

SELECTMEN'S MEETING  
THURSDAY, JULY 9, 1992  
SECOND FLOOR MEETING ROOM  
TOWN HALL, MAIN ST., AYER, MA.

7:30P.M. OPEN SESSION WITH THE POSSIBILITY OF ENTERING INTO EXECUTIVE SESSION PURSUANT TO M.G. L. CHAPTER 39, SECTION 23B REGARDING SECTION 11 D.2 (6)-FACT FINDING MEETING-AYER HISTORICAL COMMISSION-PLEASANT STREET SCHOOL.

The Board met with Chairman Jones, Selectman McKinney and Selectman Slarsky.

Chairman Jones requested to step down as Chairman due to conflict of interest, he is a Mason and a member of the Caleb Butler Lodge and a member of the International Association of Masons, Selectman McKinney stating he too is a Mason. Chairman Jones requested Selectman Slarsky Chair the meeting.

Acting Chairman Slarsky requested Town Counsel to advise the Board of policy regarding conducting a meeting which involves two members of the Board of Selectmen being members of one of the entities involved in the matter before the Selectmen tonight.

Town Counsel stated Chairman Jones and Selectman McKinney received no indirect financial remuneration resulting in any votes taken by you on behalf of the Selectmen, Chairman Jones and Selectman McKinney stated that is correct. Town Counsel stated in the event that these two (2) members of the Board of Selectmen did not participate because of their memberships then you would have a situation with only one (1) member of the Board of Selectmen, you would not have a quorum and the Board would not be able to act. If that being the case, then the rule of necessity would allow these two individuals to participate in this situation tonight and other subsequent situations that may arise as a result of the ongoing problems that have to be resolved involving the Pleasant Street School. Both Chairman Jones and Selectman McKinney have made a full and open disclosure of their membership into the Masons including dual memberships with the local chapter and International Association both under Sections 19 and under Sections 23 have indicated they don't have any personnel financial indirect or direct interest in the outcome of the meeting with the Masons and or the Ayer Historical Commission tonight or in subsequent meetings and with the actions the Town might take with the entities just named. The Board has indicated they will go forward in an objective basis.

Acting Chairman Slarsky stated the reason the Board was meeting this evening was propagated as a result of a letter received by the Board of Selectmen dated 7/2/92 from the Ayer Masonic Lodge (letter attached) referencing a public and safety hazard at the Pleasant Street School and alleging a breach in the Lease.

Acting Chairman Slarsky stated the Board was not here to decide on the breach of the lease with the masons and the Historical Commission. The Board's concern is the Historical Commission is an appointed body by the Board of Selectmen to represent the community in the best interest of the Town. The Historical Commission has taken complete control of the Pleasant Street School governed by Town Meeting, therefore has the responsibility of that building. The Board's concern is for the public safety and fire hazard that exists at this school at this time. As a result of this letter the Board asked the Fire Chief to make an investigation as well as the Town's Building Inspector. Acting Chairman Slarsky requested since both were present to comment on their findings and if there has been any resolutions to date regarding situation.

**FIRE CHIEF WELLMAN PARKER:** Chief Parker stated at the last Board of Selectmen's Meeting, July 6, 1992, he identified fire hazards to include both primary entrances and egress being blocked in violation of 527 CMR 1.06 obstructions liable to interfere with the egress of occupants or the operation of the Fire Department in case of fire. Chief Parker stated he re-inspected the school today at approximately 3:00p.m. with Officer William O'Connell and the building was still in the same condition it was in on July 2, 1992.

**BUILDING INSPECTOR WILLIAM HALLIGAN:** Mr. Halligan gave a brief background on the events leading up to present situation. Mr. Halligan advised the Board back on 3/10/92 he drafted a letter, to the Ayer Historical Commission at the request of Mr. Higgins, requesting space at the Pleasant Street School for material stored in the Town Hall that was becoming a hazard. This material belonging to the Downtown Business Association consisting of flags, halloween pumpkins, Xmas decorations and old files belonging to the Town Offices. On 4/16/92 Mr. Halligan received a letter from Mr. Maxant inviting Mr. Halligan to a Historical Commission Meeting at Ralph Richardson's house on 4/29/92 re: storage space request at the Pleasant St. School for Town Hall material. At this meeting the Commission stated problem they were having on the 1st floor of the School. The Commission granted space to the Town Hall for storage at the Pleasant St. School that evening. The space designated was the 3rd floor of the Pleasant St. School and permission was granted to store the flags in the hallway for easy accessibility for the Downtown Business Assoc. The Town did receive a letter from the Historical Commission approving this storage space.

Last Monday Mr. Higgins requested him to inspect the Pleasant St. School 7/6/92. Mr. Halligan inspected the School on Wednesday, July 8, 1992 along with Chief Parker and Gene Wixom. Mr. Halligan presented pictures taken on that day of the condition he found the Pleasant Street School in. The pictures depicted the material causing the fire and safety code

violations. Based upon his observations the main egress was totally blocked with material such as chairs, oven, lumber, organ etc. The hallway leading to into the meeting hall is not passage with all this debris. Based on this inspection Mr. Halligan posted the building as unsafe on 7/8/92 the building is not to be occupied. On 7/8/92 Mr. Halligan drafted a letter to Mr. Maxant, Chairman, of the Historical Commission and attempted to serve him, Officer Paul Cormier, Ayer Police Officer witnessed Mr. Maxant refusing to accept the letter, based on that the clock is ticking the Town has seven (7) days to resolve the problem, or it goes to court.

Acting Chairman Slarsky stated based on what you have presented tonight has there been any resolutions of the fire and safety violations existing at the Pleasant St. School. Mr. Halligan stated none whatsoever.

Acting Chairman Slarsky requested to read into the record a letter received by the Board of Selectmen on 7/9/92 at 5:05P.M. (see attached letter) from Frank Maxant stating his unavailability to attend tonights meeting on behalf of the Historical Commission.

Acting Chairman Slarsky stated the Board has made vigorous attempts to notify all parties to be present here tonight. Acting Chairman Slarsky requested of Janet Lewis, the Selectmen's secretary what attempts/means did the Selectmen's Office use to contact all parties of the meeting here tonight. Mrs. Lewis stated Officer William O'Connell served three (3) letters, Mrs. Hamel's sister received for her on 7-7-92, Mrs. Wallace's daughter received for her on 7-7-92 and Mr. Thomas May received on 7-7-92, Mrs Naparstek was on vacation, unservable and Mr. Maxant refused to accept his letter when requested by Officer O'Connell. Mr. Higgins read the letter into the record the Selectmen's secretary referred to dated 7/7/92. (see attached letter) advising the Historical Commission of meeting here tonight.

Acting Chairman Slarsky stated the Board of Selectmen made every attempt to contact the Ayer Historical Commission, re: this meeting tonight. Acting Chairman Slarsky stated now it behooves the Board of Selectmen to make a decision to go forward with the hearing at this time. The Board took this up for discussion. Selectman McKinney stated the Selectmen have a demanding issue before them that is the unsafe condition of the building that comes under the Boards purview. Selectman Mckinney states the Board should make a decision on what they as a Board want to do about the unsafe conditions in the Pleasant St. School. Chairman Jones echoed Selectman McKinneys remarks also stating we have a condemned sign on the building giving so many days to correct condition. This is the Town of Ayer's building and in the

custodianship of the Ayer Historical Commission. This Commission reports to the Board of Selectmen, they are not here tonight and the Selectmen cannot wait for them to show up to correct the situation they created.

Acting Chairman Slarsky requested if the other party was here tonight? Mr. David Dakin, Master of the Caleb Butler Lodge stood, representing the Ayer Masonic Association. Mr. Dakin stated he was notified of the meeting here tonight.

Acting Chairman Slarsky stated Mr. Dakin had the right to request Open Session or Executive Session pursuant to Chapter 39 Section 23B. Mr. Dakin chose Open Session.

Acting Chairman Slarsky requested what led up to this evening in terms of why we are here tonight.

Mr. Dakin stated the underlying reason is situation with lease negotiated on 6/17/89 with the Ayer Historical Commission for a portion of the Pleasant St. School which included renting of 4,700 sq. ft. on the first floor of the Pleasant St. School. Sometime around summer of 1990 we were near completion of renovations, we received a letter from the Ayer Historical Commission stating they found discrepancy in lease, therefore were not going to complete work on the front hallway of School, preventing the Masons from obtaining an Occupancy Permit. Mr. Dakin stated he has a copy of letter verifying work on front hallway was completed and Building Inspector issued Occupancy Permit in September of 1990. Things went on with no problems. We met with the Historical Commission in fall of 1990 concerning this issue, on 12/16/90 we sent a letter to the Commission stating we would offer shared usage of the "rear northwest classroom" and numbered terms. To date we have never received a formal reply from the Historical Commission to our letter of 12/16/90.

Basically from then on out there has been no communication between the two organizations until late May ordering us to vacate the rear classroom because the Town of Ayer desired to store items in that room. Mr. Dakin contacted Mr. Higgins and stated if the Town of Ayer needed to store items in that room we would be glad to share it with the town. Beyond that point Mr. Dakin's letter of 7/2/92 picks up present situation occurring on 6/30/92 whereas someone gained entrance to the Masonic apartments.

Acting Chairman Slarsky requested how Masons became aware someone had gained entrance to Masonic apartments? Mr. Dakins stated he received 3 or 4 telephone calls from members of the lodge at his place of work indicating there was a problem. He then contacted Mr. Higgins. Acting Chairman Slarsky requested what he found.

Mr. Dakin stated he found what you see in the pictures, Mr. Dakin stated he had photos of what lodge looked liked before and presently.

Acting Chairman Slarsky stated on or about 7/2/92 you were present at a meeting with Mr. Higgins and Mr. Maxant. At that meeting it was disclosed that three (3) people, without mentioning names, moved the property belonging to the Masons out of the rear northwest classroom, and two (2) of those people are on the Historical Commission.

Mr. Higgins responded that is correct.

Acting Chairman Slarsky stated difficulty without having the Historical Commission here to answer questions. Mr. Higgins stated that there was a letter written by Mr. Maxant, dated, 7/1/92, which stated the Historical Commission regained possession of the rear northwest classroom.

Acting Chairman Slarsky requested of Town Counsel in an attempt to alleviate the dispute what is the legal procedure?

Town Counsel stated primarily people sit down and resolve differences. Litigation is the worse way to resolve problem. If negotiations were not forthcoming then a court action has to be entered into for a declaratory judgement asking court to make determination what the document states not what the intentions of the parties were but what was executed by the parties.

Town Counsel stated he has been town Counsel for fourteen years. Town Counsel stated he did not have the opportunity to view this 6/17/89 lease before it was executed by the Historical Commission.

Acting Chairman Slarsky requested if Chairman Jones or Selectman McKinney have questions of Mr. Dakin at this time? both stated no.

Acting Chairman Slarsky stated it was apparent that the dispute with the lease could have been resolved some other way but it appears with all the documentation/action the Historical Commission took it upon themselves to remove the items and this is documented by a letter dated 6/1/92 from Mr. Maxant.

Mr. Dakin stated he would like to reiterate the willingness of the Caleb Butler Lodge, St. Paul Lodge and Ayer Masonic Association to resolve this situation. Mr. Dakin stated the Lodge apologized to the Board for this inconvenience but feels very strongly this matter must be taken care of. Mr. Dakin referred to his letter of 7/9/92 whereas the Mason's offered to resolve situation unfortunately the Ayer Historical Commission through a phone call last night from Frank Maxant informed us they did not see fit to take us up on our offer. Mr. Dakin also

stated on 7/11/92 the Ayer Masonic Association were planning to remove the obstructions from the building so they could enjoy the rights and promises of their lease.

Mr. Higgins stated he attempted to mediate and resolve the problem by removing the unsafe conditions by suggesting the appropriate thing to do was have the Historical Commission return all the material back into the rear northwest classroom and provide access to the Masons for that room which would have allowed cooler heads to prevail and then sit parties down. Mr. Maxant stated he would take that request back to the Commission. The next communication back from the Historical Commission was a refusal to do that.

Acting Chairman Slarsky stated it was quite apparent from testimony that there is a clear and present danger and an unwillingness on the part of the Ayer Historical Commission, the custodians of the building, to clear danger and make the building safe.

Acting Chairman Slarsky requested from Town Counsel what responsibilities the Board of Selectmen have to ensure the safety of the building?

Town Counsel stated under provisions of M.G.L. Chapter 143 Section 7 The Board of Selectmen, if public safety so requires, to order the inspector of buildings to enter upon the premises with the necessary workmen and assistant, which caused the structure to be unsafe be taken down without delay. Town Counsel stated as he recalls Town Meeting voted to turn jurisdiction of the Pleasant St. School from the School Dept. to the Board of Selectmen from Selectmen to the Historical Commission.

Town Counsel stated in his opinion if the Board of Selectmen so finds that the Selectmen acting in the best interest of the Town may take action based upon unsafe conditions in as you so find.

Acting Chairman Slarsky stated to the Board there is a clear and present danger and every attempt on behalf of the Board of Selectmen to resolve the situation has been done. Acting Chairman Slarsky stated the Board should not take any illegal control of the building but the Board should make an immediate decision to make the building safe, if someone is injured because of the unsafe condition the Board would be negligent not taking any action.

Acting Chairman Slarsky recommended to the Board to take immediate action to secure the building and make safe. Selectman Jones's main concern being locks removed and access to new locks for the Masons and the Historical Commission.

Town Counsel stated if the Board of Selectmen finds that the most expeditious remedy to cure the situation is to change the lock, replacing it with new lock and giving keys to both the Historical Commission and the Masons in spirit to resolve matter.

Selectman Mckinney stated as Town Counsel explained there is an emergency and under the auspices of the Board of Selectmen, the Board can move forward and remove the lock/s. Selectman McKinney requested is the Town of Ayer's material in the hall also? Mr. Higgins stated the Town of Ayer's property is now in the rear classroom only the Masons property is in hallway.

Building Inspector William Halligan stated the best way to resolve the problem is to have the Town's DPW employees take the Town of Ayer's property currently in the rear classroom up to the Third floor which the Historical Commission stated we can use and take the Mason's property and place it back in the rear classroom. Secure the two (2) doors give one key to the door leading to the Mason's apartments and give one key to the door entering front classroom to Historical Commission. Each will have a key to separate door for access.

Acting Chairman Slarsky recommended the DPW employees under the direction of Supt. Redfield, Fire Chief-, Wellman Parker, Building Inspector-William Halligan, Police Chief-Arthur Boisseau emerge upon the Pleasant Street school at 8:00a.m. tomorrow 7/10/92 and put the building back into safe condition. The Board requested of the Building Inspector, if that action is taken will the occupancy permit be restored. Mr. Halligan stated once material is removed from hallway and safe condition exists, certificate will be reissued to Lodge.

Selectman McKinney moved the material be removed as discussed no later than Friday, July 10, 1992 at 8:00A.M. to the extent the Building Inspector declares building again safe and no longer a fire hazard or emergency is in place. Seconded by Selectmen Jones, VOTE: unanimous, so moved.

Acting Chairman Slarsky requested the Board's intent with second issue. The Historical Commissions request to meet with the Board. The Board discussed whether the meeting should be a disciplinary hearing on behalf of the Board of Selectmen regarding the actions taken by members of the Historical Commission creating an unsafe condition and putting the Town of Ayer at risk.

Acting Chairman Slarsky requested of Town Counsel by what provision is someone appointed and dismissed from a Commission such as the Historical Commission.

Town Counsel stated provisions of chapter 40 Section 18 establishes Historical Commission with certain powers but appointing power is reserved with the Board of Selectmen. Any

member of a Commission as the Historical Commission after a Public Hearing, if requested, be removed for cause by the appointing authority. Again, the Board of Selectmen is the appointing authority for the Historical Commission for the Town of Ayer.

Acting Chairman Slarsky requested if the Board of Selectmen request the Public Hearing the Board does have the authority to remove someone from Commission for cause. Town Counsel stated yes.

Town Counsel cautioned the Board to respect members rights under Chapter 39, Section 23B should an Executive Session be requested. Town Counsel stated the Board of Selectmen unequivocally have the right to appoint and remove someone for cause.

Acting chairman Slarsky requested pleasure of the Board.

Selectman McKinney stated we have only heard one side and should allow the Historical Commission opportunity to come before the Board and state their argument, but advise them the Board of Selectmen has the right to remove and show cause.

Town Counsel advised the Board that a specific notice stating a probable cause hearing would be more in the line and then the selectmen could make determination to go forward with a separate hearing or a continuation of this hearing that hearing would be under Chapter 40 Section 8D. Town Counsel advised the Board they have heard half the story and have taken action on the emergency as it exists the Board could vote to continue the hearing or whether to go forward with any other hearing.

Selectman Jones moved the Board continue this hearing to allow the Historical Commission to present their argument, seconded by Selectman McKinney, VOTE: unanimous, so moved.

8:21P.M. Acting Chairman Slarsky stated the Hearing was closed.

**NEW BUSINESS:**

1. The Board acknowledged a letter received from John Flagg requesting to fill the vacant Tree Warden's position. Selectman Slarsky moved to appoint John Flagg, Tree Warden for the Town of Ayer seconded by Selectman McKinney, VOTE: unanimous, so moved.

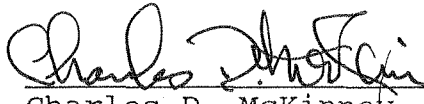
2. The Board reviewed and signed off the School Department's Payroll Warrant, removed from the 7-6-92 meeting warrant due to lack of supporting documentation, stating the Town Accountant has approved the warrant and supporting documentation as presented this evening, Selectman Slarsky moved to approve the School Department Payroll Warrant in the amount of \$41,542.00, Selectman McKinney Seconded the motion, Vote: unanimous. Chairman Jones

requesting Mr. Higgins contact the Town Treasurer and report the problem the Town Accountant is having receiving supporting documentation from the School Department on two consecutive payrolls. Mr. Higgins was also requested to have the Town Treasurer explain to the Board how this school payroll not authorized on 7-6-92 by the Selectmen, the direct deposit transfer were made to the accounts of school employees.

The Board signed off Form 53 Used Car License Application for Donald Chapman of D. Chapman Used Cars Class II License approved by the Board on 6/22/92.

8:35P.M. Selectman Slarsky moved to adjourn the meeting, seconded by Selectman McKinney, VOTE: unanimous, so moved.

8:35P.M. meeting adjourned.

  
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Charles D. McKinney, Clerk  
AYER BOARD OF SELECTMEN

DATE: 