

**Board of Selectmen
Regular Meeting Minutes
November 30, 2020**

Chair Keyes convened the meeting at 7:00PM via Zoom.

Present; Chair Brian R. Keyes, Selectman Louis J. Arcudi, III, Attorney Peter F. Durning, Executive Assistant, Lindsay Mercier

Pledge of Allegiance

Chair Keyes made a point of order regarding a change for the interactive portion of the Board of Selectmen meetings. Chair Keyes spoke with Town Counsel, KP Law, regarding open meeting laws and the requirements of the Board during COVID and the state of emergency. Per KP Law's guidance the Board of Selectmen will no longer be acknowledging comments or questions in the Zoom Chat. If a resident has a question or comment they would like to raise, the Board of Selectmen will acknowledge this by the "Raise Hand" feature in Zoom or the resident can speak and identify their name and address.

A. Consent Items

B. Appointments and Resignations

C. Public Hearing

Board of Assessors, Present; Vice Chair, Don Howes, Principal Assessor, Ann Williams

7:00PM – 2020 Tax Classification Hearing – *Presentation by Ann Williams, Principal Assessor*

The Hopedale Board of Selectmen will hold a public hearing at 7:00 PM on Monday, November 30, 2020, in the Draper Meeting Room of the Hopedale Town Hall at 78 Hopedale Street, Hopedale MA via ZOOM. The purpose is to receive comments on the classification of taxable real property in the town of Hopedale, and to determine the percentage of the tax levy for Fiscal Year 2021 that each class shall bear by multiple tax rate or by a single classification and single tax rate. Interested Hopedale taxpayers are encouraged to provide written or oral comments prior to or during the hearing.

Selectman Arcudi made a motion to open the public hearing at 7:05PM. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

Ann Williams stated that the Board of Assessors recommends maintaining a split tax rate of 1.50 and the Board of Assessors do not wish to have a residential exemption or small commercial exemption. Principal Assessor, Ann Williams presented a packet with information pertaining to the Tax Classification Hearing. Ann Williams stated that from the year 2000, Hopedale has had a split rate. Vice Chair, Don Howes, stated that this was a unanimous decision from the Board of Assessors.

Chair Keyes opened the hearing form public comments. Resident, Jim Donohue asked if this would make Hopedale less appealing to perspective commercial activity in contrast to the neighboring Towns. Chair Keyes referenced the packet that the Board of Assessors created and showed the resident the comparisons between the towns. Chair Keyes stated that commercial businesses are still interested in Hopedale. The Town of Hopedale could possibly negotiate with the businesses on a case by case bases. Vice Chair, Don Howes stated that from his time with the Board of Assessors, he has never experienced commercial businesses refusing to settle in Hopedale base on the split tax rate decision. He stated that the Board of Assessors does try to work with businesses.

Selectman Arcudi made a motion to maintain the Split Tax Rate of 1.5 for the upcoming fiscal year tax bills. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes - Aye

Selectman Arcudi made a motion to not adopt the residential exemption per Principal Assessors, Ann Williams recommendation. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

Selectman Arcudi made a motion that the Town of Hopedale does not adopt the Small Commercial Exemption. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

Chair Keyes dissolved the public hearing at 7:24PM

D. New Business

E. Old Business

Draper Complex Update: *Craig Blais, President & CEO – Worcester Business Development Corporation (WBDC) Phil Shwachman – First American Realty*

Phil Shwachman stated that beginning in August 2020, they started the project to demolish the wing of the Draper Mill on Hopedale Street, 250 square feet. The building has been abated of all remaining asbestos. The Freedom Street wing will be the next part of the building to be demolished.

Right of First Refusal, 364 West Street; *Attorney Peter Durning*

Attorney Durning provided an update regarding the Town's right of first refusal pertaining to 364 West Street and the related litigation. He informed the residents that the Town is engaged in litigation and he will not be able to provide details of non-public or litigation strategy information at public meetings. Attorney Durning stated that he did not comment on the litigation at the Board of Selectmen meeting on Monday evening, (November 23, 2020) because Judge Rubin's actions were not final at that time. Judge Rubin hinted during the preliminary injunction meeting that took place on Monday morning (November 23, 2020) about where she was inclined to rule. She took each side's argument under advisement; however, it was not clear how she would decide on certain issues until after further consideration and deliberation. During the day on Tuesday (November 24, 2020) Judge Rubin issued a statement on the docket explaining that the hearing had taken place and her assessment of the issues that were slated on the hearing, I.E. Hopedale's motion for preliminary injunction and Hopedale's request for an indorsement of a Lis Pendens. At the preliminary injunction hearing, Hopedale was seeking an order from the court that would hold the conditions that the status quo while the matter is being decided. Judge Rubin indicated during the hearing that she was not inclined to grant the motion. At her docket hearing entry on Tuesday, she confirmed that position. The reason for the Judge's decision to deny the preliminary injunction is twofold, first, granting a preliminary injunction is an extraordinary form of relief that maybe granted early in a lawsuit, there is a high burden of proof that the moving party must meet effectively it is asking the Judge to come to the conclusion that our arguments will prevail and that they can issue a preliminary ruling in our favor. Judge Rubin raised an issue about the validity of the July 9, 2020 notice of intent to sell. She raised an issue regarding if the seller had strictly complied with all of the notice requirements in the statute. The court did not make a final determination on this issue. The Town of Hopedale will have opportunities to present our argument regarding why the Town feels that July 9th notice was valid at a later stage in the proceedings. At this stage in the litigation, Judge Rubin was not prepared to issue an injunction. Second issue that the court must consider when granting a preliminary injunction, is the nature and extent of irreparable harm that might happen if the court does not impose the injunction. Counsel for the Grafton Upton Railroad offered to maintain the status quo of the property. Judge Rubin encouraged the parties to agree on a stipulation to be entered into court that would confirm the bounds of the agreement to maintain the status quo. From the Judges perspective, if the status quo is maintained, then there is no reason for the extraordinary relief of an injunction because Hopedale will not be harmed while the matter is pending. Attorney Durning stated that he is currently working with Counsel from the Grafton Upton Railroad on the terms of the stipulation that will maintain the status quo while the rest of the lawsuit plays out.

The other major decision issued by Judge Rubin, was to order the parties to participate in a mediation screening. Judge Rubin believes that "there could be a win-win from a mediated solution." Attorney Durning stated that it is important to note that Judge Rubin did not order the parties to conduct a mediation, she ordered the parties to engage in a mediation screening process. Considering the Judge's order compelling Hopedale to participate in the mediation screening, we will certainly participate in that process. Based on the third-party neutral mediators' assessment and the positions of the parties, it is possible that we may opt to conduct more activities with a third-party neutral to see if a mediation will be fruitful. It is also possible, that we could determine that mediation would not be in Hopedale's best interest and that we should proceed with the lawsuit. The decision of whether to conduct mediation with the Grafton Upton Railroad is not before the Board of Selectmen currently. At this time, the only decision the Board of Selectmen need to address is whether Hopedale will comply with Judge Rubin's order to conduct a mediation screening.

Chair Keyes opened the meeting for residents to ask Attorney Durning questions/review previously discussed items regarding the land purchase/litigation updates at 364 West Street:

What is the timeline for the mediation screening process? Attorney Durning responded that the Judge gave a timeline to report back to the Court in writing regarding the mediation screening process by January 25, 2021.

Is there a report issued by a third party or is all the feedback from the litigates?

Attorney Durning responded that the feedback will be from the litigates.

What happens to the surface transportation action while the mediation screening and litigation is being conducted? Does the surface transportation action stop or continue?

Attorney Durning responded that the surface transportation board is a federal agency created by the interstate commerce commission termination act. We are currently in discussions with the GURR to consider a stay of both proceedings at the same time effectively according to the same terms that Judge Rubin put out.

Selectman Arcudi asked Attorney Durning if they need to make a motion or vote regarding the order that Judge Rubin put out, or if Counsel is looking for direction. Attorney Durning responded that a vote from the Board of Selectmen is required. Selectman Arcudi asked where a “no vote” would get the Town? Attorney Durning stated, that they would have to report back to the court and let the Judge know that the Town of Hopedale felt that they did not think the mediation screening exercise would be fruitful at this time, and decline the courts order to conduct that mediation screening. Attorney Durning stated that he strongly recommends complying with the Judges order.

Selectman Arcudi made a motion to comply with Judge Rubin’s order and to proceed in a mediation screening. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

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:

I. Administrator Updates (In Packet)

J. Executive Session

Selectman Arcudi made motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for Purpose (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares, which he does. **Purpose 3, to discuss litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als**

Motion to adjourn Regular Session and open Executive Session, and not to return to Regular Session. Chair Keyes seconded the motion.

Roll Call Vote, Arcudi – Aye, Keyes – Aye

Chair Keyes dissolved the Regular Meeting at 9:04PM

Submitted by:

Lindsay Mercier, Executive Assistant

Adopted: _____