

**MINUTES**  
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**BOARD OF SELECTMEN**  
**MONDAY, FEBRUARY 6, 2006**  
**REGULAR SESSION**  
**SELECTMEN'S MEETING ROOM, TOWN HALL**  
**7:00 PM**

**Call to Order**

A regular meeting of the Board of Selectmen was called to order in open session at 7:00 PM in the Selectmen's Room of Town Hall. All members were present. Town Administrator Tom Younger and Assistant Town Administrator Jeff Conti were also present.

**Questions from Town Residents**

Dr. Leo DeNatale Jr. of Trapelo Road stated he is lodging a formal complaint against the Zoning Board of Appeals (ZBA) and against Planning Coordinator Jeffrey Wheeler. He explained that his two-family home has a third-floor dormer window and he has wanted to convert this third floor into a rental unit. He has applied twice for a special permit and been denied. The atmosphere of the ZBA hearings has been hostile and adversarial. Mr.

Wheeler does not answer telephone calls and gave him poor advice about whether he needed legal representation. He learned that his permit had been denied through hearsay but did not receive confirmation from the ZBA until three weeks after the decision had been made. This is hard to understand given the demand for affordable housing. He feels he was treated discourteously by Mr. Wheeler. He is asking the Board to reprimand Mr.

Wheeler and would like an apology for the way he has been treated.

Mr. DeNatale noted that none of the ZBA members are from the Waverley neighborhood.

Meanwhile, he feels the Town should find the landlords who are renting property illegally and make them adhere to the same standards and process that he has had to go through.

Selectman Firenze suggested that Mr. Younger work with Mr. DeNatale to try to resolve some of these issues.

Selectman Brownsberger stated he suspects the ZBA followed the law in denying the permit but perhaps the matter should be referred to the Planning Board, which makes the rules that the Zoning Board of Appeals then has to enforce.

The Board moved: to refer to the Planning Board the issue of in-law accessory apartments for further study.

The motion was carried unanimously (3-0).

### **Action by Appointment**

#### *Proclamation – Support of House Bill 2408, An Act Relative to the Taxation of Telecommunications Companies*

The Board moved: to approve the petition to support House Bill 2408..

The motion was carried unanimously (3-0).

#### *Discussion of 40B Belmont Uplands*

The Board noted the February 9 deadline to respond to the ZBA with comments on the O'Neill proposal to build affordable housing on the Uplands site under Chapter 40B.

Mr. Younger summarized a letter he has drafted on behalf of the Board addressing the size of the development, issues of egress and access, and concerns raised by Sustainable Belmont about the energy design of the project.

Chairman Solomon said that Mr. Colton, Chair of the Housing Trust, has asked that the percentage of affordable units in the development be 25%, not 20% as O'Neill is proposing, and that the duration of the affordability designation be permanent, which the developer has now stated would be the case. There was discussion of whether the 25% request should come from the Board as well if this is a requirement under the Town's by-law.

Selectman Brownsberger pointed out that we might want to link our access and egress comments to the master plan for the Alewife Reservation. He said he is particularly interested in the location of the path that will cross Little River.

Chairman Solomon asked whether we should mention flooding issues. Selectman Brownsberger responded that he thinks we should simply add a general statement asking that the views of other departments and committees be considered. He explained that he is not so much worried about flooding effects from this project, as flooding requirements are governed by law and he thinks this can be done without affecting flooding issues. Rather, he is concerned about traffic and preservation of open space.

The Board noted the letter will go out with Mr. Younger's signature.

The Board moved: to support the concepts of the letter.

The motion was carried unanimously (3-0).

#### *Discussion of Chapter 70 Funding Formula Change*

Members of the School Committee appeared before the Board including Chair Elizabeth Gibson.

Ms. Gibson reported that the School Committee met with Superintendent Peter Holland to talk about an effort by the Town of Acton to address inequities in the Chapter 70 funding formula. Acton is proposing a \$2,000 per pupil floor on Chapter 70 aid, so no community would receive less than this amount. For Belmont, this would mean an additional \$4 million annually in Chapter 70 aid. On Wednesday we asked the Warrant Committee to endorse this and they did, and now we are asking the Board to do the same.

Selectman Firenze noted there are towns that get 90% of their total education expenditures from the state and we get 8%.

School Committee member Kathleen Miller said that this proposal would positively affect one third of the districts in Mass. The rest would be held harmless.

The Board clarified that would mean we are asking the state to spend more money but not saying where that money would come from.

Ms. Miller stated that we do not expect this will pass, but to have 134 districts advocating is a lot of noise and maybe it will force some attention to the issue.

Selectman Firenze suggested it would be great to have this information in the local paper.

The Board moved: to adopt the proposal.

The motion was carried unanimously (3-0).

The Board and School Committee members agreed to meet in executive session at the end of the Board's February 27 meeting after hearing from the Health Insurance Committee to discuss re-opening of union contracts.

*Discussion of Opening of Annual and Special Town Meeting (Within ATM) Warrant*

The Board clarified that the "special" Town Meeting within the main Town Meeting is for the financial software appropriation and is a technicality necessary to prevent delays in the project.

The Board moved: to open the warrant for these meetings and to close it on March 10.

The motion was carried unanimously (3-0).

*Appointment to Planning Board*

The Board recalled it needs to make an appointment to fill Deborah Emello's seat. Chairman Solomon and Selectman Firenze indicated their support for the appointment of Andy Rojas. Selectman Firenze said he decided to nominate Mr. Rojas after speaking with the Planning Board and getting their input on what skills they were looking for in a new member. Mr. Rojas is a landscape architect and the Board agreed he seems to be well qualified for the position.

Selectman Brownsberger moved: to approve the nomination of Andy Rojas to the Planning Board.

The motion was carried unanimously (3-0).

#### *Discussion of the MBTA Advisory Board*

The MBTA Advisory Board has invited a senior elected official from Belmont to participate in the Advisory Board's meetings in an advisory capacity. The Board agreed that Selectman Firenze will represent the Board of Selectmen in this capacity as its designee.

The Board moved: to make Selectman Firenze its designated representative to the MBTA Advisory Board.

The motion was carried unanimously (3-0).

#### *Discussion of FY07 Budget*

The Board followed up on discussion from its previous meeting on Saturday, February 4. There will be a joint meeting of the Warrant Committee, Capital Budget Committee, and Board of Selectmen on Wednesday, February 8 to discuss the roads stabilization fund proposal and its effect on the operating budget. We need to decide on this by the 22<sup>nd</sup> of February to get it on the ballot for April 3.

The Board clarified that it is only the Roads Fund aspect that needs to be voted on by the 22<sup>nd</sup>. The related issue of how much, if any, money to take from the reserves to close the remaining operating gap does not need to be decided by that date.

Selectman Brownsberger suggested that we could have two contingency plans for closing the operating budget gap based on the outcome of the roads override vote and let the voters' decision inform us.

Selectman Firenze said he has received calls from people who feel we are using the popularity of roads construction to try to get higher tax revenue through an override. We need to frame this as an effort to make some structural changes in the way we do things to decrease costs and increase the level of service, and not present this as a scare tactic such that if we don't get the money, you won't have roads or schools or whatever. We need to make sure the voters have the information they need to cast an informed vote.

There was a general discussion of tax rates. Selectman Firenze mentioned the idea of a different tax rate for owner-occupied two-family homes that might ease the burden faced by this class.

Selectman Brownsberger stated that we are talking about tripling roads spending to address an important need that the voters have asked us to address, and that money will be committed solely to roads. Chairman Solomon added that this level of funding represents only 60% of what it would take to get all our roads to the level we would like them to be at.

Mr. Younger noted that the roads fund would also allow for proper road planning because you know you have a stable funding source in place.

Selectman Brownsberger suggested we could contact Town Counsel and have language drafted tomorrow to be voted on Wednesday.

The Board discussed whether the roads fund approach is preferable to asking for a \$3 million operating override, which you could argue would give us more flexibility? The planning aspect mentioned by Mr. Younger seems to represent an advantage.

It was agreed that Mr. Younger will come up with a draft of the roads fund ballot question and a FAQ sheet on the program. He will also verify whether a vote taken by the Board on the 22<sup>nd</sup> of February will satisfy all timing requirements. Assuming that answer is yes, the Board will plan to vote on that date in a special session.

Selectman Firenze raised the issue of whether we are asking for enough money. He is not necessarily comfortable with the amount of drawdown of reserves we might have to do to balance the operating budget under this scenario. Can we address the operating side of the budget?

The Board discussed the idea of having two overrides – one for the roads and one for the operating budget and not having to draw down the reserves as far. The Board clarified that no one is proposing dropping reserves below our 10% reserve policy limit. We have several forms of reserves totaling some \$6 million.

The Board agreed it wants to take the time to discuss the various options and make a decision on the 22<sup>nd</sup>. However, the Board did not definitively schedule a meeting for that date pending scheduling adjustments.

#### *Discussion of Purecoat North (PN)*

Chairman Noah Sachs and members of the Purecoat Planning Committee (Brian Iler, Joe Fiacco, Steve Tomczyk) appeared before the Board.

Selectman Brownsberger reviewed the Committee's activities. He stated that the Committee did great work coming up with development concepts for the PN site to give them enough cash to move out. In August, PN seemed positive about this. They explained they are a local supplier and they need to stay within the Boston area. Following the actions taken by the Board of Health, they have not been returning our calls regarding the development aspect. One of the issues that has come up is the possibility of off-site contamination and whether PN would fund testing for this – we now know that is not going to happen. While we wish to remain open to any initiative from PN on the development options, we need to protect our residents. Selectman Brownsberger stated he supports moving forward with the recommendation to do the additional testing. In response to the Board of Health lawsuit, PN has taken the position that the odors are coming from the former dump site at the high school. While we do not believe this is the case, we must take this seriously and investigate it whether it has merit or not.

Selectman Firenze said that he has become more and more uncomfortable with the idea of doing additional testing and is going to need a lot of information to get comfortable. If we have the additional information from doing the testing, what impact will that have on the Board of Health's lawsuit? Might it undercut our position? And does this raise the risk of finding environmental problems for the Town that we are not currently facing.

Chairman Sachs explained that Purecoat did testing over the summer under a Department of Environmental protection (DEP) order on their property. That report was filed in November and according to PN came up clean. There is no need to repeat what they have done but we think they may not have looked in the right places. We would like to focus on a few regions in the direction of groundwater flow. If we have contaminants migrating off-site which create a bigger problem and would require a bigger investigation. I do not see a lot of relationship with the Board of Health's lawsuit because that is about odors, not anything under the ground.

Mr. Fiacco said that the Committee has asked the DEP to require PN to do more work. This is probably the last chance to leverage the DEP to get them to do something. The last time DEP ordered PN to take action, their requirements were much more general than we had hoped.

Selectman Firenze asked if the DEP's attitude has generally been supportive of the Committee and taking its concerns seriously and Chairman Sachs agreed that it has. He warned that PN will want to file with DEP for closure of the site and we would like to act before that happens.

Selectman Firenze said he would feel more comfortable if we could get DEP to endorse this course of action. Chairman Sachs responded that the Committee is going to try to meet with DEP in the next few weeks and can run the idea of the Town's testing by them.

Mr. Fiacco clarified that PN had always maintained groundwater flow was to the west. After their testing it turned out it actually flows to the east. So all the estimating they had

done about the risk of offsite contamination was in the wrong direction. They didn't have any data points to the northeast. Chairman Sachs added that the new area we are interested in is the northeast edge of the site and not the western side where the dump site is. DEP could order borings to be done in this area, but if they do not we would still recommend that the Town do scaled-down testing in this area. We are looking for a contingency appropriation of \$25,000.

Selectman Firenze said he is comfortable with a contingency appropriation. If DEP recommends doing this, he is all for it. If we are doing it to try to influence or change DEP's opinion, he does not support that.

Chairman Sachs asked, what if DEP won't order the testing but doesn't object to having it done?

Selectman Firenze answered that we can then make a decision on that basis.

Mr. Fiacco agreed that we should explore all other options before spending the Town's money. We are approaching a decisive point on DEP's part. We will pursue the meeting with DEP.

Mr. Younger noted that the testing would be funded either with a reserve fund transfer or as an article in a fall special town meeting.

The Board asked what is the expected timing on this. The Committee members answered that it depends on DEP's response.

The Board moved: to have the Committee draft a letter for the Board pressing for the meeting with DEP and to meet again with the Committee on this in late March to take appropriate budgetary action.

The motion was carried unanimously (3-0).

#### *Discussion of Draft Wetlands Bylaw*

Members of the Conservation Commission appeared before the Board to advocate for the proposed by-law: Margaret Velie, Martha Moore, Christine McVay, Nancy Davis, and Carolyn Bishop.

Ms. Davis began by noting that we have pollution (EPA lists Clay Pond and Little Pond as polluted) and flooding issues in town. DEP no longer has the funding or staff to do prevention efforts. 168 towns have wetlands by-laws including Arlington, Watertown, and Lexington. Such a by-law would give us more protection of our resources. It would add intermittent streams and creeks to the rivers covered by the Rivers Protection Act, and would add ponds, springs, and uncertified vernal pools to the wetlands covered under the Wetlands Protection Act.

The by-law would change the 100 foot buffer zone to a resource area in which the outer 50 feet becomes a permissible area at the option of the owner. The first 25' is a no alteration zone, and the second 25' is a no permanent structure zone. We hope this would reduce pollution by protecting the first 25' of the buffer which eliminates 50% of pollutants. It would help control flooding because the vegetated buffer zone holds water and soil, preventing erosion. It would also provide a wildlife habitat.

The by-law recognizes the additional value of wetlands. It exempts sewer and storm drain maintenance. It would cover portions of 26 private lots in addition to the 264 lots already covered under existing law. These new riverfront lots would now be subject to the existing riverfront protection rules. The existing wetland lots would have the new 100' buffer rules as outlined above.

The by-law would require a second set of forms to be filed by owners wishing to build. It would add a new filing fee that would go into an account used only for wetland protection, including consulting and planning services. It would also add a refundable fee for use if any consultants are needed for the project in question. These fees would be intended to cover the real costs to the Office of Community Development.

The Board asked if this would raise enough money to be worth having the new fee. The Committee felt that if there was a large development opportunity it might. The question was raised whether any such opportunity exists on the 291 lots in question.

The by-law subcommittee plans to hold public meetings in March and April and is requesting the support of the Selectmen to get the measure on the ballot for April town meeting. The subcommittee will be speaking with property owners who would be affected by this.

The question of putting flyers in with the light bills was discussed. The Board had concerns about using town funds or the light department for what could be seen as promoting legislation rather than issue education. Mr. Younger will check into this. The subcommittee will continue to meet with other committees that may be affected by this, such as the Permanent Building Committee. The Board agreed this is important.

Resident Walter McLaughlin stated he is unalterably opposed to this. This would put the Conservation Commission in the position of wearing two hats – one enforcing state law and the other local law. The state wants to cut the buffer zone to 50 feet and this by-law would bring it back to 100 feet, for example. As a landowner, right now I can appeal the Conservation Commission's denial of a permit to the state DEP and they can overrule the Commission. Under a local by-law, the only appeal is directly to the courts and will only be upheld if there is a major mistake in applying the law. Thus, there would be no effective appeal from a local by-law. If we had this in effect previously, it would have affected the senior development at McLean.

The Board asked if it would be possible to write the by-law in a way that would allow for an appeal. There was uncertainty on this.



Ms. Davis said that only one decision has been appealed to DEP since she has been on the Commission and the person won that appeal. We work with owners to try to facilitate what they want to do. Also, many of these lots are large enough that the buffer zone would never prevent them from doing what they want to do. But there could be subdivisions in the future and then the zones would be important.

It was noted that the by-law is modeled on recommendations from the Massachusetts Association of Conservation Commissions.

There was discussion of whether DEP is an appropriate appeal target for a local by-law or whether a town body should be the appeal body.

Ms. Bishop noted that the proposed by-law has been reviewed by lawyers.

Chairman Solomon and Selectman Brownsberger indicated that they expected the measure would make it onto the warrant.

#### *Town Administrator's Report*

Mr. Younger confirmed that corrugated cardboard will not be picked up as recycling. He reported that he and Mr. Conti met with Virtual Town Hall, our web site vendor, to discuss improvements to the site. We learned that we have one of the highest numbers of hits to our site of the communities they work with. We are looking to make it easier to find information on the site.

On February 27 Verizon will update the Board on its work in town replacing cable.

There was discussion of the Woodfall Road land sale. The next step in the process is to execute the land exchange agreement with the country club and then we can proceed with issuing the RFP. We hope to have the RFP issued and a purchaser designated within three months' time.

The Fire Station RFP will be out to boards and committees for comment within days. Work on the communications tower is proceeding. We will be implementing some new crosswalk enforcement measures to alert drivers to crosswalks. We are looking at what other municipalities will be doing with red light camera enforcement to see how their by-law ordinances will be written, because a law change needs to be made to issue citations via camera. The Security Committee has sent out a survey to the departments on current security measures and needs. Regarding the Senior Center lease extension, the Archdiocese is looking to use some parking spaces at the site under any revised lease. DPW is holding an information session tomorrow night for neighbors about the proposed new public works facility.

#### **Other**

There was discussion of Waverley Square parking lot issues with people who park in the lot at night and what they are expected to do during a snowstorm when the lot needs to be plowed.

The Board asked that we follow up on where the bike path is with the Metropolitan Planning Organization.

Mr. Younger reported he attended a meeting of the Disabilities Access Commission and is working to cooperate with them on access issues.

The Board will be hearing on February 27 from a business owner interested in discussing the possibility of a gourmet wine and cheese shop in Belmont and what legal changes would be needed to allow this. Mr. Younger indicated there may be a problem with how you write the restrictions to keep all businesses from being able to sell beer and wine. There was discussion. The Board seemed to feel that this could be overcome if the Town wanted to allow this.

There was discussion of a pet business on the Cambridge line which does not qualify as a kennel and is not subject to the kennel by-law.

Mr. Conti updated the Board on Sycamore Street and Sherman Street parking issues. He has asked the Traffic Advisory Committee to facilitate a public hearing on proposed changes to address parking issues on Sycamore Street, and will be meeting this week with residents, school and town officials to discuss parking issues on Sherman Street.

The Board adjourned at 10:40 PM.

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Thomas G. Younger  
Town Administrator