

approved 9/5/12

**SELECT BOARD MEETING  
June 25, 2012**

Present: Select Board members – Doug Field, Paulette Leukhardt, Ron Coler  
Interim Executive Administrator – Mary Fitz-Gibbon  
Town Counsel – Donna MacNicol

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The meeting was called to order at 7:00 pm.

**Minutes:** Revised minutes of the May 16<sup>th</sup> meeting were presented for approval. Ms. Leukhardt said she could not approve them without reviewing the section where she has been quoted directly. At the suggestion of Mr. Coler, the section in question will be summarized and brought back to the next meeting for approval.

**Appointments:** none

**Building Inspector Program Contract:** The Board in considering the best interests of the Town has been looking into the possibility of utilizing inspector services other than those available through FRCOG. Mr. Field has learned that four inspectors would be needed: building, electrical, plumbing, and gas. Each would have a fee which he thought would be greater than the \$6,500 fee currently charged by the FRCOG Inspector Program. He therefore recommended that the Town continue with the FRCOG program for the time being. The contract has been reviewed both by Town Counsel and a requested second review by Kopelman and Paige. Suggested revisions from counsel have been included in the agreement before the Board. **A motion was made by Mr. Coler, seconded by Ms. Leukhardt, and voted, to sign the contract.** Mr. Field reported that there is training available for using the on-line application process.

**Open Meeting Law:** Mr. Field stated that the Board is responding to two complaints both filed by Suzanne Corbett that the Board violated the Open Meeting law.

1. The first complaint is that in discussing the agenda item, "Traffic issues on Main Street" at a Board meeting, Ms. Corbett felt the performance of the Police Department was being discussed without anyone from the department being present. She alleged that the department should have had 48 hours notice and had a presence at the meeting. The response letter read by Mr. Field referenced the laws thought to have been violated and stated that the Board was not in agreement that there had been a violation. Attorney MacNicol explained that this was not a discussion of the performance of an individual, which would have required executive session with 48 hours notice to the individual. She said the Board has every right to discuss any department in open session at any meeting, there is no requirement in the law that 48 hour notice be given before discussion in an open meeting.

A question was asked about something being discussed that was not on the agenda, which must be posted at least 48 hrs prior to a meeting. Attorney MacNicol said the law is clear that items not on the agenda may be discussed. The requirement is that anything that can reasonably be anticipated to be discussed be included on the posted agenda; however, issues do come up after the posting and can be included in the meeting. If there is time items can be added to a posted agenda.

**A motion was made by Ms. Leukhardt, seconded by Mr. Coler, and voted, to send the Board's response to Ms. Corbett.** Copies of the entire package will be sent to the Attorney General.

2. The second complaint is that of a serial communication violation - using a third party as a conduit to distribute information between Board members. Mr. Coler read the letter of response explaining how the Administrative Assistant communicated with board members individually for the purpose of obtaining needed information for a discussion that would be held in open session later that day. **A motion was made by Mr. Coler, and seconded by Ms. Leukhardt, that the letter be signed and forwarded to Ms. Corbett, with copies to the Attorney General.** Paullette Leukhardt read from page 6 of Ron Coler's June 6<sup>th</sup> letter to the Select Board. During discussion it appeared that there were differing opinions as to just what happened. Counsel said it appeared that this was simply an effort to get the matter organized for the upcoming board meeting. It is not a violation for members to have the discussion with the Administrative Assistant. Board members have a right to talk to the Administrative person. Mr. Coler wondered just how Ms. Corbett became involved in this. Ms. Leukhardt remained uncomfortable with the letter as written. Attorney MacNicol suggested that a paragraph be added to indicate the matter was discussed in open session. The letter could also be revised to add that the Select board disagrees with the charges; however it is aware that discussion with the Administrative Assistant could rise to the level of deliberation. **The vote was in favor of the letter as revised.**

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#### **Questions for Counsel:**

**1. Role of Chair:** Ms. Leukhardt asked Counsel to explain the role of the Chairman. Ms. MacNicol responded that the Selectmen are a board and act as a body. The Chairman runs the meetings, but has very little authority unless given it by the board as a whole. No member of the board has authority to act alone unless given same by the body (whole board). She continued that at meetings, the public has a right to attend and listen; for hearings, the public has a right to participate. Persons attending a meeting can speak if the Chair recognizes them. Usually, at meetings there is a public comment portion on the agenda, so that people can speak.

Ms. Leukhardt pursued this further over a concern that Mr. Field, chairman of the Board, without consulting the other board members, made changes to the alarm code, excluding the other board members from a room. Mr. Field explained he had taken the precaution of securing the Town Clerk's area while she was on vacation to protect town records. Counsel said there probably needs to be a broader discussion about how to handle the situation so that part of town hall isn't shut down and there is access to public records.

Later in the meeting, Ms. Leukhardt requested that the alarm system be reset. Mr. Field said he wasn't sure he knew how to do it. Mr. Coler was comfortable not having access while the clerk was gone. He inquired about a log that should be kept.

**2. Official Records** - Ms. Leukhardt spoke of a big blue binder that contained the official minutes of the Select board. She noticed a lot of records were missing. She asked if there should be a policy to expedite the process of getting approved minutes to the Town Clerk so they can be added to the book. Attorney MacNicol said the originals are kept by the Town Clerk, but copies can be kept in a folder for public use. The official record is the minutes of the Boards, once adopted.

She went on to discuss the handling of recordings and emails. Once the official record has been adopted (minutes and supporting documents) other items such as recordings do not need to be saved. The same thing is true of emails. Great care should be taken to keep town business separate from personal affairs. Currently, there is a Select board email address that people can use to contact the board. It is set up to automatically forward any messages to the individual members. Council said with emails, the recipient needs to determine the importance of the communication. If important, a hardcopy should be made and saved in town records. Once this has been done the email can be deleted. However, if notice of litigation for a particular issue has been received or is anticipated, nothing should be destroyed as it is considered part of discovery. If something needs to be kept for 10 years, there needs to be a hard copy of it. The important message is that public records belong in a public place, namely, town hall. There was discussion of retrieval systems for electronic items which tend to be very expensive.

**Warrants:** Mr. Field reported that he has talked to previous Selectmen and learned that warrants were normally signed at Select board meetings. Each pay period there are two warrants: payroll and vender. The treasurer has requested that the Board meet on Tuesdays so that schedules won't need to be changed. Currently, board members come in on Monday to review and sign warrants. Mr. Field said he would sit down with the Treasurer to better understand her request. The board does not plan to change its meeting schedule at this time.

**Liaison Reports:**

**Fire Department - Broadband** – Ms. Leukhardt reported that Mass. Technical Institute, working for MBI (Mass Broadband Institute) has contacted Chief Haskins about work at the fire station as broadband is coming to town. There seems to be a communication problem between Haskins and the representative as to how the phone system works. The phone system person Paul Mervine and Paul Swem, the IT person, will be alerted. Ms. Fitz-Gibbon was able to explain that this is part of the project to bring broadband to key services in the center of town.

**Fire station sign** - Haskins is still waiting for approval from the Historic Commission on a sign for the fire station.

**New fire truck** - Some repairs have had to be made to the old fire truck that is going to be replaced. On the new fire truck, Ford is not making the custom chassis for that size truck very fast. Mr. Field said Ford's priority seems to be making cars. Trucks will be made eventually.

**Grant application** - Ms. Leukhardt reports that the fire chief is working on a grant for a new fire engine. There will be some delays due to the redistricting of congressional districts.

**Highway Department** – The department is waiting for Chapter 90 money to be voted in Boston.

**Mail:** Robin Sherman will attend the July 11<sup>th</sup> meeting to discuss Grant Program Income monies.

**Other items:**

Ms. Leukhardt reported that at the meeting in Huntington she wished to speak to Attorney Kantor. The Attorney, from Kopelman and Paige, said she couldn't talk to Ms. Leukhardt. Ms. Fitz-Gibbon explained that Kopelman and Paige had been asked for an opinion on the FRCOG contract. She had also spoken to Leo Kopelman about the two complaints, as there had been a request for a second opinion for that as well. However, upon reviewing the meeting minutes, she realized that the Board had not voted to do

that. It had been agreed that communication with that firm should be through the Chair or the Administrator. Mr. Field said in the future all three board members need to be clear about what is going on.

**Meeting Schedule:**

The Board will meet tomorrow evening, meeting at 6:15 pm to make FY13 appointments and at 7:00 pm with the Board of Health and the Agricultural Committee. There will also be an executive session on Thursday, June 28th at 3:00 pm to meet with a MIIA representative and MIIA contracted lawyer regarding on-going litigation. The next regular open Select board meeting will be July 11, 2012. Page | 4

With regard to appointments, Mr. Coler asked if the Wind advisory committee was still functioning, or since it had given its report, was it all done? The consensus seemed to be that the committee was done.

**Public Comment:**

A question was asked about the status of the new cruiser. Mr. Field reported that it is in Boston waiting for installation of the cage and a back seat.

At 9:35 pm a motion was made by Mr. Coler, seconded by Ms. Leukhardt, and voted, to adjourn the meeting.

Respectfully submitted,  
Priscilla Phelps

Document List

Franklin Regional Council of Governments Building, Plumbing & Gas and Wiring Inspection Professional Services Agreement by and between FRCOG and the Town of Ashfield

Open Meeting Law Complaints/Select Board of Ashfield letter dated June 6, 2012 signed Suzanne Corbett

Select Board letter of response to S. Corbett Open Meeting Law Complaint dated June 25, 2012 signed Doug Field, Paultette Leukhardt, Ron Coler

Copy of Select Board response letter signed by the Select Board and dated June 25, 2012 to the OML violation complaint form submitted to the Select Board at their meeting on June 6, 2012 by Suzanne Corbett, Williamsburg Road, Ashfield; subject of complaint: Ashfield Select Board Members, and Assistant Administrator; specific persons named as subject of this complaint: Douglas Field, Paultette Leukhardt, Ron Coler, Mary Fitz-Gibbon; alleged violation date: May 30, 2012

Copy of Select Board response letter signed by the Select Board and dated June 25, 2012 to the OML violation complaint submitted to the Select Board by Suzanne Corbett, Williamsburg Road, Ashfield, at their June 6, 2012 meeting; subject of complaint: Ashfield Select Board Member; specific person named as subject of this complaint: Douglas Field, Chair; alleged violation date: May 30, 2012