

PRESENT: Selectmen Melissa M. Tzanoudakis, Roland P. Nutter and Lisa Ferolito; Mark Andrews, Town Administrator; Peggy Mazzola, Administrative Assistant
The meeting was called to order at 6:00 PM. Pledge of Allegiance was said. Ms. Tzanoudakis announced that the meeting is being broadcast live and recorded for rebroadcast.

2/26/2018 - Minutes

1. Acceptance Of Minutes

2. Approve Warrant And Sign Purchase Orders

The Board signed the warrants in advance of the meeting

3. Public Communications

Mr. Nutter read a memo calling for warrant articles for the Annual Town Meeting scheduled for Monday, May 7, 2018. Articles are due no later than 12 noon on March 15th.

Ms. Ferolito announced the 10th annual Wine Tasting will be held at the Lawrence Library on Saturday, March 3rd from 6:30-9:30 PM. Tickets are on sale now.

Ms. Tzanoudakis announced the Friends of the Lawrence Library annual used book sale will be held on March 16, 17 and 18 at the Pepperell Community Center.

Jason Russell thanked the residents for their donations to the Fire Department annual fundraiser. Funds will be used to purchase gear, sponsor scout troops and little league teams.

Mr. Nutter announced the next Veterans' Breakfast will be held on Saturday, March 10th at the Pepperell VFW from 8:30-10 AM. All veterans and their families are invited to attend this free breakfast.

4. Town Administrator's Report

Mr. Andrews noted that he has filed his Town Administrator's submission of his budget message and comprehensive budget on Wednesday, January 31st.

Mr. Andrews announced the Council on Aging received a grant in the amount of \$7,296 for Healthy Eating and Weight Management from the Community Foundation of North Central Massachusetts and the Greater Lowell Community Foundation.

Mr. Andrews announced that Pepperell's SolSmart Program is taking shape, and updated the board on the progress of this program. Mr. Nutter commented that the Northern Middlesex Council of Governments received a bronze designation from the SolSmart Program. Mr. Andrews thanked Town Planner Stephen Parker for spearheading this effort. Mr. Andrews expressed his sincere appreciation to Mr. Nutter for the new about attaining the Bronze Medal for our SolSmart Program as the Town worked hard on this designation.

5. Appointments / Resignations

5.1. Appointing Authority -- Housing Authority Appointment

Item #1 – Appointing Authority: Housing Authority Appointment: This item was tabled until the next meeting.

5.2. Appointing Authority: Appointment Of Administrative Assistant To The Board Of Selectmen And Green Communities Coordinator

Item #2 – Appointing Authority: Appointment of Administrative Assistant to the Board of Selectmen and Green Communities Coordinator: This item was tabled until the next meeting.

6. Action Items

7. Old/New Business*

There was no other business before the Board.

8. Executive Session

8.1. EXECUTIVE SESSION PER M.G.L. CHAPTER 30A §21

Ms. Tzanoudakis stated there would be two identical motions for Executive Session on two separate matters, and read the motions. Mr. Nutter motioned that the Board of Selectmen go into executive session at 6:15 PM under #1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

A roll call was taken as follows:

Melissa Tzanoudakis Aye
 Roland Nutter Aye
 Lisa Ferolito Aye

8.2. EXECUTIVE SESSION PER M.G.L. CHAPTER 30A §21

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EXECUTIVE SESSION

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hMr. Nutter motioned that the Board of Selectmen go into executive session at 6:15 PM under #1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

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A roll call was taken as follows:

Melissa Tzanoudakis Aye
 Roland Nutter Aye

Included in the Executive Sessions would be Atty. Martin Rooney, Atty. Brian Falk, Atty. Bob Hennigan, members of the Board, Town Administrator Mark Andrews, and Peggy Mazzola, Administrative Assistant.

The Board exited the executive session and returned to open session at 6:30 PM as noted in the Executive Session minutes of the meeting of February 12, 2018.

Ms. Tzanoudakis provided the audience with procedures, and stated the audience cannot participate in this session.

Ms. Tzanoudakis stated the first matter involves the complaint filed against Ms. Ferolito by an employee, and the Board's only action at this point is to appoint an independent investigator. Ms. Tzanoudakis suggested we extend Atty. Hennigan's appointment to investigate the matter. Ms. Ferolito objected, stating it is her understanding that Atty. Hennigan has a personal relationship with Stephen Parker.

Atty. Hennigan stated he doesn't have a personal relationship with Mr. Parker, but has known him and his family for many years. He does not associate with him, but only knows him through a working relationship. His son played basketball at his house once 25 years ago. Ms. Tzanoudakis asked if he felt his working relationship would impede his ability to conduct an independent investigation. Atty. Hennigan stated it would not.

Ms. Tzanoudakis stated the other individual we looked at when Atty. Hennigan was appointed was Atty. John Flick. If Ms. Ferolito objects we can engage another firm. Mr. Nutter commented in all fairness Atty. Hennigan has gone through this process once before, to start over with someone else could be problematic. Atty. Hennigan has stated he doesn't have a personal relationship with Mr. Parker.

Ms. Ferolito stated she thinks it's a blatant slap in the face to the taxpayers to spend another \$10,000 on another investigation. Ms. Tzanoudakis responded that regardless of how Ms. Ferolito feels, employees have a right to have their complaint heard and followed up on. Those rights have to be followed, and we have a process to follow. Mr. Nutter remarked having a new set of eyes may not be a bad thing, and would give Ms. Ferolito a bit of comfort knowing someone else is looking at this. Ms. Tzanoudakis stated if Atty. Flick is not available the investigation should default to Atty. Hennigan. Ms. Tzanoudakis hasn't spoken to Atty. Flick so she doesn't know if he's available.

On a motion by Mr. Nutter and seconded by Ms. Ferolito, it was unanimously voted to appoint Atty. Flick as special investigator for this complaint with Atty. Hennigan as alternate if Atty. Flick is not available.

Ms. Tzanoudakis stated the second matter involves two sub-parts. There is the complaint against Ms. Ferolito by an employee, and a second complaint that arose out of this investigation.

Ms. Tzanoudakis asked Atty. Hennigan to summarize his reports; Ms. Ferolito will have an opportunity to make a statement at the end of each summary.

Atty. Hennigan summarized his report regarding the complaint against Ms. Ferolito by Debbie Nutter. Ms. Ferolito provided a statement relative to the report.

Ms. Tzanoudakis stated she agrees with Atty. Hennigan regarding the fact that existing policies don't cover sitting selectmen, however employees deserve to be treated with respect. The Board can't enter into any disciplinary action, as there is no policy that allows us to do so. Atty. Hennigan's recommendation is to adopt a new policy. We need to govern ourselves with a code of conduct. We should all be treating each other with respect. Ms. Tzanoudakis as if we can we extend the current policy to include elected officials. Atty. Hennigan stated his recommendation is to adopt a code of conduct that specifically relates to the Board of Selectmen.

On a motion by Mr. Nutter and seconded by Ms. Tzanoudakis out of necessity, it was voted with Mr. Nutter and Ms. Tzanoudakis in favor and Ms. Ferolito opposed to start the process to adopt a code of conduct for the Board of Selectmen.

Atty. Hennigan summarized his report regarding the allegation of improper disclosure of confidential information regarding the complaint by Ms. Nutter against Ms. Ferolito. Atty. Hennigan recommends forwarding this information to the State Ethics Commission for proper action. Ms. Ferolito provided a statement relative to the report.

Ms. Tzanoudakis requested the reports be admitted as exhibits, redacted of private information.

Ms. Tzanoudakis stated for the record she read all those Facebook posts, and they were horrific. No one would have wanted to be the subject of those posts. Since there is no code of conduct for the Board, she concurred with Atty. Hennigan's recommendation that we should refer this matter to State Ethics Commission, who are the appropriate authority.

On a motion by Mr. Nutter and seconded by Ms. Tzanoudakis out of necessity, it was voted with Mr. Nutter

and Ms. Tzanoudakis in favor and Ms. Ferolito opposed to refer the report to the State Ethics Commission. Eileen Lundstrom asked what this process has cost the town. Ms. Tzanoudakis suggested she contact Town Administrator Mark Andrews for that information.

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EXECUTIVE SESSION

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PRESENT: Selectmen Melissa M. Tzanoudakis, Roland P. Nutter and Lisa Ferolito; Mark Andrews, Town Administrator; Peggy Mazzola, Administrative Assistant, Atty. Martin Rooney, Ms. Ferolito's Attorney; Atty. Brian Falk, Special Labor Counsel; Atty. Robert Hennigan, Special Counsel

Ms. Tzanoudakis stated for the record if these matters are discussed in closed session Ms. Mazzola will be taking notes, however, if the matters are discussed in open session the meeting will be broadcast live and recorded for rebroadcast. Anyone who wishes to be attend can do so, but will not be allowed to participate in the executive session.

Ms. Tzanoudakis explained process and procedures. For the first matter the Board needs to appoint an independent investigator. For the second matter Atty. Hennigan will summarize his report; Ms. Ferolito can ask questions but her attorney cannot.

Atty. Rooney stated he believes that there is a conflict of interest with Mr. Nutter participating in the process.

Ms. Tzanoudakis stated that Mr. Nutter contacted the State Ethics Commission, and they did not deem this to be a conflict. Ms. Ferolito asked if Mr. Nutter had obtained an opinion from the State Ethics Commission in writing. Ms. Tzanoudakis stated he did. Mr. Nutter stated the document is on file in the Town Clerk's office.

Atty. Rooney stated his belief that this is a violation of Ms. Ferolito's civil rights.

Ms. Tzanoudakis reiterated that the State Ethics Commission deemed it not to be s conflict as we are limited as far as any action we can take.

Atty. Rooney stated he completely disagrees; the town is running a risk as well, and he and his client preserve their rights and if we end up in federal court then we do.

Ms. Tzanoudakis stated the complaint is by Stephen Parker, and the Board needs to appoint an investigator.

Ms. Tzanoudakis stated the board can do that now or in open session.

Ms. Ferolito requested the appointment be made in open session.

Discussion ensued relative to the ground rules for conducting the process in open session. She will request that Atty. Hennigan summarize his report, and the Board will mark it as received. Mr. Nutter asked if the report would be a public record. Ms. Tzanoudakis stated it would. Atty. Falk stated the Board is using the document in an open meeting, and although some information could be redacted, the report will be open to the public records law. Atty. Hennigan stated he could provide a redacted report.

At 6:30 PM, Mr. Nutter moved to exit the executive session and return to open session. Ms. Ferolito seconded. A roll call vote was taken as follows:

Melissa Tzanoudakis Aye

Roland Nutter Aye

Lisa Ferolito Aye

Respectfully submitted,

Peggy Mazzola, Administrative Assistant

APPROVED:

Melissa M. Tzanoudakis, Chairman

Roland P. Nutter, Clerk

Lisa M. Ferolito

On a motion by Mr. Nutter and seconded by Ms. Ferolito, it was unanimously voted to adjourn the meeting at 7:16 PM.

Respectfully submitted,

Peggy Mazzola, Administrative Assistant

APPROVED:

Melissa M. Tzanoudakis, Chairman

Roland P. Nutter, Clerk

Lisa M. Ferolito