

April 27, 2017

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The meeting of the Board of Selectmen held on Tuesday, April 27, 2017 beginning at 5:00 p.m. with Executive Session for Contract negotiations followed by one at 5:30 p.m. for a disciplinary hearing in the Selectmen's Conference Room, Town Hall.

2017 SEP 14 11:31
TOWN OF LUDLOW

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

First order of business: The Pledge of Allegiance.

Correspondence

96. Verizon New England, Inc. and Western Massachusetts Electric Company d/b/a Eversource Energy petition for Joint Pole location, State Street, Verizon No. 4A0RU1H. The public hearing has been scheduled for May 2, 2017 at 5:30 p.m.

Moved by Mr. Silva seconded by Mr. Mannix to file item #96. Vote: 5-0 in favor.

97. Chief Mark Babineau, Fire Department informing the Board of his retirement of May 20, 2017 after thirty two years of service to the Town of Ludlow.

Mr. Silva Congratulations you have done a wonderful job.

Ms. Fernandes: You have done a terrific and you will be hard to replace and your replacement will be stepping into big shoes. Thank you very much.

Mr. Rooney: You came on eight years ago as Chief so for my entire time I have been on the Board you have been the Chief, you have continued to keep the department in very good hands and I appreciate the transparency. I have enjoyed the relationship and you have been a first class Fire Chief and you should be proud of the work that you have done. The Town is very fortunate for the service you have done.

Mr. Mannix: Thirty two years with the Town of Ludlow thank you very much.

Chief Babineau: It has been quite a journey. I have made a lot of great friends and got to do a lot of great things and as far as the department I have been the Department Head for the last eight and half years and it is not done without a great staff behind you from the officers to the fire fighters young and old and the people that came before me to lay the ground work for it, I just cannot say enough. This Board you have supported everything I brought in front of you and it has been a need not a want. I thank you, I am confident going forward that whoever gets the selection tonight will continue to make it better moving forward.

98. Chief Mark Babineau, Fire Department notifying the Board of \$50.00 donation made in memory of Carl Muir Langton to the Ambulance Grants and Gifts Account. Board to accept the donation.

Moved by Ms. Fernandes seconded Mr. Mannix that we accept the \$50.00 donation made in memory of Carl Muir Langton to the Ambulance Grants and Gifts account and send a letter of thanks to the family. Vote: 5-0 in favor.

99. Chief Mark Babineau, Fire Department notifying the Board the Ludlow Ambulance Service was designated by Ratell Funeral Home to receive a \$100.00 donation given by the Proprietors of the Springfield Cemetery to the Ambulance Grants and Gifts Account, Board to accept the donation.

Moved by Ms. Fernandes seconded by Mr. Mannix to accept the \$100.00 donation given by the Proprietors of the Springfield Cemetery to the Ambulance Grants and Gifts Account and send them a thank you letter. Vote: 5-0 in favor.

100. Donald E. Ashe, Hampden County Register of Deeds copy of the listing of 72 Master Deeds for Condominiums that have been filed since 2010.

Moved by Ms. Fernandes seconded by Mr. Mannix to file. Vote: 5-0 in favor.

101. Mary Cassidy, The Community Survival Center requesting permission to designate the Ludlow Town Hall Parking Lot as a drop off point for the 25th Annual National Association of Letter Carriers Food Drive on May 13, 2017.

Moved by Ms. Fernandes seconded by Mr. Mannix to authorize the Ludlow Town Hall Parking Lot as the drop off point for the 25th Annual National Association of Letters Carriers Food Drive on May 13, 2017. Vote: 5-0 in favor.

102. Joseph Freeman, Associate BETA Environmental Notification Form for the Reconstruction of Route 21 (Center Street) Ludlow. Comments on the ENF are due on May 9, 2017. Copy is available in the Selectmen Office.

Moved by Ms. Fernandes seconded by Mr. Mannix to file item #102. Vote: 5-0 in favor.

103. Common Victualler License Application for Two Roses Tea & Cupcake Co. to be located at 8 Chestnut Street, Ludlow, MA.

Moved by Ms. Fernandes seconded Mr. DeBarge to approve the Common Victualler License Application for Two Roses Tea & Cupcake Company. Vote: 5-0 in favor.

104. Massachusetts Selectmen's Association Regional Meeting is being held on Wednesday, May 24th 11:30 a.m., MMA Office, 1 Winthrop Sq., Boston, MA.

Moved by Ms. Fernandes seconded by Mr. Mannix to file item #104. Vote: 5-0 in favor.

105. Joseph Buckley, P.E. Chief Engineer, MSBA informing the Board that the Designer Selection, MSBA Panel meeting is scheduled for May 2, 2017 for the selection of the feasibility study designer for Chapin Street Elementary School.

Moved by Ms. Fernandes seconded by Mr. Mannix to file item #105. Vote: 5-0 in favor.

Ms. Villano the designer selection panel consist of thirteen individuals ten from the MSBA and three from the town.

Unfinished

Correspondence #88 from Mr. Beaulieu was tabled at the April 11, 2017 meeting. The Finance Committee has responded to the Mr. Beaulieu and the issues have been resolved.

Moved by Ms. Fernandes seconded by Mr. Silva to file. Vote: 5-0 in favor.

Correspondence #70 tabled from the April 11, 2017 meeting, the DPW Snow and Ice Removal Budget numbers as of April 18, 2017 and the total deficit balance is \$206,886.75. Chairman to approve the deficit spending.

Moved by Mr. Silva seconded Ms. Fernandes to declare a state of emergency and further to allow the deficit balance \$206,886.75. Vote: 5-0 in favor.

Updated FY2018 Capital Planning Budget letter.

Mr. DeBarge the update totals are four hundred and fifty three thousand and thirty dollars.

Moved by Mr. Silva seconded by Mr. Mannix to approve the amended letter from the Capital Planning Committee. Vote: 5-0 in favor.

Board to appoint Bill Rodrigues to the Dog Park Committee.

Moved by Mr. Silva seconded by Ms. Fernandes to appoint Bill Rodrigues to the Dog Park Committee. Vote: 5-0 in favor.

Board to appoint Michael Szlosek as the Municipal Hearing Officer.

Moved by Mr. Silva seconded by Mr. Mannix to appoint the Michael Szlosek as the Municipal Hearing Officer. Vote: 5-0 in favor.

Board to sign the Common Victualler License for Two Roses Tea & Cupcake Company if approved.

Board to approve and sign the Selectmen minutes of December 6, 2016.

Moved by Mr. DeBarge seconded by Mr. Silva to approve the Selectmen Minutes of December 6, 2016 with all members present except for Ms. Fernandes. Vote: 4-0-1 in favor, Ms. Fernandes abstained.

Board to approve and sign the Executive Session minutes of March 21, 2017.

Moved by Mr. DeBarge seconded by Ms. Fernandes. Vote: 5-0 in favor.

New Business

Board to appoint the Town Administrator as the CEO's designee to the Designer Selection panel for the proposed Chapin Street Elementary School as outlined in correspondence #105.

Mr. Silva: So moved seconded by Mr. Mannix.

Vote: 5-0 in favor.

Board to approve Annual Appointments

Moved by Mr. Silva seconded by Ms. Fernandes to appoint all the Annual Appointments.

Vote: 5-0 in favor.

Board to approve and sign the Annual Agreement with Gilles and Anne Turcotte for Animal Control.

Moved by Mr. Silva seconded by Mr. Mannix to approve the contract with the Animal Control.

Vote: 5-0 in favor.

Board to approve and sign mechanical amusement, billiard, Sunday entertainment licenses and Family Pawn Shop renewal.

Moved by Mr. Silva seconded by to approve the mechanical amusement, billiard, Sunday entertainment licenses and the Family Pawn Shop renewal.

Board to peruse the Executive Session minutes of April 11, 2017.

Board to peruse the Board of Selectmen minutes of January 24, 2017.

Visitations

6:30 p.m. Captain Ryan Pease – Fire Chief/Deputy Fire Chief Interview

Mr. Rooney: Captain you have been thru this drill before. So why don't we start it as we would normally do with you giving an introduction and then we will open it up to Board members and then allow you the final say.

My name is Ryan Pease Captain with the Fire Department currently working in Fire Prevention Office I have been there for about three years now and I have been on the Fire Department for a little over fifteen years going into my sixteenth year and a Paramedic also and I have lived in Ludlow most of my life I am thirty seven years old married and I have two kids and currently live in Belchertown, I just moved there in November and as you know I am here to interview for the office of the job of the Chief. I can do a good job with that.

Mr. Rooney: We will start with Mr. Mannix.

Mr. Mannix: First, I am going to make a comment on one of your letters of recommendation the one from Captain Prokop without going into detail I am very impressed by what he writes and what he says and how I read it. Not that anybody else think is any different than anyone else but certain things and phrases and wording that people say and do and everything else that sometimes I feel it brings out a little bit more and for what he puts down he gave me that little bit

more that I am looking for and I will say that with a small on my face. So big kudos in your corner I appreciate that and I see where you got out of high school that this was a career job and you have proved it to be that way. I only have one question that I am looking for answers for many different reasons you would become in a position of running the Fire Department, the town of Ludlow has somewhat of a residency requirement and when it comes to following the residency requirement and accepting that residency requirement. First do you believe we should have it and number two is are you able to fulfill and make sure the procedure of that is followed all the way thru.

Captain Pease: We have a residency requirement for new hires at the Fire Department and it is in there that they need to live in town for two years and yes should be followed. Is a tuff call because sometime people do have established families and are willing to move from the town, so I look at it as are you going to eliminate candidates that are very good candidates and because of certain circumstances you cannot move to town. We have a civil service requirement of living within ten miles of the town and that in of itself is a great requirement. The two year thing to add to the town and the Chief will tell you that hasn't happened sometimes and for whatever reason we would be excluding so instead of picking from an ocean of candidates you may shrink that candidate pool down to a puddle and by doing that, you are going to lose a lot of good candidates. And I think in the past we may have lost some candidates. I am a Ludlow boy thru and thru, I came from town I grew up in town and it is very important that you are from town but if you are taking a very highly qualified candidate and they are willing to fulfill the civil service requirement but unable to fulfill the town requirement I think that myself I would rather the more qualified candidate and I would ask that they move to town and we ask that every fire fighter move to town, but if they have an established family and kids in another school system and it may take some a little longer to move to town so be it. Ludlow is an attractive community and we love to see them come to town but I would hate to see us lose very qualified candidates because of that. Civil Service laws is ten miles and I would expect that everybody be held to that standard.

Mr. Mannix: We have appointed a number of firefighters in the last four years and that question has been asked of every single one of them, do they understand and do they realize that they have to move into town in one year and then once you moved into town you are required to live here for three.

Captain Pease: Ninety Nine percent of them absolutely.

Mr. Mannix: They all say yes and now if you were to take over the position of Chief and I came to you and said someone has not fulfilled their requirements.

Captain Pease: I would do everything in my power to make sure he could fulfill his requirements. If it was outside of the two year period, I would ask if he has a child in different school system that we give him a little more time, but yes we would like to see them move to town at the end of the day absolutely at least live in this town for a little while to be a Ludlow resident and of course that is important.

Mr. Silva: Ryan, congratulations by the way for making it to this position. What do you see is your biggest project that you have to be faced with once you get in as the Fire Chief and I know the Chief has some in the fire right now, so what is the biggest one you see.

Captain Pease: One of my first projects is to continue to follow thru with what he started. We are upgrading our radio system currently and I feel that is the biggest issue at hand right now because I see it as a safety issue there are parts of town right now that we have very poor radio communication and if there is an incident in that part of town we cannot talk to one another and people are in trouble and that comes with great consequences so that would be one of the major issues that we are facing right now, from safety stand point that I feel needs to done first of course we working with our Police and Fire dispatch and moving forward and definitely is something that I can continue with. The Chief also start to introduce some new station software we have used during our smoke detector program and I would like to follow thru with that and be expanded upon throughout the Fire Department for a lot of different issues and moving away from the paper and into the electronic ages I think the future for use in that respect.

Mr. Silva: Kind of a tough question. As far as moral what do you think your fellow firefighters think of you and is there a good moral and do they wish you well? What do you think they think of you as far as becoming a Fire Chief?

Captain Pease: I think they respect me, I have risen through the ranks I have almost held every position along the way we all get along it's not like we have seen any back stabbing going on in this process and almost everybody has wished me well along the way and I feel confident that I could lead this department into a great place.

Mr. Silva: Thank You.

Mr. DeBarge: Congratulations for making it this far. I am interested in one thing and that is your age and coupled with your leadership style I know, Mr. Silva kind of took where I was going with it and I know the moral and your side of the house and how good it is. I have received phone calls from retired Firefighters, active Firefighters on your behalf and being with the Police Department as long as I have I know how tight your side of the house is. That being said you stepping up into the position of Chief you may have to discipline whether they be new hires or even people that you have known for a while, do you find that situation may be difficult for you?

Captain Pease: Difficult is a strong word, I am here to do what is right from wrong if it has to be done it has to be done. In my job now in fire prevention I have go into people homes, I have to use code enforcement in business and people who I know friends of mine but we treat everyone the same, at the end of the day if someone needs to be disciplined they will be disciplined and friendship aside it is the way things have to be you're not going to be able to run a department cutting anybody favors or not disciplining people when there needs to be. I have learned a little bit about that in the past years because code enforcement is a difficult thing to do because you have to apply it evenly to everybody regardless of what they ask of you and sometimes people do ask you for favors and you lose a lot of integrity when that happens and if I was to treat people differently because they were my friends I would lose a lot of respect and my integrity would be gone.

Mr. DeBarge: Where reluctant with the test because of how young you are?

Captain Pease: I thought a lot about it and talked to my family my wife and my kids about it, it is a large responsibility and for a long period time. Sure it will be nice to say hey but there is pros and cons by being in there for potentially fifteen to twenty years there is a lot of things that I can start and see thru the end so I see that as a plus and I am here to give it my all and I am here for the long run.

Mr. DeBarge: Thanks Ryan.

Mr. Rooney: Congratulations on getting this far. When I looked at your packet I had a little bit of confusion on the transcripts as I see it you are a couple courses away from your BS at Springfield College but that was quite a while ago is that right?

Captain Pease: What I have been doing is that I got to a certain point at Springfield College but you can take up to sixty credits outside of Springfield College so I was taking classes at Springfield Community College just because they were obviously a lot cheaper per credit and I have talked to an advisor at Springfield so I can take these classes at STCC and transfer them over for when it is time to graduate hopefully sometime soon. Life got in the way like everything else and that was my intention there. I started taking more fire science courses a few of them to fill in as electives just because they were relevant to the job that I do know.

Mr. Rooney: Is it your intent to go and complete that degree.

Captain Pease: I promised my parents years ago that they spent a lot of money on school and for them I will see this thru. I have been through a lot of changes and that is no excuse and everyone has one and I haven't done it yet and I will.

Mr. Rooney: What things do think the Fire Department currently needs to improve on?

Captain Pease: That is a tough question Chief Babineau has been a very good, there is not a whole lot that I can think of, we mentioned the radios and I just think getting a communication system improved would be number one. Embracing the technology and moving forward and just continuing the Fire and EMS services that we do. We have been very good over the years on embracing all medical and anything new we have had state of the art medical equipment that you will not see in other places which has helped us deliver a much better service than other communities so we will continue to move that way.

Mr. Rooney: If you were to move five years or ten years out what major initiatives would you like to see thru completion other than the ones that you have already mentioned.

Captain Pease: Other than what we have already mentioned moving forward, I would like to see us expand our code compliance inspection services if you look around at other departments, well just Holyoke for example they have five or six inspectors that can go out and do more prevention in the community and pre-planning more buildings I am not saying that we need that many inspectors we can use firefighters. But moving forward I would like to see use develop our software by expanding into the preplanned area for more buildings and gathering more information about things and that would make us better to respond too.

Mr. Rooney: If you were to appointed Chief you would be making decisions affecting firefighters that have more experience than you that are currently on the department and including some that might have been some of your crew at some point how, do you see yourself begin able to do that given their greater experience than yours.

Captain Pease: You have to treat them like you would everyone else, but again maybe in a different way and it is all how you present issues too people and again I go back to the fire prevention and code compliance you have to tell people bad news but you want to leave them smiling at the end of the day and I think that the three years that I have been doing that has helped my try to explain things to people that you did something wrong we are going to do this again and if you do it will be consequences and again everybody has to be treated equally or you are going to lose everything or going to lose the reigns.

Mr. Rooney: What do see as let's say the overriding weakness area that you need to get better at as a member of the Fire Department?

Captain Pease: Yes, I have fifteen years on the job almost sixteen my experience you look at guys that have become Chief and they have been around a lot longer I will be the first to say I am not the smartest guy on the Fire Department there are other guys that are smarter in certain issues and we all have our strength and weaknesses but it would be my job to focus on their strengths and bring them up and learn from everybody.

Mr. Rooney: Can you give us an example where you had to show some leadership that might have not been overly popular or well received by one or more of your colleagues.

Captain Pease: I say at a Fire I run as a Safety Officer sometime some certain Firefighters will be getting closer and closer to the building and they want to be there to get closer and be closer to the action and there has been times recently at fires where you have to say you get back and stay here and do not move and you know that has happen several times and unusually in the heat of the moment people do not say anything back to you but afterwards I understand I was getting to close and at the end of the day you do not want to see anyone get hurt, so it's not always popular to not be in the action pulling them away from it when you're standing on the outside and you may not be looking at a wall that may be collapsing they are going to be happy because they have to back up. They do and they do it for a reason because safety is first.

Mr. Rooney: Chief anything you want to add.

Chief Babineau: I'll save my comments for both interviews.

Captain Pease: I appreciate having a seat at the table here and I look forward to serving you as the Chief.

Mr. Rooney: Thank you. Bring in Deputy Machado.

Deputy Machado: Good Evening.

Mr. Rooney: You have been thru this drill before so what we will do is have you make some opening comments and then we will open it up to questions on the Board and then allow you the last word.

Deputy Machado: Before we get started I would like to give a call out to the Chief here and thank him personally for his years of service throughout the years he has done a great job and either if it is me or Ryan who gets the job they are going to have big shoes to fill and I mean that literally, I have seen his issues but he has done a great job. My name is James Machado, Jim is fine I have been on the department for twenty eight years I believe in nineteen eighty nine your father was on the Board that originally appointed me as a firefighter so I appreciate his support there. I have been on the department for eighty two years and currently I am Provisional Deputy Chief I have worked my way up from Firefighter to Captain in 2009. I was promoted to Shift Officer, I ran B crew for a little over six years, I stepped forward when Deputy Crowley had to retire as Acting Deputy and that was in September 15 and I was appointed Provisional Deputy Chief June 5, 2016 and that is the position that I currently hold.

Mr. DeBarge: Congratulations, I know that the experience I have had across the hall from you guys the higher Chiefs and Captains and not to mention the personalities of all the privates and everything that side of the house and how do you handle those conflicts whether it be in front of everybody else during a fire or if you do have the opportunity to pull one or two aside how do you do that with alternating personalities.

Deputy Machado: Being there for the time I have it's not like it is a department of a hundred people you have thirty two people there and you experience a lot of things with these people you know what makes these people tick. My first belief is you have to get both sides of the story and make sure you have all the information and make sure you give it some time to process in your mind so you come out with the right decision but you have to do it respectfully you cannot do it in front of an audience if it is a fire scene you need to address it there is a job to be done and it needs to be addressed and at a fire scene right at the time is not the time to be doing it, you have time afterwards and that is how I would work it. I never want to put someone in the position of embarrassment that is not the way to do things.

Mr. Silva: As far as for projects. What do you see what you would like to challenge and get done and working well? Special Project.

Deputy Machado: First we are still kind of in the dark ages as far as paperwork, the Chief has progressed quite far with this but still there is a lot of paper we need to get into the computer age and make the place a little bit more efficient that would be one thing and I know the Chief and I have spoken about this and we need to progress and we need to get going on this and in the Department now there is Wifi and there is computers and it needs to be upgraded and that would help. It would help the Fire Inspector it would make the duties of the Captains more efficient and just the paperwork all together for me would be quit a more efficient. The next thing is training my pet peeve was always when I was a Shift Officer and when go to start training your crew and the bell rings and there goes your crew out the door and a lot of the time your training does not get done and if does not get done it may not be as efficient as you would want. I would like to get some kind of program going off duty and we have started that process and we try to do it once a month of duty training and we use do it many years ago and also sending people to the fire academy just refreshers, classes just really making it a point to emphasize on the training.

Mr. Silva: As far as morale what do you feel that the morale would be if you were to become Chief, do you see any issues or are most of the firefighters have one choice or the other.

Deputy Machado: I like to think that I have good support on the department to be Chief and I believe I have that. And again I do not want to take anything away from Ryan. We are friends and he would do anything for me and do a great job also.

Mr. Mannix: Seniority wise where do you stand on the department, not rank wise just seniority.

Mr. Machado: I believe I am three.

Mr. Mannix: The reason I ask you that is you are competing against a person that maybe has almost half the seniority that you have and I am curious on your respect to someone with half the seniority and not putting words in your mouth but as we all live our life half the knowledge, half the experience half of everything else, I am the greatest but we do walk around and talk to ourselves that way that is reality and you are in a position now and the thing that is going to be facing you and if it was to happen not that you can give me the answers that I think may be out there and there might not be any out there but you are going to have to come back into the department and work under that individual and you are going to have to work in front of everyone else and the feeling of everyone looking at you now. There is going to be the good bad and a difference through every department and I am sure there is a ton of people looking at you already because of the seniority that you have and how you lost a little already of the prestige and now you are going to have to fall in line. How do you feel about that how do you look at that what do you think your positive aspect of that are.

Deputy Machado: I try and leave my ego at the door, I really do. Ryan and I are tight, the whole department is a tight knit group unless you experienced it, it's incredible and it is what it is. There's guys that have taken the Captain exam and have not passed, taking the Captains exam and never gotten promoted it is just part of the processes everybody is just trying to better themselves and I know that Ryan would not look any different at me and again it's not like I'm going to go from Deputy Chief to the cleaner I would still be the Deputy Chief that still holds so weight and I do not think there would be any ill will there and I would not have any for me. I would welcome Ryan and support him every chance that I could. I would never undermine him, I would never do that.

Mr. Mannix: I would also say that you have a lot of reference from Captain Mol where do you find him I have not seen him in many years and I will pat you on the back for that and somehow you found him. He complemented you very well.

Deputy Machado: I worked under John for a very long time and he is a good man and I am telling you when the chips were down a lot of times in our department whether it be town meeting or whatever the occasion at a fire when that man stepped up it was everything is going to be okay and I have a lot of respect for him and he is a good man.

Mr. Mannix: You got a letter from a gentlemen from Westfield that is very nice he wrote and explained about you and family and everything else and those are the things I look for the unusual thing not the common everyday that you may go over and over again things that are more real life. My last question is the same one asked Mr. Pease. In town we have a residency requirement and the Fire Department has a resident requirement as you become Chief if that happens and one is how do you feel about that residency requirement for the Town how do you feel about upholding that and making sure it is followed thru.

Deputy Machado: There is a residency in the contract as far as the first three years and then after that it is ten miles from the border and again my personal view on it, if someone is here in the department and they are committed to the town if they live on the border Belchertown, Granby or bordering town of Ludlow that is not going to make their commitment to this town any less. They have families in the school systems wherever they are and is it a lot to ask them to move into town and I do not know if I really think that is fair. I myself live in town and my family has been in the town of Ludlow for probably ninety five years my father was born here, I have been married for twenty six years to my wife Pam and lived in the same house for twenty six years and as far as I am concerned this is where I am going to be.

Mr. Mannix: Is his golf game going to be as good as yours, or is yours going to be as good as his.

Deputy Machado: I do not like golf, so he has me beat.

Mr. Rooney: Should you be the Chief where do you see the direction of the Fire Department going in the next five or ten years what kind of initiative would you want to implement and see thru.

Deputy Machado: The first important thing you have to keep the hiring process and keep hiring qualified people that our committed to the department they are going to be committed to the

Town of Ludlow and committed to their craft. If we cannot do that than we are shooting ourselves in the foot and it is tough and you really need to do your due diligence when you are hiring folks and just make sure that they are committed to the department and committed to the town. I would rather have someone that maybe their skills may be lacking but they want to be on the department and they want to do the right thing and do a good job. That is very important to me. The next thing is purchasing equipment we have two engines one is a eighty nine and the other one is a ninety two so they will be going out of service pretty quick and we need some kind of long range plan at least and I know we lease know, but it would be very nice to get that money committed because we know after this lease is done we could just pick up and purchase a new equipment and pay the lease and just move on, so that is something. And again I mentioned it earlier about the training I would really like to set something up if we can get an agreement with the state as far as the MFA or something and just really get going on the training and keep the guys motivated. One other thing is I know there has been a lot of talk about dispatch and centralizing and that could work it is going to have to be thought out fairly thoroughly and in my opinion I sat on the rec with the Chief's committee and I knew that did not get the Chiefs support or the Towns support and it wouldn't have gotten my support and it is proceeding that way and it could work but it is going to take time and a lot of thought process for it to work.

Mr. Rooney: What would you say is the biggest area that you need to work on personally should you be the Fire Chief, let's say a weakness or an area of improvement that you need to work on?

Deputy Machado: I mention the same thing as an officer just time management it is hard I want to do a thorough job no matter what I do but when I find myself maybe just taking more time than I maybe should and maybe delegate a little bit more but for me the management and learning I have sat in a few meeting with the Chief and just look at the munis paperwork in looks like it will pretty in debt so with myself just management.

Mr. Rooney: Can you give us an example as a member of the Fire Department where you had to show leadership and that hasn't always been the most popular or perhaps well received by an individual colleague or group of colleagues.

Deputy Machado: Anytime you are in command you are making decisions and it can be the littlest thing just telling people do not do that, just try and run a scene and make sure it is safe and just calling folks back before you get into a situation you see as not being a good place to be in. It is just subtle little things as far as an example of the top of my head I really couldn't really pick one out.

Mr. Rooney: Any other questions for any other members?

Deputy Machado: I really appreciate your time and consideration for the job of Fire Chief and one thing for the guys that are watching here just a shout out to them they do a terrific job and there is not a day that does not go by that they don't make a positive impact on someone's life here in town and a lot times it is not an easy situation, so I would just like to say hey to that. Thank you.

Chief Babineau: We started down this journey quite a while ago, this process to get to this point to get to these individuals is new for the Fire Department and instead of doing the traditional written exam I approached this Board and with your support we did an Assessment Center. We had five eligible officers to take it. I'll paraphrase what the Town Administrator told me that after day two she approached the owner of the company that ran the assessment and wanted a sense of how it went and correct me if I am wrong and I think the words were a cut above that they rarely go into an organization and see all of the candidates just perform at a top level apparently it was very close and we don't get to see the scores and we get to see the rankings but they were all very close candidates. A couple of them that took it are very new officers they have been Captains less than two years and I think that votes very well for the future but they wanted the experience and again I think we have a great pool going forward here after this tonight. As far as the new candidates here I have had the pleasure of working Jim my entire career for his twenty eight years and with Captain Pease both are incredibly respected in the department with Captain Machado was always involved and served and one of his biggest accomplishments was serving on an apparatus purchasing committee, he was involved in the purchase of our tower, engines, ambulances and when he says he is very thoroughly with that

stuff and he is always involved with that type of activity as a Shift Officer it certainly commanded the respect of the people that worked under him he has had the same crew for six plus years and again would an outstanding job. Ryan Pease from the day that he started you saw that there was something in him very early in his career he was involved with the social club and I believe he was president for a year or two was a union leader for a number of years and that is a very difficult position, I myself did that and since he has been promoted to Captain and has done the job of Fire Prevention which is very difficult all of them I have talked to everyone that participated in this and all of them have the upmost respect for each other, there was not backstabbing going on, I would work for anyone of them. So as I sit here tonight this is the best of what I get to do and the worst of what I get to do is to make a recommendation to you. Certainly any promotions hiring's I have toiled over this you have two great individuals, competent individuals and a couple of factors are going to go into my recommendation and one is certainly the assessment center I think that gives us a much better look at the candidate and is not just studying books and take a written exam it is scenario based and they need to perform and respond it is about communication just look at a different aspects. Again this is very difficult but as I sit here I would recommend to this Board that Captain Ryan Pease be made Fire Chief and that Provisional Deputy Machado be named permanent Deputy Fire Chief.

Mr. Rooney: Questions comments from Board members?

Mr. Mannix: I just have a couple of comments and I would just like to say from the beginning I had no problem with the assessment testing for the Fire Chief in itself, but I did not support the assessment testing for Deputy Chief and as the Assessment came out as we sit here today I just have a few mind boggling questions just for myself. You have five great candidates and we have five people there and all of a sudden the job comes up for Fire Chief and nobody wants the job except for two guys and all of a sudden the job comes up for Deputy Fire Chief and nobody wants the job except one guy. I have not understood that yet we spent ten thousand dollars to have a test that nobody wanted the job, I could have had Civil Service do the test no reflection on anybody and it would have cost the town nothing and you got somebody to the job. All I am going to do now is understand how this Assessment worked out so great the testing in itself might have, I do not know who would have come out number one under the old system but for the Chiefs job I did not have a problem with the Assessment Center but for the Deputy Chief I did and now I am sitting her tonight almost left without a decision on a candidate I got one candidate for one job the other job and for some reason there is no one else here tonight. As an appointing authority and a member of the Board I am astounded by the fact that for some reason we have great people but nobody wants the job and I do not understand and I am ready to make appointments I do not have a problem with that and I would just like to say that.

Chief Babineau: In response to that whether it was a written exam and where the rules are to have four sign up there is probably instances and I do not believe so in our department where four people sign up and you do not even need to go take it to make that happen and the same thing would have happened. Let's say these five candidates took the written exam and they all passed it what it comes down to is signing the certification and do I really want it to explain the three that you did not see tonight again our outstanding candidates two of them our very young and have less experience than Ryan and they do not feel that they are ready, they wanted to participate in this because I believe they will be in the future part of this process going forward and the fifth candidate due to personal situations in his life at this time and I am sure you will see him in the future also. I can tell you with Civil Service that latest word that we have is other than entry level, Police Sergeant and Fire Lieutenant which we do not have Fire Lieutenants everything is going to have go thru Assessment Center in the future and I believe this is the way of the future and I believe it gives you a much better look at the candidates the rankings whether it is written or assessment this is the rankings and those are the people that came in to sign the certification for it.

Mr. Rooney: I think I heard you right when you said that there were a number of factors going into your decision you talked about the Assessment Center were there other factors or other things than the results of the Assessment Center that lead you to your decision.

Chief Babineau: I reached out to a couple Fire Chiefs, two were active and I have good relationships with and both supported what I just told you based on information on the candidates. I reached out to a couple of retired members in our department and got some input from them and again either way I think this is a win, win, but I think that if Jim were to get it, it's

not long term and I do not think it would be a ten year career if you were to get that job now and with Ryan it is long term and we have some very long term projects coming up. I need a dispatch and that will take some time to finally transition it the radio system and some other things that were mentioned, so again it is very difficult for me to sit here and pick one over the other. Ryan Pease throughout his career and its fifteen years as he said he has taken on every possible roll that he could from social club, union to safety officer and his role in fire prevention and he has done a tremendous job. The feedback that I get from not only the officials that deal with him and the public Ryan certainly has the skills.

Mr. Rooney: I just want to be clear in terms of the assessment center it is my understanding that the results of the assessment center number one would be Ryan Pease number two was Jim Machado.

Chief Babineau: Correct. On the Fire Chief Assessment Center yes that is the ranking for the Fire Chief.

Mr. Rooney: Certainly what you are seeing here you used the term this is the best of the department and I could certainly go either way, to be honest with you. Whatever good things you say about one you could say about the other I think in some respect we blessed and fortunate who have that situation that I truly believe we cannot go wrong selecting either one. But obviously we have to make a decision and at least in my mind I am a firm believer in the assessment center I think it is certainly the way of the future as you talked about getting away from a straight standard test and we as Town based on your recommendation implement the assessment center than I think given everything else that we have seen then we should be going by the results of the assessment center barring some unusual circumstances and I do not think in this particular case we have two incredible qualified candidates but given that we have to make a decision I think it makes sense to follow the results of the assessment center and I certainly would agree with you on your recommendation and with that I certainly will entertain a motion.

Mr. Mannix: I make a motion that we appoint Ryan Pease to the Fire Chief for the Town of Ludlow requisition number #03957 with the effective date of May 21, 2017 for the Town of Ludlow.

Mr. DeBarge: Second.

Mr. Silva: I am a firm believer in the Assessment Center as well but I am also a stickler for loyalty and longevity and I have to commend Mr. Machado for being here the years that he has served and if were not for the assessment center making Ryan first I would definitely go with Mr. Machado just because of that. I just wanted to say that it is an important thing for me to be here all those years.

Mr. Rooney: Any other discussion on the motion. Vote: 4-0 all in favor. I'll entertain a second motion. Your recommendation for the second position would be?

Chief Babineau: James Machado.

Mr. DeBarge: I make a motion that we move to appoint Mr. James Machado to the Deputy Fire Chief with the position number #03958 Deputy Fire Chief effective on April 28, 2017.

Mr. Mannix: Second. Vote: 4-0 all in favor.

Chief Babineau: I approached this Board with this idea and to move this forward in December of 2015 with my hope that you would have had this done by the end of the year, by end of 2016 and would have certainly provided a much longer period to mentor and show where all the hidden keys are and now we are three weeks to go and that is just a note for the future that when we are faced with that whether it be Police or Fire I firmly believe in a succession plan and mentoring in Police or Fire that you just take note of that and that I firmly believe in mentoring for a much smoother transition which we are going to have but it would have been a little easier if this Chief was sitting and involved in the budget and working on it just a note for the future. Once again thank you all very much for your support I have enjoyed my career and look forward to moving on to the next phase of my life.

7:30 p.m. Attorney Hill, Housing

Mr. Rooney: Some time ago it was the action of this Board to retain your services to review the 40B application that was submitted by HAPP Housing that now changed their name to Wayfinders and that is relative to 188 Fuller Street. We have had some discussion on the phone and based where we are in this process it made sense to bring you in and give us a sense of where we are.

Attorney Hill: I spent about ten to fifteen hours reviewing the application and the site, so I did a thorough review of application. I will explain how the process works and what the obligations are of the Zoning Board and other boards in town, what the towns options are in terms of dealing with this application and what the Zoning Boards options are and understanding what your role could be as the Board of Selectmen and in the interest of the town versus what the role of the Zoning Board is which has to be an impartial neutral objective entity. The first issue that I look at with any 40B project are the jurisdictional issues and there are three, the developer has to have an interest in the property they have to own the property also they have to have an interest I the property and own the property this property has a clean title and there are not restrictions no access issues there are no title clouds the back title comes from estates and they were probated correctly and this is registered land so the title is fine. This property is owned by Haphousing and they have a clean title there are no restrictions no title clouds, this is registered land which means there is an added level of scrutiny by the land court so the title is fine. The applicant has to qualify as a non-profit organization or a limited organization, this developer is a non-profit and they structuring this as a tax credit project and there will be a limited organization that will be setup to run the project and they qualify there is no question here as a non-profit developer typically they are in it for the right reasons they are charitable so the typical 40B. Third and final is that the project be funded by subsidy program so every 40B project has to be a subsidized housing project and in this case they are proposing to be receive subsidy in the form of tax credits and they have a letter from Department of Housing and Community Development approving the project preliminarily so they passed that test as well. Under 40B there are thresholds so a town that reaches ten percent of affordable housing you have satisfied your obligations and Ludlow is not close to that. So what matters is how close you are to the ten percent threshold so since you are not very close at all you re at 2.2 percent so you do not have that jurisdictional defense. So moving on the fundamental the purpose of Zoning Board is to consider the local concerns and the need for housing and local concerns are the type of impacts that the project might have impacts on the community the neighborhood and weighing those against the benefit of the housing project and in doing so the main function of the Zoning Board is to decide whether or not to waive bylaws, because if you did not need waivers you would not need 40B and the whole purpose of 40B is to let developers come in and do projects that do not comply with your bylaw, zoning bylaws your dimensional requirements, set back requirements those are the big ones here and you also have wet lands bylaws so they are asking for a waiver and any other bylaw that may apply. So the main function of the Zoning Board is to consider, evaluate whether or not to waive bylaws and a lot times it is not just waiving yes or no it is deciding whether they can waive it to a certain extent. The Zoning Board has the ability and it is their responsibility to consider each waiver request and decide whether or not they are justified to make the project work economically and then decide whether or not there is any adverse impacts and decide waivers. I look to see what kind of impacts are arising from projects so I look at the environmental effects this project is on five acres it is adjacent to a wetland and a stream system the property to the north is owned by the town. The storm water system for the project is well conceived but that is something that I would recommend that the Zoning Board get some peer review that is very common with 40B application and it is common with subdivision applications for a Zoning Board or a Planning Board to hire an independent engineering firm to make sure that the various design elements are done correctly so that the storm water system is designed correctly. Storm water design is all about predicted modeling and what is going to happen when we have a storm event with five inches of rain where will we collect the water how will infiltrated into the ground or distributed across the site or into the stream so they use computer models and it is important to have technical people that have that knowledge and expertise to review what the developer is proposing so you have the comfort level that things will work. So my first recommendation is that the Zoning Board retain a civil engineering firm to review all the civil design aspects of the project and water would be the most important, but looking at the utility connection the connection to the sewer looking at the road how it will be constructed and to that end I would turn to the Planning Board subdivision regulations this project is laid out closely to a subdivision it's a long dead end road and you have

buildings along the road. What I recommend to Zoning Board is that you look at your equivalent regulations typically with the subdivisions and see how this project compares to comply with those standards. So my first recommendation is to make sure you have the right consultants hired to vet the project thoroughly on all these design elements. The second part of my memo talks about the process in the way the Zoning Board reviews the waivers and then gets to how they can waive waivers versus the housing need. On the traffic issue I know that is a concern with this Board, the proximity to the elementary school it is at an intersection there is already a lot of commuting traffic in the area so I know the developer in this case did prepare and submit a traffic study so that is something that should be reviewed by the zoning board and by a traffic peer review engineering firm the same way a civil engineering would review storm water and design issues a traffic engineering firm can be brought in to review the traffic study and again this is important to have a peer a review and make sure that the right inputs were used the right assumptions were made that went into their model so that you have comfort in what they are saying is accurate or reasonable. Myself not being an engineer and looking at the site and looking at the plans and the traffic study I did not see any problems, concerns there may be things that the Zoning Board may want to ask for crosswalks, sidewalks to mitigate the risk of pedestrian conflicts with cars but there are no glaring problems it is an intersection that is not congested it is not densely populated it is a rural section of town. I did not see any major concerns on the traffic level and again I would recommend that it be peer reviewed.

Mr. Rooney: When you talk about peer review what is the process and who pays for the peer review.

Attorney Hill: The applicant should always pay for the peer review and there is a statute that allows boards to assess the cost and put that money on a segregated account it is called a 53G account and the Zoning Board can select the consultants. The applicant may protest the selection of a consultant if they see that there is a conflict of interest or the consultant is not adequately qualified.

Ms. Fernandes: With regards to the peer reviews, once it is conducted does that expert determination trump Happs findings or does that get appealed.

Attorney Hill: I would think of it this way it is evidence that the Zoning Board weighs in, so really the purpose of the public hearing is to collect the evidence that the hearing is the collect evidence peer review experts from consultants, developers from the general public from Town Officials and then it is their job to act like a jury to weigh all the evidence and decide on how to proceed.

Ms. Fernandes: Let's say the Zoning Board decides one way or the other based on information provided by the peer review professionals and they go to the state what happens with those findings.

Attorney Hill: If the Zoning Board issues a decision that they do not like and they go to the state and there is a traffic peer review and they say no way and the Zoning Board denies the project based on that recommendation the developer can appeal that to the state with an appeal committee that is an agency under the umbrella under DHCD and that basically is like a trial, an administrative hearing and the Board would have to defend the decision by having its expert take the stand to testify. Happs would have its expert testify and then that agency steps in the shoes of the Zoning Board and would make the final decision.

Ms. Fernandes: Is not where you would get another peer review person.

Attorney Hill: No there wouldn't be another one, you would just use the one that you have used an historically the Housing Appeal Committee is very slanted in favor of developers so I do not feel I need to be confined by saying that it is the truth so that is why it is very important if you got a major safety environmental issue that you are going to use to possibly deny a project it is very important that evidence that you have collected is solid and bullet proof and you have a good expert to make that argument. So probably the biggest impact that I see with this project is on the direct abutters on Chapin Street particularly the proposal to put this road right up against their property line if you see the plan the buildings are set back twenty five feet there are dumpsters proposed up to twenty feet from the property lines the construction of the buildings and the roads being so close to the property the exaction could have an impact on the trees on the

abutting properties. So I felt that it was offensive to put these buildings up against the abutters so I think there may be an opportunity for the Zoning Board perhaps push back or suggest that redesign that and push things away from the abutters perhaps require the developer to include a dense screen of vegetation or fencing along that side to protect the abutters. This is a narrow lot and on the other side it is wetlands so I think that is why the developer had to push the road so close but that is something that I saw not an ideal layout or configuration.

Mr. Rooney: Not ideal but not enough to be used as a way stop them.

Attorney Hill: That is a judgment call for the Zoning Board to make. I have seen Zoning Boards exercise some discretion and say this is too dense and everything is close and your project has to be smaller and you have to push things away. Whether or not that would be held on an appeal probably not. If they feel strongly about that issue sometimes it is important for the Boards to make a decision that they know they won't succeed on an appeal but it is the right decision to make so that could be something that they could consider doing. Moving to the economics the burden of proof or the way the process works the Zoning Board is charged with weighing the local concerns against the housing need it's charged with deciding whether or not to grant waivers from bylaws and the developer has a legal argument to make, if you do waive these bylaws that I need then this project is uneconomical. In order for us to provide all this affordable housing and in order to do a project like this I need these waivers so if your Board is denying these waivers it makes my project uneconomical so that is the essential balancing test with 40B. So in this case what the Zoning Board would do if it finds that, perhaps it does not like forty three units or it thinks the project is too dense and things are too close to a property line and there is a traffic issue and it wants to consider denying a waiver or allowing a waiver or not to the extent the developers ask for. It can purpose these conditions and waiver denials to the developer or then has the chance or the opportunity to make an economic argument to the Zoning Board and this is all laid out in the Chapter 40B regulations and it is what I would recommend the Zoning Board to do and this usually happens at the end of the hearing after we have collected all the evidence and the experts review the project and you have all this testimony and now that is the time to decide how much are we going to allow here are we going to allow everything are going to give the developer everything or are we going to cut back a little bit and that is where the analysis comes into to play. So what the Zoning Board can do is ask the developer to provide a pro forma budget showing the impact of certain conditions and certain waiver denials and on the economics of the projects and then the Zoning Board can have all the peer reviews by a another consultant that is proficient in real estate financing and project economics and that way the Board can get a sense if we do proceed with these conditions is that going to be further for an appeal if the they take it to the HAC what are the chances of us losing, so that is why the Zoning Board would have a peer review and you would look at them and give them the advice. And even if the advice is and this is going to make the project economical the Zoning Board can still impose conditions because it can still deny waivers but it may have a harder time on an appeal and it would really have to justify those decision based on the impacts the local concerns the safety concerns, the health concerns the environmental concerns and it is possible you could still succeed and prevail on an appeal if you have real impacts issues that outweigh the housing need, even if those decision make the project uneconomical. The Zoning Board can still prevail. The Zoning Board can still approve a project with conditions and it can approve a project by reducing the density or making the road smaller or something like that and that will be the test on an appeal. Is it economic and if it is non-economic then the Boards decision is being upheld an if it is non-economic the Board can still prevail if it shows that all the reasons for the decision outweigh the need for housing and the reasons were that is this to impactful for the town and we have to have these conditions because that is the right thing to do and these are important considerations. So it is not an easy task and this is a very daunting task for a Zoning Board typically they are not reviewed by the Planning Boards not Zoning Boards I do not know kind of history Ludlow has with 40B if the zoning board has heard applications like this before it is good for Zoning Boards to have as much advice as they can get sometimes zoning boards hire special council and it is important to have the advice from the peer review experts early and often.

Mr. Silva: In reviewing what you have said it does not seem like this Board has much to do other than work with the Zoning Board appeals and get them to do some of the recommendations that you have so we should submit this to them and there are some recommendation that we should take under advisement and there isn't much that we can do any further other than what we have done we have proposed that we do not want this project and we do not think it is a good

location we hired you and we have done everything that we could possible do and now it is at the hands of the Zoning Board of Appeals.

Attorney Hill: If there is something in this project that I thought was really detrimental, if I thought that there was something that was a fatal flaw and environmental issue, traffic issue that was my job to point those things out. I do not see that here I still think it should be reviewed by engineers who have qualifications that I do not have, but I do not see fatal, I do see legal issues that you could use to make this project smaller to put it somewhere else in terms of your jurisdiction you do not have a formal role in 40B you have already done something significant by hiring me to give you this advice you can have me attend the Zoning Board meetings your role is to protect the Town and however you see fit to do that is your prerogative.

Ms. Fernandes: In your experience have you seen many cases being won, seeing these peer opinions and how successful have towns been.

Attorney Hill: It really depends on how prepared the applicants are, where towns have been successful to beat back a project it has been situations mostly where developers were not that well prepared and not that sophisticated and they did not do their own due diligence they did not check their boxes. I do not think this one of those cases this developer is very sophisticated and knows exactly what they are doing and that being said and I find title problems and we do when cases from time to time the deck is stacked against the town, very rarely you are able to push back on these kind of dense projects but every now and then there issues that you can change the project to make it smaller.

Mr. Mannix: The question that I have is that we have a project coming in here and we are talking low income housing and realistically it will have a good number of children the common sense of a green area and play area for children and what they are doing, I do not find it very logical but the same token what are the chances of getting it moved out of there which may mean less housing or moving a greater distance there has to be a concern for the people living there as well as your neighbor. Environmentally they are killing the environment and they can tell you it is not going affect the trees but the same token as others look at that and review these things as much of that taken in to concern as I would like to see taken into concern.

Attorney Hill: The lack of open space can be an issue but the way this project has been setup the road is close to the abutters on Chapin and the buildings are on the other side of the road and it proposed to be a natural state, so there would be woods there may be some lawn. This is not the densest project that I have seen but it is definitely urban in Ludlow you are used to rural agricultural and you are not use to the urban environment but that alone is not a legal argument. The state will say that is the whole point of 40B. The whole point is to allow 40B for a much greater density that what is allowed under zoning to make these projects work economically, because otherwise they would not get built.

Mr. Mannix: If you broke it down into thirty seven units you could have an environment for the people living there and the children will have an area to grow, play and expand in without running seventy five feet into a wetland area.

Attorney Hill: It is the nature of the housing, there is not much open space.

Mr. DeBarge: There are some very passionate abutters that have gone to meetings and have gone to the other units in Amherst to see some of the other projects and have gone to present some it to Way Finders just great people that have taken their time to write down a lot of great information about lights that will be shining in their windows because this place will be below their homes and things like that and what we see when this is brought up we see the people from HAPP just look away and not pay attention and it seems to us they believe it is just done anyway and it is a done deal and it gets frustrating and I am speaking for myself and not all of us. What I would like to know is the further we go it is appearing that this area is so small and the safety and the fact that there is no secondary egress and fire apparatus couldn't even get around the cul-de-sac and Fire Chief said he could get his apparatus out, this are being so small have you seen smaller ones then this pass with less than what we have or should I say worst off than what we have.

Attorney Hill: I have seen much denser projects and every town is different. I have three projects in Brookline that I am working on and Brookline is an urban environment already, but still you can take Brookline and turn it into New York City and that is what they are doing with 40B's Brookline, it is a different perspective but the abutters to a 40B in Brookline. So yes there is much worse than this and the only leverage that you could have is if you had an issue like traffic like a dead end and those are issue where you could force changes to a design and that is where the engineers and the peer reviewers come into play. The ZBA could say that forty three units is too much for this five acres we are not use to this in Ludlow people need space why don't you think about doing twenty and then they put the burden on the developer. There is no market rate units to subsidize the affordable they are doing a tax credit project and it may be possible for them to do a lower density project. They could potentially scale it back without having a major impact on their ability to get the subsidy they need to make a project work.

Mr. DeBarge: You have consistently said this is not about 40B at all, this is about the area and the other thing that our master plan had no effect on this or the fact that we had one.

Mr. Rooney: In a community that has a master plan in place does that present any opportunity.

Attorney Hill: A town that has a good vibrant master plan and that provides for affordable housing in other parts of the town in perhaps a smart growth area, for a town that has that kind of plan that could be used, you could say that the project is inconsistent with the master plan it is in the wrong location those defense do not succeed that often, they would succeed where you have affordable housing plan and Ludlow does not have one and if you had a track record of being proactive to provide for new affordable housing projects then that would help you in that argument.

Ms. Fernandes: The fact that this type of project and the density of it just does not fit in the makeup of this town and the fact that a Happ representative choose Ludlow because of its charm and its space that argument, the fact that it is so dense and its apartments versus single families or condos.

Attorney Hill: That alone is not going to carry any weight.

Ms. Fernandes: How about the fact that we have suggested that they relocate to a better area.

Attorney Hill: It is their application and they are entitled to a vote on their application. You can try to convince them offline and in private conversations and in public conversations you can meet with Happ and say here is a parcel of land that we happen to control and maybe you have town land that is a lot more sensible location. Anything is possible but for this specific application there is nothing we can do along those lines to use it as a defense with the Zoning Board.

Ms. Fernandes: What is the goal of a non-profit, I know the goal of a private party is to get a return on your investment. But what is the goal of the non-profit is it to get as many units as possible in this space that are able to buy.

Attorney Hill: My understanding of this organization is that they are very active in Springfield and neighboring communities they have truly charitable purpose. They believe it is their mission to increase housing opportunities for people who cannot afford houses in Ludlow and other communities and so they do not have a profit incentive but they are driven by this mission of creating housing opportunities anywhere that they can.

Ms. Fernandes: One of the things that really bother me was that they wanted to integrate and I voice how this project seems to do the complete opposite rather than integrate it puts a big focus on the low income.

Attorney Hill: A lot of affordable housing that we see only a percentage of the units are affordable and the other is fair market rate and it avoids a stigma effect of having this development is low housing development and we have seen stigmas associated with those projects and the trend has been to go away from that. HUD does not build housing projects that stopped in the eighties and the trends is away from the traditional housing project the trend is more scatter it so people are more integrated into the community. This project is one hundred

percent affordable and a lot of this is going to be deep low income and we may think that is not public policy I tend to agree with that and unfortunately the Zoning Board can't make a decision based upon that kind of feeling or our feelings that is something that is outside of the towns ability to regulate under 40B that is considered a programmatic element under the project that a developer can do whatever he wants as long as the developer subsidizing it agrees with it then there is nothing that we can do to change that part of the project. We cannot say to the developer everything is fine but we want to of this buildings to be market rate and two to be affordable we cannot make that call.

Mr. Rooney: In terms of the public hearing we have had two sessions does the public hearing stay open until all peer reviews are done.

Attorney Hill: It is the Zoning Boards judgment on how to conduct its own hearing, the ZBA has a deadline imposed by the regulations that they have to close the hearing within six months of opening it so if they do not do that the developer could make an argument that the project is constructively approved and if the Zoning Board disagrees then they can go to the HAC and get relief. In most cases the Zoning Board has to stick to the six month deadline so the Zoning Board has to control the deadline to make sure it all gets done in time and that they save enough time to digest everything evaluate and deliberate.

Mr. Rooney: What is the average length of time of peer review, obviously it depends on how many different things like traffic environmental storm water whatever, economics but is there some kind of ballpark of how long peer reviews would last.

Attorney Hill: I find it last throughout the hearing. What tends to happen is the peer review and people will make suggestions and give advice for certain things and the developer will respond to that and propose a new set of plans and then the peer reviewer will the other set plans and could last a few months and go into two or three sessions of the hearings and at some point the Zoning Board can cut it off and say okay we have enough information from our experts and we will proceed with the next thing.

Mr. Rooney: You talk about the six months and just to be clear when did it start.

Ms. Villano: I think it was March was the first one.

Mr. Rooney: So we are talking September, as an Attorney you know you can go in and ask for continuances all the time. Does that tend to happen?

Attorney Hill: The developer can consent to an extended period of time and that happens a lot, because a lot of time the developer is not fully prepared and they may want to spend four weeks to revise their plans so if they are to take four weeks to revise the plan than you can say I want a six week extension. I find most developers are reasonable with that and it is a back and forth with the Board and the Developer.

Mr. Rooney: Based on anything that you have looked at have you seen anything from an economic standpoint that would show you who HAP really has to have the forty three or pretty darn close to that to make it economic.

Attorney Hill: No, I have not and that is one of the few bright points about my review is that this project could be capable of being scaled down and still work because they are using subsidies that are available for smaller projects. This is something where I would want to bring in someone who has experience dealing with these subsidies programs who could probably provide a much clearer opinion for that, but it is my understanding that projects like this can be scaled down and a lot times developers can come in with a project that is bigger than they really intend to build so this could be more than they anticipate using this as a bargaining positions that the town will bargain them down so that could be the situation.

Mr. Rooney: Is it what you are saying that it may be able to be scaled down because HAP does not have to build so many units because a number of them are market rate, it's all affordable?

Attorney Hill: The position is probably going to be, we can only get subsidy if we do forty three units and they can say this road is a fixed cost we need to build this and to support the cost of the

road we need to build forty three units we need all these buildings that is where you need to have a financial expert weigh in on that to keep them honest.

Mr. Rooney: There is an Attorney that is advising the Zoning Board of Appeals, you are aware of that.

Attorney Hill: Yes, but he is not acting as an attorney, his role is as an advisor and he was paid for by the Mass Housing Partnership Fund so it is important to understand that Mass Housing Partnership Fund was created to provide these advisors to help facilitate projects.

Mr. Rooney: Who does the ZBA look too to get names of peer reviewers?

Attorney Hill: The obvious default would be to ask the Planning Department and who they use for Civil engineering reviews or traffic reviews the odds are they have done this before with the projects and maybe they have a preferred engineer who is familiar with the bylaws and regulations.

Mr. Rooney: Is it fair to assume that the ZBA would be able to get the names of the economic peer reviewers from their advisor.

Attorney Hill: Yes, but they may not be the best ones.

Mr. Rooney: Is there any said action process in terms of any interaction we should or we can't have with the ZBA or does it run the gamut they could say they will handle it or give us all you got.

Attorney Hill: It runs the gamut.

Mr. Rooney: There is not prohibition on us offering our two cents, whether or not they take it that is something else. And your letter is there any reason we cannot share that with the ZBA.

Attorney Hill: I purposely did not make this a confidential attorney client document I figured this would be in the public domain.

Mr. Mannix: Is there anything stopping us to call Way Finders back in here and ask them more questions in general and can we sit and negotiated with them to make some amendments to knock it down to sixteen or twenty eight or whatever.

Attorney Hill: My strategy suggestion would be if you are going to do something like that I would think and analyze this in advance as to what you have to offer and what kind of leverage you could try and use in the negotiations and in of things is do you have any town land that you could redevelop as affordable housing somewhere that could be preferable to this, do you have some tax title parcels that are almost at foreclosure so if there is something like that you can approach HAP and say we would love to work with you guys but this not something that we like. The second idea could be to take a more hardball approach and say we do not like this we will fight you on this because we feel strongly that this is not in the best interest of the town let's talk about something that might work that gets you your permits to get the project built quicker and we can help you instead of fighting with us, so that could be an approach. Before you have that meeting you would want to talk to someone like myself and think about what your arguments are going to be and what your potential leverage will be in that kind of negotiation that is absolutely acceptable and you may want to consider doing that.

Mr. Mannix: I am looking down the road six months from now whatever it may be you are down in Boston and you are fighting with each other since last month and between both sides at some point when all these six months when the ZBA is over and done with and a better picture will be there for everyone not always the picture we want maybe even a land swap but you never open the door.

Attorney Hill: There may be something you can offer them there could be some benefit that would give to them that would entice them to work with you.

Mr. Rooney: In your experience what happens when we take a position that would be more on the side of hard ball and then it goes to the housing appeal committee and things work in favor of the developer in your experience what incentive is there for the developer to then say let's talk again I understand you do not want forty three what number can we do, what incentive is there for them.

Attorney Hill: You are answering your own question, when you lose the HAC every step of the way you are losing leverage there are always rights to appeal incentive.

Mr. Rooney: If this Board if having issues with the developer independent of the ZBA it just seems like why would the developer look to have negotiating sessions with us when they have not heard what they are getting from the ZBA perspective?

Attorney Hill: Your right and that may be case and it would probably be better to have some discussions with the Zoning Board about how you are feeling and if the Zoning Board is aligned with your positions and it obviously would make negotiations a lot easier. If you're not talking to the ZBA and they are prepared to approve this at what the developer wants, your right that that will under mind your leverage.

Mr. Rooney: Is there any reason why we cannot have a joint meeting with the ZBA to discuss and try and find out from them what things are you looking for with peer review and have you looked at Attorney Hills letter that kind of thing.

Attorney Hill: There are benefits to the down sides of having a meeting like that which is obviously the open meeting law and you cannot prevent the developer from coming here and seeing so if you are thinking about strategy to potentially have some negotiations with the developer you may not want to have an open meeting and that may be better for you to delegate one person to meet with one person of the Zoning Board which does not violate the open meeting laws and to start those conversations that way. Even the state recognizes that this happens. I agree it does make sense if you going to down this road to have this informal conversation with the Zoning Board or one or two members just feel them out if you are on the same page, I do not know if there enough for the developer to do anything different.

Mr. Rooney: You said that the ZBA as being the neutral arbiter or finder or factor something is there any reason that prevents the ZBA from entering into discussions from a negotiation stand point with the developer.

Attorney Hill: It is much more difficult, because the Zoning Board has to follow the public hearing process it cannot have private meeting it cannot go into executive session and really shouldn't be engaged in that kind of discussion and that is my belief and I do not know of any case law that says that, your job is the permitting authority so you should be making the decision on your view of the facts and evidence.

Mr. Rooney: Based on your experience with these projects it would usually not be done or inappropriate for a single member of the ZBA to meet with the developer and the project manager to see if there can be some negotiating done.

Attorney Hill: You need to be careful and to let it slip into the hearing process. I have seen situation were Zoning Boards have set up working groups with the developer so two members of the Zoning Board which is not a quorum will meet with the developer and work things out that is a slippery slope you want to avoid the impression that you are behind closed doors making side deals. The best practice would be for the Select Board to be involved in those negotiations and speak with the developer of line separately you can have a member of the Zoning Board involved so they know what is going on and they are aware of the discussions and provide some input and their job really needs to be separate they are the board reviewing the project and not engaged in negotiations.

Mr. Rooney: What are our options going forward at this point?

Attorney Hill: You can use me as much or as little as you want. I did the review, I can continue to answer questions, I can advocate, if you have positions I can advocate in front of the Zoning Board I can be a spokesperson of sorts I can help and try to influence the Zoning Board in its

actions, I can strategize about potential comprising negotiation with the developer I am basically here to help I just bill by the hour.

Mr. Rooney: An option is that we are going full steam ahead fighting this tooth and nail and we want to prevail and by prevail that would mean there is not a project at 188 Fuller Street.

Attorney Hill: The Board of Selectmen really does not have the ability to appeal permits so if the Zoning Board issues a permit you would not have actually standing to file an appeal there may be other ways the Board can act to protect the town's interest against a permit that should have not been approved there may be other things that we could do.

Mr. Rooney: For example if your marching orders from us was we are going to fight this all the way down and that means going and dealing with the ZBA and with that mindset that is an option isn't it.

Attorney Hill: It is definitely something that I can help you with I cannot tell you that you will get a big bang for your buck the two main factors are how receptive will the Zoning Board be and second do we have any good issues that we can use to fight the project. I am not seeing great issues unfortunately. There are some issues that are worth raising.

Ms. Fernandes: Maybe the leveraging or negotiating with the people involved in the project would be a good option maybe.

Ms. Villano: You spoke before of the possibility of a land swap, how does that affect the eligibility letter and the whole state end of it on the comprehensive request the site that it is at and I am not saying that there is anything out there, I was just thinking if you sat down and negotiated a swap how does that affect all of

Attorney Hill: If they were to do a different site they would have a different layout of the site and the design of the building would not change it's not rocket science but it may be too late they are invested in this.

Attorney Hill: If they agreed to move this project so they would have to then amend their project eligibility letter from DHCD they would have to take a look at the new site they would have amend the comprehensive permit application obviously the new site then abutters.

Ms. Villano: It is almost the whole step all over again.

Attorney Hill: It's not rocket science they are invested in this but it may not be too late.

Mr. Rooney: It also assumes that we have something to swap.

Ms. Fernandes: Have you see any other towns develop their own 40B projects.

Attorney Hill: Yes.

Mr. Rooney: Are there any other questions? Well, I think it bears some discussion amongst us and we need to figure out what we want to do and this has been very helpful. Thank You. So with that said what are folk's wishes to where we go from here.

Mr. Silva: My suggestions is that we have some conversation with the Zoning Board of Appeals they are the power to be, it really is.

Ms. Fernandes: If they would like to discuss it with Attorney Hill.

Mr. Silva: Give them the letter and tell them we would like to have a conversation and what he suggest is best and not obviously the Boards and they should watch tonight's meeting.

Mr. Rooney: Certainly we should be giving them this letter.

Mr. Mannix: We are going to have to give them support and we may be willing to hire Mr. Hill because they are not going to be able to do that. We are going to let them know that we are

willing to do that. We will have to evaluate if we are going to do anything are we going to hire him or someone else at five hours, ten hours, twenty hours or twenty thousand dollars and go until it is spent so there is something that we know from the get go what we are getting into and the Zoning Board needs to know what their involvement is going to be. Not that I have to go your way but I do need your support and I do need direction and if we do any of these things I need your money that is something that they may be taking votes or making changes because they cannot afford to do anything else and as of yet and the expression we have reached our hand out and we have given you some financial support if you need it.

Attorney Rooney: I think that is an excellent suggestion it may make sense if that is what this Board wants that perhaps I reach out to Mr. Jarvis and hopefully can report back at our next meeting.

Ms. Fernandes: He made a couple of points were he made it clear that this is a pretty solid project and there is a couple of areas that he suggested that maybe we look at the peer reviews and maybe one of the ways is to have the peer reviews of those areas like the traffic impact the river the economic impact the abutters and then once we get the peer review determination then maybe have him come back because now we are using the time wisely.

Mr. DeBarge: I would suggest that maybe we have another ZBA meeting.

Mr. Silva: It is scheduled on the seventeenth.

Mr. DeBarge: I suggest that he be there for that if he can.

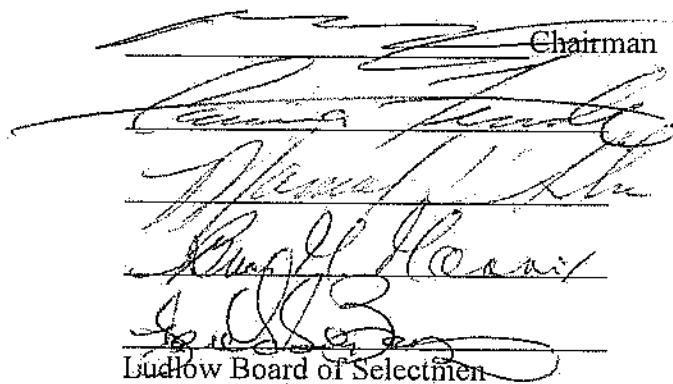
Mr. Rooney: We may need to find out what is the ZBA's intention of what is going to be conducted at that and we want to make sure he is used effectively.

Mr. Silva: The ZBA may not even be ready for that.

Mr. Rooney: I will reach out to Mr. Jarvis and I will go from there. Motion to Adjourn.

Moved by Mr. Mannix seconded by Mr. DeBarge to adjourn.

Vote: 5-0 in favor.

The image shows five handwritten signatures stacked vertically. The top signature is the most prominent and is followed by the word "Chairman" printed to its right. Below it are four more signatures, each followed by a horizontal line. The bottom-most signature is followed by the text "Ludlow Board of Selectmen".

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

