MINUTES

BOARD OF SELECTMEN

IN BOARD OF SELECTMEN
TUESDAY, JANUARY 3, 2017
6th FLOOR HEARING ROOM

Present: Selectman Neil Wishinsky, Selectman Nancy Daly, Selectman Benjamin J. Franco, Selectman Nancy S. Heller, Selectman Bernard W. Greene

DRAFT

OPEN SESSION

Question of whether the Board of Selectmen shall enter into Executive Session for the purposes described in Agenda Items 2, 3, and 4 below.

In Open Session- the Chair must state the purpose for Executive Session, stating all subjects that may be revealed without compromising the purpose for which the Executive Session was called.

To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares; The Chair declared Executive session for items 2, 3,and 4.

On motion it was,

Voted to enter into Executive session.

Roll call:
Aye: Selectmen Wishinsky, Daly, Franco, Heller, Greene

PROPOSED EXECUTIVE SESSION
LITIGATION

For the purpose of discussing strategy with respect to litigation in the matter of Dawn Churchill Paes v. the Town of Brookline, et al, MCAD Docket No. 13BEM00204, and related matters.

PROPOSED EXECUTIVE SESSION
COLLECTIVE BARGAINING

For the purpose of reviewing and approving the Public Employee Committee (PEC) Agreement.

PROPOSED EXECUTIVE SESSION
COLLECTIVE BARGAINING

For the purpose of discussing strategy relative to Collective Bargaining negotiations.

ANNOUNCEMENTS/UPDATES

Selectmen to announce recent and/or upcoming Events of Community Interest.

Chairman Wishinsky took a moment to announce the passing of Brookline residents, Dr. Bob Sperber, Marcia Heist, and Frank Farlow.

Dr. Sperber was the former School Superintendent and sat on various community Boards and Commissions, he was an active participant in community development and supporter of the Brookline School System.

Marcia Heist was a former long-term School Committee member, and active community member as well as a supporter of Brookline public schools.

Frank Farlow was an active Town Meeting member and founder of Brookline PAX. He was a supporter of civic participation.

Selectman Greene noted in his comments remembering Bob Sperber, Frank Farlow, and Marcia Heist, the passing of Hope Lewis, and internationally recognized legal scholar and commentator on human rights and Northeastern University Law School Professor who was a long time resident of Brookline.

PUBLIC COMMENT

Public Comment period for citizens who requested to speak to the Board regarding Town issues not on the Calendar.

Up to fifteen minutes for public comment on matters not appearing on this Calendar shall be scheduled each meeting. Persons wishing to speak may sign up in advance beginning on the Friday preceding the meeting or may sign up in person at the meeting. Speakers will be taken up in the order they sign up. Advance registration is available by calling the Selectmen's office at 617-730-2211 or by e-mail at sorsini@brooklinema.gov. The full Policy on Public Comment is available at http://www.brooklinema.gov/376/Meeting-Policies

MISCELLANEOUS

Approval of miscellaneous items, licenses, vouchers, and contracts.

Question of approving the Joint meeting minutes with the School Committee for October 13, 2016.

On motion it was,

Voted to approve the Joint meeting minutes with the School Committee for October 13, 2016.

Voted to approve the minutes of December 13, 2016 as amended.

Voted to approve the minutes of December 20, 2016 as amended.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

BROOKLINE SCHOOL SPACE LEASE

Question of executing the First Amendment to the Town of Brookline School Space Lease for 62 Harvard Street.

Mary Ellen Dunn Deputy Superintendent for Administration and Finance in the School Department stated that this lease relates to additional space needed for the Pierce School.

On motion it was,

Voted to execute the First Amendment to the Town of Brookline School Space Lease for 62 Harvard Street.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

GIFT

Question of accepting a gift from Chestnut Hill Realty for an amount up to $10,000 for support in the creation of the zoning bylaw necessary to implement the Hancock Village MOA.

Town Administrator Kleckner stated that the Town entered into and MOA that was before Town Meeting and requires crafting a zoning amendment. This gift will support the cost of legal services to achieve that task. There are no strings attached, the Town will chose and hire a firm to conduct the services of drafting up zoning laws. This gift is accepted under M.G.L. Chapter 44 Section 53A.

On motion it was,

Voted to accept a gift from Chestnut Hill Realty for an amount up to $10,000 to support in the creation of the zoning bylaw, or general bylaw necessary to implement the Hancock Village MOA.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

CALENDAR

Review and potential vote on Calendar Items

PAY-AS-YOU-THROW (PAYT)

Further discussion and possible vote relative to the Pay-as-You-Throw (PAYT) system of trash collection including, but not limited to, the range of cart sizes and related pricing, options and costs for overflow trash and an exception system for residents and/or properties with physical limitations.

Commissioner Pappastergion reviewed his memo that addressed some concerns previously brought up at the public hearing.

In an attempt to address some of the arguments made by Dick Benka concerning the pricing structure for PAYT carts, I note that his analysis was based on the inclusion of all components of solid waste collection (MSW, yard waste and recycling) and considers the total disposal amount of MSW of 9,100 tons per year. His main point was that if you calculate the volumes in all carts under the DPW methodology the total amount of tonnage is about 20,000 therefore we are charging an excessive amount for disposal. His overall pricing is then reduced by the cost recovery percentage (about 75%) to yield the desired revenue of $2.8M. The effect of this pricing structure is that the difference in cost between various cart sizes is only about $20 versus $60 under the DPW structure even though both methods yield the same revenue. This results in fees that are higher for the smaller carts and overflow bags and lower for the larger carts providing a dis-incentive for residents to reduce the generation of solid waste. Implementing such a fee structure would most probably reduce the variable cart system to a single sized cart system and would not achieve reductions in MSW tonnage town-wide.

Highlights:

1. The variable cart sizes reflect a practical solution to accommodate different household situations while retaining the automatic collection of trash through uniformly designed bins (as opposed to having excessive manual collection of overflow plastic bags).

2. While not a pure PAYT system, the variable pricing schedule incentivizes more recycling, limiting the cost and the negative environmental consequence of burying/burning trash.

3. The variable fee schedule is intended to generate the same amount of revenue as the current $200 flat fee.
4. An exception system based on the physical capacity of a household and/or property is responsive to the Town Meeting Resolution and provides those eligible households with an option to use plastic bags or a smaller sized bin (18 gallon).

5. Two special collections scheduled at the most appropriate dates will provide residents with the opportunity to dispose of excess trash at no cost.

Commissioner Pappastergion added that a new program has been offered that would allow resident to discard "soft" waste items free of charge. These items include textiles, books and various other household items. An outside contractor will pick these items up on a weekly basis. The hazardous waste program will continue as it is.

Selectman Heller asked about folks that live in 2-3 family buildings and if there is any imperative to sharing a cart between the units.

Commissioner Pappastergion replied that there is a concern about certain landlords trying to game the system. Depending on the cart size and fee structure the cost could be beneficial to the owner, and at a cost to the operations. The program is set up to treat everyone fairly. He added that anyone can opt out of the program as long as they have a contract with a private hauler to ensure us that their trash is being handled in a professional manner.

Chairman Wishinsky asked what would happen is someone puts out trash in an unauthorized tote or dedicated bag. Commissioner Pappastergion replied that the landlord/owner is responsible as they are now, and would be cited; this occurs mostly with student housing.

The Board expressed concern about the waiver system. And in particular when someone identifies themselves as being physically unable to use the carts; how would the DPW evaluate this request.

Commissioner Pappastergion replied that this would be the difficult part; to make a determination due to geographical placement would be an easier task for them, however they will rely heavily on the honor system. Residents that receive a waiver for the cart use will be able to purchase the dedicated bags.

Selectman Daly stated that she supports the Commissioner's proposal. In reviewing Mr. Benka's and Spiegel's recommendations, that would make the smaller bins more expensive and the larger one less expensive. The program is trying to mechanize the system to save money and reduce employee injuries, as well as encourage residents to put out less solid waste. Sometimes we have to pay for services we don't fully use. She noted that when her kids where in the school system, it was a major benefit for them, now she pays taxes to support others in the school system; it is a town-wide benefit. She feels this structure is a

good compromise.

On motion it was,

Voted That the Board of Selectmen authorizes the implementation of a Hybrid Pay-As-You-Throw (HPAYT) and semi-automated solid waste collection system for all residents opting to participate in Town waste collection services as follows:

Users shall be limited to the disposal of trash in Town issued, variable sized wheeled carts of 35, 65 or 95 gallon capacity at the annual rate of $190, $252, and $312 respectively. In addition, official Town imprinted 30 gallon plastic bags will be available for purchase at local retail establishments for a fee of $15 per roll of 5 bags to be used for overflow refuse that does not fit within the selected wheeled cart.

MOVED: That the Board of Selectmen approves a policy to accommodate households where no occupants are able to maneuver a waste cart due to physical or geographical limitations by allowing the use of official overflow bags without a wheeled cart or by the use of a special Town issued 18 gallon wheeled cart for the annual fee $156. Said policy is incorporated within the attached document entitled Waste Cart Waiver Application for Hybrid-Pay-As-You-Throw.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

SENIOR TAX EXEMPTION STUDY COMMITTEE

Question of establishing the composition and scope of a committee to study proposed enhanced tax relief for senior homeowners with modest incomes.

Selectman Franco stated that this committee relates to Article 33 of last Town Meeting. There is a draft charge presented and he asked the Board to review it. He added that Chief Assessor Gary McCabe feels that the charge encompasses the intent of the Article.

There was no vote.

SANCTUARY CITY

Discussion of Brookline's Status as a "Sanctuary City" and Compliance with Federal Immigration Enforcement Policy.

Chairman Wishinsky stated that there is a lot of interest and the Board has received many phone calls and emails relating to the Town's Sanctuary City status. What does it mean, there appears to be no standard definition. Town Meeting has addressed this twice; one with a

resolution in 1985 that focused on refuges from El Salvador, Haiti and Guatemala; this was narrowly focused. In 2006 Town Meeting broadened the resolution noting the commitment of a sanctuary Town and expands it to relate to all undocumented immigrants, incorporating Homeland Security language, and pending legislation at that time as well as taking out the use of the words illegal and aliens when addressing immigrants. It does not get into town policy and activities of the Police Department. Since that time, ICE (Immigration and Customs Enforcement) and customs has stepped up enforcement. We are looking at neighboring communities and their policies, which is of particular concern due to the incoming President and his platform on immigration.

Police Chief O'Leary gave a rundown on their current practice.

In 2012 their procedure in handling warrants has changed. The ICE Act and Secure Communities Act prompted the change. Now when we make an arrest of any subject, they are fingerprinted. Those fingerprints go to the State's database, then to the FBI and on to ICE, where the fingerprints are processed for identification of the person arrested. When ICE has any action on the individual they issue an arrest warrant, and is handled similar to how we handle out-of-state warrants. ICE determines whether they want to come in and pick up the individual or not. They are then arraigned in federal court.

Another practice ICE determines is whether or not they will come pick that person up; the Brookline PD does not doing anything to them at this point, they don't set bail, but informs the bail officer that there is an ICE detainer placed on the individual. The Court decides whether to hold them or not and ICE has 48 hours to pick them up. The Brookline PD does not inquire about a person's immigration status or participate in raids; there may have been one back in the 1980's. They may participate if there is a threat to the community to ensure public safety is upheld. If someone is a victim of a crime, we support them regardless of their residency status and ask if they want us to contact their consulate. Our focus is on those with long criminal records, not people with non-criminal offenses.

Some neighboring communities hold the subjects on arrest warrants and ICE detainers but set criteria on ICE detainers. You can hold someone based on legitimate law enforcement not based on immigration status. Newton does not inquire immigration status but can hold someone on a felony charge or if posing a threat to the public. These rules were put in place after Brookline's last rules and regulations were drafted.

Selectman Daly is concerned about people that are either involved in a domestic dispute or other kind of dispute where both individuals are arrested; the victim may get fingerprinted and files sent through the various agencies.

Also, people that are arrested under minor offenses, like traffic offenses. These individuals would be subject to the fingerprint process that may result in an ICE detainment. How can we make sure that these residents are not subject to that process?

Chief O'Leary replied that it would depend on the circumstances if someone does not produce a license, we would inquire on who that person is; if there is no license, they committed a

violation and are subject to arrest.

Selectman Greene noted that individuals arrested but are not a threat to the public or committed a felony crime would still be subject to the fingerprinting process and information sent on to ICE, which may result in a detainment. He stated that this is not what we want to do, and asked how we can address that. The incoming administration has promised a more aggressive approach; we need to protect our humanity to the people of the town.

The Chief replied that a search may not trigger further exploration. If that person came in illegally how would ICE know; there would be no record of them on their list.

Selectman Franco added that it appears once the fingerprints are sent to the State Police we have no control where they go from there.

Selectman Greene added that Boston's policy refers to the Boston Trust Act and relates to transparency tools. Also Town Meeting needs to realize there are separate issues with arrest procedures and urges Town Meeting to address those that are within Town Meeting's responsibility, like health services and Town services. He inquired if this review could be part of the accreditation process.

Town Meeting Member Marty Rosenthal spoke as the lead sponsor of the 2006 resolution and said that the ACLU model trust act is being proposed in other communities. The difference relates to judicial warrants vs administrative warrants being issued without a judge or probable cause. This model is being proposed in other communities.

Chief O'Leary added that no one is arrested that has not committed a crime; we will not keep people detained with respect to those who have not committed serious crimes; he added that he is not opposed to setting parameters.

Selectman Heller recommended looking beyond local communities on how they address the Town's Sanctuary City status. We may be doing some of the same things, but not as explicitly.

The Board recommended that the Diversity, Inclusion, and Community Relations Commission review policy and offer recommendations.

ANNUAL TOWN MEETING/ELECTION

Question of setting the dates for the Annual Town Meeting and Town Election.

Deputy Town Administrator Melissa Goff reviewed the proposed schedule. She noted that the schedule reflects a Tuesday, Thursday, Tuesday schedule.

February 3, 2017 Opening of the Warrant.
March 9, 2017 Closing of the Warrant.

May 2, 2017 Town Election.
May 23, 25, 30 and June 1st (if necessary) Town Meeting.

On motion it was,

Voted to approve the proposed dates for the Annual Town Meeting and Town Election as presented.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

There being no further business, the Chair adjourned the meeting at 9:05 p.m.

ATTEST