

**Board of Selectmen  
Regular Meeting Minutes  
February 8, 2021  
7:00 PM**

**Call to order 7:00 p.m. via Zoom Meeting**

**Chair Keyes convened the meeting at 7:00PM**

Pledge of Allegiance

**A. Consent Items**

1. Accepting the Donation of \$200 to the Bancroft Memorial Library from Frederick G. Oldfield, III, Chair of the Bancroft Memorial Library Trustees, in memory of his Grandmother, Marjorie Hattersley (Letter Attached)

Chair Keyes read the letter provided by Robyn York, Director of Bancroft Memorial Library. Chair Keyes thanked Frederick for his generosity and donation. Selectman Arcudi echoed Chair Keyes sentiments and thanked Frederick for his service, time, and effort he spends with the Library.

Selectman Arcudi made a motion to accept the donation of \$200 to the Bancroft Memorial Library from Frederick G. Oldfield, III, Chair of the Bancroft Memorial Library Trustees, in memory of his Grandmother, Marjorie Hattersley. Chair Keyes seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

**B. Appointments and Resignations**

1. **7:15 p.m.** Joint Meeting per M.G.L. Chapter 41, §11, with remaining Water Commission members, to consider Appointment of Donald Cooper (No posted meeting for W/S – review letter received)

Town Administrator, Diana Schindler, stated that this item will be passed over and revisited at a future Board of Selectmen meeting due to the Water and Sewer Department not posting a joint meeting agenda.

2. Appointment of Melissa Butler to the Master Plan Steering Committee (Talent Bank Form Attached)

Selectman Arcudi asked Town Administrator if the Master Plan Steering Committee is a full Board with these appointments, Town Administrator confirmed that after this meeting the Master Plan Steering Committee will have a full Board. Selectman Arcudi thanked Melissa Butler for her participation on the Master Plan Steering Committee.

Selectman Hazard made a motion to appoint Melissa Butler to the Master Plan Steering Committee. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes - Aye

3. Appointment of Kaplan Hasanoglu to the Master Plan Steering Committee

Chair Keyes thanked Kaplan Hasanoglu for his participation on the Master Plan Steering Committee.

Selectman Arcudi made a motion to appoint Kaplan Hasanoglu to the Master Plan Steering Committee. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

**C. Public Hearing None**

D. New Business\*

1. Approve MOU with CMRPC for implementation of EEA grant in the amount of \$32,500 (TA to sign) (vote)

Town Administrator briefly explain the EEA (Executive Office of Environmental Affairs) Grant. Schindler stated that this grant opportunity became available, and she has been working with CMRPC to carry out an open space plan. It is stated in the MOU that some of these funds will be applied to Administrative processes to update the Zoning Bylaws. Schindler has informed the Planning Board at a previous meeting and the Planning Board is ready to assist.

Selectman Hazard made a motion to approve the MOU with CMRPC for implementation of EEA grant in the amount of \$32,500. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi -Aye, Keyes – Aye

2. Collective Bargaining Assignments –  
Selectman Hazard – School, Clerical, Public Works  
Selectman Arcudi – Public Safety (Police, Fire, Call Fire, Dispatch) (Vote)

Selectman Hazard made a motion to approve the Collective Bargaining Assignments. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

E. Old Business

1. Green Communities Fuel Efficient Vehicle Policy (FEVP) Update – Adoption Letter and MOU EEA PAG Round 4 Hopedale MP – *Mimi Kaplan, CMRPC*

Schindler informed the Board of Selectmen that there have been updated State parameters on the FEVP. The Board adopted the FEVP at a previous meeting but due to the parameters being updated, Schindler needs to inform the Board and send a letter to the State to inform them that the Board is aware and approves. The updated parameters by the State are minimal and will mostly affect the Schools. The School Committee addressed and approved this at their previous meeting.

2. COVID Updates

Town Administrator Schindler stated that currently the Town Hall is closed to the public, however, staff hours have increased. There have been ongoing discussions regarding reopening the Town Hall to the public. Once Hopedale is no longer in the “red category” and at “yellow or green” then the Town Hall will reopen to the public. If Hopedale moves to the “yellow” category by Friday, they will reassess Town hall opening at an earlier date. There have been discussions regarding COVID vaccines and vaccine clinics in Hopedale. Schindler has been working with Bill Fisher, Hopedale Health Agent, and Salmon VNA, Hopedale has a contract with, to discuss the possibility of setting up COVID clinics and acquiring refrigeration for the vaccinations. Schindler has been looking at possible CARES Act funding for vaccinations as well.

3. Mediation Updates; *Attorney Peter F. Durning, Special Counsel*

Attorney Durning shared a presentation with the Board and the public to inform them of recent developments and the culmination of the effort to transpose the term sheet that the Board approved at their meeting on January 25, 2021 to the final settlement agreement. Attorney Durning presented slides as a reference, displaying the parcels (A, B, C, D, E) of One Hundred Forty Realty Trust that are being discussed in the settlement agreement. Durning stated that there has been a change to Parcel B since the last meeting, the GU RR has agreed to extend a riparian buffer for the entire southeast portion of Parcel B. The Trust and the GU RR have agreed that the whole 50ft length of the southeastern border will be a no-build/riparian buffer. There will be no physical or vertical structures at this location, there is a provision, that states there can be storm water infrastructures that facilitate infiltration but not treatment and it can have driveways in portion of the area. This is the only change to the slide presented showing the division of the parcels.

Attorney Durning felt that some items need to be reiterated, such as, the Board of Selectmen have always held the authority to act on the Right of First Refusal under G.L. c. 61, 8, nothing about the Special Town Meeting vote or the on-going litigation changes that authority. As the Town's Chief Executive authority, the Board of Selectmen has general authority for conducting and resolving litigation. Lastly, to the extent, the Settlement Agreement with GU RR and the Trust results in the Town of Hopedale acquiring less land for less money than was authorized at Special Town Meeting, no further authorization is required. It is important to recognize the status quo. Though Hopedale has arguments for acquiring the portion of 364 West Street subject to G.L. c. 61, at present that land is controlled by the One Hundred Forty Realty Trust. Both Judge Rubin and Judge Lombardi acknowledged that the substation of the trustees occurred. Rail Roads enjoy broad preemptions under federal law. Part of the reasons motivating the Board of Selectmen to seek a negotiated solution, was to secure better environmental protections for the Town than the Town would have had if the GU RR obtained the land outright. Though railroads enjoy a preemption over State and local regulations, they are bound to follow federal law, including the Clean Water Act and, extent applicable, the Safe Drinking Water Act.

What is important to understand about the proceeding that we are going through tonight is that the Board of Selectmen have already authorized the execution of a settlement agreement at their meeting on January 25, 2021 under the terms sheet. Between January 25, 2021 and today (February 8, 2021), Attorney Durning has been working with Counsel for the GU RR and the Trust and has negotiated some revisions to the term sheet that clarify certain elements in the agreement and provide further enhancements for the Town. Attorney Durning recognized that at the previous meeting he was asked if revisions to the term sheet were possible, he did not state that it was a certainty that any of the terms from the term sheet could be altered because we had entered a binding agreement with the term sheet. The GU RR and the Trust were able to discuss certain modification that would provide additional benefits to the Town.

Attorney Durning discussed the letter received by the Board of Selectmen and dated February 5, 2021, from the Water and Sewer Commissioners that stated the terms of the term sheet are violating their authorities. Durning stated that the Water/Sewer Commissioner's authority is not as vast as asserted in their letter. Given the posture of the conveyance being contemplated by the settlement agreement, which involves the grant of land by a private party to the Town, the concerns about the Commissioner's authority under any eminent domain power are not present here. Commissioners have authority over this land as water supply, at this moment in time, it is not certain that 364 West Street can support a public water supply. The Hopedale Zoning Map for 364 West Street shows that the portions of land discussed is zoned as industrial. This land is not in the Ground Water Protections bylaw district, however, pursuant to the agreement the Trust is agreeing to adopt certain deed restrictions that will impose the same land use controls that are present in the Ground Water Protection bylaw over parcels B and C that will be controlled by the Trust and GU RR.

While the Commissioners do not have the breadth of authority over this parcel as it is presented in their February 5, 2021 letter, the Commissioners and the Water Department do have a significant role to play with the potential development of a public drinking water supply at 364 West Street. Given that both the Town and GU RR have an interest in exploring the land in Parcel A for a potential water supply, the Settlement Agreement includes a provision for a cost sharing agreement that is subject to review and approval by the Water/Sewer Commissioner. In addition, the settlement agreement removes any constraint on the sequence of any exploration for water supply by the Commissioners and the Water Department. There was a mandate in the term sheet that the Town would first look to explore the possibility of a bedrock well. This requirement was removed, as the cost sharing agreement would go into operation, the GU RR and Water Department would explore the viability of wells in the shallow groundwater well or wellfield, they would be conducting this work at the same time while consolidating and sharing that effort.

Attorney Durning pointed out key provisions that are addressed and changes that have been made in the settlement agreement, such as, (1) the Trust or its designee and/or successors shall comply with the applicable health and safety state and federal laws and regulations regarding the development and operation of a water supply well provided however, nothing herein shall be interpreted as subjecting any such work to any local preclearance requirements. (2) The settlement agreement provides a mechanism for the assessment of roll back taxes for a change in use of the land classified under Chapter 61. The value of the roll back taxes will be assessed by the Hopedale Board of Assessors prior to Closing. To preserve the bargained for cost of the land in Parcel A, that the Town and GURR has settled on, the purchase price will be increased by the assessed tax then Trust will be obligated to pay the tax within 5 days. Due to this, the purchase price for parcel A remains consistent with the result of the negotiation. (3) GU RR has proposed donating Parcel D (363R West Street) to the Town. This will be subject to approval at Town Meeting, pursuant to G.L. c. 40, 14. (4) Section 1.e.iv. expressly references the involvement of the Parks Commission and the Conservation Commission with respect to the replication easement area on the east side of Parcel A. (5) The language in Section 5.a stated the Town shall not unreasonably withhold support for GU RR's future application(s) for state and federal grants. (6) the calculation of the survey costs in 5.b is based on a cost-sharing between the acreage in Parcel A for the Town and the acreage in Parcel, C and E, for the Trust. (7) To preserve the status quo and avoid local actions that would constitute impermissible preclearance activity, the Town shall not take any action inconsistent with the terms and intent of this agreement to extinguish, restrict, eliminate or to take by eminent domain the easement areas delineated on Exhibit 1 (Section 5.f). The Town acknowledges that the land subject to this agreement has historically been zoned for Industrial uses within the Town, and further acknowledges that the Defendants relied on the zoning status of this land as allowing Industrial uses as a matter or risk intentionally acquire the subject land and thereafter to effectuate the allocation of Parcel A, B, C, D, and E in this agreement. The Board of Selectmen shall continue to support the zoning of Parcels B, C, and E as permitting Industrial uses as a matter of right. (8) The action to enforce language in section 14 expressly references the ability to bring actions in Massachusetts State Courts for the enforceability of the agreement. There is language requiring the parties to confer in good faith to try and resolve the dispute. There is also a fee shifting provision – the loser in any enforcement action pays the cost of the prevailing party. (9) The Board of Selectmen shall be designated as the decision-making body of the Town for the purpose of implementing the provision of this settlement agreement. The Board of Selectmen shall have the right to consult with any such board, commission, or department as is necessary for carrying out any such terms of this agreement but shall retain decision-making authority to the extent permitted by law.

Selectman Hazard asked Attorney Durning to clarify if there is a timeline and/or deadline, does the Board of Selectmen have time to address some issues that have been brought to them by the Water Department, Conservation Commission, and the Public. Attorney Durning responded that yes, regarding the timeline, pursuant to the terms of the term sheet, the term sheet being a binding commitment, we have until February 9, 2021 to sign and complete the transition from the term sheet to the finalized terms of the settlement agreement. Selectman Hazard asked if the request to post pone the agreement by the Conservation Commission, Water Department and the residents that are suing the Town is possible? Attorney Durning stated that the vote to commit to the settlement agreement was already taken at the January 25, 2021 meeting. Selectman Arcudi asked Attorney Durning that in points 8 and 9, the land will remain zoned as Industrial and that the Town will not seek eminent domain, how will the Town know this in the far future so that does not happen? Also, regarding the donated land, does there have to be a Special Town Meeting, or could this item be put on the Annual Town Meeting? Attorney Durning responded that the donated land item can go on the Annual Town Meeting, a Special Town Meeting is not necessary.

Chair Keyes opened the meeting for public discussion. Keyes acknowledge that Attorney Lurie is on the meeting, Attorney Lurie represents the citizens that are suing the Town regarding the land at 364 West St. Keyes asked Attorney Durning if we should acknowledge and speak with Attorney Lurie at this meeting tonight? Attorney Durning advised it would not be appropriate for Attorney Lurie to speak and advocate on behalf of the residents he represents. He can speak during this meeting. Attorney Lurie stated he represents 10 residents of Hopedale, that he sent a letter to the Board of Selectmen and discussed the letter with Attorney Durning. Attorney Lurie stated that he feels that the Chapter 61 rights of the Town remain in effect and the deal abandons those rights. Attorney Lurie continued to inform the Board, Attorney Durning and Resident of his position and reasons as to why the Town should have moved forward with litigation to obtain the land, as it was the Town's right to obtain the land.

Selectman Arcudi asked Attorney Durning with the pending lawsuit by the residents, does this change the timeline of the settlement agreement? Arcudi fears that a lawsuit could potentially make the agreement with GU RR and the Trust null or void. Then causing the Court to step in and the Town not getting any land. Attorney Durning responded that there are some additional activities that need to occur that are spelled out in the settlement agreement particularly the execution of a purchase and sale agreement, during that period there is going to be an engineer and a survey of 364 West Street so that we get the precise meets and bounds that are intended to be conveyed. These activities typically take 60 days, there will be 60 days before a formal closing. Attorney Durning stated that it would depend on the tactics that Attorney Lurie and the residents he is representing use. What is anticipated in the settlement agreement is that the agreement memorializes the agreement that has been reached between the Town and GU RR. Pursuant to the terms of the settlement agreement the outstanding litigation and the surface transportation board will be closed/dismissed and the current litigation in the land court regarding the rights under chapter 61 will also be dismissed. If another group decides to sue the Town, then it should not affect the timeline of the settlement agreement. Selectman Hazard asked what the consequences would be if the Board of Selectmen choose to postpone per the request of the residents that are suing the Town. Attorney Durning stated that the Trust and GU RR would likely insist on compliance with the terms of the terms sheet and the modifications that we secured through the settlement agreement would be void.

Attorney Durning wanted to stress that about submitting material to the land court Judge. The settlement is not subject to land court approval. This is the determination of three litigants, the Town, the Trust, and GU RR. They have arrived at a resolution of their agreement and their issues. There is not requirement to submit the resolution to the land court for approval. Multiple residents raised concerns regarding they feel that the process was rushed, they felt that the Board did not follow the Town Meeting vote to purchase the land, and that the Water/Sewer and Conservation Commissions should have been involved more. Attorney Durning stated that all the work that the Commissions put into this was utilized and used by the Selectmen. Selectman Arcudi stated that the public was asked what their main concerns are regarding this land if purchasing the land outright was not possible. The Board and Attorney Durning worked to make sure those public requested were met. Their main concerns being water supply protections current and future, parkland protection and conservation, watershed protection.

Several residents have asked if it would be possible to edit the date on the term sheet, to give the Selectmen and the residents more time to review and to avoid possible litigation with Hopedale residents. Attorney Durning responded that, the date is not changing, he feels that changing the date due to the threat of a litigation is warranted.

A resident asked Attorney Durning if the Town were to fail at Land Court and the Surface Transportation Board would there be any recourse? Durning responded that yes, surface transportation board decisions are reviewable by the federal court system, so there could have been an appeal of the decision of the surface transportation board to federal court. Decisions of the land court are appealable to the appeals court and ultimately, the Supreme Judicial Court of MA. That was part of the consideration in this matter, that given how close some of the issues were and how dramatic the swing for the winning and losing party that the likelihood of success and cost of litigation would involve many layers of practice following the resolution.

- F. Public and Board Member Comments (votes will not be taken)
- G. Correspondence and Selectmen Informational Items (votes will not be taken)
- H. Requests for Future Agenda Items:  
Selectman Hazard asked to add the Select Board name change to the next agenda.
- I. Administrator Updates (In Packet)
- J. Executive Session: Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to collective bargaining or litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote
  1. **Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.**
  2. **Purpose: Collective Bargaining; All units.**

Selectman Arcudi made a motion to move into executive session. Selectman Hazard seconded the motion.

Roll Call Arcudi – Aye, Hazard – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 10:42PM

*Submitted by:*

*Lindsay Mercier*  
*Lindsay Mercier, Executive Assistant*

*Adopted:* \_\_\_\_\_