

Select Board Meeting Minutes  
May 23, 2022  
7:00 PM

Chair Hazard reconvened into open session at 7:47 PM

Consent Items

Selectman Keyes motioned to approve minutes for April 11, 2022, April 22, 2022, and May 9, 2022. Chair Hazard seconded this motion and made an appeal to update April 11<sup>th</sup>, 2022, minutes, to clarify that where it states that Judge Rubin made a clear error following mass procedures as a factual statement, to clarify that the board was discussing whether she did not that she absolutely did. Judge Dessin ruled there was not strong likelihood of success and Judge Goodwin had properly exercised her authority however this should have been Judge Rubin instead of judge Goodwin. Selectman Keyes also supported this change. Selectman Stock did not vote on these minutes because he was not present during the meetings.

Chair Hazard moved to approve the April 11, 2022, April 22, 2022 and May 9, 2022 meeting minutes with the modifications.

Chair Hazard – Aye, Selectman Keyes – Aye

Accept Donation of \$50 to the Hopedale Bancroft Memorial Library from Barbara A. Levinson. Chair Hazard made a motion to accept this donation, and Selectman Stock seconded this.

Chair Hazard—Aye, Selectman Keyes—Aye, Selectman Stock Aye

Appointments & Resignations

Appointment of Nicholas Walker to the Hopedale Police Department as a Part-Time Dispatcher, effective May 24, 2022.

Selectman Keyes made a motion to approve this appointment of Nicholas Walker effective May 24, 2022. Selectman Stock seconded the motion.

Chair Hazard—Aye, Selectman Keyes—Aye, Selectman Stock – Aye

Appointment of Call Firefighters Candidates Timothy Morse, Andre Aureliano and John McCarthy to the Hopedale Fire Department effective June 1, 2022. Selectman Keyes made a motion to approve this appointment of Firefighters Candidates Timothy Morse, Andre Aureliano and John McCarthy to the Hopedale Fire Department effective June 1, 2022. Selectman Stock seconded the motion.

Selectman Stock – Aye, Selectman Keyes – Aye, Chair Hazard – Aye

New Business

Order of Taking for Mendon Street Intersection Project: this will be talked about in a different meeting as the project is underway.

Town Administrator Schindler stated that the order of the taking is prepared however, the license agreement with the Grafton Upton Railroad is not secured. Schindler stated that the Town has agreed that until the license agreement is completed, the Town will not go forward with the taking portion.

Propose to change Select Board Meeting Start Time: 6:30pm. Selectman Stock motioned this; Selectman Keyes seconded.

Selectman Stock stated that the Select Board meetings tend to last very long and this would help curb the late endings. Selectman Keyes was in favor of a 6:30PM on Monday start time, however, he cannot commit to an earlier start time. Chair Hazard agreed with Selectman Keyes.

Selectman Stock moved to amend the Select Board Meeting start time to 6:30PM. Selectman Keyes seconded the motion.

Selectman Keyes – Aye, Chair Hazard – Aye, Selectman Stock – Aye

Hopedale Fire Department – Surplus Equipment

Fire Chief Daige stated that the Fire Department has a storage area of outdated or broken equipment. There is \$100 worth of Firehoses to be sold at a Fire Muster to sell antique Fire Department equipment. This would be an opportunity to hopefully get a couple thousand dollars back. Chief Daige stated he could provide the log list to the Select Board. Chair Hazard made a motion to go through with this, and Selectman Keyes seconded the motion.

Selectman Keyes – Aye, Chair Hazard – Aye, Selectman Stock – Aye

MOA for Clerical Unit: 5% increase in FY2022, a 2.5% increase in FY2023 and a 2.5% increase in FY2024. There have also been adjustments to the hours of work, a paid holiday, and some longevity beyond 10 years. Selectman Keyes asked Town Administrator Schindler if the Finance Committee is aware of this contract and if they have approved. Town Administrator Schindler stated that the Finance Committee is aware of the salary trends and discussion that has been taking place with the Select Board. Schindler stated that the Select Board is the authority regarding approving these contracts. Schindler also stated that the increases are in the budget and the Finance Committee has approved the budget. Chair Hazard motioned to approve this, and Selectman Stock seconded this motion.

Selectman Keyes – Aye, Chair Hazard – Aye, Selectman Stock – Aye

MOA for DPW Unit: Chair Hazard stated that this item will be passed over.

MOA for Call Fire: The retroactive raises for FY2022 were not requested, but a raise for FY2023, FY2024, and FY2025 will be requested. There are currently 16 members on call. They are required to come back 5 weekday nights 6pm to 6am unless they are working their full-time job during those hours. The issue is their attendance has trailed off and they have been averaging 3 members per night. There is going to be a guaranteed 4 members a night by assigning them to a rotating shift group, and they will not be required to be on call 365 days a year reducing it to a quarter of that. By splitting the 16 members into four groups it is a guaranteed 4 members per call. A lot of the transport is being given to Mendon as it is hard to staff the ambulance, and this would increase EMS efficiency and solve that issue. Selectman Stock motioned to approve this, and Selectman Keyes seconded this motion.

Selectman Keyes – Aye, Chair Hazard – Aye, Selectman Stock – Aye

MOA for Dispatch: Chair Hazard stated this item will be passed over until the next meeting.

### Old Business

#### FY22 End of Year Account Transfers:

The Finance Committee decided to reduce the amount of free cash to \$242K leaving \$150K there, and they are not recommending the stipends in the draft budget created by the Town Administrator. The Finance Committee put \$75k extra in the reserve fund. There will be a list of the requests for ARPA, there are things that will not be seen in the budget. There will be \$120k for storm management plan, \$47K for tree maintenance, and \$25K for the town hall foundation and boiler repairs out of ARPA. Selectman Keyes stated that the finance committee does not have the authority for ARPA spending approval, and the next steps according to Chair Hazard would be to vote by the board to use ARPA money. However, the plans would be submitted to the finance committee to vote on the fund use by the select board. There is also a \$165K request for the water tank project. Selectman Keyes asked why retained earnings are not being used for this. Ed Burt, Water Commissioner stated that they have used their retained earnings for other urgent projects. They do not have 165k in their budget. They currently have a balance of 199K was the balance the last time it was certified, however, 27K was used for an emergency repair, and 91K is being used to offset next year's budget. This would leave the department with \$8K to cover emergency repairs. Selectman Stock motioned for \$165K to be given to the water tank project. Selectman Keyes seconded this motion.

Selectman Keyes – Aye, Chair Hazard – Aye, Selectman Stock – Aye

#### Review of FY23 Budget & Cover Sheet for Town Meeting:

Town Administrator Schindler stated that the Finance Committee had voted to use \$242k of free cash and some amount of ARPA, Schindler stated that the finance committee still had not recommended the stipends. Schindler stated that she will provide a list to the Select Board at the next meeting regarding what will be put towards ARPA. Chair Hazard stated that the discussion on the use of ARPA funding will be put on a future meeting agenda to be reviewed and discussed. Schindler stated that the Select Board has voted and approved \$150k of ARPA funding towards Stormwater Management. Schindler also stated that the Finance Committee did vote in favor of using ARPA funding for water/sewer. This item has not been voted on by the Select Board at this time.

Update re: GU RR Request for Support of the Industrial Rail Access Program (IRAP) Grant

Schindler stated that this particular IRAP grant request was to add some additional infrastructure at the West Street location. The application being discussed is located in the packet. The letter stated that the infrastructure will include 37,000ft of linear track and 4 turn outs. Selectman Keyes clarified that this is regarding the GU RR's land, not the land that is being disputed. Chair Hazard has some concerns about environmental and local approvals, which on the grant is stated yes, there are environmental and local approvals needed. However if there are no approvals to get, why does it not say no or n/a. If the answer is in fact yes, Chair Hazard would like to know the specifics of those approvals. Chair Hazard also brought up there is also a recurring reference to right-of-way issues, which on the last grant were undecided or debatable, however on the form the answer is also no. Selectman Stock has stated that he does not support a deal with the Railroad that he believes is not mutually beneficial and has a negative environmental impact. The point was brought up by Michael Milanowski of the GU RR that the State and the Railroad has had no issue with the right of way. Milanowski stated that it would be good to have storage of the cars, which is federally regulated, and donate park land, build 2 ½ miles of biking trails, and improved the Rustic Bridge, and wanted to go discuss this deal with public private ownership in 2020 as they believed that the federal government would give them the land in October 2022 to make the transition as seamless as possible. Additionally, he wanted more clarification and documentation by Chair Hazard on the legal issues regarding right-of- way. The Railroad company believes that the Town does not have eminent domain powers over RR land. Milanowski stated that the State and the Railroad had no issue with the right-of-way. Milanowski stated that the GU RR has tried to make this a win-win situation with the Town, citing many items that the Railroad was willing to give the Town or work through with the Town. The railroad right-of-way is 60 feet wide in some areas and in other areas it is 120 feet wide; the right-of-way is tax exempt. Liz Riley asked Milanowski if the Federal Government would see the case? Liz Riley did not specify which case she is referring to. Milanowski responded that the Federal Government informed the railroad to go to the State first. Town Administrator Schindler raised the question of whether the Town had ever asked the Board of Transportation for clarification. The GU RR did reach out and this was pushed to the Select Board, and then they were denied the special counsel as the issue morphed into an eminent domain as the Board took over gaining intervenor status for the Town. The GU RR doubts if the Town can raise eminent domain over the RR and believes they are in breach of a legally binding agreement with them.

Ed Burt, Water Commissioner, stated that the Water Commission did write to the Surface Transportation Board directly when the Board learned that the fly ash silos were put into place with no previous understanding of the impact. The response that the Water Commission received from the Surface Transportation Board was to resolve this with the primary Board, that being the Select Board. Ed stated that the Board did not ask the railroad to buy the land. The Town exercised its right of first refusal on chapter 61 in October of 2021, not just before it was going to expire in 2022. The Town Meeting that took place in October 2021 authorized the expenditure. The first time the Conservation Commission and Water/Sewer Commission heard of this agreement, both Boards rejected it because it did not meet their primary goals of protecting the current water supply. Ed continued that regarding the litigation pertaining to the Citizens vs. the Town of Hopedale, the Citizens won a portion of the lawsuit. The Citizen's won regarding that the expenditure for the smaller parcel, the Court said that the Select Board had exceeded its authority. Ed feels that the Railroad does not protect the water supply according to their Boards and that the Select Board has an opportunity to invalidate the settlement.

Selectman Keyes stated that he disagrees with the statements from Ed. Keyes stated that he does care about the water supply and was taking the water supply into consideration when the Board created the agreement.

Milanowski responded to Ed's statements stating that the Railroad must comply with Federal regulations and the Clean Water Act, the Railroad will not impact or contaminate the Water Supply. Milanowski stated that opinions like this, that are not based on fact, are making this more difficult. He stated that he is trying to have a partnership with the Town, and there was the desire to do water testing. They were going to provide a \$2 million easement as that was a possible watershed. However, it was discovered by Milanowski that water testing is not on the Water Commission's five-year plan because they are not interested in the location anymore. The pond goes through the Draper complex, which is contaminated, and the pond has lead weights as well. Chair Hazard stated that it is not fair to call the statements made by Ed untrue.

Rob Fahey stated that the property that is being developed by the railroad is also contaminated with lead as a former shooting range and ask Milanowski to speak on that. Milanowski responded that during a meeting a claim was made by the head of the Conservation Commission that there were shotgun shells all over the site, and she took a shell off the site upon visiting. Yet upon inspection by selectboard member Arcudi and a police officer, he could not find the shells. Milanowski stated that a member of the DEP that oversees water quality for Central Mass reviewed the site. The area in question is not near the well and Milanowski stated that shot gun shells does not necessarily mean lead contamination. Chair Hazard stated that this does not mean that the Conservation member fabricated her findings. Milanowski stated that he wants the statements to be backed by facts.

Rob Fahey discussed that in the recent IRAP regarding the rail expansion for industrial purposes, the cars need a place to go, however, a whole hill side would be taken out and will the water be contaminated. If it is possible that the water could be contaminated, what are the precautions that the Railroad will take to prevent this.

Mr. Milanowski responded that as he stated before, the Railroad follows Federal and Clean Water Act regulations. Storm water retention is built into the agreement, and they are required to filter the water per the Clean Water Act. This is designed to control any type of filtration that comes from the site. Milanowski stated that if the site is not built to specifications, then the Railroad is liable for this and that is not something the Railroad wants. The Railroad is expanding, and they are trying to do this in an ecological and environmentally friendly way.

Chair Hazard raised the question should the IRAP letter be rescinded, followed up, or no action needed. Selectman Stock motioned that the letter should be followed up with the current board's opinion, as the Board is no longer in support. Chair Hazard seconded this motion.

Selectman Keyes stated that there is no reason to object to the IRAP and does not support opposing this. Selectman Keyes stated that Town counsel weigh in.

Selectman Keyes – Nay, Chair Hazard -- Aye, Selectman Stock – Aye

Update re: 364 West Street

Selectman Stock brought up the judge's decision on May 5<sup>th</sup> 2022. Quoting Judge Karen Goodwin, which summarizes the petition, she ordered that in the court's view the actions of the railroad were wrong. Not "might be" wrong but "were" wrong. Selectman Stock has discussed this with an attorney and was informed that Judges typically do not put this in print and the Judge also stated that there appears to be grounds to rescind the agreement. Selectman Stock motioned to seek separate counsel, with municipal litigation and land-use experience, to review the settlement agreement and review the next steps; he proposes Anderson Kreiger in Boston/Cambridge. Chair Hazard seconded the motion.

Selectman Keyes—Aye, Chair Hazard – Aye, Selectman Stock—Aye

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

Selectman Keyes commended the Fire Chief on the golf tournament fundraiser, as well as the golfers and the sponsors.

Selectman Stock commended Tracy Phillips on her efforts on the Fairy Walk.

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

A/P Warrant #22-24, \$691,637.20, 5/18/2022

P/R Warrant #22-24, \$924,476.99, 5/18/2022

Xfinity Notice – On August 8, 2022, due to changes in business costs, AMC+ On Demand will increase from \$6.99 to \$8.99 per month.

KP Law – Notice of Rate Increases

Memorial Day Parade & Ceremony Announcement

Selectman Stock moved to adjourn the regular meeting. Selectman Keyes seconded the motion.

Selectman Keyes – Aye, Selectman Stock – Aye, Chair Hazard – Aye

Chair Hazard dissolved the meeting at 10:06PM.

Respectfully submitted:

Lindsay Peterman

Select Board approval: 12/27/2022