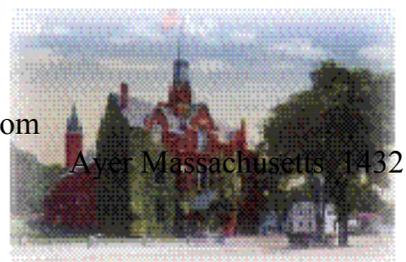


- Town of Ayer
- Board of Selectmen
- Town Hall, First Floor Meeting Room
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Ayer Massachusetts 1432

**DRAFT MINUTES**

**Monday, July 9, 2012**

**Special Selectmen's Meeting**

7:00p.m . Chairman Fay called the meeting to order.

**7:00p.m. Open Session - Meeting recorded @WWWAyer.MA.US (Town Website)**

James M. Fay, Chairman	X	Christopher R. Hillman, Member	X
Frank F. Maxant, Vice-Chair	X	Gary J. Luca, Member	X
Pauline Conley, Clerk	X	Robert Pontbriand, Town Administrator	X
Janet S. Lewis, Secretary	X		

Amendment to 7-9-12 Agenda-Mr. Pontbriand advised to another Reserve Fund Transfer prepared by Town Accountant-Lisa Gabree and not included with earlier materials submitted to the Board. Mr. Pontbriand requesting to include the Vocational Education Reserve Fund Transfer in the amount of \$91,729.55 to pay the 4th quarter invoice from Nashoba Valley Tech due to unanticipated increase in students attending Voc Tech Schools in 2012.

Chairman Fay added Public Input with a fifteen minutes time limit not previously on agenda.

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

Calvin Moore-Mr. Moore stated his concern over the July 6, 2012, newspaper article which ran in the Nashoba Publications Newspaper which depicted him as being belligerent, boisterous and disrespectful when requesting a meeting with the Board of Selectmen re the sale of his Main Street Properties due to time constraints re the sale/s. Mr. Moore stating this is totally unacceptable. No one in the room said he was disrespectful to Selectmen's staff and demanded an apology stating he and the Town are tired of this kind of garbage being reported. Mr. Pontbriand clarifying Mr. Moore's manner being more upset and anxious trying to get this meeting scheduled. A dialog continued re the background of the meeting request including exchanges between Board members re establishing a quorum for the meeting.

Agenda Item #1. Reserve Fund Transfers(RFT)-Present for discussion Lisa Gabree- Town Accountant.

- **Town Counsel-Reserve Fund Transfer** -Mr. Pontbriand gave the Board a brief breakdown re Town Counsel overage due to unforeseen legal expenses in the 2nd half of Fy-12 which increased the need for legal counsel causing the account to overrun and the Lexis Nexis Law Books overage advising the Board to these law books not being budgeted for in Fy-13 and the account cancelled. Mr. Pontbriand recommending the Board vote to approve the RFT in the amount not to exceed \$8,667.92. Mr. Pontbriand on a positive note advised the Board to the Town expected to receive reimbursement in the amount of \$1,277.50 from Trinity Financial to cover legal costs of the March 2012 Super Town Meeting as well as an additional \$1K from Nashoba Valley Technical School to cover legal cost to prepare the

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ATM Warrant Article re Ayer joining the NVT District. Selectman Luca moved the Board vote to approve the Reserve Fund Transfer for Town Counsel, Account #01151 in the amount not to exceed \$8,667.92, 2nd by Selectman Conley. Selectman Conley noting the Planning Board running on high side i.e. Zoning Map issues, Mr. Pontbriand stating Fin-Com looking into establishing a separate legal account for the Planning Board. VOTE: Selectman Luca aye, Selectman Conley aye, Selectman Hillman aye, Selectman Maxant abstained Chairman Fay aye, 4-1 motion passes. Selectman Maxant feeling he didn't want to be responsible for sending any more Town money to K&P.

- **Board of Selectmen- Reserve Fund Transfer**-Mr. Pontbriand advising the Board to overrun due to unforeseen expenses re new computer/printer for Selectmen's Secretary when her computer crashed/replaced, cost of printer cartridges, and Town Administrator's Blackberry bill for June 2012. Selectman Luca moved the Board vote to approve the Reserve Fund Transfer in the amount not to exceed \$146.23-account #01122 Selectmen's Expenses, 2nd by Selectman Conley, VOTE: unanimous, so moved. Selectman Conley requesting Mr. Pontbriand prepare documentation re overtime account overspent, requesting this item be taken up at Selectmen's 7-17-12 meeting.
- **Vocational Education-Reserve Fund Transfer**-Mr. Pontbriand stated as earlier reported overrun due to unanticipated increase in students attending Voc Ed. in FY-12 from approximately 48 students to 54-59 students attending NVTS. Selectman Luca moved the Board vote to approve the Voc Ed. Reserve Fund Transfer-Account #01331-52000 in the amount not to exceed \$91,729.55, 2nd by Selectman Conley, VOTE: unanimous, so moved.
- Selectman Conley requesting Reserve Fund Balance from Town Accountant questioning if there will be enough in account to pay for above transfers. Ms. Gabree to advise.

**AGENDA ITEM #2. Open Meeting Law Complaint from Selectman Maxant-** Chairman Fay opened the discussion by advising the Board to Town Counsel's review and remedy to Selectman Maxant's Open Meeting Law Complaint dated June 5, 2012, "alleging under Part 2 of the Agenda -Properties Enforcement of the Selectmen's Executive Session Meeting of June 5, 2012-, under the guise of litigation strategy the Board violated OML, by no litigation extant., no litigation planned, no litigation threatened and no litigation strategy discussed". Chairman Fay stating that Selectman Maxant is seeking the Board publicly release the 6-5-12 executive session minutes and for the Board to apologize to owners of properties discussed; and release copy of apology letter/s to press. Chairman Fay stating Town Counsel suggested the Board release the executive session minutes of 6-5-12 seeing no critical item in the minutes that would negatively impact the Town's enforcement actions. Chairman Fay maintaining that there was no violation of the Open Meeting Law. Mr. Pontbriand also advising that the Board should pursue enforcement action, and authorize the Building Inspector to work with Town Counsel by vote in Open Session these actions should assist in resolving matter. Selectman Luca moved the Board vote to have the Town Administrator respond back to the Atty. General's Office re complaint with the actions taken by Board and include the minutes of 6-5-12 Executive Session and 7-9-12 Open Session minutes, 2nd by Selectman Conley for discussion requesting what remedial action was taken by Board. Chairman Fay responding release of executive session minutes of 6-5-12 and requested the Board vote their position if Open Meeting Law was violated: Selectman Luca no, Selectman Hillman no, Selectman Maxant yes, Selectman Conley yes, Chairman Fay no **3-2 vote did not violate the OML**. Selectman Luca stating the Board had no intent to violate the OML went into meeting to gathering information/strategy necessary for the Board of Health and

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Building Inspector to utilize Town Counsel re litigating properties and it wasn't clear until the end of meeting that litigation wasn't discussed by Building Inspector after stating legal action would be needed placing meeting under executive cover. Selectman Conley read excerpt/s from OML into the record feeling Board should have realized at some point that they were violating OML and should have adjourned from Executive Session into Open Session. Selectman Maxant maintained his belief that Board violated OML by hiding discussion, intent and decision from public. Selectman Hillman stating Selectman Maxant should have recused himself from this discussion being a party of interest, living at one of the properties in question; and advising Selectman Maxant to his pursuing this further. Selectman Maxant objecting stating this is absolutely wrong this is a nuisance issue. More discussion held re opinions from Board members relative to OML. Chairman Fay called for a vote on Selectman Luca's original motion that the Board **did not violate the OML** with amendment from Selectman Conley to include with Board's response to Attorney General: the Public Release of Executive Session Minutes of 6-5-12, 1st half of amended minutes (DPW -MOA) not be included and amendments to the 6-5-12 Executive Session minutes reflect (on Page 1. 8th paragraph the word conferred be corrected to concurred, and on page 5 of Executive Session Minutes 2nd paragraph the words "and to be taken" removed) the email from Town Counsel-Mark Reich dated 7-5-12, draft minutes of 7-10-12 and four (4) pages referenced into record from Selectman Conley re OML. VOTE: Selectman Luca aye, Selectman Hillman aye, Selectman Maxant no, Selectman Conley no, Chairman Fay aye. 3-2 motion passes.

8:15p.m. Selectman Luca moved the Board adjourn the meeting, 2nd by Selectman Maxant, VOTE: unanimous, so moved.

8:15p.m. Open Session adjourned.

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