



TOWN OF HOPEDALE

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Select Board
Glenda A. Hazard, Chair
Brian R. Keyes
Bernard J. Stock

Town Administrator
Diana M. Schindler

Select Board
Special Meeting Minutes
Including Joint Meeting with Planning Board
and Development Industrial Commission
August 24, 2022
6 pm

Present: Chair Hazard, Member Keyes, Member Stock, and Town Administrator Schindler
Others Present: Attorneys David Mackey and Mina Makarios

Chair Hazard called the meeting to order 6:00 p.m.

Member Keyes moved to reverse the order of the agenda, starting with Old Business, Item D, #3 on agenda. Chair Hazard seconded. No discussion.

Hazard – Aye, Keyes – Aye, Stock - Aye

Update re: 364 West Street Court Proceedings in August

Attorney David Mackey started with update on Federal court case dispute with GU RR's attempt to stop the Town from filing the Order of Taking for under MGL Chapter 79, for the 364 West Street property that Town Meeting voted on July 11, 2022 to authorize the Select Board to take by eminent domain, 130 acres of forestland. On July 19th, the Board voted the Order of Taking. The day prior to that meeting date, the RR filed a complaint in Federal Court, a temporary restraining order (TRO) against the Town's Taking relying on the [Interstate Commerce Act of 1887](#), which they interpreted as barring the Town from being able to take property that is in active use by a railroad. They have argued to the court, based on reliance of a recently submitted plan, that they need all the land to move ahead. Judge Saylor granted the TRO without ruling the merits of the case. He handed it off to his colleague, Judge Burrows who scheduled a second hearing on the matter on August 10, 2022. RR and Town submitted several briefs and affidavits. Judge Burrows heard the case on 8/10. RR argued that Town could not take the property and lacked eminent domain power because the RR was preempted under Federal law. Anderson Krieger (AK) argued on behalf of the Town; that District Court lacked jurisdiction, that there was no federal claim the RR could bring under that statute, that the RR's plans were preliminary and not practical and did not qualify for preemption; further that RR did not need a preliminary injunction since it could challenge the Taking in State Superior Court. The case was argued for two hours. Judge Burrows ended by stating she hadn't had time to review the briefs and did not feel comfortable weighing in the facts for the preliminary injunction. She did ask the parties if they would be willing to maintain status quo while waiting for her decision. The Town agreed. She asked the RR if it would halt its development plans on the property. The RR was not in definitive in its agreement in court, but when filing later briefs, they did appear "to live with" status quo and seemed to agree to stop work on property while Judge Burrows is rendering her decision. In the meantime, AK filed on behalf of Town, a complaint in Federal Court that the court does not have jurisdiction over that matter. GU RR filed a response which Attorney Mackey hasn't had a chance to review yet. He expects that Judge Burrows will hear the motion to dismiss and the RR injunction at the same time, but he's not sure when.

Member Keyes asked Attorney Mackey to clarify if he stated we objected to the RR and was part of our case to dismiss, is that they would have the right to argue the case in State Superior Court. Under state

law, a party challenging a Taking by a governmental entity or the compensation proceeds in Superior Court and if the Court agreed, it could invalidate. Attorney Mackey clarified that wasn't part of the motion to dismiss but part of the response to the RR's TRO filing. Member Keyes noted that the Town hasn't been successful in State Court thus far, so it seemed unlikely. Attorney Mackey clarified that, although there has been substantial litigation thus far regarding the Town's Chapter 61 rights, these particular issues have not been litigated and therefore he doesn't think it predicts success. Member Stock commended Attorney Mackey in the court appearance, stating he made solid arguments, and it was a job well done.

Consider and Vote on Proposed Order of Taking for Land at 364 West Street Pursuant to Article 1 of the July 11, 2022 Special Town Meeting

Attorney Makarios noted that the Order of Taking needs to be voted within 30 days of the Taking. Therefore, he is asking the Board to revote the Taking with today's date, so we have a valid vote in anticipation of the Judge allowing the Town to record the Taking shortly. Attorney Keavany has been notified that this vote is taking place. Chair Hazard asked for a motion to reaffirm and renew with same terms as previous vote.

Member Stock made that motion. Member Keyes seconded for discussion. No discussion.
Stock – Aye, Hazard – Aye, Keyes – No

Member Keyes comments, he was going to stay with previous vote and state on the record that he does not agree with currently strategy, time money and resources spent on their path we've chosen at a Board. Chair Hazard reiterated there are no taxpayer finances being used on this effort, money is coming from donor. Member Keyes stated he wasn't referring to simply money, but also time and energy spent on this effort as opposed to other affairs in the Town that aren't being attended to. Chair Hazard stated this effort was not taking resources away from other initiatives to her knowledge. Member Keyes disagreed and stated further that he was unaware of any donations that have been made to the Town so far regarding the legal costs. Chair Hazard assured Member Keyes that Administrator Schindler would provide updated information relative to that.

Attorney Makarios reminded Board they needed to sign the Taking in front of the Town Clerk. Member Stock added that what the Board is doing reflected what the voters have told the Board they wanted the Board to act in two Town Meetings. As a Board member, he is implementing what they want. Chair Hazard confirmed she was as well.

Respond to Open Meeting Law Complaint from GU RR dated July 6, 2022

Attorney Makarios noted another housekeeping item; an open meeting law complaint, purported to be filed as an emergency complaint. Attorney Brian Riley responded to emergency nature, saying there is no emergency. The AG agreed. The AG's office in their due diligence followed up to see if any further response was filed. Attorney Makarios followed up with RR Counsel and asked if they were still raising complaint. He noted that there was no response to part of another complaint, but agreed that if we responded to both, instead of them filing another action with AG, they would accept our response as timely. Board reviewed letter in packet.

Member Stock moved to delegate a response to the July 6th Open Meeting Law complaint filed on behalf of the Grafton and Upton RR to Anderson Krieger substantially in the form provided in the Select Board meeting packet for August 24, 2022. Member Keyes seconded.

Stock – Aye, Keyes – Aye, Hazard – Aye.

Attorneys Mackey and Makarios left the meeting approximately 6:30 pm.

Administrator Schindler asked the Board to move Item #1 under Old Business, GU RR driveway opening on Mendon Street, to a future agenda. The project engineer is on vacation and not available. There are documents in the packet he provided for the Board's review and for discussion at

upcoming meeting when he returns. Member Keyes moved to table this item to a future meeting agenda. Member Stock seconded.

Stock – Aye, Keyes – Aye, Hazard – Aye.

Request for Fall Family Outdoor Event, Hopedale Unitarian Parish, 65 Hopedale Street, Saturday, September 24, from 10 am to 3 pm, Rain date of Sunday, September 25, 12-3 pm and Request for One Day Permit for Beer & Wine, Indoor at Parish Hall, 7-10 pm

Tracy Anderson, Organizer, described the event in more detail for Board.

Board had no issue with events as presented. Member Keyes moved to approve the Fall Family Outdoor Event for Saturday, September and to further approve the One Day Permit for Beer & Wine - as requested for evening event, indoors only, in the Parish Hall, Saturday, 7-10 pm. Member Stock seconded.

Stock – Aye, Keyes – Aye, Hazard – Aye.

Accept Meeting Minutes for May 9 (revised), June 21 and June 27

Member Keyes is satisfied with requested revision for May 9. Since Member Stock was not present for May 9, Member Keyes moved to accept the revised minutes as presented. Chair Hazard seconded.

Keyes – Aye, Hazard – Aye Stock – Abstain

Member Keyes moved to accept minutes of June 21 and June 27. Member Stock seconded.

Stock – Aye, Keyes – Aye, Hazard – Aye.

Appointments and Resignations - Accept Resignation of Lindsay Peterman

Chair Hazard suggested the Board pass over this item to give her and Board members a chance to determine if there are other options besides Lindsay leaving. Member Keyes was agreeable to this. He stated for the record he was unhappy with the content of the resignation letter and wanted residents to see it in the packet if the resignation was going to be accepted and he was hopeful a discussion would take place between the Board and the Town Administrator in regard to content. Chair Hazard noted there were three emails in the packet relative to this matter. Member Keyes made a motion to carry this item to the next regular meeting agenda. Member Stock seconded.

Stock – Aye, Keyes – Aye, Hazard – Aye.

Public and Board Member Comments (votes will not be taken)

Nicole Small, resident, relative to the emails in the packet relative to the item above. Chair Hazard clarified there was one email chain, with three separate communications.

Member Keyes noted that schools will be starting before the next regular meeting. He noted that Superintendent Crebase and her team are ready to get started and he wished everyone well.

Correspondence and Selectmen Informational Items (votes will not be taken)

- Notice of Traffic Delays at Hopedale/Mendon Street Intersection, week of 8/29/22
- Motion to Dismiss Plaintiffs' Verified Complaint (GU RR, 364 West Street)
- A/P Warrant #23-03, \$759,701.39
- P/R Warrant #23-03, \$581,908.31
- A/P Warrant #23-04T, \$197,211.39

Requests for Future Agenda Items

- Joint Meeting with Finance Committee, September 12, 7 pm; Review and Prioritize re ARPA Requests; Review Capital Requests in Preparation for Fall Special Town Meeting (tentative date, 11/14/22); Town planner implementation

Administrator Updates

- ✓ Hopedale/Mendon Street Intersection Project: paving scheduled to be completed by 9/30; light masts installed in November. Projected completed by 12/30/2022.
- ✓ Green Communities implementation grant The Town just completed its larger energy reduction project at the schools and there are additional monies to explore spending at the Bancroft Memorial Library or the schools for weatherization and a few other minor items.
- ✓ Complete Streets Prioritization Plan is being finalized and will be available at the next meeting and will be submitted to MA DOT for review by 8/30/2022.
- ✓ Streetlight Purchase Project: The Town has a contract with RealTerm Energy for Streetlight purchase. The Town did an audit and bid out the light fixtures and smart controls. However, the project stalled due to lack of public works department capacity to purchase, manage and maintain streetlights. Administrator Schindler recommends exploring converting the streetlights to LED lights that remain in National Grid ownership. This will allow Town to secure much-needed energy savings, without the cost of maintaining the lights. This would require the Town to separate from RealTerm contract which would be a minimum buyout cost. RealTerm has been asked to provide this cost so the Town can evaluate these options. Discussions should continue with Road Commissioners and Highway Superintendent to determine best course of action.
- ✓ Questions from Road Commissioners regarding Overdale Parkway Agreement
Road Commissioners had some questions regarding the agreement. Administrator Schindler sent those questions to the attorney at KP Law who assisted the Select Board with the agreement. They question their role in determining development specifications of the road being improved through the agreement. Member Keyes noted they should have oversight, but not authority, which falls to the Planning Board. If questions remain unresolved, a joint meeting will be scheduled.

Member Keyes moved that the Select Board recess at 6:53 pm and close out this Zoom link to reconvene with the Planning Board on their Zoom link at 7:00 pm. Chair Hazard will not be able to join the joint meeting, however Members Keyes and Stock will have a quorum and will dissolve at the conclusion of that portion of the meeting. Member Stock seconded.

Stock – Aye, Keyes – Aye, Hazard – Aye.

Joint Meeting with Planning Board, Zoning Board and Development & Industrial Commission For Continued Discussion of Marijuana Establishment Zoning Bylaw Additions/Amendments
The Select Board reconvened with Planning Board at 7 pm to continue the review of marijuana establishment Zoning Bylaw additions or amendments.

The Zoning Board was also invited but the Chair did not post nor responded if they were going to join. Chair of the Development and Industrial Commission had a conflict and could not attend. Two members of this committee were present and since this does not constitute a quorum, they were given permission to speak.

The proposed draft was sent to the board by legal counsel and shared at this meeting. The Planning Board and Select Board members reviewed the section titled Purpose and all members felt the language was appropriate. The language is as follows:

The purpose of the Marijuana Overlay District Bylaw is to provide for the placement of Medical Marijuana Treatment Centers (“MMTCs”) and Adult Use Marijuana Establishments (“MEs”) in locations suitable for such uses in accordance with G.L. c. 94G and all applicable regulations, including 935 CMR 500.000 and 935 CMR 501.000, in order to support the public’s right to access marijuana and marijuana products while mitigating community impacts and protecting public health, safety and welfare.

The next section is labeled Establishment and would layout the boundaries of the overlay district on

the zoning map. Since the map has not been updated in several years, the goal is to get a rough draft in place. The public will have a chance to comment on this entire draft at the public hearing once a hearing is scheduled. The Development and Industrial Commission did not map out the boundaries but discussed RT 140 and RT 16 spaces and the small area around Cumberland Farms. Stephen Chaplin reviewed the section labeled Definitions and the language is as follows: Where not expressly defined in the Zoning Bylaws, terms used in the MOD Bylaw shall be interpreted as defined in G.L. c.94G, § 1 and the regulations governing Adult Use of Marijuana (935 CMR 500.000), Medical Marijuana (935 CMR 501.000) and otherwise by their plain language. A discussion was held if this should be a narrower subset once a map is established.

Stephen Chaplin asked Diana Schindler how an updated map is completed which she indicated that Central Massachusetts Regional Planning Commission would normally assist with this.

Stephen Chaplin remarked that designating where certain facilities would be able to locate would be a long and tedious process. He explored the concept of whether creating the criteria instead might be less tedious as opposed to creating an overlay district. Kaplan Hasanoglu said the board could detail criteria by right and those that would need a special permit. Chris Chase felt the overlay bylaw would streamline the process.

The board reviewed where Hopedale has commercial or industrial zoning as the town is mainly residential. The discussion revolved around whether the small area around Cumberland Farms and the small parcel across the street should be within the overlay boundaries. Jimmy Khokhar felt it was too close to the schools. Brian Keyes reminded the members that there was a request for a marijuana retail establishment near the medical building and there was a ton of resistance from public and town officials. Brian Keyes reviewed the overlay district would be over any zoning of the property and the space has to be useable; if water and sewer are not available, the location is not viable for these businesses. Stephen Chaplin reminded the audience that an overlay district zoning change would need a 2/3 approval vote at a town meeting. Chairman Chaplin then tabled this particular discussion.

The board then reviewed the Limitations and Prohibitions section and it reads as follows: No more than 4 marijuana retailers shall be permitted in the Town of Hopedale.

A lengthy discussion was held regarding the number of retailers to allow and Kaplan Hasanoglu felt this also was a function of needing the map updated to decide if this limit is appropriate. Locations discussed along with the Cumberland Farms area were the area near Hazel Street, West Street parcels and the former Draper land.

The Social Consumption Establishments section reads as follows:

No marijuana or marijuana product shall be smoked, eaten or otherwise consumed or ingested on the premises of any MMTC or ME. The prohibition on on-site consumption shall also include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site.

A discussion was held if this section is even needed as it is not allowed by the state at this time. Stephen Chaplin, Kaplan Hasanoglu and Jimmy Khokhar felt the language should be in the bylaw, while Chris Chase and Mike Costanza felt it should be removed. Rick Lima reminded the board that since testing for marijuana levels is not available, the police department is not in favor of allowing social consumption establishments in Hopedale.

Location and Dimensional Controls were reviewed. The draft includes language that marijuana establishments may not locate within 500 feet of the pre-existing public or private K-12 schools which was agreed to by the members after a lengthy discussion. This section included a 100-foot buffer zone and the board members asked to strike this paragraph from the draft. The remaining language was found to

be acceptable regarding location and dimensional controls. The language regarding drive through establishments will be removed and drive through establishments would be bound by state regulations. Special permitting was discussed and overall, it was agreed that since the Planning Board does the site plan review, the Planning Board would be the granting authority to roll in the special permitting to streamline the process. The special permit requirements all seemed reasonable to the Planning Board and Select Board members.

Stephen Chaplin will have counsel make the revisions as discussed. Then a public hearing will be held and the Planning Board will make a recommendation for the town meeting.

Jane Wyrick, from CMRPC will work on updating the map with her resources available to her.

The buffer zone discussion between two retail marijuana establishments is still on the table, depending on the zoning map. Only Brian Keyes is in favor of establishing a buffer zone. The Planning Board reviewed their past discussions and decided to not include a buffer zone in the bylaw.

Member Stock made a motion to dissolve the Select Board meeting at 9:39 pm. Member Keyes seconded.

Stock – Aye, Keyes – Aye.

Submitted by:

Diana Schindler, Town Administrator (with excerpts from Planning Board minutes by Mary Arcudi)

Adopted: 10/11/2022

