

**Board of Selectmen's Meeting
Open Session Meeting Minutes
35 Central Street – Town Hall
1st Floor Hearing Room
May 10, 2016**

Members Present: Selectman Thomas Boussy, Selectwoman Caroline Colarusso, Selectwoman Ann Marie O'Neill, Selectman George Seibold, and Selectman Anthony Wilson

Also Present: Attorney William Solomon, Town Administrator David Ragucci

Call to Order: Chairwoman O'Neill called the meeting to order at 7:00 p.m. (To view this meeting in its entirety go to Stoneham TV on Demand available from the Town's homepage at www.stoneham-ma.gov)

Agenda Item 1: Pledge of Allegiance

Agenda Item 2: 57 Franklin Street – Site Plan Approval (Time 1:00 on Stoneham TV on Demand) The public hearing was opened at 7:01. Attorney Houghton appeared for the petitioners, Frank M. Walsh and Debera A. Walsh, Trustees of the D.K.L. Two Realty Trust, regarding the proposed site plan for the property at 57 Franklin Street. Attorney Houghton explained that the Walsh's wanted to demolish the existing structure at that site and build a three family dwelling. He explained that it is an allowed use in the overlay district. Selectman Wilson stated his concerns about the density in the area as it relates to parking and asked Attorney Houghton to explain the three onsite/three medallion parking that is proposed in the plan. Attorney Houghton stated that his client would provide three on site spaces for tenant parking with the option of purchasing parking medallions for nearby lots. He also stated that his client owns all the adjacent property, so parking will not be an issue at this site. Selectman Seibold stated that the Walsh's consistently maintain their properties in Town. Selectman Wilson asked if all of the terms and conditions proposed by the departments have been met. Attorney Houghton explained that they have been or will be met upon building. The Hearing was open to public comment and there was none. Selectman Wilson moved that the Board approve the Site Plan. Selectman Seibold seconded the motion.

Voting in Favor:

Chairwoman O'Neill
Vice Chairwoman Colarusso
Secretary Wilson
Selectman Boussy
Selectman Seibold

Motion carries (5-0).

Agenda Item 3: TIF Update (Time 7:07 on Stoneham TV on Demand) Town Planner Erin Wortman was present to speak on this matter. She stated that based on the vote at Town Meeting, the Board was now authorized to enter into a TIF agreement with the owner of 370-380 Main Street. She prepared two documents outlining the terms of the agreement. Town Planner Wortman stated that the owner of the property entering the agreement with the Town will always pay at least the current tax rate. The TIF only applies to the newly assessed/value added portion on the property. The Town will not only gain a more valuable and better maintained property, but also a Meal Tax income. Therefore, any relief granted is quickly gained back by the Town. Chairwoman O’Neill asked which fund the Meal Tax goes into. Town Administrator Ragucci stated that checks for Meal Tax are deposited into the General Fund. Attorney Houghton, who represents the developer, reiterated that TIF only applies to new growth and does not affect the current taxable rate of the property and thanked Town Planner Wortman for all of her work on this matter. Selectman Boussy moved to approve the terms of the TIF proposal/agreement as submitted by Town Planner Wortman. Selectman Seibold seconded the motion.

Voting in Favor:

Chairwoman O’Neill
Vice Chairwoman Colarusso
Secretary Wilson
Selectman Boussy
Selectman Seibold

Motion carries (5-0).

Agenda Item 4: Approve Minutes (5/2/16) (Time 15:47 on Stoneham TV on Demand)

Selectman Seibold moved to approve the minutes of 5/2/16. Selectman Wilson seconded the motion.

Voting in Favor:

Chairwoman O’Neill
Vice Chairwoman Colarusso
Secretary Wilson
Selectman Boussy*
Selectman Seibold

Motion carries (5-0). *Selectman Boussy recused from approving Agenda Item 3.

Agenda Item 5: Fire House Centennial Celebration Parade – committee formation

Selectman (Time 17:00 on Stoneham TV on Demand) Wilson stated that he followed up on questions raised at the last meeting regarding committee formation and fundraising so he prepared a memorandum to assist in that matter going forward. Chairwoman O’Neill stated that she is also concerned with liability issues. Selectman Boussy stated that policy is really what is at issue here. No one is trying to prevent the parade from going forward, there are just the issues of fundraising and insurance. Selectman Wilson’s memorandum describes the differences

between formal committees, ad hoc committees, and private groups as to fundraising. He stated that as long as the body is working under the direction of the Town, it can raise money.

Chairwoman O'Neill stated that she met with Town Counsel Solomon and Selectman Wilson on the insurance aspect of committee formation and Town volunteers. Town Counsel Solomon stated that as long as the Town has requested help/volunteers, then the person assisting the Town is covered by the Town's insurance. Per the direction of David Ragucci and Town Counsel Solomon, it is not necessary to list every volunteer on the insurance since that would be a cumbersome process and would create situations where individuals not named, but in fact volunteering, would not be covered.

Public member Tara Lawlor asked for clarification on the Fire House Centennial Celebration Parade Committee. She stated that it was unclear what the status of the committee now was. Chairwoman O'Neill stated that the Board wanted to be certain of the Town's responsibility to the committee and its volunteers and that she was excited about the anniversary, and that the committee could proceed under whichever format it desired. Selectman Wilson moved that the Town Administrator establish a committee in support of the Centennial Celebration. Town Counsel Solomon stated that no motion was necessary, just an expression that it was the will of the Board that the Town Administrator establish a committee. Chairwoman O'Neill asked that Selectman Wilson's guidelines be posted to the website with a complete list of requirements and expectations for Town Committees. She also stated that she would like to start bringing committees in on a regular basis to make reports to the Board. She also stated that a vote of the Board is not necessary for the Town Administrator to form an advisory committee.

Agenda Item 6: See Clix Fix (Time 32:19 on Stoneham TV on Demand) Town Administrator Ragucci stated that he directed all department heads to update See Clix Fix. He stated that in the last year the Town had 462 issues open on See Clix Fix. 430 issues have been resolved and closed. 32 issues remain open. Of the 32 issues, some are open because they are ongoing or chronic issues. Chairwoman O'Neill stated that she appreciated the feedback. She stated that See Clix Fix has been great for the Town in terms of education and feedback and asked what type of issues tend to be chronic matters. Selectwoman Colarusso asked for clarification of the unresolved issues. Town Administrator Ragucci stated that the chronic issues tend to be sidewalk/street repair, street light outages, cross walk paintings, non-police issues. Selectwoman Colarusso asked Town Administrator Ragucci for a complete list of resident complaints made to the DPW, requested that the list be cross referenced with all unresolved matters from See Clix Fix, and a plan to address and prioritize those items be made. Selectman Boussy asked how DPW matters are prioritized and what procedure is used to prioritize matters that come in through See Clix Fix, phone calls, email, etc. Selectman Seibold asked how matters are prioritized. Selectwoman Colarusso also asked how matters are prioritized.

Chairwoman O'Neill requested a prioritized list of streets and sidewalks from the most in need of repair to the least. She stated that the Town's infrastructure is in need of repair and that neighboring communities have sidewalks and streets in good repair and we should have them too. She stated that we have received mitigation money for repair and replacement. Selectman Boussy stated that we have 60 miles of sidewalks and streets and the Town never budgets the money for maintenance. Selectman Seibold stated that knowing that the Town has not budgeted

the money for repairs, we need to plan and prioritize carefully. Selectman Boussy stated that MacArthur Road is in poor condition. Selectman Seibold stated that it has only been hot topped so it is not draining properly. Selectwoman Colarusso stated that Chapter 90 money has to be used by June 30 and was wondering the plan. Chairwoman O'Neill stated that we need a paving plan and it needs to be prioritized by need. Town Administrator Ragucci stated that he will get the paving list. Selectwoman Colarusso requested that when Broadway is repaved she would like to see a single, undivided line painted as the double line seems to be causing speeding issues.

Agenda Item#7: Weiss Farm – discussion of original warrant article and legal fees (Time 46:39 on Stoneham TV on Demand) Selectman Boussy left the hearing room as he has recused himself from this matter. Selectman Seibold read Article 1 from the September 20, 2014 Special Town Meeting. He stated that it is his opinion that the Town should not be considering a land swap and that the Town is approximately \$100,000 over the money appropriated for legal fees. He stated that it doesn't feel right and that is why he has recused himself from future votes. He continued that if the project is too big for Franklin Street it is too big for behind the Oaks and it should be put back in front of Town Meeting. Selectman Seibold stated that \$250,000 was appropriated for legal fees and the cost is nearing \$340,000. He stated that \$74,000 would be covered by the developer for MEPA.

Town Counsel Solomon stated that both the Town Accountant and the Town Administrator have paid all bills in this matter and have determined that they are related to the defense of the matter. He stated that the author's original intent has to be reasonably inferred. He also stated that the Board of Selectman has a right to look at a wide variety of issues related to this matter and that right is not at all dependent on Town Meeting. Town Counsel Solomon stated that purpose, intent, and context need to be considered when deciding if something is in the scope of the Warrant Article. He stated that he believes, and the Town Administrator and the Town Accountant agree with him, that all of the expenditures regarding the land swap are within the purpose and intent of the original warrant article.

Town Counsel Solomon continued by saying that the gist of 40B is that it allows developers to override years of community planning. He stated that the Town needed to avail itself of every legal avenue to review the process and to not allow the developer to ride roughshod over the Town's position. Selectman Seibold stated that it is not stated in any bylaw or state law that the Town can make a land swap. Town Counsel Solomon stated that it is reasonable to look at the land swap as a way to control where the project is built and that it is reasonable to look at the panoply of options and to make certain that it doesn't get built on Franklin Street. Selectman Seibold stated that is a very broad scope and that given the cost, people need to be informed. Town Counsel Solomon stated that the warrant states on its face that the money is to be spent to prevent the building of a development at 170 Franklin Street and the land swap would accomplish that. Solomon stated that he believes that exploring the land swap is a reasonable way to gain the sought after result – not building at 170 Franklin Street.

Selectman Seibold asked what fund the money is coming out of as the expenditures are almost \$200,000 over the allotted \$250,000. Town Administrator Ragucci replied the unclassified account. Chairwoman O'Neill stated that not enough credit has been given to

Attorney Solomon in this matter. She stated that Solomon has negotiated and received some of the work in this case for free or a reduced fee and that Corcoran has given some money for testing, etc. Selectwoman Colarusso stated that she has been at every meeting that has been held in this matter and that she has never heard Town Counsel, the Town Administrator, or the Town Accountant say that the warrant article has any ambiguity. We have used the authorized funds to hire experts to fight 40B and 40B is a broken law. She stated that they have been working to get the best possible outcome for the Town and that without the professionals that they have hired, they could never have come close to this deal.

Selectman Seibold stated that he has been at only two meetings regarding this matter and he is concerned that the land swap will become a liability to this Town because of the vague language. Chairwoman O'Neill stated that as the Town has gone through this process ideas and decisions have evolved. The Board has always opposed this development, but that based on court decisions, not building is not an option any longer. The land swap evolved as a way to control the location and the size of the development. Selectman Seibold stated that the Conservation Commission voted no on the land swap.

Town Moderator Larry Means stated that there were many procedural issues on the night of Special Town Meeting, but the motion made, in a general sense, was to fight development. He also stated that the \$250,000 was put under the jurisdiction of the Board of Selectmen.

Public member Jim Sullivan stated that he supplied the language for the original article and that he left it vague because he didn't know how to fight a 40B. He stated that while the land swap was not originally contemplated, there is a nexus between the swap and making sure the project is not built on Franklin Street. He stated that, ultimately, the Town will have to vote on the details of any deal.

Public member John Eaton stated that when reading the original warrant article you have to interpret it using plain language and it clearly states "any legal action" to oppose building at Weiss Farm. He thanked Chairwoman O'Neill, Selectwoman Colarusso, and Selectman Boussy for opposing the Weiss Farm project and for the hours they have put into this matter. He stated that previous Boards, including those in which Selectman Seibold was a member, failed to make a plan to bring this Town into compliance with the requirements for low income housing. He stated that this could have been planned for and prevented by previous Boards.

Public member Raymie Parker stated that the Town approved spending \$250,000 on this matter not \$340,000. She asked where the additional money is coming from and where the authorization is coming from. Town Counsel stated that some of the funds have come from the developer and that the expenditure meets the goal, purpose, and broad intent of the warrant article authorizing the Board to act. Chairwoman O'Neill stated that even without the warrant article, which served as a message to the developer, the Board has an obligation to fight this matter. She stated that while \$250,000 was dedicated to the fight, it certainly didn't cap what could be spent. She stated that the Board and the attorneys are working to get this matter to Town Meeting.

Selectman Seibold stated that the gateway to Stoneham is now going to be a 40B development and that is a concern to him as is the money being spent on this matter.

Public member and member of the Conservation Commission, Ellen McBride, stated that she has the feeling that the Board is keeping the details of the land swap from the Conservation Commission, that the Board should be transparent, and that when the \$250,000 was spent the Board should have returned to Town Meeting.

Public member Paul Amato stated that he agrees with the effort to stop the development on Franklin Street. Public Member Tara Lawlor sought clarification of her understanding that Selectman Seibold would not be participating in the negotiations on this matter. Selectman Seibold stated that he was no comfortable spending Town money on this matter and he would not be involved in negotiations.

Agenda Item #8: Attorney Fees Discussion (Time 101:42 on Stoneham TV on Demand)

Selectman Seibold stated that his questions surrounding legal fees had to do with being fiscally responsible and questioned why Town Counsel could not represent the Board on certain matters. Town Administrator Ragucci stated that the unclassified account is used to hire attorneys when it is determined that Town Counsel Solomon does not have the expertise required. Chairwoman O'Neill stated that a handful of employees made 27 allegations against Board members as a prelude to a suit against the Town. The Town then had an obligation to fully investigate the matter. She continued that Town Counsel Solomon, having worked for the Town for 30 years, had a relationship with many of the individuals that were part of the investigation. She stated that the Town used the attorney that was recommended to Town Administrator Ragucci by its insurance provider to handle the investigation. The attorney found that none of the claims could be substantiated, but wanted to make it clear that it was an investigation and that no one was individually represented by counsel.

Selectman Boussy stated that MIIA (Massachusetts Interlocal Insurance Association) directed the Town Administrator to use outside counsel to investigate the charges brought by the 3 employees. He stated that from 7/1/14 through 5/12/16 the Town spent roughly \$520,000 on outside counsel, but that only \$5,000 was spent in this matter to prevent a suit against the town. Selectman Seibold asked about \$28,000 on ethics issues. Selectman Boussy stated that concerned all Town Boards and Committees and had nothing to do with individual Board members. Selectman Seibold stated that the spending just keeps adding up and he wants a better breakdown. Selectwoman Colarusso stated that the public sector operated differently than the private sector and that when a complaint is brought, management has an obligation to fully investigate the matter. She stated that she is concerned about the lack of employee training and that she keeps asking human resources to produce training manuals and policies and procedures and until that is accomplished, this type of expenditure is uncontrollable. She stated you cannot stop employees from complaining, but once made the complaint needs to be investigated and defended. The Board is not generating fees. It is investigating complaints. Chairwoman O'Neill stated that action needs to be taken so that this does not happen again and that is why the Board keeps pushing for policies and procedures. She stated that it is vitally important for everyone to understand the rules of engagement and the rules need to be in writing. Selectman Seibold stated that we only speak at these meetings and he is concerned about the 1.1 million dollar settlement

reached by a department head many years ago. Chairwoman O'Neill stated that the fees in question were not used for an attorney hired to go to court to defend any of the Board members. The case at issue was 27 complaints that needed to be investigated and not one of the complaints was substantiated and an unbiased decision was rendered.

Agenda Item #9: Alcohol Bylaw (Time 118:15 on Stoneham TV on Demand) Selectman Seibold stated that at the last Town Meeting, the Town bylaws were not changed regarding convenience stores. He stated that we have an alcohol bylaw that states there is to be no open alcohol on Town property and yet the Board has approved wine tasting at the Farmer's Market and a Truck Festival with a beer tent. Town Counsel stated that the bylaw in question states that you cannot have alcohol on Town property without the consent of the owner or person in control. In the case of the common, the owner or person in control is the Board or Town Administrator. If the Board gives permission for the alcohol to be served, then it waives the bylaw. Selectman Seibold asked if anyone contacted the Chief about this. Town Counsel stated that the Chief was involved with the Truck Festival discussions. He also stated that Section 9-1 does not apply with the Board gives consent to consumption because 9-1 only refers to offenses and the discipline that can be sought following an offense of public drinking. It would not apply if the Board waives the bylaw regarding Town property. Selectman Seibold asked if the Town is covered for liability. Town Counsel Solomon said that the Town is covered.

Agenda Item #10: Trash Fee Reduction (Time 126:47 on Stoneham TV on Demand) Selectwoman Colarusso stated that she has been looking at the Town's accounts and how the Board can decrease the burden on the tax payers. She stated that she is disappointed with the artificially high water rates and, while that has been corrected, she feels the Town owes recompense to the tax payer in the form of some relief on the trash fee. She stated that water rates have been high since 1983 and the Bob Grover stated that in 2005 the water and sewer fees began to be misappropriated. Selectman Boussy stated that as one of the first towns to sign onto MWRA use, the Town's water rates should not be so inflated. Selectman Wilson stated that he looked at the trash account balance and that they fluctuate by about \$200,000 over the course of a year just based on billing cycles and receipt of payments. He stated that even without a reduction in trash fees, the trash accounts will be in a deficit in two years and that the account balances will not be maintained at the recommended level of 10-15% of expenditures. He also stated his concern that the numbers are even more uncertain if we do not take the option on the current contract. Selectman Wilson also stated that if the Town has to subsidize the trash budget from the operating budget, it has to come from somewhere and that money is the equivalent of teachers, sidewalks, and street lights.

Selectman Boussy stated that it was never the intent to keep the trash fee indefinitely and subsidize other Town necessities. The trash fee was a temporary measure and now there is a projected surplus. He stated that he would like to eliminate it, but that would be drastic and unfair. Selectman Wilson stated that if they decrease the trash fee by \$40 then it is the equivalent of removing \$350,000 from the operating budget. Selectwoman Colarusso stated that she is only discussing FY17 and providing some immediate relief. Selectman Seibold stated that he would feel better if Bob Grover were at the meeting and could give his input. Selectman Boussy stated that it has nothing to do with DPW, this is a policy issue and that if the Board makes a modest decrease now, it can revisit the matter in September. Town Administrator

Ragucci stated that free cash is not predictable and if the Board reduces the fee now they will end by losing services in the future. He stated that stabilization should have \$5 million in the account, not \$3 million. Selectwoman Colarusso stated that on April 14, 2016, Town Administrator Ragucci stated that if the Town decreased the water fee, there would be layoffs – and there have been no layoffs. She stated that she takes great offense to the artificially inflated water fees and that it is an integrity issue and that she feels an obligation to pay the tax payers back. Town Administrator Ragucci stated that how this Town dealt with water and sewer rates is common practice and the MWRA drives that cost. He stated that the Town has been well managed and has seen improvements on staffing and its capital needs have been well addressed.

Selectwoman Colarusso moved to decrease trash fees by \$25 and purchase the big belly barrels that were tabled at the last meeting. Selectman Seibold stated that he wanted to table the discussion until Bob Grover could be at the meeting. Selectman Boussy stated that it is a policy matter and it is not Bob Grover’s decision. Selectman Wilson amended the motion to decrease trash fees by \$10 and review the matter when Town Meeting is closer. Selectman Seibold seconded the amendment.

Voting in Favor:

Secretary Wilson
Selectman Seibold

Voting Against:

Chairwoman O’Neill
Vice Chair Colarusso
Selectman Boussy

Motion fails (2-3).

Chairwoman O’Neill, passed the gavel to Selectwoman Colarusso and moved to decrease trash fees by \$15, purchase the big belly barrels and review the matter in September. Selectman Boussy seconded the motion.

Voting in Favor:

Chairwoman O’Neill
Vice Chairwoman Colarusso
Secretary Wilson
Selectman Boussy
Selectman Seibold

Motion carries (5-0).

Agenda Item #11: Arbor Day Proclamation (Time 153 on Stoneham TV on Demand)

Selectman Boussy read the Arbor Day Proclamation.

Agenda Item #12: Communications Liason (Time 153:30 on Stoneham TV on Demand)

Selectman Boussy stated that there is money in the budget for the BOS to hire someone to manage the Town’s website, write a blog, or work on the Town’s social media presence. He

wants the Town's boards and committees to make a connection with the community and to improve the Town's website. Selectman Wilson stated that there needs to be a clear job description and asked if some of this could be handled by the new IT assistant. Selectman Seibold asked if they could offer the position to the previous secretary to the Board. Selectman Boussy stated that she did not want the position. Chairwoman O'Neill stated that this is really part of a community building effort. She stated that the person who takes the job needs a level of expertise and information about the Town to know when there are events and where to advertise those events. Public member Liz Erk stated that she would be happy to assist the Town in creating a job description and developing a strategy to accomplish the Town's goals. Selectman Boussy moved to dedicate the \$17,000 to the position of Communications Liason contingent upon a job description being agreed upon by the Board. Selectman Wilson seconded the motion.

Voting in Favor:

Chairwoman O'Neill
Vice Chairwoman Colarusso
Secretary Wilson
Selectman Boussy
Selectman Seibold

Motion carries (5-0).

Agenda Item #13: Town Administrator (Time 172:34 on Stoneham TV on Demand) Town Administrator Ragucci stated that William's Street is closed for repair and replacement of water mains. The water has been rerouted and a detour is in place. The construction will last for about 6 weeks. Selectman Wilson asked how this matter was communicated. Town Administrator Ragucci stated that there are detour signs, flashing signs, and the residents were notified individually. Selectwoman Colarusso stated that she will initiate a robocall about Williams Street. Chairwoman O'Neill requested that all information regarding who to call in an emergent situation be communicated with the residents and placed on the website. The Town Administrator stated that the new Recreation Director starts May 11, 2016, and the new Library Director is scheduled to start in June. He stated that he walked the route proposed by Eversource and will be allowing the borings, but not the test pits. He stated that on May 13-14, 2016 the arena parking lot is going to be used for the production of a movie. He also stated that the Arena floor has not yet breached, but there is only about one more season left before the Town will have to decide whether to invest \$600,000 into a new floor for the arena. Town Administrator Ragucci also stated that the exterior painting of the library has been scheduled.

Agenda Item #14: Miscellaneous (Time 180:15 on Stoneham TV on Demand) Selectman Wilson noted that the trash can located near McDonnough's was destroyed and requested that it be replaced at a location where it was needed. DPW will identify location. Selectwoman Colarusso asked the status of the bucket truck ordered by DPW. Town Administrator Ragucci stated that it has been ordered and he will find out the status. Selectwoman Colarusso stated that the light near Winfrey's that was supposed to be replaced by DOT in FY17, is now on DOT's 5 year plan. Selectman Wilson asked the status of the MWRA project. Town Administrator Ragucci stated that the Town would be receiving \$487,000 for street and sidewalk repair on Oak and Cottage Streets and \$500,000 for a staging area at the high school. Chairwoman O'Neill

stated that replacing the streets and sidewalks that are being torn up by the project is not mitigation, it is repairing the damage done by the project. She questioned whether they would be ADA compliant and what else the Town would be getting. Selectwoman Colarusso stated that the Town has not yet signed an agreement. Selectman Wilson asked whether the Stevens Street and Pleasant Street sidewalk projects were already funded. Town Administrator Ragucci stated that they are funded.

Selectwoman Colarusso moved to adjourn. The motion was seconded by Selectman Boussy and **unanimously voted.**

Meeting adjourned at 10:20 p.m.

Respectfully submitted,

Dava Feltch Kilbride
Secretary to the Board of Selectmen