

Selectmen's Meeting Minutes
Tuesday, June 1, 2004
Ayer Town Hall, 1st Floor Meeting Room, Main Street, Ayer, MA

7:00p.m. Open Session

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

Public Input

Chairman Bresnahan requested if there was anyone present wishing to meet with the Board.

1. Patrick Hughes-Community Preservation Committee allegation of violating Open Meeting Law.
2. Carolyn McCreary-Parking Station Update
3. Selectman Fay-Parking Garage and public safety issue.

Chairman Bresnahan called for a motion to approve the agenda as amended. Selectman Fay moved the Board approve the Agenda of 6-1-04 as amended, 2nd by Selectman Maxant, VOTE: unanimous, so moved.

Chairman Bresnahan took this opportunity to publicly recognize and thank Frank Harmon, Commander of the American Legion Post 153 for their efforts organizing the Memorial Day Parade celebrated on Saturday, May 29, 2004. Chairman Bresnahan congratulated Mr. Harmon for his contributions coordinating the event.

Chairman Bresnahan presented a Certificate of Appreciation to Joyce Jones, sophomore Ayer High School on behalf of the Board of Selectmen for her community service to the Selectmen's Office assisting with filing and office duties in the Selectmen's Office.

Chairman Bresnahan also took this opportunity to publicly recognize and thank the Ayer High School's Capitalism & Democracy Class for promoting public awareness to the electoral process by conducting a "Rock the Vote Concert & Registration Day" on May 15, 2004 at the Ayer Town Hall. Chairman Bresnahan read the Certificate of Recognition into the record for the following students: Jennifer Alger, Matthew Bollinger, Kerris Iolt, Maria Hughes, Justin LeClair, Isaiah Miller, Kerry Parsons, James Pinard, Johnana Seminiano, Gabe Sharples, Viviana Suavita, Neil Woodward and Band Members: Matthew Vanaria, Theodore Sparrow, Christopher Hogan, James Hogan, Christopher Harris and Kevin Johnson. Certificates to be presented at the High School Awards Night on June 3, 2004 by Selectman Morrison. Chairman Bresnahan also recognized and commended teacher John Radcliffe for initiating this civic event.

Patrick Hughes, Chairman -Community Preservation Committee (CPC) stated alleged 5-18-04 violation/s by Pauline Conley totally erroneous. Chairman Bresnahan advised Mr. Hughes to the Board taking this matter up later in the meeting.

Carolyn McCleary-Parking garage status. Chairman Bresnahan requested the Town Administrator give an update on the status of the parking garage. Ms. Scheipers stated the Board of Selectmen approved and endorsed a Feasibility Study and submitted it to MART re the site selection process. This collaboration by the Board was endorsed by surrounding communities which thanked Ayer for taking on this initiative for area based commuters. A Public Information Meeting is in the works with MART for late June, 2004. Selectman Fay took this opportunity to state again his dismay with Selectman Maxant taking it upon himself to "again" speak with MART representatives without the full Board's consent or knowledge. Selectman Maxant stating his conversation with MART consultant (who wrote report) addressed two issues with regard to the Feasibility Study.

1. Site in Ayer to accommodate 350 cars did not address traffic patterns or what a facility of this size would do to downtown Ayer-i.e. business/middle of retail district. Recklessly entering into P&S- way too premature.
2. Location being for convenience of commuters.

Selectman Fay stated the Board has approved the Study, and Scope of Services is in process of being developed; once Federal funds are approved and received a more in-depth study will be conducted. Selectman

Sullivan stating the consensus of Ayer residents was that a station was needed in Ayer. Selectman Fay stated he takes exception to Selectman Maxant going outside parameters. Selectman Morrison agreeing not being comfortable with Selectman Maxant speaking for Board. Selectman Fay stated his 2nd issue was that of public safety re overgrown bushes on corner of Rosewood/Groton School Rd. requesting property owners be advised to bushes needing trimming by DPW.

Agenda Item #2. Minutes of 5-18-04 and 5-24-04 accept and ratify votes & actions

Selectman Sullivan moved the Minutes of 5-18-04 be accepted as read, 2nd by Selectman Morrison, VOTE unanimous so moved.

Minutes of 5-24-04-Ms Scheipers advised to Meeting posting, posted two hours too ~~early~~^{LATE} and the need to ratify the votes of the Board of Selectmen taken at the 5-24-04 meeting.

Chairman Bresnahan explained the purpose ratifying the Board's votes taken on Monday May 24, 2004.

"Selectman Bresnahan stated the Selectmen's meeting held on Monday, May 24th, 2004 was posted on Friday, May 21st at approximately 10:13a.m. and thus the 48 hour posting time was missed by approximately 2 hours. As such we must now take actions to ratify those votes taken at that meeting."

Chairman Bresnahan called for a motion to ratify the Treasurer's request re the amended Section 125 Plan.

Selectman Morrison moved the Board ratify the May 24th vote to approve and sign the amended Section 125 plan document, 2nd by Selectman Fay, VOTE: unanimous, so moved.

Chairman Bresnahan read the Board's letter to be sent to Ms. Conley re: the Board of Selectmen's review of complaint, documentation obtained and findings of the Board re alleged violation of the Open Meeting Law by the Community Preservation Committee. (see attached copy)

Chairman Bresnahan called for a motion to ratify the Board's vote re: Ms. Conley's complaint against the CPC.

Selectman Sullivan moved the Board ratify the May 24, 2004 vote to accept the following findings of fact relative to Ms. Conley's complaint against the Community Preservation Committee:

1. The CPC did not refuse to be videotaped. The CPC met in open session with a quorum in compliance with the Open Meeting Law. The members in attendance were: Faye Morrison, Pat Walsh, George Bacon, Patrick Hughes and Gary Luca.
2. There was no violation of the Open Meeting Law or the CPC By-laws and therefore neither Mr. Hughes or Ms Morrison, nor any other member of the CPC, acted knowingly and purposely in violation of the Open Meeting Law and CPC Bylaws.
3. It was reasonable for the CPC Chair to make a decision prior to the start of the CPC meeting to have the CPC meeting in the small meeting room, and not in the meeting room where Ms. Conley had set up the video camera, due to the fact that the Park's Commission's 6:30p.m. meeting was still in progress with a large number of people in attendance.

2nd by Selectman Morrison, VOTE: unanimous, so moved. The Minutes of 5-24-04 were read and accepted. Motion to approve made by Selectman Maxant, 2nd by Selectman Morrison, VOTE: unanimous, so moved. Selectman Sullivan moved to clarify this motion by adding the original posted agenda by the Community Preservation Committee was for the CPC meeting to be conducted in the small conference room (Conference Room A). Selectman Maxant stated the Board investigated alleged violation with their best intentions, proof of no wrong doings grounded. Selectman Maxant moved the Board amend the motion and include a thank you to Ms Conley, no 2nd to this motion. Selectman Sullivan stating allegations to CPC destructive, how do you thank someone for those kind of allegations/conduct. Selectman Fay stated she should be held responsible/accountable for her actions/accusations against Town Officials i.e. legal cost involved for merit less accusations. Glen Garber agreeing echoing legal fees attached to this issue, frivolous expenditure of tax payers money. Chairman Bresnahan advising to Board's letter going out to CPC and Attorney General.

Agenda Item #3. Supt. Madigan's Report

1. **Long Pond Dam**-Supt. Madigan appraised the Board to Dam totally out of commission and cost for reconstruction estimated at \$68K provided no homes are built downstream. Supt. Madigan stated a much more substantial dam would then be required estimated over \$208K, of which \$98K has been

appropriated for repair of the dam along with an additional \$30K being pledged by the Stratton Hill proposed development. The Board reviewed the Sandy Pond 3 proposed Development that would be directly effected if the dam failed. The Board questioned if Sandy Pond 3 would contribute and requested a member of the Board meet with the Planning Board & Supt. Madigan to ascertain what stage the Planning Board is with Sandy Pond 3. The Board requesting assurances that consideration of the Sandy Pond Developers request to extend the construction permit date will go hand and hand with consideration by the developer in funding the cost of the reconstruction that will be required due to the development being built downstream. The Board urging the Planning Board to negotiate with the developer to see that the 100 year storm reconstruction costs is borne by the developer and not the Town. Selectman Fay to meet with the Planning Board and Supt. Madigan and report back at the next Selectmen's Meeting re Sandy Pond 3 funding dam reconstruction. Patrick Hughes interjecting all the work involved is within the ACEC.

2. Fitchburg Road Materials Bid Award

The Board awarded the Bid Award for the Fitchburg Road Sewer Project to Powell Stone & Gravel Co, Inc. Lunenburg, MA for the bid award not to exceed \$68,700.00. Motion to approve made by Selectman Sullivan, 2nd by Selectman Morrison, VOTE: unanimous, so moved.

3. Autumn Ridge Sewer Extension-The Board met with Steven Smith developer for the proposed 56 unit Autumn Ridge Sub-Division's Sewer Easement. Supt. Madigan was updated by Mr. Smith to Town's ability to work with Hospital being permitted re the easement over Hospital land to maintain sewer line. The Board reviewed capacity 9K/day, future development, with Mr. Smith and Mr. Madigan. Mr. Smith advised to Smith Family bearing cost of this sewer extension in its entirety. The Board reviewed with Supt. Madigan his 3 components to serve 56 units and 5 homes along Groton Rd. will represent 11K gallons per day of wastewater. Sewer system to consist of 8" gravity sewer, 2.5" force main and a sewage pumping station, all of the facilities to be located on the developments property and will be privately owned, operated and maintained. Component 2. consists of approximately 884' of 8" gravity sewer running south along Groton Rd/Washington St., the sewer line to accept sewage from the development (component 1) and 5 homes and will flow by gravity to the southern driveway entrance of Nashoba Valley Hospital. The sewer line will be Town owned, operated and maintained. Component 3. consists of 692' of 8" gravity sewer running west along southern driveway entrance where it connects to the existing hospital sewer collection system. This component will require a permanent 30' wide easement to be operated and maintained by the Town of Ayer. The developer to prepare all necessary easement documents to include land surveys with metes and bounds at no cost to Town of Ayer. Selectman Sullivan expressed his concern re the Board approving the sewer extension prior to the Planning Board approving the definitive plan, encouraging the Board to wait for Planning Board process to be completed. Selectman Sullivan made this request into a motion. Selectman Sullivan moved the Board defer premature passage until Planning Board approves the Smith Family Project, 2nd by Selectman Morrison, VOTE: Selectman Sullivan aye, Selectman Morrison aye, Selectman Fay no, Selectman Maxant no, Chairman Bresnahan no, 2-3 motion fails. Selectman Fay moved the Board approve Supt. Madigan's recommendation for Autumn Ridge proposed development's sewer system improvement request to the state and the preparation of the easement documents by the developer for the proposed Development of 56 units and 5 homes along Groton Rd. submitted by the Smith Family, contingent upon the Autumn Ridge Development proposal by the Smith Family being approved by the Planning Board 2nd by Selectman Maxant, VOTE: Selectman Fay aye, Selectman Maxant aye, Selectman Sullivan no, Selectman Morrison no, Chairman Bresnahan aye, 3-2 motion carries.

4. Sanitary Landfill Monitoring Contract- The Board approved the Sanitary Landfill Monitoring Services Analytical Laboratories Quotations submitted by Supt. Madigan and recommended by Tata & Howard is awarded to Severn-Trent Laboratories not to exceed \$25,560.00 for Three year Analytical

laboratory services contract. Motion to approve made by Selectman Fay, 2nd by Selectman Morrison, VOTE: unanimous, so moved.

5. **Sludge Landfill Monitoring Contract-** The Board awarded the Sludge Landfill Post Closure Monitoring Contract to Weston & Sampson for the period of 6-30-04 to 7-1-05 for the bid award not to exceed \$20,400.00. Motion to approve made by Selectman Fay, 2nd by Selectman Morrison, VOTE: unanimous, so moved.
6. **Westford Road Engineering Contract-** The Board approved Tata & Howards Engineering Contract for Westford Rd. drainage and paving improvement project reflecting the Fy-04 Chapter 90 Project Request for additional engineering services not to exceed \$13,800.00 recommended by Supt. Madigan. Motion to approve made by Selectman Fay, 2nd by Selectman Morrison, VOTE: unanimous, so moved.

Agenda Item #4. Fire Station Project. The Board met with Wellman Parker and Chief Paul Fillebrown. The Board was updated to low bidder for the new Fire Station Construction Project –Eastern General’s withdrawal of its \$3,861,000.00 bid. Chairman Parker of the Fire Station Building Committee stated a meeting has been scheduled for Wednesday, June 4, 2004, with the contractor from Eastern to get an explanation of their action. Mr. Parker stated meanwhile the Committee has been working with the Town’s Project Manager Tony DiLuzio of KVAssociates and the second low bidder Barr Inc. of Putnam, CT which came in at \$4,098,000.00 an increase of \$237,000.00. Town Administrator Anita Scheipers advised Eastern’s Bid Bond of \$192,000.00 would be recovered creating a shortfall of \$45K. Chief Fillebrown & Mr. Parker requested the Board wait until after the meeting on June 5, 2004 when more information will be received before taking any action. The Board moved to accept the Chief’s & Mr. Parker’s request to wait until the June 5, 2004 meeting with Eastern’s representatives before taking action. Motion made by Selectman Fay, 2nd by Selectman Morrison, VOTE: unanimous, so moved.

Agenda Item #5. Town Administrator’s Report

1. **Reserve Fund Transfer-Veteran’s Agent-** The Board approve a emergency Reserve Fund Transfer in the amount of \$3K requested by Mr. Velez for burial expenses for deceased veteran. Motion to approve made by Selectman Fay, 2nd by Selectman Morrison, VOTE: unanimous, so moved.
2. **MART Request for Securing Federal Funds:** The Board reviewed Mohammed Khan’s letter of 5-17-04 urging the Town contact Congressman Meehan to confirm the federal funds earmarked for the Ayer Parking Garage get approved. Ms. Scheipers also requested the Board’s authorization for herself, Shaun Suhoski, and Selectman Morrison to meet with Congressman Meehan to move this request forward. Selectman Maxant again stating things are getting out of control, Purchase & Sale premature and inappropriate stating the request for the Federal Funds make no reference to Study conducted by McCann Assoc., not ready to make site selection. Chairman Bresnahan stated the Board approved and authorized Feasibility Study, which reflected no major disruption of traffic, and public information meeting will allow community info/discussion re site location. Congressman Meehan would not move ahead with project unless a Feasibility Study was conducted. Merchants present: Ed Kelly and Nick Laggis questioning if Federal Funds would lock in the site and expressing their concern re Fitchburg’s Parking Facility being huge and one of that size would change the whole downtown. Selectman Fay stating Mr. Khan’s letter simply reflects a request for funding. Selectman Fay moved the Board approve Mohammed Khan’s request and authorize Ms. Scheipers, Shaun Suhoski and Selectman Morrison to meet with Congressman Meehan to urge his support to fund Town of Ayer’s Parking Facility, 2nd by Selectman Morrison, VOTE: Selectman Fay aye, Selectman Sullivan aye, Selectman Morrison aye, Chairman Bresnahan aye, Selectman Maxant no, 4-1 motion passes.
4. **Fy-05 Performance Evaluations /Goals & Objectives-**Ms Scheipers updated the Board to process for Fy-05 evaluations and Goals & Objectives.
5. **FRA Ruling-Whistle Blowing at Railroad Crossings-**Ms Scheipers updated the Board to her & Chief Rizzo’s meeting in Littleton at which FRA reps explained the process to keep our one existing ban to stay in place and to add any new locations the Town may wish to request. Ms. Scheipers stated keeping existing bans is fairly easy but to add new locations is an extensive process to justify the whistle ban request requiring the Town fund and implement new safety measures to overcome the loss of the whistle

at intersections. MMA will assist the town with keeping the current ban but any new locations we would be on our own i.e. funding improvements, new locations are due in by December 18, 2004. The Board urged residents interested in assisting the Town with this effort to contact the Selectmen's Office.

6. **Fy-05 SHAVE Program-** Ms. Scheipers advised the Board to new Fy-05 applications ready and available for pick-up at the Town Hall.
7. **Devens Disposition-**Chairman Bresnahan stated he requested this item be placed on the Board's Agenda. Chairman Bresnahan advised to the draft of the final mission statement summarizing its activities and outlining what the next and final disposition related Board should accomplish. Steering Committee members have 45 days to change/additions they may want; baring any changes the committee work is complete. The report will then be sent to the five entities stated in the Devens Legislation that will decide on the disposition of Devens and whose representatives will be sending delegates to the Devens Disposition Executive Board. The next final committee.

9:30p.m. Selectman Sullivan moved the Board adjourn from Open Session pursuant to MGL Chapter 39 Section 23b, Exemption #3 re: contracts to adjourn from Executive Session to re-enter into Open Session for the sole purpose of adjourning the meeting, 2nd Selectman Maxant, VOTE: Selectman Sullivan aye, Selectman Fay aye, Selectman Morrison aye, Selectman Maxant aye, Chairman Bresnahan aye, unanimous, so moved.

9:30p.m. Open Session ended



DATE: 6-15-04

Cornelius F. Sullivan, Clerk

AYER BOARD OF SELECTMEN