

Board of Selectmen Minutes 02/04/2015

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Board of Selectmen	February 4, 2015
Regular Meeting	Selectmen's Hearing Room, Town Hall

Present:	David Nelson, Chairman
	Philip Crawford, Selectman
	Thomas Terranova Jr., Selectman

Chairman Nelson called the meeting to order at 7:03 p.m. He announced that the meeting was being taped for cable television transmission and led those assembled in the Pledge of Allegiance.

FY 16 budget review: Historical Commission

Historical Commission Chair Nan Hockenbury appeared before the Board to present the Historical Commission's FY16 budget request. Ms. Hockenbury reviewed a number of activities and events that the Historical Commission has engaged in and attended in the current fiscal year, including activities related to the tercentennial celebration of the Meeting House.

The Historical Commission is requesting an operating budget of \$22,415. That amount includes the following: \$8,000 for gravestone conservation and repairs, at the West and South cemeteries. Forest Hill and Willow cemeteries are the next sites for this ongoing project; \$260 for dues for national and regional historic preservation organizations; \$3,500 for the second year of the three-year inventory of historic structures, as required by the Massachusetts Historic Commission; \$5,000 for landmark signs, which relate to the Museum in the Streets project; \$300 for preservation books and materials; \$350 for seminars and workshops; \$3,000 for professional advising; \$2,000 for operating expenses; and an undetermined amount for disaster planning, which would be used to prepare the Historical Center so that the building and the collection will be preserved.

In response to several questions from Chairman Nelson and Selectman Terranova, Ms. Hockenbury explained that she has added \$50 to the original budget submission for an additional dues payment; that the funds for supplies would be used for cemetery preservation supplies and other items, and that the cemetery preservation project would pay for work at the West and South cemeteries, but would not be sufficient for a wrought iron fence replacement contemplated by the commission.

Selectman Terranova ask how the proposed budget differed from the current fiscal year budget, which is significantly lower. Ms. Hockenbury said that the Museum in the Street initiative, which would entail a walking or driving tour around Town with brochures and markers for historically significant properties or locations, and additional cemetery preservation work are the two major differences. He asked about the total cost for the cemetery project. Ms. Hockenbury said that she does not have a definitive estimate, as damage is addressed as it occurs. She said it could cost \$8,000 to \$16,000 to conclude this project, not including the wrought iron fence.

Board members thanked Ms. Hockenbury for her presentation. She urged community members to visit the Historical Center on South Common Street, which is open by appointment.

Update on Perley Burrill matter

Selectman Terranova recused himself from this discussion due to a prior business relationship with the owner of the property, saying he wished to err on the side of extreme caution and left the room during it.

Town Counsel Thomas Mullen said that after a process lasting over a year and including the threat of possible imprisonment, Joseph Pedoto, trustee of Little Joe Realty Trust, had all five fuel storage tanks removed, and, Mr. Mullen was told, disposed of in accordance with pertinent regulations. A small amount of contaminated soil was discovered near one of the tanks and the state Department of Environmental Protection (DEP) was notified. Mr. Mullen said he will seek a court order that the trust pays the Town's fees and costs, totaling about \$3,600, incurred during the contempt proceedings.

Mr. Mullen said no one is happy with the appearance of the site. He said this issue is beyond the scope of the Town's court complaint, and that the law limits severely what the Town can do about ugly, dilapidated buildings. For the Town to act, there must be a real hazard to health and safety as determined by the building inspector and Board of Health.

Town Administrator James Boudreau said that the contractor at the property has applied for a demolition permit and is waiting for the asbestos report, which must be provided before the merit is approved. The permit is for the demolition of the main building only.

Selectman Crawford said that there is concern about contamination in other areas of the site due its past use, and asked if the Town has leverage to seek additional testing or existing environmental site reports. Mr. Mullen said that the only leverage the Town could apply would come from the owner seeking zoning relief or some other permit or concession from the Town. The Town cannot insist on an environmental test report but can ask for it. Mr. Mullen said he will find out if DEP plans further testing.

Mr. Mullen said the ultimate question is what will become of the property. There have been discussions with potential buyers of the property, but none contemplates using the property for residential purposes. The zoning for the site is residential and the business use was grandfathered as it pre-existed zoning.

With the conclusion of this discussion, Selectman Terranova rejoined the meeting.

Delegation of Open Meeting law complaint

Mr. Mullen said that the Board is in receipt of an Open Meeting Law complaint filed by Selectman Crawford against Selectman Terranova. Mr. Mullen is requesting that the Board consider and vote publicly on whether to delegate the investigation and response to this complaint to him. He said that in the recent Open Meeting Law complaint filed by Michael Walsh against the Board, former town administrator William Gustus asked Mr. Mullen to investigate and respond, and he found no violation existed. In the subsequent lawsuit filed by Mr. Walsh and two other residents, the plaintiffs complained that the Board should have acknowledged the complaint publicly and voted publicly to delegate the investigation and response. For that reason, he said, it would be wise to avoid similar complaints by acknowledging any complaints in an open meeting and voting to delegate the investigation and response in the same fashion.

Selectman Terranova said there is another complaint pending against the Board. Mr. Mullen said he would suggest that the same procedure be used with the more recent complaint, by Selectman Terranova against the other two Board members. Mr. Boudreau said that matter would be placed on the agenda for the meeting of February 9. Hew said that there was not time to post this item with the required 48 hour notice, and that no immediate action was needed.

On the motion of Selectman Crawford, duly seconded by Selectman Terranova, the Board voted unanimously to delegate the investigation and response to the Open Meeting law complaint filed by Selectman Crawford to Town Counsel Thomas Mullen.

FY 16 budget review: Board of Library Trustees

Library Director Nancy Ryan said that the library operating budget as voted by town meeting consists of three line items: director's salary, other salaries and expenses. Other salaries include those of staff librarians, pages and substitutes. They will receive a two-percent increase as well as any step and longevity changes as required by the collective bargaining agreement. The circulation manager's salary is being moved into the department head line, as agreed to during contract negotiations.

The library's computer and peripherals maintenance is handled through a consortium, at an annual cost of \$110 per unit. The library's phone system was upgrade this year, and some of that capital appropriation is available to put toward the maintenance contract. The monthly bill will be about \$60. The expense line also includes materials, books, magazine subscriptions, program supplies (most of which are used by the Youth Services department), travel expenses and the North of Boston Library Exchange (NOBLE) consortium fees. The total budget increase requested in 2.3 percent.

Chairman Nelson said this is a tight budget and said the library does a great job. Selectman Crawford said he has met with the library leadership a couple of times on the budget, and said that Ms. Ryan runs a tight ship and does a wonderful job. He asked whether an increase for the department heads should be included in budgets. Mr. Boudreau said he would check with the town accountant on how salary increases for department heads will be handled and will adjust budgets if necessary.

Selectman Terranova said that the shifting of staff was done to better serve the library. He asked why the appropriation for fiction was increasing so dramatically. Ms. Ryan explained that for budgeting purposes, all new materials requests for books are in that fiction line item and then are apportioned to each book category, which is tracked internally. Selectman Terranova said that all other budget items seemed very reasonable and said the library does a great job.

Ms. Ryan said the capital budget request for \$5,000 would pay for a desk for the assistant director, a table, chairs and two cabinets for materials.

FY 16 budget review: Board of Assessors

Assessing Director Richard Simmons Jr. said that the overall budget request is \$800 lower than the current fiscal year due to savings realized by having Mr. Simmons undertake tasks previously handled by paid consultants. He said the budget also included \$10,000 retained to defend commercial values if they are challenged. There is also a \$1700 request for assessing software.

In response to a question from Chairman Nelson, Mr. Simmons said the Board of Assessors will be discussing software that would help create a link between the building department and the assessing office software. This will assist in the sharing of information between departments, which will help with tracking new growth. This amount is not included in the budget, as there will be discussion of how this cost should be allocated.

Mr. Simmons also said that the budget includes funds to complete one-ninth of the nine-year cyclical review of values.

Selectman Terranova said the budget is very tight and well done. Board members thanked Mr. Simmons for his presentation.

Explanation of tax bill error

Mr. Simmons told the Board that there has been an error in the third-quarter tax bills of property owners in the Lynnfield Water District (LWD). The Town handles tax billing for both water districts. As a result of using an original figure included on the recap sheet submitted to the state Department of Revenue instead of an amended figure supplied by the LWD, approximately 1500 taxpayers in the LWD received tax bills that were too high. That will be corrected by an adjustment in the fourth-quarter billing. The Board of Assessors will be discussing that matter at a meeting this week. Mr. Simmons said the issue came to light today.

FY 16 budget review: Conservation Commission

Conservation Administrator Betty Adelson and Conservation Commission Chair Denise Young appeared before the Board to present the commission's operating budget request. Ms. Young outlines the commission's membership, its duties, and the processes by which it enforces the state Wetlands Protection Act and the local conservation bylaw.

Ms. Adelson said that the commission has been very busy. She said the part-time clerk, Debby Dunphy, is a former senior manager with several corporations who is working 15 hours per week. She assists with technology and several other functions, and is earning \$17.34 per hour, the lowest rate paid in Town Hall. She noted a clerk recently hired is earning \$19 per hour and the Finance Committee pays \$20 for its part-time clerk.

Ms. Adelson said that when she began work in her current position 27 years ago, she was working seven hours a week and shared a desk, phone and supplies with the Planning Board clerk. Over the years, the workload increased. She works independently, reporting to the commission and town administrator. She interacts with federal, state and local agencies and boards, attorneys, developers, residential and commercial property owners. She noted that the Town has many wetland resources and listed several ongoing projects and issues that involve wetlands and conservation. The local conservation bylaw affects new lots and newly created subdivisions as well as commercial properties. It imposes a 25-foot no-build zone and a 50-foot no-disturb zone, although variances can be sought.

Ms. Adelson reviewed her varied duties and said site visits are an important part of her job. She noted that the commission is also tasked with the stormwater bylaw, which requires that with any disturbance of a property of an acre or more all stormwater must be retained on site and pretreated before discharge.

Ms. Adelson said that compensation for her position is low when compared to other communities, and said some similar communities have staffs of two and three people. This is the first significant increase in compensation sought for the position.

The budget seeks hourly compensation rates of \$22.00 for the clerk (from \$17.34) and \$33.65 for the administrator (from \$30.72). Ms. Young said the commission supports the proposed increases and praised Ms. Dunphy for her productivity and efficiency and Ms. Adelson for being knowledgeable and her ability to interact with the various individuals and entities with which she works.

In response to a question from Selectman Crawford, Ms. Adelson said that Ms. Dunphy is in her third year in the Town's employ. She started taking minutes at commission meetings, and was given additional hours to allow Ms. Adelson to perform field work while keeping the office open. Ms. Dunphy has also implemented a tracking program for funds received through the project review fees. Selectman Crawford said that Ms. Dunphy has done a great job in her role with the Fields Committee and noted that as the Conservation Commission's work has increased, its space has not. He said the commission's lengthy meetings reflect the amount of work necessitated and thanked them for their work.

Selectman Terranova thanked Ms. Adelson and Ms. Young for their explanations of the requests. He said while a 13.1 percent budget increase sounds large, it is not a huge sum of money (\$11,000). He noted that in the comparative compensation survey provided by the commission, the only abutting community that was included was Wakefield. He asked if they had attempted to get compensation data from other abutting communities. Ms. Adelson said she did not receive a response from North Reading and did not pursue Peabody or Lynn because they are cities and are not of similar size, and do not have the same septic system issues due to having sewer systems. She said that Lynnfield is a smaller town but has a large amount of wetlands, and that makes finding comparison communities difficult. Selectman Terranova said that he would be interested in receiving additional data on three to four similar communities in the area and asked Ms. Adelson to use her judgment on their selection.

Chairman Nelson said that Lynnfield town government is very lean and said that while comparisons to other communities can be researched, the focus should be on what Ms. Adelson does and had done during her years of service to the Town.

Board members thanked Ms. Adelson and Ms. Young for their presentation.

Appointment of special police officer

On the motion of Selectman Terranova duly seconded by Selectman Crawford, the Board voted unanimously to appoint Charles Peabody as a special police officer, for a term ending on June 30, 2015. Board members noted that this will allow Mr. Peabody, who recently retired after a distinguished career as a full-time police officer, to continue his service to the Town.

Adoption of a Domestic Violence and Abusive Situation Leave Policy

Mr. Boudreau told the Board that the Commonwealth now requires, as a result of passage of Chapter 260 of the Acts of 2014, employers to have a policy providing domestic violence and abusive situation leave to employees under specific circumstances. The Town of Norwell adopted a policy modeled on one provided on the attorney general's website while Mr. Boudreau served as town administrator in that municipality, and that policy was adapted for Lynnfield and some small revisions were made after review by town counsel. The policy requires employees to exhaust all other accrued leave time before taking unpaid leave under this policy.

Selectman Terranova commented that this policy is very similar to the sample policy provided by the attorney general's office. Board members said its adoption is necessary and Chairman Nelson asked that it be placed on the Town's web site.

On the motion of Selectman Terranova duly seconded by Selectman Crawford, the Board voted unanimously to approve the Domestic Violence and Abusive Situation Leave Policy as presented (see below).

ADMINISTRATIVE POLICY

It is the Administrative Policy of the Town of Lynnfield to implement and administer the provisions of "An Act Relative to Domestic Violence". This law is intended to reduce domestic violence, and to provide victims and family members of victims of domestic violence protected work leave for qualifying reasons associated with domestic violence.

The Town is committed to the protection of those eligible individuals that provide service to the Town by giving them the necessary tools to deal with domestic violence issues. This policy, along with the efforts of the Employee Assistance Program (EAP), can be utilized if the need arises for an employee to take time off to deal with a domestic violence issue.

DEFINITIONS

The provisions of this policy apply if the employee or a family member is a victim of domestic violence (unless the employee is the perpetrator of violence against the family member).

"Abuse" is defined as attempting to cause or causing physical harm; placing another in fear of imminent serious physical harm; causing another to engage involuntarily in sexual relations by force, threat or duress or engaging or threatening to engage in sexual activity with a dependent child; engaging in mental abuse, including threats, intimidation or acts designed to induce terror; depriving another of medical care, housing, food or other necessities of life; or restraining the liberty of another.

"Abusive behavior" includes domestic violence, stalking, sexual assault and kidnapping.

"Domestic violence" is defined as abuse against an employee or the employee's family member by:

- a current or former spouse of the employee or the employee's family member;
- a person with whom the employee or employee's family member shares a child in common;
- a person who is cohabitating with or has cohabitated with the employee or employee's family member;
- a person who is related by blood or marriage to the employee;
- a person with whom the employee or employee's family member has or had a dating or engagement relationship.

"Family Member" (under this policy) is defined as:

- persons who are married to one another;
- persons in a substantive dating or engagement relationship and who reside together;
- persons having a child in common regardless of whether they have ever married or resided together;
- a parent, step-parent, child, step-child, sibling, grandparent or grandchild, or persons in a guardian relationship.

EMPLOYEE ELIGIBILITY REQUIREMENTS

All employees of the Town of Lynnfield including all Regular Full-time and Regular Part-time employees, Intermittent/Seasonal/Temporary Employees, 410367693Interns, and Volunteers 410367693Thomas A. Mullenare eligible for Domestic Violence Leave benefits, as indicated in this policy.

LENGTH OF LEAVE & PERMITTED REASONS FOR LEAVE

An eligible employee may take up to 15 days of leave from work in a 12-month period, if the employee or family member of the employee is a victim of abusive behavior and the employee is using leave from work to:

- seek or obtain medical attention, counseling, victim services or legal assistance;

- secure housing;
- obtain a protective order from a court;
- appear in court or before a grand jury;
- meet with a district attorney or other law enforcement official;
- attend child custody proceedings; or
- address other issues directly related to the abusive behavior against the employee or family member of the employee; provided that the employee is not the perpetrator of the abusive behavior against such employee's family member.

EXHAUSTION OF VACATION, PERSONAL AND SICK LEAVE

Before an employee may submit a request for the use of an unpaid Domestic Violence Leave to Human Resources, he or she must utilize any and all accumulated personal leave, vacation leave and sick leave available.

UNPAID LEAVE

Approved Domestic Violence Leave is an unpaid leave.

NOTICE REQUIREMENT

Employees are generally required to provide an appropriate advance leave notice by submitting the document titled "Notice of Need for Domestic Violence Leave", except in cases of imminent danger. In cases of imminent danger, the employee is required to notify the Town of his/her absence within three (3) workdays that the leave was taken or is being taken. The Town will not take negative actions against an employee for an unscheduled absence, if within thirty (30) days from the unauthorized absence or last unauthorized absence in cases of consecutive absences, the employee provides any of the forms of documentation of the need for domestic violence leave identified below.

REQUIRED DOCUMENTATION

The Town of Lynnfield requires documentation showing that an employee or employee's family member is a victim of abusive behavior. An employee may satisfy the documentation requirement by producing any of the following documents within a reasonable period of time from the request:

- Protective order, order of equitable relief or other documentation issued by a court of competent jurisdiction as a result of abusive behavior against the employee or employee's family member;
- A document under the letterhead of the court, provider, or public agency which the employee attended for the purposes of acquiring assistance as it relates to the abusive behavior against the employee or employee's family member;
- A police report or statement of a victim or witness provided to the police, including a police incident report, documenting the abusive behavior complained of by the employee or the employee's family member;
- Documentation that the perpetrator of the abusive behavior against the employee or family member of the employee has admitted to sufficient facts to support a finding of guilt of abusive behavior or has been convicted of, or has been adjudicated a juvenile delinquent by reason of, any offense constituting abusive behavior and which is related to the abusive behavior that necessitated the leave;
- Medical documentation of treatment as a result of the abusive behavior complained of by the employee or employee's family member;
- A sworn statement, signed under the pains and penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or professional who has assisted the employee or the employee's family member in addressing the effects of the abusive behavior.
- A sworn statement, signed under the penalties of perjury, from the employee attesting that the employee has been the victim of abusive behavior or is the family member of a victim of abusive behavior.

The Town of Lynnfield shall maintain any received documentation within the employee's personnel file, but only as long as required for the Town to make a determination as to whether the employee is eligible for the requested leave.

CONFIDENTIALITY OF INFORMATION

All information related to the employee's leave shall be kept confidential by the Town and shall not be disclosed, except to the extent that disclosure is;

- requested or consented to, in writing, by the employee;

- ordered to be released by a court of competent jurisdiction;
- otherwise required by applicable federal or state law;
- required in the course of an investigation authorized by law enforcement, including, but not limited to, an investigation by the attorney general; or
- necessary to protect the safety of the employee or others employed at the workplace.

If additional time off is required, the employee should discuss the request with Human Resources. Nothing in this policy limits or impairs an employee's right or ability to seek other types of applicable unpaid time off.

EFFECT ON BENEFITS

An employee granted a leave under this policy will continue to be covered under the employer's group health insurance and basic life insurance plans under the same conditions as coverage would have been provided if he/she had been continuously employed during the leave period.

If the employee fails to return from domestic violence leave, the Town may seek reimbursement from the employee for the portion of the premiums it paid on behalf of that employee (also known as the employer contribution) during the employee's leave.

An employee shall be in an unpaid leave status for the duration of the leave.

JOB PROTECTION

If the employee returns to work within the time permitted, a maximum of fifteen (15) days in a twelve (12) month period, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status and authority.

The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, the employee will be subject to any pay or benefit reductions or other adverse actions, including layoff, which he/she would have experienced if he or she had not taken leave under this policy.

If the employee fails to return after a qualifying leave under this section, the employee may be terminated, unless reinstated to his/her same or similar position, in accordance with applicable laws, other leave-related policies, and/or appropriate bargaining unit contract language.

PROVISIONS

The Town shall not make any of an employee's rights hereunder contingent on whether the employee maintains contact with the alleged abuser, even if the alleged abuser is another Town employee.

Domestic Violence Leave time shall be taken in increments of not less than 2 hours.

Domestic Violence Leave shall be reported as unpaid leave in the Town's attendance systems.

APPLICABLE LAW STATUTES M.G.L. c. 149, § 52E.

FORMS

The following form documents associated with and attached to this policy may change to meet the needs of the Town or new requirements of the law. Please consult the Human Resources Department for the most current version:

- Employee Acknowledgement of Receipt of Domestic Violence Leave Policy
- Notice of Need for Domestic Violence Leave

Authorization of deficit spending for snow and ice removal

Mr. Boudreau said that the Town is in deficit on its snow and ice budget, for which \$120,000 was appropriated, as the result of the spending of \$113,000 on the storm of January 26-28, 2015. He said no disaster has been declared by the Federal Emergency Management Agency, which makes such declarations based on the amount of property damage, not the cost of storm clean-up. Damage was limited in general to coastal communities as the snow was not a heavy snow. An additional two to four inches of snow is expected tomorrow with potential for a significant snowfall Monday and Tuesday.

Massachusetts General Law Chapter 44, Section 31D requires that the Board of Selectmen and Finance Committee authorize any deficit spending in the snow and ice account.

On the motion of Selectman Crawford, duly seconded by Selectman Terranova, the Board voted unanimously to authorize deficit spending in the snow and ice account of up to \$117,000.

Selectman Terranova said there were issues with clearing of sidewalks, and that he understands that Department of Public Works (DPW) was concentrating on clearing streets. He asked if walkways near school bus stops and walking areas could be prioritized.

Mr. Boudreau said he met with Superintendent of Schools Jane Tremblay and DPW Director Andrew Lafferty today on this and other snow-related issues. He said the Town has 19 miles of sidewalks to clear, and that the sidewalk plows move at a speed of about one mile per hour. One unit is out of service and another cannot cope with snow at the current depth of snow, so the DPW is doing the best it can clearing sidewalks with Bobcats equipped with snowblowers. He noted there have been issues in the area of Huckleberry Hill School.

Selectman Terranova said there have been issues on Main Street, in the Pinehill Road and Wing Road areas and on Summer Street. He asked whether additional bus stops could be implemented during this emergency, and said his primary concern is safety of the children. Mr. Boudreau said schools and public safety are the top priorities in snow removal. He said he would speak with Ms. Tremblay and Mr. Lafferty about these issues. He said sidewalk clearance is ongoing. He noted this has been an unprecedented amount of snowfall in a concentrated time period.

Chairman Nelson and resident Patricia Campbell raised concerns about sight lines due to high snow banks. Ms. Campbell asked if these could be lowered. Mr. Boudreau said that he will check with Mr. Lafferty, but noted this condition exists at nearly every intersection in Town. He said they will address the busiest intersections first.

Mrs. Campbell asked how this additional snow removal will be funded. Mr. Boudreau said that he will assess where additional funds are available at the end of the fiscal year.

Announcements

Chairman Nelson read announcements from Town Clerk Trudy Reid on the availability of nomination papers, the February 28 deadline for dog licenses, and the need to return town census forms.

Mr. Boudreau announced that videos of all Board of Selectmen meetings will be available on the Town's website by accessing a video link on the front page. He said past meetings will be uploaded as time permits. Meetings are also being replayed on the Town's access channels. He has also launched a Twitter account, @LfdTA, on which he will provide updates on storms and other events.

Selectman Terranova thanked Mr. Boudreau for ensuring the videos of municipal meetings are available online. He said that while attend the Massachusetts Municipal Association conference, he viewed a free program designed to help residents better understand municipal budgets and how their tax dollars are spent. He said he is looking further into this. He thanked the students and teachers at Huckleberry Hill School for inviting him to a recent Lynnfield Heroes program. He also received a call from a resident with concerns about a billboard on Route 1 in Peabody near the town line which has caused concerns. Mr. Boudreau said the Town is looking into whether it was properly notified of the hearing in Peabody at which the billboard was approved.

Use of Town facilities

On the motion of Selectman Crawford, duly seconded by Selectman Terranova, the Board voted unanimously to approve the use of the common on May 16 for a craft fair being held by Centre Congregational Church.

On the motion of Selectman Terranova, duly seconded by Selectman Crawford, the Board voted unanimously to approve the placement of a banner above the common from June 1-13 for Lynnfield Community Connections.

Administrative matters

On the motion of Selectman Crawford, duly seconded by Selectman Terranova, the Board voted unanimously to approve the minutes of the meeting of December 15, 2014 as presented.

On the motion of Selectman Terranova, duly seconded by Selectman Crawford, the Board voted unanimously to approve the minutes of January 5, 2015 with one change offered by Selectman Terranova.

On the motion of Selectman Crawford, duly seconded by Selectman Terranova, the Board voted unanimously to adjourn at 8:53 p.m.