

Selectmen's Meeting Minutes 10/18/10

**Board of Selectmen
Meeting Minutes
10/18/10**

The Board of Selectmen met this evening at the Easton Town Offices, Selectmen's Office, 136 Elm Street, with Chair Colleen Corona presiding.

Members present: Colleen Corona, John Haederle, Irwin Cohen, Ellen Barlow, Sean Noonan and Town Administrator David Colton were present.

Corona called the meeting to order at 7pm and announced that this meeting is televised.

Mass Department of Conservation and Recreation Curatorship Program

Kevin Allen, Historic Curatorship Program Manager and Ellenor Jahrmarkt, Borderland State Park Supervisor were present. See the attached information regarding the Wilbur House located at 251 Massapoag Ave, Easton and other related Curatorship information. Allen explained the program and the upcoming opportunity to submit a proposal for the Wilbur House. The Request for Proposal will be available on Thursday, October 21, 2010 and will be posted on the Town's website. Information can also be obtained at www.mass.gov/dcr/stewardship/curator. Corona noted the press will be helpful in getting the word out and thanked Mr. Allen for the information.

One day entertainment license – Elm Mariachi Mexican Restaurant – 620 Washington Street, Easton

Applicant Luis Contreras was present to explain the request for the one day entertainment license for Saturday, October 30, 2010 from 10pm - midnight. Fire Chief Tom Stone was present and noted the fire detail which is needed for the entertainment event in accordance with the Fire Safety Act of 2004. Corona reiterated the need for the detail because of the change in use from the restaurant venue to the entertainment venue for this one entertainment event.

See the proposed conditions to be considered when the Selectmen considering granting the one day entertainment license:

The Fire Department will need to issue a temporary permit and a fire detail will be required.

The Inspectional Services Department will be required to provide an inspection before the Temporary Certificate of Inspection is issued.

Voted: (Haederle/Barlow) voted unanimously to approve the one day license with conditions

J. Hockman, Inc. – Change Order #1 – Repairs to Long Pond Dam

Land Use Agent Stephanie Danielson was present. Colton referenced Change order #1 as proposed and suggested we can accommodate both Phase I & II for less than the cost of what we originally anticipated for Phase I. Danielson noted that this will work bring the dam back into complete compliance. Funding for the project was discussed.

Voted: (Barlow/Cohen) voted unanimously to approve Change Order #1

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Discussion re: Agricultural Commission

Land Use Agent Stephanie Danielson was present. Colton explained that he and Danielson have been talking about the possibility of establishing an Agricultural Commission. Colton explained that Easton has many land uses including agricultural; much of which is still in private ownership.

Danielson distributed the attached information and requested the appointment of a Steering Committee in order to develop an Agricultural Commission bylaw to present to a future town meeting. See the attached information.

After discussion, Corona agreed to work with Danielson in putting together some detailed information for the Selectmen's consideration at the next meeting.

North Easton Sewer District Update

DPW Director Wayne Southworth, Public Health Agent Mark Taylor and Joe Shea, Vice President of Woodard and Curran were present.

Corona referenced the public informational meeting held on October 7th and the concepts of two proposed plans for the sewer district were reviewed. Alternative #1 goes directly down Main Street and services both residences and businesses and Alternative #2 includes small portion of Main Street and the Mechanic Street area.

Southworth referenced the exciting opportunity which exists for Easton to have sewerage. Southworth suggested having the sewer line go right down Main Street, keeping the sewer line in the town right of way, away from private property would be the way to go. Main Street should be the trunk line and many side streets could be connected in time. Southworth suggested getting Main Street done first and out of the way should be a priority. The DPW would like to continue to work to bring the entire infrastructure in the Main Street area in-line before the sewer lines comes in.

The Board discussed the possibility of incorporating all of the utilities underground in the Main Street area. This would help during snow and ice storms, eliminating some of the power outages caused by weather conditions. Proposed betterment costs were discussed.

Taylor gave a brief history of the history of septic failures in the Main Street area and spoke of the need for a solution downtown. Taylor spoke of both alternatives and again reiterated the need for sewer in the downtown area. Costs to repair existing septic systems were discussed.

Corona referenced the planning meetings held every other week regarding wastewater and the proposed sewer district and the requirements and the formulas used by the Department of Environmental Protection.

Shea commended the Water Division as they have encouraged water conservation; this concept opens up the opportunity to connect more properties to the district. The two methods of calculating betterments were discussed.

Shea noted that they will be incorporation more detailed information for the next public informational session when discussing both options. Shea spoke of the cultural and historic information he received from Southworth.

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In closing, Corona encouraged comments from the public and announced the next public information session to be held on October 26, 2010 at 7pm at the Olmsted School Cafeteria.

One day liquor license requests

Corona referenced the following one day licenses requested by Stonehill College:

One day all alcohol license to hold a Catholic School Committee Association Reception at the Martin Institute on 10/19/10- from 4pm – 8pm

Voted: (Noonan/Cohen) voted unanimously to approve the one day license

One day all alcohol license to hold a Family Reception at the Shields Science Center on 10/23/10 from 4:30pm – 7:00pm

Voted: (Noonan/Cohen) voted unanimously to approve the one day license

One day beer and wine license for the Chet Raymo Literary Series Event at the Martin Institute on 10/27/10 from 4:45pm – 6pm

Voted: (Noonan/Haederle) voted unanimously to approve the one day license

Easton Police Details are not required for these events.

Safe Routes to School Infrastructure Program – School Complex Area

See the attached preliminary report.

Colton referenced the draft letter of support for the program for the Board's consideration and noted the public process required. A committee has been formed and a Selectmen's representative should be considered. Corona asked if Barlow would consider serving since she has been so involved in the Activate Easton Committee. Barlow agreed to serve in this capacity.

Voted: (Haederle/Noonan) voted unanimously to appoint Selectman Barlow to the committee

Voted: (Barlow/Haederle) voted unanimously to support the letter of support as drafted

Special Town Meeting Warrant Discussion

See the attached draft of the Special Town Meeting warrant.

ARTICLE 1. AMEND FISCAL YEAR 2011 BUDGET

ARTICLE 2. FUND CONTRACT FOR DPW UNION

ARTICLE 3. FUND CONTRACT FOR CLERICAL UNION

ARTICLE 4. FUND CONTRACT FOR DISPATCHERS' UNION

ARTICLE 5. CHARTER CHANGE (FINANCE COMMITTEE)

Colton noted Town Counsel has reviewed them and identified some issues. The Finance Committee is aware and they may revise the articles.

ARTICLE 6. CHARTER CHANGE (BOARD, COMMISSION, COMMITTEE MEMBERSHIP)

ARTICLE 7. AMENDMENT OF CODE TO REFLECT NAME CHANGE OF HISTORIC DISTRICTS COMMISSION

ARTICLE 8. AMENDMENT OF SECTION 215, ARTICLE 11, CLASS II LICENSE REGULATIONS

ARTICLE 9.

To transact any other business that may legally come before said meeting.

Selectmen's Meeting Minutes 10/18/10

Bob Hicks referenced article 5 and wants the board to be aware that the charter is in conflict with the bylaw as it currently exists.

Voted: (Haederle/Cohen) voted unanimously to include all articles

Discussion re: Bay State Gas

Colton referenced the house explosion on Jenny Lind Street a few years ago and the fact that two police officers were injured while responding to the incident. The Town filed a claim to seek a relatively small amount in damages relating to the incident and neither Bay State Gas nor their attorney has dealt with this claim to the point of being completely irresponsible. This has forced everyone involved to go into expensive litigation to recover costs. Recently the officers themselves filed a claim. Town Counsel recommends that we attach a lien on their case to recover any of the Town's costs. Colton agreed that this would be the way to move forward. After discussion, the consensus of the Board was to move forward as recommended by Town Counsel.

Selectmen's Meeting Schedule

See the attached proposed 2011 Selectmen's Meeting Schedule.

Corona explained the schedule and noted that careful consideration has been given so there are no conflicts with major religious holidays.

With respect to the 2010 schedule, Corona proposed a meeting for 10/26 at 6pm to finalize the warrant. The Board agreed.

CPA Committee Resignation

Corona referenced the resignation submitted by Colleen Less. A certificate of appreciation has been prepared for the Board's signature.

Proposed revisions to the Personnel Bylaw

Labor Counsel Marc Terry was present. See the attached letter submitted by Attorney Terry and the redlined version of the personnel bylaw reflecting the proposed changes. Colton referenced the personnel bylaw and noted the problems with this as it relates to the Charter.

Terry specifically spoke of sections 59-7 and 59-14 and suggested these to be the most substantial changes proposed. The sections lack clarity of the role of the Human Resources Board. He gave examples of some of the clarifications needed, especially where it relates to the Town Administrator as Human Resources Director.

The Board reviewed the proposed changes and after discussion, it was agreed to put the draft on the Town's website for public input. The intent is to consider the proposed changes at the next Annual Town Meeting.

Cultural Council appointment

Corona referenced the volunteer form submitted by Marion Wingfield.

Voted: (Barlow/Haederle) voted unanimously by roll call to appoint Marion Wingfield to the Cultural Council

Cohen-Wingfield; Haederle-Wingfield; Corona-Wingfield; Barlow-Wingfield; Noonan-Wingfield

Selectmen's Meeting Minutes 10/18/10

Minutes

Voted: (Noonan/Barlow) voted unanimously to approve general minutes dated 8/23/10
The Board did not take any action on General minutes dated 9/13/10.

Voted: (Noonan/Barlow) voted unanimous to approve executive session minutes dated 9/13/10

Public Participation

None

Selectmen's Notes

None

Town Administrator Notes

None

Press Notes

None

Voted: (Corona/Noonan) voted unanimously by roll call to adjourn open session, to go into executive session to discuss collective bargaining, litigation and real estate negotiations, not to return to open session (8:40pm)

Cohen-yes; Haederle-yes; Corona-yes; Barlow-yes; Noonan-yes

Respectfully submitted,

Mary Southworth

List of Documents and Other Exhibits Used:

Agenda Notes

Application for Entertainment License – Elm Mariachi Mexican Restaurant

Mass DCR information pertaining to Curatorship Program

Safe Routes to School Infrastructure Program Preliminary Assessment – Olmsted School

Draft letter of support regarding Safety Route to School Program

J. Hockman, Inc. – proposed Change Order #1 for Repairs to Long Pond Dam

Special Town Meeting Warrant

Selectmen's Meeting Schedule 2011

CPA Committee Resignation – Colleen Less

General Minutes dated 8/23/10

Agricultural Commission request to appoint a Steering Committee

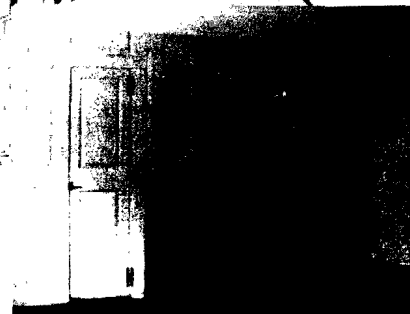
USDA Support Local Farmers document

APPROVED



WILBUR FARMHOUSE

251 Massapoag Ave., Borderland State Park, Easton, MA



The Wilbur Farmhouse was built by George Wilbur in 1788 and is the oldest structure within Borderland State Park. Wilbur raised cattle on the property, which was later sold and occupied by generations of farmers until the farm was purchased by the Ames family in 1948 and incorporated into the Ames family estate, Borderland. The house was leased to tenants through the 1980s and has since been abandoned for approximately seven years.

The house is a two-and-a-half-story Georgian-influenced Cape Cod style residence with a one-story rear kitchen addition. The house retains a high level of historic integrity. While DCR has recently performed some stabilization work on the property, significant rehabilitation work is required to make the property suitable for occupation. DCR hopes to release a Request for Proposal for the property in the near future for parties interested in encouraging the rehabilitation, reuse and maintenance of the property in return for a long term lease through DCR's Historic Custodianship Program.



Historic Curatorship Program

Department of Conservation and Recreation

June 2010

Within the Commonwealth's 450,000 acres of State and Urban Parks are a number of unused, historically significant buildings. Over time, these properties have fallen prey to the elements and vandalism. The **Historic Curatorship Program** was established in to preserve these properties through a unique public-private partnership. Through the program, DCR



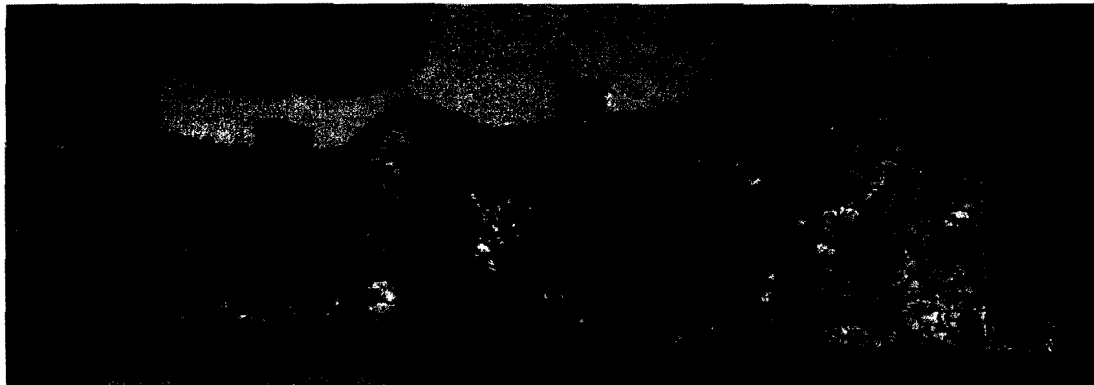
Glendledge Cottage, Halibut Point State Park, Rockport, Before and After

partners with a Curator who agrees to rehabilitate, manage and maintain a historic property in return for a long-term lease. As a result, DCR secures the long-term preservation of threatened historic sites and Curators exchange their hard work and unique skills for the opportunity to live or work in a one-of-a-kind location.



Garden tour, Litchfield House, Great Brook Farm State Park

Curators are selected through an open and competitive process and proposed reuses must be compatible with the historic and natural character of the park or forest. Proposals are evaluated according to the experience of the applicant, the quality of the reuse plan, proof of sufficient resources to undertake the project, and level of public benefit beyond providing biannual public access. Average lease terms range from 20 to 30 years.



Bradley Palmer Mansion (Willowdale Estate), Bradley Palmer State Park, Topsfield



**Gatekeeper's House, Lowell Heritage State Park
Before and After**

PROBLEM: Dozens and dozens of unused state-owned historic properties site under-used and under-maintained

SOLUTION: 1994 - State creates program that allows outside parties to rehabilitate, manage and maintain these invaluable resources in return for a long term lease

OPPORTUNITY: Curators contribute their investment, skills, and hard work and live or work in a one of a kind property in a one of a kind location.

RESULT: Eyesores and liabilities transformed into valuable assets that compliment or enhance the visitor experience at little cost to the citizens of the Commonwealth



**A new bulkhead for the Harlow Farmhouse
Ellisville Harbor State Park, Plymouth**

For more information on the program,
please contact:

Kevin Allen
Historic Curatorship Program Manager
Office of Cultural Resources
251 Causeway Street, Suite 700
Boston, MA 02114-2119
HCP.Requests@state.ma.us
617-626-1361

OR VISIT

mass.gov/dcr/stewardship/curator

Selections Minutes 10/18/10

Agricultural Commission Request to Appoint Steering Committee

1

- **Objective**

- To establish a steering committee responsible for:
 - ✦ conducting public outreach sessions and soliciting interest in adopting a Local Agricultural Commission
 - ✦ developing an Agricultural Commission bylaw to present at May 2011 Town Meeting
 - ✦ conduct public information sessions and gather support for adoption at Town Meeting

Agricultural Commission Request to Appoint Steering Committee

2

- Desire for local grown products
 - Since 2008:
 - ✦ NRT has increased # of farmers presenting at the Farmer's Market
 - ✦ ART leased land to local farmer
 - ✦ Conservation Commission signed tenancy agreement for Tufts Farm

Agricultural Commission Request to Appoint Steering Committee

3

- **What is an Agricultural Commission?**
 - Committee formed at Town Meeting through adoption of bylaw
 - Comprised of farmers, farm land owners or businessmen, members of the public interested in farm issues

- **What does an Agricultural Commission do?**
 - Local voice advocating for farming interests
 - Source for help, guidance & support
 - Interface with town
 - Helps resolving farm related problems & issues
 - Advocates for farmland and natural resource protection

Agricultural Commission

Request to Appoint Steering Committee

4

- **Role of Steering Committee**
 - Talk to other Local Agricultural Commissions
 - Conduct exploratory meeting
 - Draft bylaw
 - ✦ Purpose or mission
 - ✦ Membership
 - ✦ Appointment
 - Prepare warrant article
 - Gather public support

Selectmen's Minutes
10/18/10

**TOWN OF EASTON
COMMONWEALTH OF MASSACHUSETTS**

WARRANT FOR SPECIAL TOWN MEETING

November 15, 2010

BRISTOL, SS.

To either of the Constables of the Town of Easton in the County of Bristol:

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of the Town of Easton qualified to vote in elections and Town affairs to meet in the Oliver Ames High School Auditorium in said Easton on Monday, the 15th day of November, next, at 7:00 P.M., then and there to act upon the following articles:

ARTICLE 1. AMEND FISCAL YEAR 2011 BUDGET

To see if the Town will vote to raise and appropriate or appropriate by transfer from available funds a sum of money to amend the fiscal year 2011 budget, or take any other action relative thereto.

Submitted by Board of Selectmen

Explanation: This article will amend the FY11 budget to make adjustments for revised revenue projections including final state aid figures. The projected overall impact is a net reduction to the total budget. However, several budgets also require additional funding. At this time, the anticipated budget adjustments are as follows:

<i>Collector/Treasurer</i>	<i>\$ 15,880</i>
<i>Veterans Department</i>	<i>5,573</i>
<i>Library</i>	<i>3,422</i>
<i>Recreation</i>	<i>2,175</i>
<i>Employee Benefits & Insurance</i>	<i>(36,571)</i>
<i>Net Reduction</i>	<i><u>(\$ 9,521)</u></i>

Selectmen Recommendation:

Finance Committee Recommendation:

ARTICLE 2. FUND CONTRACT FOR DPW UNION

To see if the Town will vote to appropriate by transfer from available funds a sum of money needed to fund the incremental cost items contained in a collective bargaining agreement with members of the Southeastern Public Employees Association (DPW Unit) for fiscal year 2011, or take any other action relative thereto.

Submitted by Board of Selectmen

Explanation: The collective bargaining agreements with the DPW, Clerical, and Public Safety Dispatcher Unions expired on June 30, 2010. Funds sufficient to cover the cost of a 2% cost of living increase were appropriated as a set-aside line item in the FY 2011 budget by Town Meeting. We have successfully negotiated a one-year agreement with each of the three unions which grants a 2% cost of living adjustment. Given the uncertainty surrounding the financial condition of the Town in 2012 we were unwilling to extend the contracts beyond one-year. Collective bargaining for further time periods will be conducted after the Town Administrator presents the proposed FY 2012 budget.

Selectmen Recommendation:

Finance Committee Recommendation:

ARTICLE 3. FUND CONTRACT FOR CLERICAL UNION

To see if the Town will vote to appropriate by transfer from available funds a sum of money needed to fund the incremental cost items contained in a collective bargaining agreement with members of the Southeastern Public Employees Association (Town Clerical Employees' Unit) for fiscal year 2011, or take any other action relative thereto.

Submitted by Board of Selectmen

Explanation: The collective bargaining agreements with the DPW, Clerical, and Public Safety Dispatcher Unions expired on June 30, 2010. Funds sufficient to cover the cost of a 2% cost of living increase were appropriated as a set-aside line item in the FY 2011 budget by Town Meeting. We have successfully negotiated a one-year agreement with each of the three unions which grants a 2% cost of living adjustment. Given the uncertainty surrounding the financial condition of the Town in 2012 we were unwilling to extend the contracts beyond one-year. Collective bargaining for further time periods will be conducted after the Town Administrator presents the proposed FY 2012 budget.

Selectmen Recommendation:

Finance Committee Recommendation:

ARTICLE 4. FUND CONTRACT FOR DISPATCHERS' UNION

To see if the Town will vote to appropriate by transfer from available funds a sum of money needed to fund the incremental cost items contained in a collective bargaining agreement with members of the Southeastern Public Employees Association (Easton Public Safety Dispatchers' Unit) for fiscal year 2011, or take any other action relative thereto.

Submitted by Board of Selectmen

Explanation: The collective bargaining agreements with the DPW, Clerical, and Public Safety Dispatcher Unions expired on June 30, 2010. Funds sufficient to cover the cost of a 2% cost of living increase were appropriated as a set-aside line item in the FY 2011 budget by Town Meeting. We have successfully negotiated a one-year agreement with each of the three unions which grants a 2% cost of living adjustment. Given the uncertainty surrounding the financial condition of the Town in 2012 we were unwilling to extend the contracts beyond one-year. Collective bargaining for further time periods will be conducted after the Town Administrator presents the proposed FY 2012 budget.

Selectmen Recommendation:

Finance Committee Recommendation:

ARTICLE 5. CHARTER CHANGE (FINANCE COMMITTEE)

To see if the Town shall vote to change the Charter of the Town of Easton by deleting subsection (c) Powers and Duties of section C3-5 Finance Committee and substitute the following as a new subsection (c) reading,

(c) Powers and Duties. They shall consider any or all municipal questions for the purpose of making reports or recommendations to the Town.

Submitted by the Finance Committee

Explanation: The purpose of this article is to bring this charter provision into conformity with Massachusetts General Law 39 Section 16 which uses broader language. MGL 39 Section 16 reads in part, " ... who shall consider any or all municipal questions for the purpose of making reports or recommendations to the town... " ... " The existing charter provision states in part, " such powers and duties with respect to advising Town Meeting on any or all matters which are to come before the Town Meeting.... ". " That is not in conformity with the letter or spirit of the statute. Changing this Charter subsection was accidentally omitted in 2004 when the comparable bylaw section was corrected. The current bylaw section has the same wording as the powers and duties as set forth in this article.

Selectmen Recommendation:

Finance Committee Recommendation:

ARTICLE 6. CHARTER CHANGE (BOARD, COMMISSION, COMMITTEE MEMBERSHIP)

To see if the Town shall vote to change the Charter of the Town of Easton to add new subsections g and h to Section C7-7 Definitions of Article C7 General Provisions as follows:

(g) Ex-officio. Where the town charter or bylaws includes an employee of the town as an ex-officio member of an appointive board, commission, committee or sub-committee of town government, regardless of where that person resides, that person shall be nonvoting. Further, ex-officio members shall not serve as an officer of that board, commission, committee or subcommittee.

(h) Member. Membership on a board, commission, committee or subcommittee of town government shall be limited to residents of the town except for ex-officio members (as defined in section g above). Any person not a currently a resident of the town who serves as a member on any board, commission, committee or subcommittee shall hereby cease that membership or service upon passage of this article and its approval by the Office of the Attorney General of the Commonwealth. Notwithstanding, any member so removed shall not be considered for re-appointment until such time as they again become residents of the town.

Submitted by the Finance Committee

Explanation: The term ex-officio is not defined in the town charter as to whether or not that includes voting. Subsection g will clarify that point. Town employees with subject expertise should be able to serve in an advisory capacity as non-voting members of town boards, commissions, committees, and we thank those employees who serve and have served.

Subsection h establishes the principle that town boards, commissions, committees and subcommittees should be lead by its residents. Participation by residents is fundamental to the success of a democracy.

Selectmen Recommendation:

Finance Committee Recommendation:

ARTICLE 7. AMENDMENT OF CODE TO REFLECT NAME CHANGE OF HISTORIC DISTRICTS COMMISSION

To see if the Town will vote to amend the Code of the Town of Easton by deleting “The Easton Historic Districts Commission” wherever it appears and inserting in its place “The Easton Historical Commission” or take any other action relative thereto.

Submitted by the Department of Planning & Community Development

Explanation: At the Annual Town Meeting in May 2010, the Town voted to adopt a Local Historic District bylaw establishing the Easton Historic Districts Commission and to grant that Commission, pursuant to Chapter 152, Local Historic Districts, the additional role and responsibilities of the Historical Commission. The name change intends to reflect the breadth of the Commission's role and responsibilities.

Selectmen Recommendation:

Finance Committee Recommendation:

ARTICLE 8. AMENDMENT OF SECTION 215, ARTICLE 11, CLASS II LICENSE REGULATIONS

STM Warrant 11/15/10 Draft #1

To see if the Town will vote to amend Section 215, Article II, Class II License Regulations, of the Code of the Town of Easton as follows:

by deleting the word “principle” in the first sentence of §215-4.C and inserting in its place the word “principal”;

by deleting §215-4.F. in its entirety, and inserting in its place a new subsection F. “An application for a new Class II license, a transfer of a Class II license or an application for a modification to an existing Class II license must be accompanied by a site plan approved by the Planning & Zoning Board in accordance with Section 7-10 of the Zoning Bylaws”;

by deleting §215-4.J. in its entirety;

to further amend §215-4 by re-lettering the remaining subsections of §215-4 accordingly;

by deleting §215-5.D. in its entirety, and by inserting in its place a new subsection D “The number of motor vehicles for display on the premises shall be limited to the number of vehicles indicated on the Class II license issued by the Board of Selectmen.”;

by deleting §215-5.E. in its entirety;

to amend §215-5 by re-lettering the remaining subsections of §215-5 accordingly;

by deleting §215-5.H (formerly I) in its entirety, and by inserting in its place a new subsection H “The investigation of violations under this Subsection shall be delegated to the Police Department and to the Inspector of Buildings, each of which may enter the licensed premises at reasonable times to inspect and investigate the conditions in order to ensure compliance with the terms of the license.”, or take any other action relative thereto.

Submitted by Board of Selectmen

Explanation: The Selectmen issue the Class II license to businesses involved in used car automobile sales. The intent of the by-law change is to ensure that applicants are compliant with the zoning by-law before applying to the Selectmen for a permit.

ARTICLE 9 .

To transact any other business that may legally come before said meeting.

Tentative Schedule Board of Selectmen 2011

January 10

July 25

January 24

August 8

February 7

August 29

February 28

September 12

March 14

September 26

March 28

October 17

April 11

October 31

April 25

November 14

May 9

November 28

May 16

December 12

June 6

June 20

July 11

Selectman's Minute 10/18/10

MIRICK O'CONNELL

A T T O R N E Y S A T L A W

Marc L. Terry
Mirick O'Connell
1700 West Park Drive
Westborough, MA 01581-3941
mterry@mirickoconnell.com
t 508.860.1447
f 508.207.9345

September 3, 2010

CONFIDENTIAL

David Colton
Town Administrator
Town of Easton
136 Elm Street
Easton, MA 02356

Re: Revised Personnel By-laws

Dear David:

I am writing in response to your request for advice regarding potential conflicts between the Town Charter and Chapter 59 of the Town's Administrative Code, the so-called Personnel By-laws.

As a general proposition, the conflicts between the Charter and the By-laws primarily emanate from two provisions. First, there are numerous conflicts between the authority of the Town Administrator and the authority of the HRB. Second, the Charter establishes a "good cause" standard for suspension or removal, which conflicts with the references to "just cause" in the By-laws. I will detail each of these conflicts below. I also recommend a number of changes that are not based upon a conflict between the Charter and the By-laws, but rather are intended to clarify the existing By-laws or to improve the Town's personnel practices. I will explain each recommendation and its purpose below.

§ 59-2. Principles.

In the ordinary course, I would recommend the elimination of the references to "nonmerit factors" in Paragraph E and in § 59-3 as the use of this term is vague and provides employees protections beyond the scope of state and federal anti-discrimination law thereby exposing the Town to legal claims based on the assertion that a decision (e.g., a decision to terminate, not to hire, to promote) was made without regard to merit factors. The concept of nonmerit factors, however, comes directly from § 5-3 of the Charter. Accordingly, the deletion of this phrase from the By-laws, when it remains in the Charter, would not likely affect employees' ability to bring such claims. The Town should consider this issue the next time it convenes a Charter Review

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

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MIRICK O'CONNELL

David Colton
September 3, 2010
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Commission although I recognize the elimination of the concept of merit would likely be viewed with skepticism.

§ 59-5. Conflict with other laws or agreements.

I recommend deleting Paragraph C, which states that conflicting provisions of collective bargaining agreements prevail over provisions of the By-laws, because, by definition, employees covered by collective bargaining agreements are Exempt Officials under § 59-10. They are, therefore, not covered by the By-laws.

§59-6. Personnel Director.

I recommend that the Personnel Director's duties be amended to include the duty to assist the HRB.

§ 59-7. Human Resources Board.

There are number of points regarding Section 59-7.

1. The Appointment of the HRB

Although the Town Meeting, through the Personnel By-laws, voted to give the Moderator the authority to appoint the HRB, the By-laws must still be analyzed in light of the Charter. Section 4-2(b) of the Charter gives the Town Administrator the power to appoint "...except as otherwise authorized by the Charter, all department heads, officers, members of boards and commissions and employees." The Town Administrator's appointments are subject to the approval of the Board of Selectmen. Section 3-3(c) of the Charter, however, gives the Moderator the "powers and duties for that office by statute, by this Charter, by bylaw and by other vote of the Town Meeting."

Section 4-2(b) can be interpreted as establishing the Town Administrator as the appointing authority for all positions for which no other method of appointment is established in the Charter. For example, the Town Administrator would not be the appointing authority for the positions listed in Section 3-2(d), which establishes the Board of Selectmen as the appointing authority for the positions specifically listed therein. Under this interpretation, the Town Meeting cannot give the Moderator the authority to appoint the HRB because that authority is given to the Town Administrator. That is, the Town Meeting's vote, whether through Personnel By-law or otherwise, would conflict with Section 4-2(b) of the Charter thereby invalidating the provision of the Personnel By-laws that gives the Moderator the authority to appoint the HRB.

MIRICK O'CONNELL

David Colton
September 3, 2010
Page 3

On the other hand, it can also be argued that Section 3-3(c) is a retention of authority by the Town to allocate to the Moderator any power or duty it sees fit, subject to law.¹ Under this interpretation, the phrase "except as otherwise authorized by Charter" does not defer only to express statements of the authority to appoint, such as Section 3-2(d). It also defers to the Section 3-3(c) when the Town Meeting gives the Moderator the authority to appoint. Theoretically, this interpretation would allow for the transfer to the Moderator of numerous powers and duties, including the power to appoint currently allocated to the Town Administrator.

Based on our prior discussions, I understand you are not presently seeking my advice with respect to a definitive interpretation on the conflict between Sections 4-2(d) and 3-3(c) of the Charter as applied to the appointment of the HRB or to appointments generally. I do, however, strongly recommend the Town clarify this issue by Charter amendment. I can recommend specific changes to the Charter to resolve this conflict if the Town wants to address this issue.

2. The Power to Convene HRB Meetings

I also recommend giving the Town Administrator the authority to convene meetings of the HRB. Ultimately, this is a pragmatic recommendation based upon the volunteer nature of the HRB. It is designed to give the Town Administrator the ability to push the HRB, if necessary, to fulfill its duties.

3. "Town Administrator" v. "Personnel Director"

Please note that the titles of "Personnel Director" and "Town Administrator" are used throughout the By-law. The use of these terms is somewhat of a distinction without a difference as the Town Administrator serves as the Personnel Director. In determining which term to use in different provisions, I have tried to determine where the authority or responsibility comes from. If it comes from the Charter, I have used the term Town Administrator. If it comes from the By-laws, I have used the term Personnel Director. Here, for example, the ability to convene meetings is necessary for the Town Administrator to fulfill his duty to create a Personnel Plan, inclusive of the Salary and Classification Plans created by the HRB. To be fair, this distinction is not always clear. If there is one (or more) reference you would like to change, we can likely change the reference without legal consequence.

4. Access to Payroll Records

In Paragraph B(3), I recommend deleting the word "payroll" from the records to which the HRB will have access because payroll records include deductions for a variety of items that

¹ Massachusetts General Laws Chapter 43B, the Home Rule Procedures Act, establishes certain limitations on what changes can only be effectuated through an amendment to the Charter. For example, the method of electing the Board of Selectmen and the method of appointing the Town Administrator may only be changed by Charter amendment.

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may reveal confidential personal information. This follows the approach taken by the Office of the Secretary of State with regard to the public records law. Records of salary or earnings are a public record, but payroll records that reference deductions are generally not. Pragmatically, I suspect the reference to payroll records was unintentionally broad and the only records of any relevance to the HRB's development of the Classification and Salary Plans are the records of pre-tax earnings.

5. The Authority of the Town Administrator and the HRB

I recommend clarifying a number of provisions in Paragraphs B - D. The changes ultimately reflect a correction to the core conflict between the Charter and the By-laws. As background, let me address the structure of the Charter vis-à-vis the Town Administrator and the HRB in light of the relevant provision of the General Laws.

Massachusetts General Laws Chapter 41, § 108A provides that a town may establish a plan classifying any or all positions, excepting elected positions and positions in the school department – exceptions that are properly incorporated in the By-laws. Section 108A then directs that the positions should be put into classes that reflect “substantially similar work or having substantially equal responsibilities.” Section 108A further provides that a town may then establish a plan of minimum and maximum salaries on a class-by-class basis through the development of a salary plan that may provide for the attainment of the maximum salary through “step-rate” increases.

The scope of authority established under § 108A is important to understanding the corresponding authority to establish Classification and Salary Plans passed on to the HRB through the Charter. What this means is that § 4-2(m) of the Charter should be interpreted as giving the HRB the authority created under § 108A. That is, the HRB has the authority to place different “positions,” which are more appropriately referred to as classifications, into classes of classifications with substantially similar work or responsibilities. It has the authority to establish a Salary Plan to assign a salary to each class of classifications. Significantly, the HRB does not have the authority to develop new classifications, eliminate old classifications or determine anything other than which classifications should be placed in which classes and to assign a salary to each class. Further, the HRB's determinations are subject to the approval of the Board of Selectmen under the terms of the Charter. Accordingly, all other responsibilities with respect to the development of classifications lie with the Town Administrator/Personnel Director in accordance with § 4-2 of the Charter, subject, in limited instances, to the approval of the Board of Selectmen.

From this basic structure, it becomes clear that certain provisions within § 59-7 and elsewhere, as noted below, are either inconsistent with the Charter or require clarification. First, throughout the By-laws, I have updated the definitions and terminology to be consistent with the distinction between a “classification,” which refers to a job title, and a “position,” which refers to the number of individuals who are hired in a particular classification. Although not covered by

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the By-laws, the example of police officers can be used to illustrate this distinction. The Town maintains a classification of police officer. Within that classification, the Town maintains numerous positions. Thus, to emphasize that the Classification and Pay Plans focus on the classification rather than the individual, I recommend changing the term "position" to "classification." Similarly, in most circumstances with regard to the Classification and Salary Plans, it is appropriate to refer to classifications rather than "employees." These changes are made throughout the By-laws as appropriate. The remaining references to "position" and "employees" are consistent with the distinction discussed in this paragraph.

6. Clarification Items

I recommend clarifying references throughout the By-laws as necessary to create consistency with the Charter in the use of the term "Salary Plan" as opposed to other terms interspersed in the document such as "salary schedule" or "Pay Plan."

Specifically, Paragraph B(4) should be amended by striking the phrase "schedules of the Town employees" and inserting the word "plan" at the end of the first sentence. This maintains a parallel structure between the Charter and the By-laws and avoids any confusion with regard to the potential difference between the Salary Plan, as contemplated by the Charter, and the salary schedule of Town employees.

In Paragraph B(8), I recommend deleting the phrase "summary of performance based increases given" from the list of information the HRB shall present to the Board of Selectmen on an annual basis. Similarly, the HRB's report to the Board should not address the "distribution of employees falling within various performance levels." These references relate to the administration and implementation of the By-laws, not the development of the Classification and Salary Plans, which is the HRB's function. Accordingly, these provisions should be stricken as they do not relate to the authority given the HRB under the Charter. Moreover, they may intrude upon the authority of the Town Administrator to "fix[] the compensation of all Town officers and employees appointed by him" under § 4-2(c) of the Charter.

As Section 59-10 includes classifications covered by collective bargaining agreements within the definition of "Exempt Officials" not subject to the By-laws, Paragraph B(9) appears to give the HRB a responsibility that exceeds that given to it under the Charter. Further, as the Town Administrator is given the authority to negotiate all contracts under § 4-2(j) of the Charter, subject to the approval of the Board of Selectmen, the HRB's involvement in the evaluation of collective bargaining agreements is inappropriate. Moreover, the risk to the Town of having a volunteer HRB involved in collective bargaining, with its substantial legal requirements, in any respect, may inadvertently expose the Town to liability for unfair labor practices.

In Paragraph C(2), I recommend clarifying that the Classification Plan does not apply to classifications established through collective bargaining. This reference differs from my recommendation with respect to § 59-5 because § 59-5 contemplates how to handle a conflict

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between the By-laws and provisions of collective bargaining agreements, which will not occur considering collective bargaining unit classifications are not within the scope of the By-laws pursuant to § 59-10. It is, however, appropriate to clarify in this instance that the scope of the Classification Plan does not apply to classifications covered by collective bargaining agreements.

I recommend amending Paragraphs C(5) and C(6) to be consistent with the concepts discussed above and to reference the process by which the Classification and Salary Plans are submitted for approval by the Board of Selectmen.

§59-8. Department Heads.

I recommend clarifying that department heads may not establish procedures that are inconsistent with those established by the Town Administrator/Personnel Director. In this context, I have chosen to use both the terms Town Administrator and Personnel Director because the duties at issue derive from both the Charter and the By-laws.

§ 59-10. Definitions.

First, with respect to the definition of "Appointing Authority," the term "just cause" must be changed to "good cause" to be consistent with the § 7-11 of the Charter.

Second, the By-laws contain two sets of definitions of the terms "Class," "Classification Plan" and "Class Specification." One set of definitions is in § 59-10. The other is in § 59-12. There does not appear to be any material difference in the sets of definitions. Because the definitions in § 59-12 are clearer, I recommend maintaining these definitions and moving them to § 59-10, which defines all other terms within the By-laws.

Third, I have changed "position" to "classification" consistent with the discussion above.

Fourth, to be consistent with the Fair Labor Standards Act, I recommend changing the terms "Salaried Employee" to "Exempt Employee" and "Hourly Employee" to "Non-exempt employee."

Fifth, I recommend clarifying the definition of "part-time employee" as it appears internally redundant.

Sixth, I recommend deleting the term "probationary period" because the Charter provides that all employees are subject to removal only for good cause. Accordingly, it is inconsistent with the Charter to terminate an employee, even a new employee, without good cause. Moreover, while the term probationary period is defined, it is not used elsewhere in the By-law.

Seventh, I recommend deleting the phrase "from an eligible list" from the definitions of "Temporary/Seasonal Appointment" and "Temporary/Seasonal Employee" as the Town should

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not be burdened with trying to maintain any kind of eligibility list. I note, however, that this change would not preclude the Town from maintaining an eligibility list.

Last, I recommend inserting a definition of "Salary." The definition I recommend is broad and includes compensation that may be paid on an hourly basis.

§ 59-12. Definitions.

As noted above, I recommend moving the definitions of "Class," "Classification Plan" and "Class Specification" to § 59-10.

§ 59-13. Administration.

Section 59-13 appears to require major revisions to follow the authority given to the Town Administrator and HRB under § 4-2(m) of the Charter. Carrying forward the general discussion above, I will explain my recommendations paragraph by paragraph.

The changes to the introductory paragraph again clarify the process of transmitting the Classification Plan for approval to the Board of Selectmen and make other clarifications consistent with the general discussion above.

The changes to Paragraph A are largely clarifications based on the general comments above. The one substantive change is that the authority to develop proper class specifications appears to lie with the HRB, not the Town Administrator. As defined in § 59-10, the Class Specification is the description of the characteristic duties, responsibilities and qualifications that distinguish one class from another. That is, the Class Specification is the tool by which the HRB is to determine in which class each classification shall be placed. The HRB has the authority to allocate classifications to classes doing substantially similar work or having substantially similar responsibilities. Thus, giving the Town Administrator authority over the determination of the Class Specifications appears to intrude upon the HRB's authority.

Like Paragraph A, Paragraph B gives the Town Administrator/Personnel Director the authority to allocate classifications among classes. This is the purview of the HRB.

Paragraph B gives "equal weight" to the assessment of the employee's supervisor or department head in determining to which class a particular classification should be allocated. Aside from the practical difficulties in determining what "equal weight" may mean in certain cases, directing the HRB to give specific weight to a supervisor's or department head's recommendation cuts against the core purpose of having the HRB develop the Classification Plan -- to have an independent board conduct a neutral analysis of job classes without consideration for a supervisor's or department head's efforts to advocate for a particular employee. Accordingly, I recommend continuing to include the supervisor and/or department

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head in the process, but as contributors – not decision makers. This approach is consistent with the authority given to the HRB by Charter.

The only substantive change in Paragraph C is the authority of the HRB to determine when classification reviews shall occur. Because the HRB has the authority to determine class allocations, it should not be limited in its review of those allocations to times when the Town Administrator requests them. I recommend a middle ground that allows the HRB to review class allocations as it deems necessary or upon the request of the Town Administrator.

Last, in Paragraph D, I have clarified that after a reclassification, the HRB must evaluate whether to allocate the classification to a different class. In this context, the terms “reclassified” and “regraded” are interchangeable. They both refer to determining whether one (or more) classification(s) should be moved to a different class. I have introduced the term “regraded” because of the potential double meaning of reclassified. That is, reclassified may mean the change of the title of the classification or it may mean the reallocation of the classification from one class to another, which is more commonly referred to as a regrade.

While the changes in § 59-13 clarify that some of the functions seemingly given to the Town Administrator properly lie with the HRB, the key clarification, consistent with the discussion above, is that the HRB does not have the authority to establish classifications or determine proper duties within a classification. Its core duty is to take the classifications in existence, allocate them to a class and assign a minimum and maximum salary range for each class, all of which must be submitted to the Town Administrator and processed to the Board of Selectmen for approval.

§ 59-15. Development.

The changes in this section are clarifications only.

§ 59-16. Maintenance.

The changes in this section are clarifications only.

§ 59-17. Administration.

Section 5-3, Merit Principle, of the Town Charter provides: “All appointments and promotions of town officers and employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence and suitability.” In keeping with the Charter provision, I recommend revising Paragraph A by deleting the basis for starting an employee at a higher than minimum rate, which currently is “by exceptional qualifications of the applicant or by lack of qualified applicants available at the minimum rate.” This clause is more limiting than the Charter, which requires considerations of merit, without limitation.

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Accordingly, I recommend amending Paragraph A by replacing the restrictive language with a reference to § 5-3 of the Charter.

The changes to Paragraph B are largely clarifications, except for the frequency of review of the Salary Plan by the HRB, which I recommend amending to be consistent with my recommendations in Paragraph C of § 59-13.

§ 59-22. Policy.

For the reasons articulated above with regard to Paragraph A of § 59-17, I recommend amending § 59-22 to incorporate the merit principle from the Charter.

§ 59-25. Selection Procedures.

I recommend amending Paragraph A(1) to incorporate terminology from § 5-3 of the Charter by deleting "ability and qualifications" and inserting in their place "confidence and suitability."

§ 59-33. Responsibility of employees and Department heads; reasons for action.

I recommend revising Paragraph C to be consistent with § 7-11 of the Charter, which states employees may be suspended or removed from office for good cause. The Charter then defines the term "cause" as including, but not limited to, "incapacity other than temporary illness, inefficiency, insubordination, and conduct unbecoming the office." The By-laws, however, provided a more narrow definition of good cause. This is, therefore, inconsistent with §7-11 the Charter.

§ 59-34. Procedure.

I recommend striking the phrase "cause" in Paragraph A and inserting the word "reason" in its place to distinguish the authority of a supervisor to send an employee home as a non-disciplinary proceeding, for which the "good cause" standard does not apply.

With respect to Paragraph B, I recommend deleting the last sentence, which calls for the removal of an oral reprimand from an employee's file after 24 months. Although this is not driven by a provision of the Charter, pulling disciplinary documentation from an employee's personnel file may result in the inability of a Town to sustain higher level discipline in the future.

I recommend making several changes to Paragraph C. In particular, I recommend inserting, "the Town Administrator or Appointing Authority," in the list of officials who may impose a written reprimand. I also recommend deleting the word "just" in the phrase "just cause" and replacing it with the word "good" for the reasons discussed above. Further, I recommend extending the period for which a written reprimand may be issued to 10 days

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following the appropriate official's "learning of" the behavior as opposed to the occurrence of that behavior. Last, as noted above with respect to Paragraph B regarding oral warnings, I recommend deleting the provision that calls for the elimination of written warnings from an employee's personnel file after 24 months.

I recommend clarifying Paragraph E by making clear that an employee's appointing authority is within the definition of a supervisor. This is significant as an employee's appointing authority always has the authority to impose discipline (for "good cause"). Further, the unauthorized imposition of substantial discipline (i.e., a suspension of more than five days) by an official other than the appointing authority may constitute a violation of the employee's civil rights.

§ 59-35. Appeals.

I recommend streamlining the appeals process to ensure that both the Town Administrator and the appointing authority, when the Town Administrator is not the appointing authority, have the opportunity to review the appeal of a disciplinary action. The revised process I recommend ensures that the Town Administrator will always have an opportunity to review discipline if the Town Administrator is the appointing authority. It also gives the Town Administrator the authority to review discipline before it is appealed to the appointing authority when the Town Administrator is not the appointing authority.

Please contact me if you have any questions.

Very truly yours,



Marc L. Terry

MLT/ljg
Enclosures