

Board of Selectmen  
Minutes  
September 12, 2007

The Chairman called the meeting to order at 7:03 p. m. with all Board members present. David Cressman, Town Manager and Attorney Charles Zaroulis were also present.

Motion by Mr. Johnson, second Mrs. Stronach, unanimously voted to go into Executive Session at 7:03 p. m. for the purpose of discussing Rocco's. On roll call Mrs. Stronach, Mr. Johnson, Mr. Gay and Mr. Selissen voted in favor.

1. The Board returned to open session at 7:45 p. m. and the meeting was called to order at 7:52 p. m. The Chairman called for a moment of silence for the victims of 9-11 and Mrs. Stronach led the Board in the pledge of allegiance.

2. Atty. Barry Gerstein met with the Board requesting a change of officers in the corporation for Longhorns. Atty. Gerstein said that they are changing the clerk and secretary.

Motion by Mr. Johnson, second Mrs. Stronach, unanimously voted to approve the request for change of officers for Longhorns.

3. Mr. Selissen read the public notice regarding the transfer of liquor license for White Hen Pantry, 910 Andover Street. Zahir Khan, Pam Burns and Michael Dorsey were present to represent White Hen Pantry. Mrs. Stronach asked if there were any issues at all with residents at the location. Ms. Burns said no. Mr. Johnson said that there was litigation involved with this license transfer and asked if there was any history that would help the Board. Atty. Zaroulis said that they are proper before the Board in regard to this application pursuant to a court order. Mr. Selissen said that this is a public hearing and asked if there was anyone who wished to speak; no one came forward.

Motion by Mrs. Stronach, second Mr. Johnson, unanimously voted to approve the transfer of the liquor license.

4. Chief Donovan met with the Board to discuss staffing in the Police Dept. Mr. Selissen said that one of the concerns is the transfer of officers to other municipalities. Chief Donovan said that in 1998-99 there were 58 members of the department; today there are 55. The Chief explained that in order to get a new officer on Board it takes approximately one year. The Chief said that he has a potential of losing seven people in this fiscal year and asked how the positions would be filled. Mrs. Stronach thanked the Chief for the time and effort he put into this including the organizational chart. Chief Donovan said that the Town Manager is the appointing authority. Mrs. Stronach asked how much it costs to send someone to the academy. Chief Donovan said that the cost is their salary, they pay the town back; it's about \$3500 a month.

5. The academy is 22 weeks or 5 ½ months; field training is about 8-12 weeks; by the time employee benefits are paid it about 3-4 months so it can be almost a year to replace a person. Mrs. Stronach asked if in other towns when they know that someone is going to retire they start the process while the other person is still working. Chief Donovan said that he knows of no town that does that. The Chief said that the Fire Dept. replaces man for man; they don't. Mr. Johnson indicated that the Board worked really hard to pass a budget. Chief Donovan said he would like to be able to train people; there are 6-7 officers between 52-58 years old who will be retiring within the next three years; then officers will be 41-42 years old; he has a very young department. Mr. Johnson asked if he was confident with where the town is right now in terms of public safety. The Chief said no. The Chief said that he is trying to work within his budget but there are a lot of things they are not doing. Mr. Johnson asked if the recent collective bargaining agreement would help with the planning. Chief Donovan said that 33 years of service at 55 is about average; he has 6-7 people are going; replacing them is the problem. Mr. Gay asked if this was an unusual year for retirements. The Chief said yes that four years ago there was an early out; it's a cycle. The Chief said the senior people are gone now; they have vacant Lt. position; it's key to fill the position. The Board briefly discussed setting funds aside for training in the future. Members asked about grant money. The Chief said that there is some out there but it's usually matching funds. The Chief indicated that the town does have resident's preference.

6. Steve Sadwick and Jay Kelley met with the Board regarding expedited permitting and MGL Chapter 43D (Chapter 205 of the Acts of 2006). Mr. Sadwick explained that there needed to be a priority development site and certain criteria needed to be met; such as; community and landowner approvals, adjacent to existing development and in underutilized buildings or facilities. Once accepted the town has 120 days to prepare a priority development site and a complete application must be approved or denied within 180 days of submittal. Mr. Kelley said that NMCOC received some technical assistance money and made it available to member communities; five communities including Tewksbury were successful. Mr. Sadwick said, at the Board level, the town is under 180 days in the permitting process. Mr. Johnson asked what the benefit is for the town for potential sites. Mr. Sadwick said some sites are moving slowly one being the old Wang site. Mr. Sadwick said the Perkins property is a good site; Tewksbury is being proactive on rezoning there; that would be a good site for expedited permitting. Mrs. Stronach agreed with the proactive approach. Mr. Sadwick said it should stay on the table for further study.

7. At this time the Board held a public hearing on acceptance of Old Stagecoach Road. Mr. Selissen read the public notice. Mr. Cressman said that this is one of the few unpaved roads that still exist in town; over the past year they have met with the residents to lay out the street; residents weren't interested in making the street 24' wide. Mr. Sadwick said that the Planning Board looked at the plan on Monday night; they are in agreement with the plan and would like to see it move forward. Mr. Sadwick said that the proposal is for the street to be 16' wide, one way. The Planning Board is in favor of it but would like to see something from the police and fire departments. Mr. Duhani felt that it should stay at 18' wide to handle cars parked on the side of the road and should be able to accommodate emergency vehicles. Mr. Selissen mentioned it would be one way going in. Mr. Duhani said at the corner of 106 and 108 there will be some tree plantings; trees will be sitting on sanitary sewer pipes; they should be free of plantings. Mr. Selissen asked they could put a stop sign at Old Stagecoach Road and Vale Street. Mr. Duhani said sure. Mrs. Bowen said that she is favor of the plan that is before the Board right now. Mr. Selissen asked if she supported the plan submitted by Mr. Sadwick. Mr. Gay asked if she supported the 16' width. Mrs. Bowen said yes. John Mackay, 206 Old Stage Coach Road said that the last plan is the best plan. Mr. Johnson asked if he preferred one way or two way. Mr. Mackay said one way.

8. Ms. Anderson, 90 Vale Street, agreed with the plan submitted by Mr. Sadwick; one way 16' wide and asked if it would be paved before the end of the year. Mr. Duhani said it would be done after town meeting. Mr. Moody, 20 Old Stagecoach Road said he agreed with this plan, one way 16' wide. Mr. Gay said that this issue was before the Planning Board they were strongly in favor of one way (Shawsheen St. to Vale St.); 16' wide they did get comments from the residents who supported it. Mrs. Stronach said she supports it as well; it's the best compromise. Mr. Johnson said he would not want to take an adverse position; he would defer to those who use it and honor that compromise.

Motion by Mr. Gay, second Mr. Johnson, unanimously voted to approve the plan for Old Stagecoach Road, paved as one way Shawsheen Street to Vale Street with a 16' width contingent upon approval of the police and fire chiefs and stop signs being placed at Old Stagecoach Road and Vale Street.

9. Town Counsel indicated that this is a friendly taking; the legal documents must be signed prior to town meeting for this to go forward. Mr. Duhani said that the plans should be stamped by a registered professional engineer.

10. The next agenda item was discussion regarding Melim Dr. Mr. Joseph Serwatka, Planning Board consultant; was present. Mr. Sadwick explained that Melim Dr. was a subdivision before the Planning Board in 1997; inspections occurred during that time period. The developer has no interest in coming back to change anything on this site. One year ago, the Town Manager, Town Engineer and Finance Director talked about water and sewer billing because of being on the Lowell line; utilities come from Lowell. This has been discussed internally but there are outstanding issues to be addressed before the Selectmen lay out the road as a public way. Mr. Sadwick said that the Planning Board voted to move forward and initiated the process to revoke the \$2000 bond. Mr. Duhani said a few issues were identified; take the road but not drainage easement, control the intake but not the outlet; accept the roadway, utilities and drainage easements, these were not addressed. The developer was required to conduct tests for quality control issues; that was not done; two days ago a sink hole was developing settlement and cracking. Mr. Duhani said something is going on and they are not sure what it is. Mr. Duhani said developers use the site to bury stumps; maybe settling is occurring from a stump pile. Mr. Duhani said that the water line belongs to the City of Lowell; the rest of the lot appears to be in good shape. Resident 40 Melim Drive asked to review a copy of the report. Mr. Duhani said sure. Mr. Selissen said that there are issues with outstanding water and sewer bills are they going to enter into an agreement with the town? Resident 40 Melim Dr. said that those discussions are ongoing.

11. Ms. Mondello, 60 Melim Dr. said that they are interested with the issues with the water and sewer and want to be in agreement. Ms. Saterfield, 61 Melim Dr. said they want the town to accept the street. Mr. Salvesand, 41 Melim Dr. asked how the developer was able to approve it like this. Mr. Sadwick said that as the work is being completed and inspected the developer has the right to request reducing the bonding. Mr. Sadwick said that everything was in place until we saw the as built plan. Resident 41 Melim Dr. said the town didn't know the water and sewer was coming from Lowell. Mr. Duhani said he would contact Lowell Water Dept. and do an exploratory. Mr. Selissen asked if it would be before the winter sets in. Mr. Duhani said it would be a couple of weeks. Mr. Selissen said that a meeting should be set up with the residents regarding the water and sewer. Mr. Duhani also felt that there should be more extensive testing done.

Motion by Mrs. Stronach, second Mr. Gay, unanimously voted to continue the hearing until September 25, 2007, at 8:15 p. m.

12. Anthony DeAngelo met with the Board regarding the transfer of Class II License on the premises at 2195 Main Street. As an abutter to the property Mr. Gay excused himself at 10 p. m. Mrs. Stronach asked if there was any input from the residents. Mr. Selissen indicated there was none. Town Counsel suggested that Mr. DeAngelo provide documentation that he is a resident of 5 Tamarack Terrace, Stoneham.

Motion by Mr. Johnson, second Mrs. Stronach to approve the transfer of the Class II License subject to Mr. DeAngelo providing acceptable proof of residency.  
VOTED: 4-0 Mr. Gay not present not voting.

13. Mr. Gay returned to the meeting at 10:05 p. m.

14. Mr. Cressman informed the Board he is appointing Nathaniel Powers and Paul Nicosia as dispatchers effective September 24, 2007.

15. Mr. Cressman provided copies of the department heads goals and objectives to the Board.

16. The Board discussed Park and Recreation staffing. Mr. Cressman said that the position of Program Recreation Leader will be full time and will be funded from Recreation Revolving Fund. Mrs. Stronach asked if the whole salary is come out of the revolving fund. Mr. Cressman said yes.

17. The Board discussed the water billing policy relative to a memo dated July 11, 2007, regarding the Foster School. Mr. Selissen said that if they want a break they should go to one meter per unit. Mr. Johnson felt that it should be consistent across the board and the Board should move forward and bring them in line and felt that 5 years is too long. Mrs. Stronach agreed that everyone should be treated the same and 5 years is too long. Mr. Gay agreed. Mr. Selissen said the Board should look at it and come back with another recommendation. Mrs. Stronach asked what is reasonable. Mr. Cressman said two years minimum if they were not going to commit to individual meters; two years is the policy. Mr. Selissen said that a memo should go out in the next 2-3 weeks; and suggested that the change take effect January 2010. Everyone agreed that the effective date would be January 2010.

Motion by Mr. Johnson, second Mrs. Stronach, unanimously voted to table Labor Counsel invoice pending receipt of proper invoice.

18. Mr. Cressman said he received a letter of resignation from the DPW Supt. effective October 1, 2007 and requests authorization to post; there will be a screening committee and 5-7 candidates will be interviewed. Mr. Selissen said that he would like to have Mr. Johnson serve on the screening committee.

Motion by Mr. Johnson, second Mrs. Stronach, unanimously voted to authorize the Town Manager to post the DPW Supt. position.

Motion by Mrs. Stronach, second Mr. Johnson to approve the minutes of June 21, 2007. VOTED: 4-0 Mr. Gay not voting.

19. Mrs. Stronach said she had two issues regarding the Financial Planning Task Force; summary of August 20<sup>th</sup> meeting they met with the Accounting Dept. and the Fire Dept and discussed House Bill #2531 relative to mandatory overtime. Mr. Johnson asked if the Board could table discussion on this topic until the next meeting.

20. Mr. Johnson said that he would like to thank the Town Clerk, her staff, and the election workers for doing a commendable job on the September 4<sup>th</sup> election.

21. Reminder that Verizon will hold an informational meeting on September 13<sup>th</sup> at 7pm at the Trahan School relative to the cell tower.

Motion by Mr. Johnson, second Mrs. Stronach, unanimously voted to change the October 16<sup>th</sup> Selectmen's Meeting to October 23<sup>rd</sup>.

22. 275<sup>th</sup> Anniversary Committee; five members at large will be appointed.

Motion by Mrs. Stronach, second Mr. Johnson, unanimously voted to invite residents to participate in the 275<sup>th</sup> Anniversary Committee for the Town of Tewksbury.

Motion by Mr. Johnson, second Mrs. Stronach, unanimously voted to sign the warrant for the Special State Election on October 16<sup>th</sup>.

Motion by Mr. Johnson, second Mr. Gay, unanimously voted to sign the warrant for the Special Town Election on October 16<sup>th</sup>.

23. Attorney Rosemary Mocera met with the Board in regards to Tewksbury Junction. Atty. Mocera said that she wanted to discuss a number of issues she has with department heads including certain safety issues that need to be addressed. Atty. Mocera said that the material was originally submitted on August 2<sup>nd</sup> to meet with the Board of August 7<sup>th</sup>.

24. Mr. Selissen said that if this is ongoing litigation he did not want to jeopardize anyone's legal position. Attorney Zaroulis said that this is not a hearing and said that there was no need to cover the contents of the correspondence as the Board has very little jurisdiction over these issues. Atty. Mocera said that she was concerned that Mr. Colantuoni, Deputy Chief Ryan and Chief Mackey did a pre inspection for Paul Morris but didn't give the same courtesy to other unit owners prior to the State Fire Marshall coming out to do an inspection. Atty. Mocera showed a video of an oil tank truck entering the premises in July 2006 and no one has bothered to ask why the tanks were being brought into the premises. Atty. Mocera said that Mr. Morris owns units 13 and 14; someone contacted Deputy Ryan and they were told that they were not going to be allowed to refill the tanks which were filled with home heating oil and that business was being run out of units 13 and 14. Atty. Mocera said that Commissioner Colantuoni had no knowledge of the refueling of MDR vehicles and Deputy Ryan never came out to see if the tanks had been removed and that was of concern to the Association. Atty. Mocera said that she has additional photographs showing the fuel truck coming back in again by unit 14; it was stored onsite and the Building Dept. knew about the activities. Atty. Mocera said that the tank had 400 gallons of oil which far exceeds what is allowed in the district. Atty. Mocera said that there was equipment repair going on; the Building Dept. knew about these activities. Atty. Mocera said that it was a pre-inspection before the Fire Marshall inspection. Atty. Mocera said that on August 3, 2007 it appears that Deputy Ryan, Chief Mackey and Mr. Colantuoni were on the premises. Atty. Mocera said that she had asked to be on the agenda; on August 2<sup>nd</sup> she heard from Mr. Cressman that the task had been assigned to Mr. Sadwick and Mr. Colantuoni and she never heard from those individuals. Atty. Mocera said that she had concern that these violations were allowed to exist for over one year. Atty. Zaroulis said that the State Fire Marshall's Office and the Building Commissioner have separate jurisdiction.

25. Atty. Zaroulis asked Atty. Mocera when she refers to the pre-inspection why she doesn't refer to the inspection by the Fire Marshall as a post inspection. Atty. Mocera said that she would have no problem with them coming out for an inspection they would have wanted such an inspection. Atty. Zaroulis asked her to address the question. Atty. Mocera said had the Building Dept. and Fire Dept. thought it was important to make an inspection; the unit owners were not aware. Atty. Zaroulis said that there were certain units owned by Mr. Morris that was what was before the Building Commissioner; the State Fire Marshall reviewed a copy of the letter; as a result of that inspection the Building Commissioner issued a decision and an order. Atty. Zaroulis said that this is not a hearing and asked Atty. Mocera what she expects of the Board of Selectmen. Atty. Mocera said to have the Selectmen justify the activities of these individuals.

26. Atty. Zaroulis said she's asking the Board to take action when the request was made in 2006 state law 40A if he didn't respond within 14 days you have the right to take an appeal to the ZBA and asked why she didn't take an appeal. Atty. Mocera said that the town hasn't taken issue about Mr. Colantuoni going to site, no communication; no action whatsoever. Atty. Zaroulis asked Atty. Mocera why she didn't take the appeal; why bring it to the Board one year later. Atty. Mocera said that they were constantly ignored. Atty. Zaroulis said that there was a conversation with Deputy Ryan; they did receive calls regarding the tank; they did call Morris, they were to be removed and the Association was notified; in 2006 it was going to be removed and never heard anything after that. Atty. Mocera said that the Board deserved to know. Mr. Johnson didn't know what if any jurisdiction the Board has over any issues; this isn't a hearing and he would like to digest the information. Atty. O'Neill said that the litigation is ongoing; an appeal has been taken by the Association. Atty. O'Neill said that the decision of the Building Commissioner is not appeal able to the Board of Appeals and referred to his letter to the Board of Selectmen; he said that they need a permit to have the oil on the site and they are going to apply but it is not a violation. Atty. O'Neill said that he does not look to this Board for relief. Atty. Mocera said that one of the members of the Association is here and would like to speak with the Board. Mr. Selissen said that they were made aware of potential violations in other units he would expect them to go and check out the other units. Mr. Selissen said that it was implied that they were doing something off color. Mr. Gay said from what heard there isn't anything outstanding here and he will rely on Counsel to try and resolve this outside this forum. Ms. Stronach said she read all the documents and was overwhelmed with the information and appreciated Mr. O'Neill being out there and wouldn't want to make a comment. Mr. Johnson said he didn't want to add anything to it. Mr. Cressman said that he noted one thing that Atty. Mocera misrepresented Mr. Colantuoni's vehicle as being a Ford type SUV. Atty. Mocera said that he indicated in some writing that he wasn't there on the third. Atty. Mocera said that there were three individuals in that picture in uniforms and believed that those three individuals were there on the third. Atty. Zaroulis said to Atty. Mocera that she said he denied being there on the third. Atty. Zaroulis said that Counsel made certain allegations about certain town officials including himself; in one of the letters she said that he refused to enforce laws of the town of which he has never refused to do so. Atty. Zaroulis said that this matter is going to be before the ZBA this year and you are going to hear all the facts. Mr. Selissen asked for a detailed written report from Chief Mackey, Deputy Chief Ryan and Mr. Colantuoni to be distributed to the Board of Selectmen. Atty. Mocera asked for copies of minutes or clarification or whatever information they can. Atty. O'Neill asked for the same courtesy.

Motion by Mr. Johnson, second Mrs. Stronach, unanimously voted to approve the common victualler license for Villa Roma Pizza.

27. Mr. Cressman informed the Board that he was appointing Robert Hayes as Library Clerical Assistant effective October 1, 2007.

Motion by Mr. Johnson, second Mrs. Stronach to go into executive session at 11:24pm on roll call Mr. Gay, Mr. Johnson, Mrs. Stronach and Mr. Selissen in favor, unanimous vote.

The Board came out of executive session at 11:45pm and adjourned on a motion by Mrs. Stronach, second Mr. Gay, unanimously voted.

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Anne Marie Stronach, Clerk