mr. Rooney asked if the Selectmen brought it to Town Meeting and it was approved and then goes to ballot and is not approved, how long do we have to go back to the voters seeking an approval and based on what?

If the appropriation is made it sits in this fiscal year, and the scheduled July 1st the State wants you to have a balanced budget. You should have a balanced budget by July 1st but you MUST have a balanced budget prior to the certification of your tax rate as late as December. If you have a straight (not contingent) appropriation you would need to hold a special election to put this on the ballot by December.

The third option, contingent appropriation, where you don't have a yes on the ballot. You go to Town Meeting and ask for a contingent appropriation. First, you appropriate your budget and make a 'contingent' for the capitol project debt service subject to Proposition 2 ½ approval. Mentioning the Prop 2 ½ approval makes it contingent automatically. When you do a contingent appropriation, you have September 15th to either place the ballot question before the voters or the appropriation dies. It becomes null and void. You do not have to do anything further. If you get a yes, it is in the budget. Where the contingent appropriation will NOT work for the Town is in the Special Town Meeting because of the timing. There is a lot of flexibility, with the timing of all of this within your hands; you should map out your timing which would avoid calling a special election or special town meeting.

Mr. Rooney asked counsel if they have any recommendations on what makes sense to go first. Ms. Crowley said that looking at our schedule to completely avoid any special elections or town meetings would be to place the ballot question in March and if you get a yes, then pass the appropriation in May. That seems the least complicated. But remember no dollar figure on the ballot.

Mr. Rooney noted that having the voters decide on a ballot question with no dollar amount is disconcerting. This is a statute and cannot be changed. If they feel that the money is too great, then the time would be at the town meeting appropriation. Mr. Rooney feels it is somewhat unfair to the voters if the question is simply do you want a senior center. For a debt exclusion, it is earmarked and cannot be used for anything else. Mr. Mannix asked if the costs are above what is voted upon at town meeting what happens. If the difference is significant then it may have to be voted upon again at another town meeting to adjust the figure. There was some discussion regarding overages and Ms. Crowley stated that there is some leeway but she would have to look further. Mr. Silva stated that unless there was another available funding source you would have to go back to town meeting. But the DOR will be overseeing this process throughout. Ms. Fernandes recapped by saying that in their logistical opinion the best route for us is to educate the public, put the question on the ballot and then appropriate the funds. Ms. Crowley noted that public funds cannot be used to publish or educate the public with an opinion on the ballot question. You can express an opinion or state information and a public employee may express an opinion but may not fundraise for that purpose. The building committee asked if they could use or contact Town Counsel for their purpose of asking any questions and Mr. Mannix stated any questions would have to go through Ms. Villano. Mr. Rooney asked about public funds, if there was going to be an informational meeting and it was scheduled to be held at the library, would this be use of public funds? Ms. Crowley stated that she would have to check on that and get back to him.

The 40B project. There is a proposed HAP Housing project in the vicinity of Fuller and Chapin Street for 43 units. At this point their application has not been approved but signs point to yes on that. An overview of how the process would work if HAP did make an application for a comprehensive permit and what the town would have to do and then field any questions you would have.

Under the statute 40B, a comprehensive permit can only be applied for a non-profit corporation as in this case. Once they have received the housing subsidy from DHCD they can elect to make the permit application and once they do that there is regulatory information they need to give to the Board of Appeals. The Board of Appeals acts almost as a special permit granting authority. The difference here is that rather than a Planning Board going to different town departments asking for insight about a town project it is the Board of Appeals going to the Planning Board, Conservation Commission, Safety, Department of Public Works, Board of Health and Board of Selectmen. The Board of Appeals is tasked with coalescing the information often having members of those boards at public hearings on certain aspects of the project. Then the Board of Appeals will make its decision. The decisions it can make are: to deny the project, to simply allow it or to allow it with conditions. That is where 40B has its teeth because it demands a board of appeals vary local law to accommodate the project as best it can. In the event that the town does not have much low-moderate income housing stock. Basically, if you don't have 10% of your housing stock the board of appeals needs to be very measured in how it decides on conditions. If it poses conditions to the extent that the project is not viable that simply won't pass appeal from the Housing Appeals Commission.

Because the Board of Appeals goes into the information and some of that may be beyond its scope of regular knowledge the town is allowed to charge a fee to employ consultants and there also state

grants available to pay for consultants. If the town receives a comprehensive permit application Mr. Snider feels that would be the order of business to find a consultant of which they could give the town a short list. Mr. Mannix asked once this project is built can HAP sell this project and if so when? Mr. Snider stated that there are restrictions on how long the property is dedicated to low-moderate income housing. The consultant would help with a timeline of restriction.

Mr. Rooney asked when you talk about consultants, who will pay? A Grant from the State or put a 'reasonable' fee passed onto the applicant. Mr. Rooney asked what the reasonable limit on fee? This would be based on the size of the project and what specific expertise would be required. Mr. Rooney asked if this would/could be negotiated with the applicant (HAP) or is that us saying this is the cost. You can make that decision and hire and send the bill to the applicant but the cost must be reasonable or the Housing Appeals Commission can be called to make a decision.

Mr. Rooney asked Mr. Snider about the list that they could provide, would it be law firms or other companies serving as consultants? Mr. Snider stated that this would be what he would envision. Some law firms have expertise like Mark Bovrowski the author of the book Mr. Snider brought with him. He has experts that he subcontracts with for a technical review of all areas.

Mr. Rooney asked that when they work with the consultants are they talking about helping to fight the project being located at Fuller & Chapin which is the consensus of the Board and others or would the consultants just try to get the best deal within those constraints. Mr. Snider stated that again, the decision-making body is the Board of Appeals. You can suggest conditions and it is entirely appropriate that you would comment on this, but ultimately it is not the Board of Selectmen's decision.

That is one way to orient yourselves on this project but perhaps another way would be to know that the towns that do not have the ten percent of the subsidized housing stock as special permit type findings. Now those are going to be allowed in the usual circumstance as long as the conditions are right. So, he thinks the orientation should be to make this project the best it can be in that location. And that is through reasonable conditions.

Ms. Fernandes asked is arguments can be made through the Board of Appeals and consultants that this location is not the best or optimum but the State Housing Appeals Commission has the final say if your decision is appealed to them by the applicant. Mr. Snider stated that often your standard planning concerns have not held up at the State, for example if 'existing traffic was beyond the critical point and any further traffic would not be beneficial. You already have to be dealing with a situation that cannot be mitigated. It is a very tough standard.

Mr. Mannix talked about if the concerns of all boards are there and it comes down to the State decision especially when the applicant refuses to accept any changes and not been cooperative at all. He talked about the egress for the proposed project would butt up against the planned new school would be exiting. Most people feel that what the applicant wants (HAP) they get it and won't compromise. There is a legitimate concern regarding fire or emergency apparatus would not have enough room to access this project.

Mr. Silva asked to their knowledge, once the approval has been given by the State, have any of these projects not gotten built. Mr. Snider said that yes there are some but for example the Board of Appeals may put some restrictions that alter the project but cannot make the project enviable.

Mr. Rooney finds the town in a dilemma the Board of Selectmen voted against this project unanimously and should be proactive to be successful to stop the project going into 188 Fuller Street and short of that then look at what can we do to try to mitigate the damages. Going back to the consultant. Does it require a notification to the applicant that the town intends to hire this consultant with the applicant being charged with these costs? Mr. Snider stated that it is in the rules to notify and work cooperatively with the applicant.

The Board of Appeals would sign any contracts with the consultants but the Board of Selectmen would absolutely have the ability of input.

Ms. Fernandes asked about after the notification to the applicant regarding the hiring and cost of the consultant, who actually determines if the costs are reasonable.

Mr. Snider stated that there is an industry set of expectations as to cost. It will be a negotiated number between the town and the consultant with cooperation of the applicant.

Mr. DeBarge stated that as a Board they voted against the location and if they decided to vote against the whole project could they work with the applicant to try and find another location?

Mr. Rooney stated that they can only act on that comprehensive permit at 188 Fuller Street when and if it comes into the town. Is it unreasonable to ask the possible consultants to meet with the Board to go over their options of costs and possible work scenarios? Mr. Snider stated that a preliminary conversation would be appropriate. Ms. Fernandes asked if this preliminary meeting should include the Board of Appeals. Mr. Snider stated that he fees you should bring in as many boards, employees or departments that would be associated with the project should be invited to this meeting. The Board of Appeals should be the main board in name but can be conducted by the Board of Selectmen.

Mr. Mannix asked if anyone in the audience had any questions. Not on this topic.

Mr. Snider noted that the Board of Appeals needs to get this information out and start the public hearing within 30 days of receipt of the application. Mr. Rooney asked based on the timeframe of process, does it make sense to bring in the Board of Appeals to begin discussions based on the expected receipt of the application. Mr. Snider also stated that any other department or board should be included.

Mr. Mannix thanked counsel.

Board of Public Works Quarterly Meeting. The Board of Public Works and Board of Selectmen met and discussed the following: Center Street Project, contract has been signed at a price of \$ 1,796,171. The work to be started at any time with a completion of November 2017. They should be starting anytime.

The Cemetery Project – on Center Street and diagrams were in the packages for the Board. The Town acquired the parcel (driving range) with about 2688 for all sections on 4.3 acres. Preliminary numbers for grading, markers, markers placed, engineering, spreading the loam and paving, to develop all that parcel would cost about \$ 76,000. They picked the easiest sections to prep based on the fact that there are only 100 lots left in the current cemetery which should carry us about a year. Due to time constraints, this could be developed quickly for about \$20,000 each for both and at least get things opened up right away. After that they need to put some buildings in for storage, mowers etc. the only thing they do not know is the cost of water for irrigation but there is an old artesian well that could be opened up but it won't be enough to do any year type of irrigation. Mr. Mannix spoke about Pine Cone Lane that had a water problem and they were able to use the Chicopee water so maybe they would run a water line down the street.

Ms. Fernandes asked about the timing and they said it would be within a year for the first phase to be ready by the time more spots are needed. Mr. Mannix noted that this would be out of sales of lots and perpetual care and not against the taxes. There are some repairs that need to be made at Island Pond Cemetery but they would like to use no more than is necessary. There are two funds, one is the restricted perpetual care fund where the principal cannot be touched but the interest is moved to the perpetual care for use in care of the lots. The second is unrestricted and comes from sale of lots. Mr. Mannix asked what the restricted fund could be used for and the answer is nothing. It is there to give interest to the perpetual fund.

Mr. Rooney asked what the long-term plan is from the Board of Public Works for the balance of the land. We only purchased twenty acres the next parcel over still belongs to the original owners. Mr. Rooney noted that at the last meeting there was discussion of using the other parcel for something other than cemetery. This can't be done because the money is coming from perpetual care. Mr. Rooney wanted to know about land for recreation for the Town and there was no problem from the Board of Public Works. They discussed a soccer field but decided that would not be appropriate.

Mr. Rooney noted that with the acres purchased we have about eighteen to twenty years of plots available. In his mind, there should be some recreational land for now and this should not be a surprise for the Board of Public Works since it was discussed and the question about using the

money for other than perpetual care was brought up to the Board was told they could use it, now the Board of Public Works is saying they cannot. There was a disagreement at the last quarterly meeting about these uses.

Ms. Fernandes noted that for a temporary use for the back side of the parcel provided that other money be used for development. Mr. Mannix would like to look at that other property for purchase possibly be used for recreational purposes if there could be an agreement on price. So if the two boards could work together perhaps this could be done. Mr. Haluch talked about 100 acres near Lyons Street that is forest and perhaps something could be done with this. Mr. DeBarge said they all sat at this last meeting that it would be great to utilize the back parcel for recreation, sports and now everyone seems to not agree or does not remember this conversation. Mr. Rooney asked Ms. Villano where the \$300,000 came from to purchase this parcel. She said it was from the sale of lots fund. He asked what is currently in the sale of lots account and Ms. Villano said \$180,000. And the restricted fund of \$1,200,000, restricted by the state that needs to be looked into and have Town Council look into these restrictions, it was clear by everyone that when this parcel was purchased a section was to be used for recreation/fields and a committee was going to be set up to investigate that use. She suggested that the Board is at the point to establish this committee and take a good look at the perpetual care funding if it can be used and if not what other funding is out there to be used to enhance the fields. Mr. Rooney asked the Board of Public Works if they agreed that the four (4) acres they are going to develop which will last for about twenty years and the balance of the twenty acres. Mr. Rooney stated that short of any action by the Board of Public Works or some agreement to put together some kind of a committee what we are talking about here is extremely contrary to the discussions we had at a prior quarterly meeting. Is that fair to say? Mr. Haluch agreed it was fair to say. Gary stated that he is not opposed to doing something provided the perpetual care money is allowed to be used but to change and now to do something else there...

Mr. Rooney disagreed that is not accurate to say this is a new change or new decision – it was talked about at prior meetings. We need to check first if we can use this money for these recreation uses.

Mr. Mannix is asking the Board of Public Works, since they are the oversight body for this, to research this and see when and who would pay for these use changes and get back to the Board of Selectmen with those answers and even suggest a committee be formed. Board of Public Works is charged with this and return with some answers within a reasonable amount of time. Mr. Haluch asked is they could get an answer about the use of the restricted fund. Mr. Mannix said that would be up to them to contact the Town Accountant or Counsel.

Moved by Mr. Rooney seconded by Ms. Fernandes, that contingent upon the Board of Public Works selecting a person, the Board of Selectmen select one of our members to work with a selected member of the Board of Public Works and for the two of them to report back to these two boards at the next quarterly meeting on issues surrounding this property, namely the funding and the development of it.

Discussion – Mr. Mannix stated that it is Board of Public Works decision. They stated they would like an answer from Town Counsel. Mr. Rooney stated the purpose of the motion is that those two-designated people would come up with answers to these questions and report back to the boards. Find out from counsel and all the details surrounding this issue.

Vote: 5-0 in favor.

Board of Public Works - VOTE

Moved by Mr. Santos seconded by Gary to have someone from the Board of Public Works to work with the person from the Board of Selectmen to come up with answers to the questions and report back to the boards.

Vote: 4-0 in favor.

Moved by Mr. Rooney, second by Mrs. Fernandes, to appoint Derek DeBarge as representative for the Board to the two-person committee with the Board of Public Works designee.

Vote: 5-0 in favor.

Moved by Gary, second by Mr. Linton to appoint Steve Santos as Board of Public Works representative for the two-person committee with the Board of Selectmen.

Vote: 4-0 in favor.

Mr. Mannix asked the status of the other cemeteries in Town. Board of Public Works said that they have gotten prices to fix stones and such and now they know how much money is in the account they can move forward with progress. Mr. Santos noted that this new cemetery was their primary concern about the cost and now that they have numbers they know what they can spend on the other sites. They only are planning to develop the four acres because of money constraints, if they had unlimited funds they would develop the entire twenty acres and have that ready for future use of plots. The front piece was used first due to easier grade less cost to run water. The back section needs much more engineering, difficult grading etc.

Mr. Silva noted that the funds are restricted but that there must be a way to access them, perhaps Town Meeting or something. It can't possibly be permanently restricted. We can check with the Department of Revenue on the use restrictions.

Mr. Mannix asked about the Center Street Project, would it be done by? Mr. Linton stated that it is moving along but have hit a roadblock as far as land takings which will require a lot more money and he will turn that over to Steve Santos for explanation.

The original proposed land takings were estimated at 25 parcels, during the 75% upgrade there was an additional 68 parcels which comes under proposed easements, temporary easements and utility easements. They met with Ms. Shirley Shriver who stated that due to the Federal funding that even temporary easements which would be for grading, Erosion control and landscaping to get it to the road are, under Federal Guidelines, due for just compensation. This was not anticipated. It is 66,325 sf. The permanent easements are for guardrails and sidewalks and we are not sure where on the plan those are included. That is an additional 11,036 sf. The other one was the utility easements for poles / wires overhead. Either the Town can acquire them which would facilitate a faster change. That could delay the project because we cannot submit it until all easements are in place including the utility. The Town would own the easements of 27,175 sf. He cannot verify the square footage or dollar amounts because they are still in Beta for review. If the estimate of \$8.00 so is correct it will cost an additional \$675,000. Once they respond and we get an outside appraiser to appraise that we will not have an actual cost.

Mr. Rooney noted that prior to that information the amount that had been earmarked for takings was \$188,000. Mrs. Villano corrected that number to \$308,000 that was approved for the land takings. The possible extra costs would be about \$40,000 for the appraiser for 92 parcels. And it takes two appraisers, one appraiser and one to verify. In order to meet the August bid process, all of the land takings have to be done sealed signed and delivered in July and paid for. It is going to require more money; it could be an additional \$500,000 at Town Meeting. The Board may have to put it into a Special instead of the Annual so the money may be used earlier provided the project goes forward.

Ms. Fernandes noted that she is on a gaming committee and Boston seems to have changed their mind on the timing for money for infrastructure. Before they felt that you would have to wait for the impact of the built casino before they would entertain any requests for infrastructure funds. Now they realize towns and cities need money before or during to prepare for the impact of those changes. Towns can put in proposals for transportation type projects if they think this would fit with an impact. The only problem is that we would have to use up the original \$100,000 that we were given before we request additional money.

If we can prove that we are affected, we can apply for more money but only if that \$100,000 is used. Now maybe we want to consider using some of that money since Center Street is a possible corridor to the casino.

Ms. Villano stated that that was not her understanding of the \$100,000 use. That it must be used for something that is specific to a direct effect from the casino. We have been told on numerous occasions that this money must be specific to casino related. Mr. Silva asked how soon the appraisal would be coming in and have you hired anyone?

Mr. Haluch has some concerns, he is on the committee and this is the first he has seen any of these numbers. They fired their town engineer who influenced to come through with the project. Where is this whole thing going? Eventually there would be one person who would be in charge of the

project. Complaining about now having a Town Engineer. Mr. Mannix stated that issue is up to your Board.

Mr. Mannix wants to know tonight what is the timing and possible cost and what direction as to how we are handling things and how you are handling things. We have to work together all of us for the betterment of both boards and the Town. We need to come up with some answers or a direction.

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Mr. Silva asked again about the appraiser, Ms. Villano stated that they have a list but they cannot engage the appraiser until the environmental report is complete and released and that is supposed to be any time now. The environmental report, the 75% report must be filled out and then we can hire the appraiser. Within the next two weeks we will be going out to hire the appraiser and it may take a few months for them to complete the work and we may run out of time to get a dollar amount in order to go to town meeting. Appraisals completed by June 9th, and all the takings must be completed by the end of July with written offers of just compensation sent to owners no later than June 16th. All Board of Selectmen votes and compensation to owners finalized by July 17, 2017. Mr. Silva asked if we need to put an article in the Special Town Meeting for more money. Ms. Villano said yes we need to have the BPW submit an article but we don't have a dollar amount for that article. Ms. Villano noted the appraisers could give us a better number based on experience and that could get done within the next few weeks.

Mr. Santos asked if the Board of Public Works should sponsor the article or Board of Selectmen and Ms. Villano stated that the Board of Public Works should since it is their project and they sponsored the last articles.

Mr. Rooney asked if the Board needed to take action tonight to call for a Special within the Annual. Ms. Villano noted that yes, they could or do it at another meeting. There is normally a Special within the Annual so over the next few weeks she would be asking to call for a Special. This is new information that is more complex and the Board needed to be informed. Mr. Mannix thanked the Board of Public Works.

Board of Public Works Voted to adjourn their meeting.

Moved by Mr. Rooney seconded by Mr. Silva, to open the hearing for the Liquor License Violation for the Brookside Café at 8:20 p.m.

Vote: 5-0 in favor.

In attendance was Police Chief Madera, Mr. Mike Lafaver, owner of the Brookside Café. Mr. Mannix noted that the Chief sent two reports of violation at the Brookside. If you have any comments.

Mr. Lafaver stated that he had no comments but would answer any questions from the Board. Chief Madera stated that there were two complaints back on November 8, 2016 where there were individuals after hours that were found at the Brookside during compliance check. That particular incident resulted in a warning to the establishment that Mr. Lafaver did respond that night to the Brookside and it was made clear that they would have to adhere to the rules and regulations that apply to the closing of the establishment. On December 11, 2016, there was a second incident which is why this has come to a hearing before the Board. That incident was documented by Det. Irwin, who had stopped by at 2:03 a.m. was on patrol in the area of the Brookside and during his check observed approximately 10-15 people standing near the bar. He requested additional units, assisted by Officer Leaseman, and they entered the establishment. Upon entering they observed individuals still consuming alcohol. At that point they were cleared away, the patrons were asked to leave and notification was provided that this would be filed. Again, it would be up to the Board to review these facts and determine what consequences or restrictions would be placed on the Brookside as a result of these two incidents.

The second incident, the Chief does not know if this was a veteran bartended or not, that was not clear on the report but it is clear that there was two incidents in a row within a month. The Chief did note that he can't remember any incident within the last 15-20 years where the police have had to respond to the Brookside either inside or outside to resolve a problem. He was surprised at these two incidences happening within a month.

Mr. Lafaver stated that at the first incident he was told there was no violation so he is surprised this is even being talked about. The second incident was a new bartender, the first time she ever worked at the Brookside and unfortunately the last time she worked there. Although she was experienced, she knew when closing time was, and all he can say is she no longer works there anymore.

The Chief noted that Mr. Lafaver may not be aware that there is a violation in regards to people being on premises after hours that should not be there, that was the violation he was given a warning on. Not the actual consumption of alcohol but the presence of individuals beyond the hours.

Mr. Silva spoke about the times of the incidents, the first at 3:00 am. Mr. Rooney asked about the incident in November and Mr. Lafaver noted that all except one were employees. Mr. Rooney asked if Ms. Hebert was still in his employment. Mr. Lafaver stated that yes she was. Mr. Rooney read a portion of the December report that stated at the end of the investigation Mr. Lafaver terminated Ms. Hebert's employment at the Brookside Café on the spot. Is that not accurate? Mr. Lafaver said that is not accurate. Mr. Rooney asked if he recalled stating that to the officer. Mr. Lafaver said he did not say that at any time. Mr. Rooney noted that that employee is still an employee at the Brookside. Mr. Rooney asked Mr. Lafaver what he thinks the Brookside and its various employees did wrong. Do you think you did anything wrong?

Mr. Lafaver said absolutely, in December they were open after hours. Mr. Rooney asked if Ms. Maggert is no longer an employee at the Brookside Café. Mr. Lafaver stated that she was there and spoke to the police but she was not the one working. Mr. Rooney asked who the bartender was. Mr. Lafaver could not remember since she worked only one day. Mr. Rooney asked what was Ms. Maggert doing in the bar that evening? Mr. Lafaver said she was simply in the bar as a patron. Mr. Rooney asked again what did Brookside and its' employees do wrong with regard to these two incidents? Mr. Lafaver stated that obviously, they did not everyone out of the bar on time. Mr. Rooney asked anything else? Mr. Lafaver said that is what we are here for. Mr. Rooney noted that it was not only having people in the bar but you were serving liquor after hours. Mr. Lafaver said no, no one was served after hours, but people still had drinks.

Mr. Rooney asked if it is Mr. Lafaver's understanding that it is allowable to be consuming alcohol after 2:00 a.m.? Mr. Lafaver said he already agreed there was a violation that night. Mr. Rooney noted that he is trying to find out from you what the Brookside and the employees did incorrectly that night. Mr. Lafaver said that what they did incorrectly was they did not make sure that everything was not off the bar and the people were out of the bar. Mr. Rooney asked about both incidents. Mr. Lafaver noted that the first incident did not have any alcohol violations, just people in the bar. Mr. Rooney asked what steps Mr. Lafaver has taken since the November 8th or December 11th incident to insure the board that this is not going to happen again. Mr. Lafaver said absolutely. He spoke to all the employees and said everything has to be off the bar and all people out of the bar by closing time.

Mr. DeBarge asked if Mr. Lafaver was there either night. He said no. Mr. DeBarge said that is it fair to say Mr. Lafaver does not know if alcohol was served after the proper time, is that correct? Mr. Lafaver stated that he reviewed the security videos. Mr. DeBarge asked that Mr. Lafaver can't be 100% sure alcohol was not served. Mr. Lafaver stated that the security videos cover the entire bar. Mr. DeBarge asked if Mr. Lafaver would be surprised if Ms. Maggert, in the report, admitted she was one of the bartenders. Mr. Lafaver stated that yes, he would be surprised. Mr. DeBarge said that would surprise you? It is in the statement one of the officers took said that she was one of the bartenders. Mr. Lafaver noted that she is a bartender and may not have noted she was not the bartender working that night. Mr. DeBarge said that the Chief was surprised at the two incidents back to back. Mr. DeBarge said that he is surprised that with two incidents back to back that Mr. Lafaver would come in here with a defensive attitude toward this and not just coming with your hat in hand so to speak. Alcohol was served after hours, people there, there was some questionable activities going on past 2:00 to 3:00am. Some things that we could call question to I would say did you do enough to tell your employees and make sure that they go on the straight and narrow from now on. Depending on what happens with this are we going to have more incidents. Mr. Lafaver stated that he can assure the Board there would not be any more incidents. I have a security system I can view from my phone, if I am not there, I look to see who is there to make sure that things are being complied with. Mr. DeBarge – and this security system making sure no one had anything to drink after hours, it is pretty state of the art? OK I appreciate it. Mr. Rooney asked when the security system was put in place. Mr. Lafaver said about a year ago and he added another one after the incidents. Mr. Rooney asked if the old security system was needed to be replaced and Mr.

Lafaver stated he knew no one was served because of the security system may not be true. You had the security system you referenced at the time of these two incidents (yes) but you can't sit there and say...Mr. Lafaver said he wasn't using it, looking at it all the time but I am now. Mr. Rooney- so on Saturday evening into Sunday morning at 2:00 a.m. you are looking at that security system? Mr. Lafaver said yes I am.

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Mr. Mannix: Mr. Lafaver, I have to say that on liquor violations, I am the harshest on this Board. I do not accept them under any circumstances. I don't accept your nonchalant attitude or answers so far. I start taking that as something is wrong with your answers, I could not tell you what but I don't like them. I spent 32 years as a police officer in this Town. I went to many a bar after closing time I did not like that job or appreciate that job. It is a tough job for policemen every time they go to an establishment, they are put at risk, and I don't care what bar it is. On some of these situations you have people hiding inside not answering the door. That alone I would write you up immediately that alone would be enough for me to say suspend your license. If I am the officer checking the door, knocking with a response of reasonable excuses for a few minutes, being polite you might not even have a report or warning. If the police department had to go through that evening, is that the night you had to come down and open the door for them? (it was) and some of those people are still working for you? There shouldn't be a single person still working for you any longer. That is your business, your livelihood, if the police have to call you down there at 3:00 a.m. in the morning, shame on you. I don't want to be that police officer there. I have a great deal of fear of what might be happening when that door opens. I don't want to find out and all you are is making a bad situation worse. And a month later, 10-15 people after hours, they did not serve a single drink they were all bought at 1:59 a.m.; it is tough to go along with that. That number of people in an establishment that is closed when no one is supposed to be there, no one is supposed to be there except the worker. Not a bartender that works there, that you say is not working, even though as I read this report Ms. Maggert acknowledged the violation, took responsibility for the violation, it certainly sounds like she was working there. That quote, unquote from her and you sit there and tell me "oh no she was a worker that wasn't working, just sitting there" that is garbage. Maybe you like her, she is a good bartender, I don't care. 10-15 people, something else is going on, you as the owner gets called up to go down there. As an owner, I don't want to be called down there but I know I am going to be getting new help. As the Chief told you, violation after 2:00 a.m. there is not a person in the place, the bartender is there to lock up the door. If you are a bartender and it is not your night of work you have no business inside. Nicole not working, she has no business inside. I don't care who it is. To sit here and read the reports on how it happened and you sit here in front of me, this Board, you don't care. That is the attitude you are giving across, I am not saying it is your attitude, but that is definitely what I am reading out of you. And I think Mr. Rooney was inferring that too. I am not saying you have to come in here eating crow, I am not saying that. I am saying that something has to be done. Mr. Lafaver - I hope not because I do care, very much, it is my business and it is my livelihood and if you talk to the bartenders you would understand how hard I have been on them about this and the police are there to check us every night (do you blame them?) and we are in compliance every single night. And we will continue to be.

Mr. Mannix asked what happened the last weeks and months where things flowed smoothly and now. You say the police are there every night, good I hope they would be. As a courtesy, I used to go by the bars and put on the lights and circle the buildings giving the bartender the opportunity to say 'look the cops are here, everyone out' as a way of helping you out but they can't do that every night. But to hide in the building with people in the bathroom. Ms. Fernandes was surprised that the business has been there with no prior problems.

Mr. Lafaver stated he had owned the business for fifteen years with no problems or violations. My employees are very well trained, I am actually a certified TIPS instructor, my people are TIPS certified. We ID everybody and play by the rules. These were a couple of unfortunate circumstances and I can assure the Board that it will never happen again. I always been cooperative with the police, let them look at security videos, I have helped identify people and have always cooperated 100% with the police department.

Mr. Mannix said that one of the things that Mr. Lafaver has said through this is that it will not happen again and he tends to believe him. It means a lot to him.

Mr. Rooney said that one of the things that struck him when reading the report was that there was a substantial amount of manpower by the Ludlow Police Department used to respond to each of these incidents. It really isn't a good thing for the entire town. The Board has some discussion

about what may be perceived as your nonchalance; I have seen a lot of witnesses being questioned as well as my colleague (Mrs. Fernandes), it is not always what you say but how you say it that makes a difference to a jury or a finder of fact, so you should think about that, hopefully there won't be a next time.

Mr. Mannix commented that he would have no problem giving you (Mr. Lafaver) a three-day suspension, without a thought, but with my background and such. He said to the Board that he would support other avenues but anything less than a suspended sentence would be shameful. It is how I feel; the rest of the Board sometimes think a little different than I do.

Chief Madera asked that Mr. Lafaver notify in writing that his bartenders have been TIPS certified to assure that they are knowledgeable of what they are responsible for and perhaps that was the issue with an inexperienced bartender. This would insure that his personnel are well aware of what their responsibilities are and that comes with the TIPS training.

Moved by Mr. Rooney seconded Mr. Silva by that the Board impose a two-day loss of license, one of them being a weekend, night or day, and that we hold that for a period of one year. If during that year there are any further violations, then those two days would be imposed immediately. And at the end of the year if there are no violations then it would be dismissed. Mr. Rooney added to the motion that Mr. Lafaver provide to the Board the names of all the employees who are bartenders with documentation that they are all TIPS certified and provided no later than two weeks from today, it was seconded by Mr. Silva.

Vote: 4-1-0 in favor. Mr. DeBarge opposed.

Mr. Mannix asked if that was acceptable to Mr. Lafaver and he said yes he can accomplish that in two weeks. Mr. Mannix thanked Mr. Lafaver and hoped things would be better in the future.

Mr. Silva asked Chief Madera if that (written proof of TIPS) is something that the Town should be requiring. Chief Madera said that going forward it should be something they should have within the application process so that if the police department needed information on the license they would have it. Mr. Lafaver said that he became a TIPS instructor so he would not have to pay for classes every three years, also one other of his staff is a TIPS instructor.

Chief Madera noted that he has been working on an ordinance that will address and educate a lot of business owners on what the responsibilities are and once that is put together he will bring it before the Board for review.

Moved by Mr. Rooney seconded by Mr. Silva to close the hearing at 8:52 p.m.

Vote: 5-0 in favor.

1. Copies of the request to add the Stevens Senior Housing and the Ludlow Mill Housing to the Towns Chapter 40B Housing Inventory.

Mr. Mannix asked if this will add the units to increase our percentages. Ms. Villano stated that at the last meeting that there was a memo from the state regarding the 40B inventory and she noted that the last two projects were not included – the Stevens Memorial and Ludlow Mills that is under permit now and she asked the state to add this. We are at 2.2% and these would add an additional 1%. Provided the state approves both of these.

Moved by Mr. Rooney seconded by Ms. Fernandes to file.

Vote: 5-0 in favor.

2. Letter from Sgt. Shameklis, Safety Committee, recommending changes to the Town of Ludlow Traffic Rules and Orders, Schedule IV, a Stop Sign to be placed at the intersection of Center Street and Warsaw Avenue, westbound.

Moved by Mr. Rooney seconded by Ms. Fernandes for the Board to approve the recommendation from the Safety Committee and send notification to the Department of Public Works.

Vote: 5-0 in favor.

3. Annual Beano Report from the Ludlow Elks # 2448.

Moved by Mr. Rooney seconded by Ms. Fernandes to file item # 3.
Vote: 5-0 in favor.

4. Letter from Chief Babineau, Fire Department notifying the Board of \$100.00 donation from Cheryl Putnam in memory of Keith R. Hobbs, Sr. and \$100.00 donation from Robert and Patricia Sears made to the ambulance Grants and Gifts account.

Moved by Mr. Rooney seconded by Ms. Fernandes to accept the donations and send letters of thanks.

Vote: 5-0 in favor.

5. Letter from Ellen Allen, MSA President informing the Board that the Massachusetts Selectmen's Association, Annual Business Meeting will take place on Saturday, January 21, 2017 during the MMA Annual Meeting & Trade Show.

Moved by Mr. Rooney seconded by Ms. Fernandes to file item # 5.

Vote: 5-0 in favor.

6. Report from Police Chief Madera regarding the Crime Comparison report for 2015 and 2016.

Moved by Mr. Rooney seconded by Ms. Fernandes to file item # 6.

Vote: 5-0 in favor.

7. Letter from Lt. Brennan, Commander of the Ludlow Police Response Team informing the Board that the 2nd Annual Joshua D. Desforges Walk/Run Challenge will be held on Saturday, April 29, 2017. Ms. Villano noted that they are requesting permission to use Town property for the event.

Moved by Mr. Rooney seconded by Mr. DeBarge to grant any permission that is being requested by Lt. Brennan on behalf of this event held on April 29, 2017.

Vote: 5-0 in favor.

8. Request from Elizabeth Teixeira requesting a "Junk Collector's License" to open a second-hand store at 200 Center Street, Suite #8.

Moved by Mr. Rooney seconded by Mr. DeBarge to have Ms. Teixeira come in before the Board in regard to her request in item #8.

Vote: 5-0 in favor.

9. Letter from Neil Schofield, LSP Sovereign consulting Inc. notifying the Board of the availability of the Permanent Solutions Statement with No Conditions for Interstate 90 Westbound, Tractor Trailer Accident and Diesel Fuel Release, Ludlow Service Plaza, Mile Marker 55.7.

Moved by Mr. DeBarge seconded by Mr. Rooney to file item # 9.

Vote: 5-0 in favor.

10. Package from the Mass Gaming Commission regarding the 2017 Community Mitigation Fund Guidelines and applications on COMMBUYS. Ms. Villano noted that this correspondence is what Ms. Fernandes was inquiring about.

Moved by Mr. Rooney seconded by Mr. Silva to file item # 10.

Vote: 5-0 in favor.

11. Letter from John Diotalevi, President, Polish American Citizen's Club with an invitation for the Annual Installation Banquet being held on January 28, 2017. Mr. Edward "Bob" Siwicki will be presented the Citizen of the Year award.

Moved by Mr. Rooney seconded by Mr. Silva to file item #11.

Vote: 5-0 in favor.

12. Letter from Mr. Fred Pereira, Ambulance Abatement Committee requesting to abate ambulance service bills in the amount of \$50,212.56 as uncollectable.

Moved by Mr. Rooney seconded by Mr. Silva to abate the amount of \$50,212.56 from the Ambulance Abatement Fund as uncollectable.

Vote: 5-0 in favor.

13. Donation of \$1,628.37 for the repairs to the Whitney Park scoreboard from Dr. Steve McDaniels.

Moved by Mr. DeBarge seconded by Mr. Rooney for the Board to accept this donation of \$1,628.37 from Dr. McDaniels for the Whitney Park scoreboard with a letter of thanks to Dr. McDaniels and all others who helped.

Vote: 5-0 in favor.

14. Letter from Police Chief Madera requesting to charge off medical bills and lost wages to Chapter 41, Section 111F for injuries sustained by a Police Officer on January 10, 2017.

Moved by Mr. Rooney seconded by Mr. Silva for the Board to charge off various work or medical expenses to Chapter 41, Section 111F for an injured Officer as outlined in item # 14.

Vote: 5-0 in favor.

15. Letter from James Bartolomei, IBPO/NAGE Representative requesting that the Town of Ludlow and Ludlow Dispatchers commence negotiation.

Moved by Mr. Rooney seconded by Ms. Fernandes to file item # 12.

Vote: 5-0 in favor.

16. Letter from John Garcia for a Petition for a Zone change for 720 Chapin Street from Split Zoned to Business B to make the parcel one zone.

Moved by Mr. Rooney seconded by Mr. Silva for the Board to forward the petition for a Zone Change from item #16 to the Planning Board and put it on Town Meeting Warrant.

Vote: 5-0 in favor.

Mr. Mannix would like that in addition to the Board forwarding this on to Planning the Board should be kept informed about the time and details of the changes. Mr. Silva said that the Board must forward this along and then the Board would still have the opportunity later – at Town Meeting- to have a say on the issue. He feels the Board does not have the knowledge or expertise until the Planning Board hears this. Mr. Mannix noted we don't have to send this along and the Board does have some say and it's just not a rubber stamp. Mr. Silva asked Ms. Villano if the Board can reject this request without going before the Planning Board and she said that she would forward this along to Town Counsel. It is not as simple as a yes or no. The Board is the 'keeper' of the Warrant Articles so you have the right to put on or not put on any article on to the Warrant. This request would become an article and at that time the Board would have that option. She will ask Town Counsel about the process. Mr. Mannix noted some prior zone changes that he did not agree with. Mr. Rooney stated that he disagreed because there is a process, going before the Planning Board there is a Public Hearing that is held and unless the Board is prepared to do that and we have a Planning Board to already perform that. It makes no sense to weigh in yes or no prior to the process being completed. Mr. Rooney would be more in agreement on other articles that come before the Board and they decide if it should go before Town Meeting. Here we are not doing that, we are sending it to the Planning Board that is designed and set up to have a public hearing. Does the board want to function like the Planning Board and have the persons come in and have a Public Hearing with abutters?

Mr. Silva noted that zoning issues must be heard by the Planning Board.

Board to approve and sign the contract with the Town of Ludlow and Morais Concrete Service for the Riverwalk Project.

Moved by Mr. Rooney seconded by Mr. Silva to approve and sign the contract with Morais Concrete Service and the Town.

Vote: 5-0 in favor.

Moved by Mr. Rooney seconded by Mr. Silva for the Board to approve and sign the Selectmen minutes September 6, 2016 with all member's present.
Vote: 5-0 in favor.

Moved by Mr. Rooney seconded by Mr. Silva for the Board to approve and sign the Selectmen minutes for September 20, 2016 with all member's present.
Vote: 5-0 in favor.

Moved by Mr. DeBarge seconded by Mr. Silva for the Board to approve and sign the Selectmen minutes for July 19, 2016 with all members present except Mr. Rooney.
Vote: 4-0-1 in favor. Mr. Rooney abstained.

Moved by Mr. Rooney seconded by Mr. Silva for the Board to approve and Chairman to sign the Memorandum of Agreement By and Between the Commonwealth of Massachusetts Department of Conservation and Recreation and the Town of Ludlow for The Management and Operation of The John F. Thompson Memorial Pool, Ludlow, Massachusetts.
Vote: 5-0 in favor.

Moved by Mr. Rooney, second by Mr. Silva for the Board to approve and sign the contract between Berkshire Design Group and the Town for the design phase of the dog park.
Vote: 5-0 in favor.

Mr. Mannix asked Ms. Villano when the dog park would be started and she said that this is the design phase and once the design is done they hope to apply to the Stanton Foundation for the construction costs, so we are looking at the end of the summer '17, hoping to fast track it. She suggested to the Board to put together a 'Dog Park Committee' (Board member, Department of Public Works, Conservation, Planning and some citizens) take the design and get the construction done and further to take care of the maintenance on the park annually.

Moved by Mr. Rooney seconded by Mr. Silva to approve the extended liquor hours for Super Bowl Sunday, February 5, 2017.
Vote: 4-1-0 in favor. Mr. Mannix opposed.

Moved by Mr. Rooney seconded by Mr. Silva for the Board to sign Warrants and Abatements.
Vote: 5-0 in favor.

Mr. Mannix noted there is a special Selectmen's Meeting on Tuesday, January 21, 2017 at 6:30 p.m. Blue Cross /Blue Shield is coming in at 7:00 p.m. including changes in health insurance.

Mr. Silva commented on the issues of Department of Public Works. Many people have come to him regarding the issues like the firing of the engineer and disgruntled employees. It is an embarrassment.

Mr. Rooney noted that now that the door has been opened regarding the December 13th meeting which Mr. Rooney watched. It was an embarrassment. They are a duly elected board and he doesn't want to micro-manage on issues but it is how they go about their meetings. It has to stop. Given that he is about nine years on the Board, one of the things he would like to say is that he is proud of this Board, there may be disagreements but he has never left a meeting mad at one of his colleagues. There has to be an ability to disagree collegially and he really urges those members to take a look at that and see that type of behavior is not in the best interest of the Town. The Board of Selectmen have to strike a balance with the Department of Public Works being elected but that behavior is not best for the Town and I believe this is just the tip of the iceberg. Mr. Silva agrees they are an elected Board but when you get to the employee and labor issues with the Town bearing the consequences he would like to see this getting straightened out.

Mr. DeBarge used to go to the meetings as the liaison, it was funny to them how unorganized things were. And you have one that is 'romper room' with grown men overseeing important work, with large sums of money and oversees our roads. He is trying to keep his cool but he thinks it is time where we start looking at ways to do something about it as the Board of Selectmen and talking about taking a vote of 'no confidence' if it comes to that. If it does come to that, it is my understanding that we can do that, what ways we can show what ways we can delegate is the way the Board does best. To talk about things like the cemetery and the use of land for sports and the

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Department of Public Works acting like it was never even discussed. He doesn't understand it, but something needs to be done. If a vote of no confidence is what it takes then we need to do that.

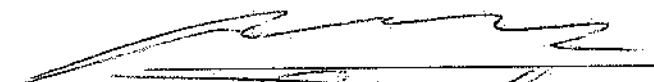
Mr. Rooney shares his frustration but we need to be careful about that because that would go into a recall and the Town does not have a recall provision in the charter and that is a serious road to go down. If he could suggest put that on the agenda for the next quarterly meeting and watch the meetings until then and it might give us something to discuss at the next meeting. It may resolve or get better if they know we are unhappy with what is going on there. Mr. DeBarge noted we have to do something, we can't be afraid to act. He completely agrees with Mr. Silva about being embarrassed and all they do is fight. People see what is happening and they come to us as the Board of Selectmen to handle it.


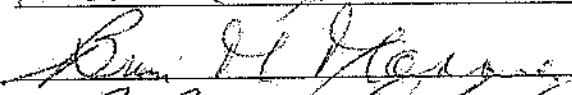
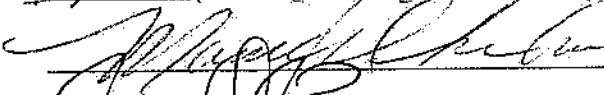
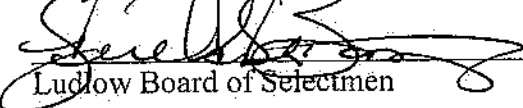
Ms. Fernandes suggested to put a couple of women on the Board of Public Works and that would handle that. Ms. Fernandes talked about how she is asked about how a five-member board is better than a mayor and having been on this Board and experiencing the different viewpoints from different members, especially tonight a perspective from other members who were police officers with regard to the liquor license hearing seeing it from the police perspective and safety.

Mr. Rooney noted procedurally, are we going to schedule a meeting with the Zoning Board of Appeals? Ms. Villano will contact Town Counsel but does the Board want just Zoning Board to come in for a discussion on the 24th or next meeting.

Mr. Rooney attended the swearing in of Nick Cocchi the new Sheriff, he is the only one who worked his way up through the ranks, he is from Ludlow and he is our neighbor and he would like to invite him in to meet with the Board and even include the invitation of the outgoing Sheriff. He deserves some recognition for all the work he has done for Ludlow and perhaps a citation.

Mr. Mannix thanked the Board of Public Works for coming in to inform the Board of what is happening. Mr. Mannix does not want to watch the Board of Public meetings because of what is being said and he knows most of them and they may not do the best job but they are doing it. Unless we talk about it, express it we can't solve any issues. He noted their responses were decent with us, not with each other but with us. He would rather talk with them initially until they tell him to go 'pound sand'.


Chairman





Ludlow Board of Selectmen

All related documents can be viewed at the Board of Selectmen's Office at Town Hall during regular business hours.