

Selectmen's Meeting
Tuesday, September 6, 2005
Ayer Town Hall, 1st Floor Meeting Room, Main Street, Ayer, MA

7:00p.m. Open Session

The Board met with Chairman Morrison, Selectman Sullivan, Selectman Conley, Selectman Maxant and Selectman Bresnahan.

Public Input-Chairman Morrison requested if there was anyone present wishing to meet with the Board.

1. James Fay-Mr. Fay updated the Board to the Shriver Job Corp's municipal project on line re the West Main Street sidewalk repair consisting of 7500 sq. ft. of 5ft. sidewalk built to code and of completion date set for mid September 2005. Mr. Fay thanked the Board for opportunity for Shriver students to work/train with Town and welcomed/encouraged future projects. Mr. Fay took this opportunity to welcome the Board to Shriver Graduation on 9-23-05.
2. David Bodurtha -Grievance Procedure/Policy-questioning recent allegations/statements made against him-during Fy-06 Appointment discussions i.e. office access, Town Counsel billing, and why he wasn't notified and given opportunity to respond. Mr. Bodurtha to remit copy of questions and Board to get back to him.

Chairman Morrison called for a motion to approve the Agenda as amended. Motion to approve the Agenda of 9-6-05 as amended made by Selectman Maxant, 2nd by Selectman Sullivan, VOTE: unanimous, so moved.

Agenda Item #2. Minutes:

Selectman Conley presented the following minutes for approval having received no edits to minutes presented on 8-16-05 either by email or mailboxes. Ms. Conley referred the Board to her attached spreadsheet for official recording. The Board approved the following Minutes:

5-31-05 Motion to approve made by Selectman Conley, 2nd by Selectman Bresnahan for discussion, noting misspelled name of Susan Provencher (page 3) and clarifying Selectman Sullivan's excusing himself and then moving the motion to enter into Executive Session. Selectman Conley advising to Selectman Sullivan excusing himself earlier in the meeting to take telephone call and coming back into meeting and making motion to enter Executive Session, VOTE unanimous, so moved.

6-7-05 Motion to approve made by Selectman Conley 2nd by Selectman Bresnahan, VOTE: unanimous.

X6-7-05 Motion to approve made by Selectman Conley, 2nd by Selectman Maxant, VOTE: unanimous.

7-12-05 Continued to time certain that being Selectmen's 9-20-05 Meeting, motion made by Selectman Conley 2, by Selectman Bresnahan, VOTE: Selectman Conley aye, Selectman Bresnahan aye, Selectman Maxant aye, Selectman Sullivan no, Chairman Morrison no 3-2 motion carries.

8-2-05 Motion to approve made by Selectman Conley, 2nd by Selectman Bresnahan, VOTE: unanimous.

8-30-05 Motion to approve made by Selectman Conley with amending time opening at 7:10am not 7:00am 2nd by Selectman Bresnahan, VOTE: unanimous. Ms. Conley took this opportunity to update the Board to Attorney General's Guidelines (which Ms. Conley presented) re recording of minutes advising to Selectmen's 7-12-05 vote to limit the minutes to only the motion and action being improper stating minutes must include small summary of each item citing 1943 case law. Ms. Conley stating she will bring this issue back up later in the meeting when the Board meets with Town Counsel.

Agenda Item ##. Public Hearing (cont.) MA Elec./Verizon re: Pole Petition-Fire Station. Selectman Conley opened the Hearing by reading the Public Hearing legal notice into the record. The Board met with Fire Chief Paul Fillebrown, present for the discussion Verizon representative Ken Dobie. Chief Fillebrown advised the Board to pole being sited on Town property on pole located on West Main St. and crossing over to new Fire Station. Selectman Conley moved the Board approve the Pole Petition presented by MA Elec./Verizon for a new J.O. Pole on West Main Street, 2nd by Selectman Maxant for discussion. Selectman Maxant advising to Town utility lines all being underground in downtown Ayer questioning why this project would not be tied into underground conduits. Mr. Dobie advising to cost facture being paramount (cost prohibited -project funding) and considerable delay of work. Selectman Sullivan stating he is not in favor of driving up cost. Chairman Morrison called for a VOTE: Selectman Conley aye, Selectman Bresnahan aye, Selectman Sullivan aye, Chairman Morrison aye, Selectman Maxant no, 4-1 motion carries.

Agenda Item #4. Fy-06 Appointments (cont.)

Disabilities Commission-Ms. Scheipers introduced to the Board Alan Bell of 75 Sandy Pond Rd. Ms. Scheipers advised to the Disabilities Commission recommending the appointment of Mr. Bell to serve on this Committee. Mr. Bell gave the Board his background re working/serving on Municipal/State Public Agencies in Cambridge, MA i.e. Health & Human Services, ReDevelopment Board re Housing issues. The Board thanked Mr. Bell for stepping up to serve on this Commission-good fit for the Town welcoming and looking forward to working with him in the near future. Selectman Bresnahan moved to approve the appointment of Mr. Bell to the Disabilities Commission with expiration date of 6-30-08, 2nd by Selectman Sullivan VOTE: unanimous, so moved.

ZBA Alternate-Selectman Conley updating the Board to no 3rd Alternate position available on the ZBA. The Board moved to defer this discussion pending clarification from Chairman of the ZBA, Dale Taylor. Motion made by Selectman Sullivan, 2nd by Selectman Bresnahan, VOTE: unanimous, so moved.

Agenda Item #5. Conservation Commission-Consultant By-law

The Board met with Patrick Hughes, Chairman, Conservation Commission. Mr. Hughes took this opportunity to advise the Board to Fletcher's Pond being lowered in October 2005 for the annual weed kill, DPW and Fire Dept to be monitoring pond, re limit of lowering.

Mr. Hughes stated he was before the Board this evening to request the Board's approval to invoke the Consultant's By-law re current projects before the Commission i.e Bennetts Brook buffer-storm water management, impact to the Spectacle Pond Well- Zone 2 Aquifer and the Willows 40-B project. Mr. Hughes stated at the ConCom 8-25-05 meeting the Commission voted to request Epsilon Assoc. Inc. be hired to provide Wetland Consulting Service in the amount of \$2,600.00. Mr. Hughes stated the proposal was before the Board this evening for their approval. Selectman Sullivan moved the Board approve the hiring of Epsilon Assoc. Inc. to provide Wetland Consulting services to the Commission as outlined above not to exceed twenty six hundred dollars (\$2,600.00), 2nd by Selectman Conley, VOTE: unanimous, so moved.

Agenda Item #6.-Supt. Madigan's Report-The Board met with Supt. Madigan.

1. Evaluation of Central Ave. Wastewater Pumping Station

Mr. Madigan updated the Board of the importance of the pumping station's age and equipment to the Town's wastewater collection system advising to HTA preparing and submitting a proposal to evaluate the pumping station as stated above along with current capacity. HTA submitted a proposal in the amount of \$9K with the following scope of work: review existing information, evaluate flows, field evaluation, report & recommendations, meeting attendance. Selectman Sullivan moved to approve Supt. Madigan's recommendation to award HTA proposal to evaluate the Central Avenue Wastewater Pumping Station not to exceed \$9K, 2nd by Selectman Bresnahan, VOTE: unanimous, so moved. Selectman Conley reaffirming \$10K funding source for this proposal being approved at Town Meeting.

2. Fy-05 Chapter 90 Program-Supt. Madigan gave his recommendations/proposal for the Fy-05 Chapter 90 Program totaling \$121,650.00 with the enclosed request forms and supporting documentation for the Board's review and approval.

1. Crack Sealing-	\$10K
2. Paving-Sandy Pond Rd.	-\$41,200
3. Paving-Shaker Rd.-	\$39,300
4. Paving -Bishop Rd.-	\$17,550
5. Guard Rail-Barnun Rd-Park St.-	\$13,600

Selectman Bresnahan moved the Board approve Supt. Madigan's recommendation- denoted in a memo dated 8-31-05 as stated above totaling \$121,650.00, 2nd by Selectman Sullivan, VOTE: unanimous, so moved.

3. Utility Installation Inspections-Supt. Madigan submitted his status report to the Board re utility installation inspections for developments/subdivisions. Supt. Madigan informed the Board to developers being sent a letter that the DPW will no longer be conducting utility inspections due to heavy work load and drafting an RFP for Engineering Services qualified for part-time utility construction inspections.

Water/Sewer Permit- The Board approved Supt. Madigan's recommendation for a Water/Sewer Permit for Lot 1 Groton School Rd. for Calvin Moore for a one inch (1") water service for a four bedroom house. Motion made by Selectman Sullivan, 2nd by Selectman Conley, VOTE: unanimous, so moved.

Agenda Item # 7. Mark Reich, Town Counsel-Kopelman & Paige

Selectman Maxant opened the discussion by requesting Mr. Reich give the Board a brief background of his position as Town Counsel. Selectman Maxant reviewed with Town Counsel the Community Preservations Commission's August 3, 2005 meeting requesting clarification regarding the "Secret Ballot" used by Commission to vote for either Gary Luca or Carol Tillis taken by the Commission which was later in the meeting validated by a subsequent voice vote. Selectman Maxant requesting Town Counsel's email to Town Administrator Scheipers dated 8-8 -05 which provided opinion that the secret ballot violated the State's Open Meeting Law the subsequent voice vote ratified the decision under the secrecy of the paper ballot. Selectman Maxant stating on August 9, 2005 the Board of Selectmen voted to appoint Ms. Tillis to the Community Preservation Commission by a 3-2 vote. Selectman Maxant then stated six days later Town Counsel submitted a more formal opinion in letter form adding "I have been informed, however, that the subsequent voice vote taken by the CPC may not have ratified the results of the secret ballot but may have simply authorized that those result be presented to the Selectmen. If this being the case and results of the secret ballot including the names of the candidates were not revealed to the public by the CPC the Open Meeting Law violation will not have been cured. Town Counsel recommending the CPC amend their minutes including names of candidates, and votes cast for each candidate. Mr. Reich stated regardless of what happened at the CPC meeting the Selectmen did not impact the irregularities of the CPC vote when making the Citizens at large appointment on 8-9-05. Selectman Maxant contended that Town Counsel came to a different conclusion in his second opinion than in his first; accusing him of not doing enough research before rendering an opinion. Mr. Reich contented both opinions are completely consistent and based upon facts given to him. Selectman Maxant questioning why Town Counsel did not take into account information provided by Gary Luca when making his opinion. Town Counsel advising he is only authorized to speak to Scheipers and the Board, not citizens of the Town and therefore could only take into consideration information provided to him by Town administration. Town Counsel stated he was offended by Selectman Maxant's accusations that he did not perform his job properly. Selectman Maxant stating you had one set of facts from someone who was present at the meeting and another providing hearsay. Selectman Bresnahan stating at this time he found Selectman Maxant's remarks insulting and resenting the accusation, to many floating around and wanting them to stop, adding he did not vote for Carol Tillis because of the CPC recommendation he voted for her because he wanted to. Chairman Morrison also apologized to Town Counsel on behalf of the Board adding she had confidence in his work. Selectman Conley stated she had offered Town Counsel tape of 8-3-05 CPC meeting to view and he refused. Selectman Conley requested if Town Counsel has a contract with Town. Mr. Reich stated Kopelman & Paige (K&P) serve 120 municipalities in the state and have no contract with any of them. Ms. Conley asked if K&P has or would consider a fee schedule. Selectman Conley on another matter taken up earlier in meeting questioned Town Counsel on legality of Selectmen's Meeting vote of 7-12-05 challenging Selectmen's Meeting Minutes only reflecting the motion and vote referencing DA case in 1943. Town Counsel advising to DA interpretations not law and advising to DA being challenged successfully on a case by case basis, urging minutes reflect votes actions.

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Agenda Item #8. Town Administrator's Report-

1. The Board approved St. Mary's Lawn Party sign to be placed on the Town Hall grounds Sept. 7, 2005 through Saturday, September 11, 2005. Motion to approve made by Selectman Conley, 2nd by Selectman Bresnahan, VOTE: unanimous, so moved.
2. Selectman Conley moved the approve S.O.M.'s Change Order #1. in the amount of \$875.00 to add extra down spout to the gutter at the Newton St. side of Town Hall, 2nd by Selectman Bresnahan, VOTE: unanimous, so moved. The Board approved of Mary Spinner being appointed the Board's authorized representative to the Town Hall Roof project upon Ms. Scheipers departure re problems/information processing. Motion made by Selectman Conley, 2nd by Selectman Sullivan, VOTE: unanimous, so moved.

3. The Board appointed Robert Friedrich Temporary Asst. Building Inspector for a three (3) month period. Mr. Friedrich will work 8-10 hours a week at the rate of \$15.00 per hour. Selectman Conley questioning Mr. Friedrich experience, and duties to be assigned. Motion made by Selectman Maxant, 2nd by Selectman Bresnahan, VOTE: Selectman Bresnahan aye, Selectman Sullivan aye, Selectman Maxant aye, Chairman Morrison aye, Selectman Conley no 4-1, motion passes.
4. MGL C40B-Manufactured Housing- Mr. Suhoski updated the Board to the Town of Kingston's urging support from surrounding communities re counting manufactured housing units (mobile homes) on a community's subsidized housing inventory. Mr. Suhoski advised Town of Ayer will be able to add 59 mobile homes to the Town's inventory urging the Board's support this legislation in writing to State Representatives. Selectman Sullivan moved the Board support the inclusion of mobile homes to the affordable housing inventory criteria by having the Town Administrator draft a letter for the Board's support to the Town of Kingston and cc State reps., 2nd by Selectman Bresnahan, VOTE: unanimous.
5. Department Reports on Web Site-Ms. Scheipers updating the Board to Rayellen Gilles getting the Town's Web Page up and running and urging the Board allow Department Head's monthly reports be submitted in hard copy and electronic format to the Communications Com for uploading onto the Website. Selectman Conley urging the Board to have the Town Clerk check all information prior to placing on the Website to ensure errors/misleading information not go out from the Town noting her corrections to the new website. Selectman Conley stating this not meant to criticize only to ensure all information is correct and adding that she is very pleased with the Website format.
6. Cell Tower Sale-DPW located cell tower site-the Board requested this matter be placed on a future Agenda. Supt Madigan to contact Fire/Police Depts. Re access to tower-security issues.
7. Ms. Scheipers reminded the Board to Kopelman & Paige conducting training classes re Open Meeting Law on 9-14-05 @7pm and Community Preservation Act 9-28-05 @7pm both at the Ayer Town Hall.

Selectmen's Questions/New Business

Selectman Bresnahan-Annual Conference Selectmen to be held in Worcester-September 23-24. Selectman Bresnahan moved to approve Selectman Sullivan attend the conference, 2nd by Chairman Morrison. Selectman Conley also wishing to attend. Selectman Bresnahan amended his motion to include both Selectman Sullivan and Selectman Conley to attend the conference, 2nd by Selectman Conley, VOTE: Selectman Bresnahan aye, Selectman Sullivan aye, Selectman Maxant aye, Selectman Conley aye, Chairman Morrison no, reflecting on past practice to only one Selectman attending and budgeted for, 4-1 amended motion passes.

Selectman Maxant-re who placed newspaper boxes around downtown area, and steps to take to have removed, Selectman Bresnahan and Gary Luca responded to checking into this and reporting back to Board.

Selectman Conley-re Town Clerk's request to have a No parking sign be placed below window (Martha Riley's Office) in handicapped parking area. The Board requested DPW place sign up as soon as possible.

2. School Dept. Payroll/inaccuracies in prior year reporting requesting Town Accountant/Treasurer submit update and cc Fin-Com.

3. 20 Year Transition Plan- Selectman Conley advised to Mr. Suhoski attending as Town's representative.

4. Article of 8-31-05 in Lowell Sun article re: another package proposal being offered to Ms. Scheipers stated by Chairman in Article, questioning who authorized another packet be offered to Ms. Scheipers on the Board? Chairman stating article incorrect.

Chairman Morrison-Chairman Morrison advised to her contacting Mr. McCann the Interim Town Administrator and that she would be meeting with him before he starts work. Selectman Conley requesting date and time of that meeting is made available to Board members.

NEW BUSINESS The Board met with Ed Kelly and Phil Berry re process to be used to replace Ms. Scheipers urging the Board to consider a diversified group made up of businesses, town departments and citizens. Mr. Berry adding the Town should look at Town Manager position as well. Chairman Morrison agreeing to a diversified group of people but looking to first get McCann on board and adding citizens will have input as well. Selectman Bresnahan suggesting the Board schedule Selection Committee on the next Selectmen's Agenda. Selectman Conley questioning Chair on people already being contacted to serve.

Mary Spinner –Requesting if the Town was conducting 9-11 service this year, being that 9-11 falls on a Sunday. Chairman Morrison requested Ms. Spinner come up with a few ideas for the Board's consideration.

9:55p.m. Selectman Sullivan moved the Board adjourn the meeting, 2nd by Selectman Bresnahan, vote unanimous, so moved.

DATE: _____

Pauline Conley, Clerk

AYER BOARD OF SELECTMEN