

## BOARD OF SELECTMEN MEETING

February 11, 2019

Chairman Kevin A. Caira called the meeting to order at 6:00 p.m. in Room 9 of the Town Hall. Present were Selectmen Gregory B. Bendel, Jonathan R. Eaton, Edward P. Loud, Sr. and Michael V. McCoy. Also present was Town Manager Jeffrey M. Hull and Mark Reich, Town Counsel.

Selectman Eaton advised that prior to any motion being made, and as he mentioned two weeks ago, upon receiving the letter dated January 22 that was signed by 21 residents, he reached out to the State Ethics Commission to obtain an opinion whether his prior professional relationship with Mr. Veerman would constitute conduct which would cause a reasonable person to conclude that a conflict existed. Selectman Eaton was advised that participating in discussion relating to this letter would constitute a conflict as defined by Massachusetts General Law Chapter 268A, Section 23b. Selectman Eaton recused himself and left the room.

Selectman McCoy made a motion to enter Executive Session pursuant to G.L. Chapter 30A, Section 21(a)(1) to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against a public officer, employee, staff member or individual and upon the conclusion of the discussion the Board shall return to open session. The motion was seconded by Selectman Bendel for the purpose of discussion.

Chairman Caira asked Town Counsel Attorney Reich to explain the reasons and purposes for the Board to enter Executive Session. Attorney Reich stated that notice went out relative to the Executive Session and advised that the intent of the vote is to determine whether the Board of Selectmen is going to enter Executive Session and the basis is to determine whether there is cause to give rise to the concerns referenced in the motion and discussed at the Board's last meeting. He advised that discussion to go into Executive Session would not be substantive of the matter because of the sensitivity and the rights of individuals implicated. Attorney Reich stated that discussion should be limited to whether there is a basis to go into Executive Session. He advised that if the Board votes to go into Executive Session that would be the time to discuss the substance of the matter. If the Board determines that it is not necessary to go into Executive Session to discuss the matter, a no vote would suffice and it would not be brought forward.

Chairman Caira asked if there were reasons for the Board to go into Executive Session what reasons would be for the purposes of removal. Attorney Reich stated that the Board would be discussing removal for cause and would be based upon dereliction of duties. He cited examples such as the failure to attend meetings and failure to carry out specific duties, things that relate to specific duties on the Board of Appeals. Attorney Reich advised that if the Board of Selectmen, as the appointing authority, wish to discuss those specific matters to determine, or whether they believe, there is cause, that would be the basis to go into Executive Session. If Board members believe there were no such cause and therefore no basis to discuss it, the Board could determine not to go into Executive Session. Attorney Reich noted that going into Executive Session does not mean that there is a cause, it could simply be a basis to go into Executive Session to discuss whether there is a basis or to "flush" the matter out. He advised that the initial vote is simply whether the Board wants to go into Executive Session. If members do not believe there is cause and do not believe there is a basis, Attorney Reich advised it would not be necessary to go into Executive Session.

Chairman Caira reiterated that the basis to go into Executive Session is for failure to attend meetings, threatening behavior, behavior unbecoming at a meeting. Attorney Reich advised that it would be based specifically with respect to the conduct of the individual in that position.

Attorney Reich stated that it would be failure to carry out duties which could mean the failure to attend meetings, taking action at a meeting that prevented the Board from taking action, threatening, discriminatory behavior while that person is conducting themselves at that actual meeting. It would have to be with respect to conduct as a member of the Board. He stated that going into Executive Session would allow for additional consideration.

Chairman Caira asked if there were any questions or comments from the Board. There were none.

Chairman Caira stated that there was a motion duly made and seconded and called for the vote. The vote was taken by roll call with Selectman McCoy and Selectman Bendel in the affirmative and Chairman Caira and Selectman Loud in the negative, motion failed for lack of a majority.

Town Manager Hull asked to clarify that at this point, the matter is disposed of. Chairman Caira confirmed that is his understanding because it was based upon the January 22 letter received by the Board relative to a statement made on a matter on a private email. It was not related to how the individual handles himself at meetings. Attorney Reich stated that based upon this vote of the Board of Selectmen, there would be no further action taken on this agenda item.

Chairman Kevin A. Caira reconvened the meeting at 7:00 p.m. in Room 9 of the Town Hall. Present were Selectmen Gregory B. Bendel, Jonathan R. Eaton, Edward P. Loud and Michael V. McCoy. Also present was Town Manager Jeffrey M. Hull.

Chairman Caira stated that the Board met at 6:00 p.m. for the purpose of going into Executive Session, he advised that the motion failed and the Board will be taking no further action.

Chairman Caira asked those present to rise and he led the pledge of allegiance.

#### TREASURY WARRANTS

Chairman Caira asked for a motion to accept the Treasury Warrants. A motion was made by Selectman Loud, seconded by Selectman McCoy and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen accept Treasury Warrants 30, 30A, 31 and 31A.

Chairman Caira advised that he is aware there has been discussion relative to the Ristuccia Rink. He advised that it is not an agenda item but the Board will discuss it under New Business.

#### **CHRISTINA STEWART, LIBRARY DIRECTOR, RE: LIBRARY STRATEGIC PLANNING PROCESS FOR 2021 - 2025**

Ms. Stewart stated that Town Manager Hull asked that she provide an update to the Board of Selectmen on the Library's Strategic Plan. She stated that every four years, the Library develops a five year plan. She stated that it is due to the Board of Library Commissioners on October 1, 2019. Ms. Stewart advised that the benefit of having a plan on file with the Board of Library Commissioners is that the Library is eligible to apply for certain construction and federal grants. Ms. Stewart stated that the strategic planning process is a valuable tool in evaluating library services and ensuring the Library provides the best possible benefit to residents.

Ms. Stewart advised that a planning consultant was hired in the fall and a Strategic Planning Advisory Committee was formed. The committee is comprised of representatives of Town government, local organizations, schools, parents, business community, Library Trustees, Friends of the Library and Library staff.

The first meeting of the Strategic Planning Advisory Committee was held on January 29 and they were charged to provide feedback, advice and to support the plan. Ms. Stewart stated an important part of developing the plan is to do an internal and external assessment of the Library. She reviewed what activities have been completed to date to conduct that assessment and advised that a survey is being developed and will be on the website beginning March 1. She encouraged all residents to complete the survey, whether or not they use the library.

Ms. Stewart reviewed steps that will need to be taken before the Strategic Plan is submitted to the Board of Library Trustees.

Ms. Stewart stated that, in addition to completion of the Strategic Plan, the Library also conducts an annual action plan that is based on the strategic plan. She likened it to a “To Do” list, focusing on the goals and objectives and how they will be achieved each year.

Chairman Caira thanked Ms. Stewart for the information and asked if there were any questions or comments from members of the Board. Members of the Board thanked Ms. Stewart for the information and complimented her on the staff and program offerings of the library.

Chairman Caira asked whether the report will be on the website. Ms. Stewart advised that right now it was distributed to the planning committee, the Board of Selectmen and the Board of Library Trustees. The plan will be on the website once it is complete and advised that the report could be included as an addendum.

Town Manager Hull stated this is another example of the library’s attention to the changing environment. This is one of the tools used consistently to give the library a sense of how they should evolve.

Ms. Stewart thanked the Town Manager, administration, Board of Selectmen, Finance Committee and Board of Library Trustees for their continued support.

#### **THERESA MARCIELLO, ELDERLY SERVICES DIRECTOR, RE: UPDATE ON PROGRAMS INCLUDING MEMORY CAFÉ**

Ms. Marciello stated that her department works closely with the library and expressed her appreciation to Ms. Stewart and her staff.

Ms. Marciello advised that the first Memory Café took place on October 24. She stated that they knew what they wanted to do when the program began but they were not sure how it would work out. She stated that in addition to the Board of Selectmen and the Town, they receive support from We’re One Wilmington (WOW) and Assisting Hands. Ms. Marciello expressed appreciation that both organizations provide financial support for the program.

The memory café “Our Moment” is held once per month to provide a safe, relaxed environment for the caregiver and the one they are caring for. The memory café is held at the 4<sup>th</sup> of July Building and Ms. Marciello reviewed the benefits of holding the activity at that location. Ms. Marciello stated that they use aroma therapy, typically lavender as it has a calming effect, music and appropriate lighting. Ms. Marciello noted activities have included pumpkins and flower power. She stated that as participants relax they begin to sing out loud and reminisce.

Ms. Marciello recognized that the program is successful as a result of work by Case Manager Laura Pickett, resident and nurse Laurie Hayes and Patrolman Paul Chalifour. Officer Chalifour initially was there to ensure available parking but he attended the first program and has continued to do so. Ms. Marciello stated that the participants find him entertaining and look forward to seeing him.

Ms. Marciello reported that 16 to 18 people participate consistently. At the most recent memory café there was a participant from out of town. She stated that the department is pleased with the initial results and will continue the program on the 3<sup>rd</sup> Wednesday of the month.

Ms. Marciello stated that Laura Pickett runs a caregivers support group on the 3<sup>rd</sup> Monday of the month and there has been an increase in participants opening up for support. Ms. Marciello thanked members of the Board of Selectmen and the community for their support of the program.

Ms. Marciello commented that the Elderly Services Department is working with the Police Department and with Health and Recovery Coordinator Samantha Reif. She advised that mental health training will take place through four workshops with one workshop conducted each month.

Ms. Marciello advised that the Income Tax Assistance Program began on February 5 and will continue on Tuesdays at the Senior Center. At this time seniors are informed of the Circuit Breaker which provides \$1,000 tax credit. She stated that the tax credit is determined by a formula using the water bill, real estate tax bill and income.

Chairman Cairra asked if there were any questions or comments from the Board. Members of the Board thanked Ms. Marciello for being present. Selectman Bendel commented that like the library, the Elderly Services Department finds creative ways to develop programs of interest to residents. He recognized that the center is bursting at the seams and noted that funds are in the budget to make improvements.

Selectman McCoy noted that the Elderly Services Department provides valuable services to the seniors and he asked at what age one could join the senior center. Selectman McCoy was advised that residents can join at 60 years of age.

Selectman Eaton recalled that while on the Finance Committee, during budget season, the Library, Elderly Services and Recreation would be scheduled for the same evening. Each department offers great programs. Selectman Eaton also recognized that the department is bursting at the seams and stated that the number of programs has increased and the Elderly Services Department is a huge value to the community.

Town Manager Hull stated that Ms. Marciello does a great job and noted that the senior population is growing. It is anticipated that by 2020, Wilmington will have 6,000 residents in the category of aged 60 or over. He stated that the needs of the building will be addressed through the Facility Master Plan.

#### **BOARD OF SELECTMEN DISCUSSION, RE: CONSIDERATION OF CHANGE IN ANNUAL TOWN MEETING DATE**

Town Manager Hull stated that Selectman McCoy that the Board of Selectman have a discussion to consider changing the date of Annual Town Meeting. Selectman McCoy stated that this has been previously talked about and there is a number of different options i.e. certain days of the week vs. Saturday or moving to earlier in the year. Town Manager Hull noted that if the Board of Selectmen is looking to make a change it would require Town Meeting approval and then it would require an act of the legislature.

Selectman McCoy stated that he is a member of the By-law Committee and advised that the Committee reviewed the Town's Inhabitant By-law to make adjustments. He stated the objective is to try and get people to vote and come to Town Meeting. Selectman McCoy stated that it was a unanimous vote to look at options to change Town Meeting. He hopes that it will be sometime in March. He stated that based on research by Town Manager Hull, from 1957 to 1979 the election was held the 1<sup>st</sup> Saturday in March and the second Saturday was Town Meeting. Selectman McCoy stated that he respects that the Town Manager has to present his budget but the consensus was to change Town Meeting. Selectman McCoy stated that although the committee had discussion regarding changing the date of Town Meeting, they did not discuss changing Town Election.

Selectman McCoy commented that Town Meeting typically takes place the same weekend as Holy Communion and residents are unable to attend. Selectman McCoy stated that he contacted Paul Ruggiero, Interim Superintendent, about accommodating Town Meeting on a different date. He provided Mr. Ruggiero with proposed dates and was advised that there were activities at the schools and could not accommodate the particular dates.

Selectman McCoy recalls that responses to the survey that was conducted were mixed with approximately 50% looking to have the meeting a few nights during the week and another 50% interested in having Town Meeting on a Saturday in March.

Selectman Eaton asked whether the By-law Review Committee is still meeting and was advised by Selectman McCoy that they stopped meeting as they have completed their review. Selectman Eaton stated that he would hope that no matter how it is resolved, he does not want to have Town Election after Town Meeting. He stated that he does not want Annual Town Meeting to turn in to a campaign stop.

Selectman Eaton stated he is glad the Town put out the survey in the fall, he wished there were more responses than the 479.

Selectman Eaton noted that the preference for Saturday or during the week were skipped by a lot of people and opined it is an impossible problem to fix. He acknowledged that weeknights are tough for seniors, weekends are tough for parents. He noted that there was a suggestion to split the routine articles from those that will generate extensive discussion. Another comment revolved around the length of the meeting. He believes that Open Town Meeting is the most direct way to make decisions for the Town.

He noted that there seemed to be a preference, whether on a Saturday or during the week, for the fourth week in April. He suggested that the survey was a first step and for the By-law Review Committee to conduct another survey with narrower options.

Selectman Eaton stated that the Board/Town needs to be mindful that over the last few years, the state is later in terms of resolving the budget. There are a lot of line items in the budget that are dependent on state aid. If the Board cannot eliminate the guess work by the Town Manager and his staff, then the Board has to do create an environment mitigating the amount of guesswork.

Selectman McCoy agreed that it would be his preference to hold the Town Election the week prior to the Town Meeting. Selectman McCoy stated that the By-law Review Committee has completed its task and noted that at the last Annual Town Meeting the Town Clerk gave her report. He

stated that the committee had discussion relative to changing the date. He suggested that March 21, 2020 be the Town Election and March 28, 2020 the Annual Town Meeting. He suggested a warrant article for this Annual Town Meeting to be implemented in 2020. He recognized the Town Manager needing to develop and present a budget, but justified that he is trying to be customer friendly.

Selectman Eaton confirmed that responses to the survey indicate the closer to the nice weather, residents did not want to attend Town Meeting for a Saturday.

Selectman Bendel appreciated that the Board was having this discussion. He stated that he has received comments from residents and one of the concerns is the seniors. He recalled a forum at the high school relative to senior housing and noted the lack of attendance and seniors reported that they did not want to drive at night. Selectman Bendel suggested looking at different start times and suggested earlier in the morning or later in the day so residents can attend First Communions.

Selectman Bendel expressed concern with having Town Meeting in March due to the weather. He noted the previous March there were five (5) or six (6) snow days during the month of March. He asked what would happen if Town Meeting was “snowed out”. He stated that relative to having Town Meeting over multiple nights, it is his preference to conduct Town Meeting on one day and complete it. He acknowledged difficulty in giving up one day but believes families would find it more difficult to attend Town Meeting multiple nights per week.

Selectman Bendel acknowledged the Town Moderator was present this evening and offered to yield time if the moderator would like to comment.

Town Moderator Robert Peterson, Jr., stated that he does not have an opposition to moving Town Meeting and the suggested date would be right in the “sweet spot” where there is the highest attendance across the Commonwealth. He asked the Board that, when considering moving the date, they take a holistic approach. He stated that comments have been received that Town Meeting is long and arduous. Town Moderator Peterson stated those can be addressed whether by consent agenda or electronic voting. He estimated the cost of renting equipment for electronic voting to be approximately \$20,000. Town Moderator Peterson reviewed the benefits of electronic voting. He stated that Towns around the Commonwealth have formed Town Meeting Review Committees which would be a cross section review of those around town and would be able to build on the survey. He strongly suggested that the Board of Selectmen consider establishing a Town Meeting Review Committee with vested town individuals appointed to look at and address all the issues. He would like the Committee to provide recommendations to streamline the process and educate individuals on Town Meeting so they can make informed votes and increase participation.

Chairman Cairra commented that he has attended Brighton Town Meetings and note that they utilize electronic voting. He expressed his preference to conduct Town Meeting on Saturday, being mindful of the Town Manager’s budget process.

Selectman McCoy stated that he was in agreement that Town Meeting should remain on a Saturday. He stated that he would like the Board of Selectmen to change the date now and put it on this year’s Warrant. Selectman McCoy recommended the last Saturday in March to be Town Meeting and the previous Saturday in March be Town Election. He stated that he agrees with the Town Moderator to establish a Town Meeting Review Committee.

Selectman Eaton stated it is a good idea to have a Town Meeting Review Committee. Town Meeting is the governing body of the community and he would rather a solution come from the community rather than the Board.

Selectman McCoy made a motion that the Board of Selectmen introduce a Warrant article for the 2019 Annual Town Meeting to change Town Meeting date to the last Saturday in March and the prior Saturday be established as Town Election.

Chairman Cairra asked if there was a second. The motion was seconded by Selectman Loud for the purpose of discussion as he has not offered comment.

Selectman Loud agreed that there needs to be a change. He stated he was in agreement that Town Meeting should be held on Saturday. He stated that he has spoken to residents who will not drive at night, especially two or three nights in a row. He suggested establishing a subcommittee with a caveat recommendations must be made prior to next year.

Town Manager Hull stated that one of the issues he deals with when developing the budget is to get an understanding what the Town's revenue are including property tax and state aid. He reviewed the timeline for presenting the budget if Town Meeting is held in March.

Chairman Cairra stated that he would be inclined to take the approach of developing a subcommittee to come back with recommendations prior to next year's Town Meeting.

Chairman Cairra stated that a motion has been made and seconded and before calling for the vote he asked Town Counsel if he would like to comment.

Mark Reich, Town Counsel, stated that Town Elections are governed by Chapter 39, Section 9A and Town Meetings by Chapter 39, Section 10 which give certain range and flexibility take place between February and June. There is nothing in the statute whether the election comes before Town Meeting but is tradition. Some towns have same warrant, some have two separate warrants. In terms of the statute requirements and by-law provisions, the process discussed this evening is appropriate.

Chairman Cairra called for the vote and by the affirmative vote of Selectman McCoy and four members opposed, the motion failed.

Selectman Eaton offered a motion to form a Town Meeting Review Committee and that by the end of 2019 recommendations be provided to the Board of Selectmen to be included in the Warrant for the 2020 Annual Town Meeting. The motion was seconded by Selectman Bendel for discussion. Selectman Bendel stated that he would support the motion and asked that dates offered by Selectman McCoy be reviewed. He stated that he would like Town departments to have the opportunity to comment in the event there may be an issue that the Selectman have not thought of.

Selectman McCoy stated that if a committee is formed he would like to be the Board of Selectmen designee.

Selectman Loud noted that Town Moderator Peterson offered valuable insight and hopes his ideas are vetted by the committee. He would also like it mandated that the committee provide recommendations for next year's Town Meeting.

Town Manager Hull asked the Board of Selectmen questions regarding membership and whether the Board intended to appoint Committee members and how many. Selectman Eaton suggested a committee of 15 individuals and suggested that the Board of Selectmen each appoint 3 members. Selectman McCoy suggested waiting until the next meeting to further discuss the details of the committee.

Chairman Cairra stated that a motion has been made and seconded and called for the vote. By the affirmative vote of all, it was

VOTED: That the Board of Selectmen establish a Town Meeting Review Committee.

### COMMUNICATIONS

Town Manager Hull reviewed his memorandum to the Board of Selectmen regarding the replacement of Michael Morris, Town Accountant. Town Manager Hull stated that Mr. Morris' last day of employment will be July 12, 2019. At the Board's meeting of November 13, 2018, the Board agreed with the recommendation to establish the position of Finance Director/Town Accountant. The responsibilities for the position will change to include oversight and management of accounting, treasury, collections and assessing.

Town Manager Hull reviewed his memorandum to the Board of Selectmen regarding the appointment of Christine R. Touma-Conway, Esquire, to the position of Town Clerk. Ms. Touma-Conway was more recently the City Clerk in Methuen for 17 years and, in her capacity, was responsible for the supervision and training of staff, conduct of city-wide elections, oversight of licensing of alcohol and automobile establishments, responsible for records management and vital records and served as the Records Access Officer. Ms. Touma-Conway is a graduate of Suffolk University with a Bachelor of Science Degree in Journalism and Marketing Communications and obtained her Juris Doctor from Suffolk University.

Town Manager Hull reviewed his memorandum to the Board of Selectmen regarding Warrant Articles submitted by petition for the 2019 Annual Town Meeting. Four petitioned articles were received. Two petitions are to rezone property, one to purchase Town-owned land and one to petition the state legislature to allow Adam Silva's test results be allowed for employment consideration as a Fire Fighter.

Town Manager Hull reviewed a letter to Daniel J. Veerman advising him that, on February 11, 2019 at 6:00 p.m., the Board intends to meet in Executive Session to discuss the discipline or dismissal of, or complaints or charges brought against him in regard to matters associated with his involvement as a member and Chairman of the Zoning Board of Appeals in deliberations with respect to an application for a special permit to construct a substance abuse detoxification facility at 362 Middlesex Avenue. Mr. Veerman was advised that he has the right to attend this meeting, to speak on his own behalf and to have counsel or a representative of his choice attend the meeting for the purpose of advising him.

Town Manager Hull reviewed a memorandum from Shelly Newhouse, Director of Public Health, regarding steps being taken relative to the plastic bag ban.

Town Manager Hull reviewed his memorandum to the Board of Selectmen regarding allegations of conflict of interest. At the Board's meeting of January 28, 2019, a member of the public raised allegations of conflicts of interest involving the proposed development at 362 Middlesex Avenue. No specific circumstances were provided so no conclusion may be drawn from those allegations. The Town has full confidence in its volunteer boards and commissions. Each member is responsible for taking the State Ethics Commission Conflict of Interest Exam in order to demonstrate understanding of the Conflict of Interest Law.

Town Manager Hull reviewed correspondence from Jenny Charbonnier, Shady Lane Drive, who provided a letter directed to the Board of Appeals regarding 362 Middlesex Avenue. Ms. Charbonnier requested that the letter be considered by the Board of Selectmen and Town Counsel.



Town Manager Hull reviewed a letter from Mary Jane Byrnes, Pinewood Road, regarding Facebook post made by Daniel Veerman, Chairman, Board of Appeals.

Town Manager Hull reviewed a letter from Kelly Magee Wright, Executive Director, Minuteman Senior Services, inviting the Board of Selectmen to participate in the national March for Meals campaign.

Town Manager Hull reviewed a letter from Selectman Edward Loud resigning his position on the Board of Selectmen effective February 12, 2019.

**BOARD TO CONSIDER REQUEST OF TERRI MARCIELLO, DIRECTOR OF ELDERLY SERVICES, TO USE THE TOWN COMMON ON SATURDAY, APRIL 27, 2019 FROM 8:30 A.M. TO 12:30 P.M. (RAINDATE: SATURDAY, MAY 11, 2019) TO HOST A CELEBRATION OF WORLD TAI CHI DAY**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman Bendel, seconded by Selectman Loud and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen approve the request of Terri Marciello, Director of Elderly Services to use the Town Common on Saturday, April 27, 2019 from 8:30 a.m. to 12:30 p.m., with a raindate of Saturday, May 11, 2019, to host a celebration of World Tai Chi Day.

**BOARD TO CONSIDER REQUEST FROM THE RECREATION COMMISSION TO USE THE TOWN COMMON TO CONDUCT THE ANNUAL EASTER EGG SCRAMBLE ON SATURDAY, APRIL 20, 2019 AT 11:00 A.M.**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman Loud, seconded by Selectman Bendel and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen approve the request of the Recreation Commission to use the Town Common on Saturday, April 20, 2019 at 11:00 a.m. to conduct the Annual Easter Scramble.

**BOARD TO CONSIDER FINANCE DIRECTOR/TOWN ACCOUNTANT RECRUITMENT PROCESS**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman Eaton, seconded by Selectman Bendel and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen adopt the process as outlined by the Town Manager in a memorandum dated February 8, 2019 relative to the replacement of the Town Accountant.

**PUBLIC COMMENTS**

Chairman Cairra stated that at the last meeting and the one prior, there was a change to how he handled Public Comments to avoid violating the Open Meeting Law. Chairman Cairra provided his explanation.

Chairman Cairra addressed questions that were posed at the last meeting which were relative to heating, potential conflict of interest, change in Town Counsel and potential hiring of Special Counsel.

Chairman Cairra requested that speakers provide their name and address for the record.

Suzanne Sullivan, Lawrence Street, requested to be a member of the Town Meeting Review Committee.

Ms. Sullivan stated that she has not received an answer to her question she asked at previous meetings. She stated that the Zoning Board of Appeals (ZBA) voted against a Special Permit for the detox facility and it has come to her attention that the decision may be overturned. She opined that in the event the vote takes place the Town will have to hire special counsel because KP Law will have to defend the initial vote. She asked what vote would be defended, the vote for special accommodation or the special permit vote. Attorney Reich responded that, with respect to the decision process, he reminded those present that the Board of Appeals is an independent quasi-judicial board that makes decisions on matters within its purview and acts independently under statutory authority. The Board of Selectmen does not direct or mandate the actions of the ZBA. The ZBA hears matters brought before it and makes decision on those matters. The fact that ZBA may make a second decision on same matter would be a result of what is brought forward by the applicants. Ultimately the determination of what decision to defend is based on what decision is challenged. The ZBA does not decide which decision is challenged.

Selectman McCoy stated that he is not interested in what position Town Counsel will defend. He stated that he brought it up at a previous meeting that he believed after ZBA vote of 3-2, the project was defeated. He opined that a simple majority vote cannot supersede the special permit which requires a super majority. He asked Town Counsel for confirmation that a super majority is required to overturn the vote. Town Manager Hull opined that it is problematic for Town Counsel to give legal advice in a public forum that will set the road map for whoever appeals the decision. He stated that someone will be suing the Town's decision, it's just a matter of who. To be engaged in discussion on strategy in a public forum is ill advised.

Selectman Loud stated that he served on the Board of Appeals for 14 years and an application for special accommodations was not brought forward during his tenure. He asked Town Counsel to provide an explanation. Attorney Reich clarified that the application is for Reasonable Accommodation not Special Accommodation and it is in the Americans with Disabilities Act (ADA). It is an effort by the entity to use the ADA to override the Town's zoning. He stated that he has not seen the ADA applied and stated case law is not clear because it is rare. Mr. Reich expressed his concern in discussing legal strategy as it may impact litigation and he is hesitant to give ruling other than to say it is not clear. He stated that the application is not about reconsideration or overriding a previous vote. It is a separate decision being sought and Town Counsel's job is to defend the Town.

Rob Fasulo, Marjorie Road, asked how will the process be determined if it has never been done and there is nothing to base it on. Attorney Reich stated that the process will be governed by the law.

Mr. Fasulo commented relative to the ice rink and asked who was responsible for the Town's interest in the transaction and when did the Town find out about the sale. He stated that he hopes that person is not responsible to negotiate the Sciarappa Farm.

Mr. Fasulo stated that he received a notice of determination regarding a request for documents relative to 362 Middlesex Avenue and asked whether the Town will comply with the law and provide the documents that he has requested. Town Manager Hull stated that there have been multiple requests for public records and the Town has been very responsive. He stated that the challenge has been when responses have been issued, they have been brought to the Supervisor of Records. The Supervisor of Records has made determinations. There has been particular desire to

obtain certain attorney/client privileged communication. Town Counsel is of the opinion that the exchanges are attorney/client privileged and not subject to release. To suggest that the Town has not been responsive is not true. There have been multiple exchanges between Mr. Fasulo and the Town Clerk over the last several months. Mr. Fasulo opined that the request for 362 Middlesex Avenue should have generated thousands of emails. He stated that the Town Manager's comment that the Town has been responsive to the request is a lie.

Selectman Bendel stated that he was subject to the request and stated that he has complied. Selectman Eaton stated that he does not know who made the request but it was forwarded to the Selectmen. He advised that he also has gone through email, texts, Facebook accounts and turned over what he had.

Frank West, Birchwood Road, stated that it appears for the foreseeable future, the Roman House will remain and asked whether the Superintendent of Public Buildings can be asked to assess the structure and provide a cost to make it look nicer and suggested painting the exterior.

Chairman Cairra advised that the Town invested \$24,000 to put a new roof on the building. Selectman Eaton stated the building looks out of place and advised that he spoke to Mr. Hooper about utilizing inmates and noted there is hesitation to place them so close to a school. He agrees something needs to be done and would like to see the building sold and moved.

Town Manager Hull stated that the roof was the priority due to leaks. There is no plan to do significant upgrades. He stated there is a proposal for a combined Town/School Administration Building. Mr. West stated that the Town lost the Swain and Whitefield Schools because the Town let them rot.

Mr. West asked about the Inclusionary Zoning By-law and believes the Board of Selectmen should weigh in. Mr. West noted changes he would like to see to the draft by-law including increasing the percentage that would be required.

Mr. West asked whether there will be early voting for the Annual Town Election and he was advised there would not. Mr. West stated that the Board ought to consider it to maximize participation. Chairman Cairra advised that residents could vote absentee.

Mr. West noted that the Town Moderator had commented about combining Warrant articles and asked if that was possible. He suggested that the appropriation for Memorial/Veterans' Day observances could be included in the Veterans' Department budget as well as the payment to the Veterans' organizations for the lease of quarters.

Geoffrey Wood, Frederick Drive, opined that the Board had not answered the questions that were asked at the Board's meeting two weeks ago. He stated there were questions regarding looking at exposure of the Town. Town Manager Hull stated there was a question raised at the last meeting regarding whether the Board has considered the "exposure" of reappointing Daniel Veerman to the Board of Appeals. He stated that people on Boards and Committees still have a First Amendment right to free speech. The other question was what the vote to reappointment Mr. Veerman was and Town Manager Hull advised that the vote was four in favor and Selectman McCoy was not present. Mr. Wood asked why Town Manager Hull did not speak up when Chairman Cairra said the questions were answered.

Mr. Wood stated that he believes the Town is woefully underfunding the OPEB liability and the Retirement Fund. He asked how the Town intends to fund the retirement by 2035. He opined that the Town has made a commitment to the employees and retirees. Mr. Wood had several follow-up questions which were responded to by Town Manager Hull.

Mr. Wood thanked Selectman Loud for his service and wished him well.

Janice Sawyer, Lawrence Street, stated that the letter the Board of Selectmen received on January 22 went to the Board of Selectmen, ZBA and Mr. Hull. She stated points 8 and 9 were about the reasonable accommodation and a request was made to not consider making reasonable accommodations at this time. Ms. Sawyer stated the concerned citizens believe ZBA Chairman Daniel Veerman has a conflict of interest which exposes the Town to liability. Ms. Sawyer asked if there was a reason the Board of Selectmen meeting was not being televised and she was advised the meeting was being televised.

Selectman Eaton stated that a part of what Ms. Sawyer was referring to was relative to his statement at previous meetings and he thought it best to recuse himself for the remainder of the discussion. Selectman Eaton left the meeting room.

Town Manager Hull stated, as noted by Town Counsel, the Board of Appeals is a separate and distinct body that has authority over zoning and the only connection between the Board of Selectman and the Board of Appeals is that the Board of Selectmen appoint members to the Board of Appeals.

Michael Champoux, Gloria Way, stated he reached out to the producers of “This Old House” regarding the Roman House and had not received a response.

Mr. Champoux stated that the comment regarding negotiations relative to the ice rink frustrated him. He stated that all along the way there were conversations but no agreement and the owner of the ice rink chose to go another route. Mr. Champoux wanted to be very clear that it was not a failure to negotiate on the Town’s part.

Mr. Champoux thanked Mr. Loud for his service and wished him well.

Selectman Eaton returned to the meeting.

Kelly Richards, Shady Lane Drive, asked how the Board of Selectmen determine which pieces of correspondence are read into the record. Town Manager Hull stated that pieces of correspondence on the agenda are read and noted he keeps additional notes in anticipation of questions that may be raised. Ms. Richards questioned a memorandum regarding conflict of interest obligations. She asked if residents submit a letter to the Board of Selectmen and ask that it be read into the record are there rules governing that. Town Manger Hull advised that the letters that were received were provide to the Board of Selectmen and he did not believe it necessary to read 4 or 5 pages of material into the record. Selectman Eaton assured Ms. Richards that all letters are delivered to the Selectmen and are read.

Ms. Richards stated that she believes individuals serve the Town with the best of intentions but a difficult piece for her is that sometimes questions have not been answered and that is where the level of trust comes in. She wants to make sure the Board is looking out for her. She stated the opioid epidemic is devastating. She alleges that those involved in the group Concerned Citizens of Wilmington have had their homes vandalized and have been threatened online.

Ms. Sullivan stated that the purpose of the request for reasonable accommodation is to go around the By-laws of the Town and if the vote of the ZBA is approval, she expects the Board of Selectmen to take action to protect the Special Permit vote. She stated her belief that the reasonable accommodation would be an illegal vote. Attorney Reich advised that issues being touched upon are issues of litigation strategy and does not believe it would be appropriate to answer and reiterated that the ZBA is an independent board.

Selectman McCoy stated that he is glad to hear Town Counsel say he has never seen the ADA reasonable accommodation applied to zoning. He believes Mr. Siracusa “hit the nail on the head” when he requested the size of the building and the number of beds be reduced and the applicant said no. Mr. Siracusa voted against the project because the aesthetics of the building are not harmonious to the area. Attorney Reich clarified that he has not seen the ADA applied to a Special Permit.

Jane Palmer, Douglas Avenue, commented that if the ZBA is autonomous, they should hire their own lawyer.

Mr. Wood asked for clarification regarding the regularly scheduled ZBA meeting on February 13 and asked who agreed to have the issue of 362 Middlesex Avenue scheduled for February 27. He asked if it was a request by Bettering’s lawyer and the ZBA agreed to have a meeting because they wanted it. Members of the audience answered yes. He asked when that has taken place before. Selectman Loud advised that it was a regular occurrence on the Board of Appeals.

Mr. Wood made additional comments regarding the application for reasonable accommodation and suggested the Town should have made such application to have the carnival located at the municipal parking lot. He asked why the Town would agree to move forward with the application.

Mr. West stated that Selectman Loud mentioned that a resident could ask for a letter to be read into the record and stated that requests have been made and the Chairman of the Board of Appeals has refused and also refused to allow the author of the letter to read it into the record.

Mr. West commented that the advice of Town Counsel to the ZBA should be that it is a topic that cannot be voted on.

Joseph Rebeiro, Judith Road, asked what the next steps would be if, on the 27<sup>th</sup>, the ZBA votes 3-2. Town Manager Hull stated a decision will be drafted and similar to what is happening regarding the decision that was made on the 16<sup>th</sup>, Attorney Jonathan Silverstein has prepared a draft decision for the ZBA to consider. He expects whatever decision is made on the 27<sup>th</sup>, Town Counsel will prepare a draft decision for review by ZBA and, if approved, members of ZBA will sign.

Selectman Loud offered information based on his experience. He stated there have been close to two hours of comments to a Board that does not have authority and emphasized those comments should be made at the ZBA meeting of February 13. Members of the audience stated that Wednesday’s meeting is not a public hearing and they will not be able to speak.

Patricia Xavier, Oakdale Road, asked whether the letter submitted by Jenny Charbonnier could be read into the record this evening as there is confusion whether it will be allowed to be read into the record on the 13<sup>th</sup>.

Attorney Reich advised that every piece of correspondence on the agenda and referenced by the Town Manager, is already a part of the record. He stated that the minutes of the meeting are not a transcript and it is not necessary for it to be read to be incorporated as part the minutes. Mr. Champoux asked whether the Board’s communications are published on the website as part of the agenda. Chairman Cairra advised that it has not been done.

Ms. Sawyer stated that members of the Board stated that they receive their packets on Friday and she had been to Town Hall earlier today and specifically told by the Town Clerk that the Board does not receive letters until the meeting and the public does not have access until the following day. She said she wanted letters that would be part of the meeting. Members confirmed that they receive packets on Friday evening which are delivered by police. Town Manager Hull stated that

he is aware Ms. Sawyer had requested the letters on Friday. He stated that it is a policy to get information to the Board of Selectmen before the public sees it so the public is not querying the Selectmen on information they do not have which is why the Administrative Assistant indicated on Friday that the information is not available. He is unclear why the Town Clerk would have advised that it was not available today.

### NEW BUSINESS

Selectman Bendel requested an update for a timeline to establish an Economic Development Committee.

Selectman Bendel stated that the Board of Selectmen asked that the budget include funds for specific improvements to be made at the Senior Center and asked where it would be in the budget. Town Manager Hull advised that it is included in the Public Buildings Department budget.

Selectman Bendel expressed his disappointment regarding how the sale of the rink unfolded.

Chairman Cairra asked Town Manager Hull to address the ice rink issue. Town Manager Hull stated that initial discussion took place in 2014 or early 2015 with Mr. Ristuccia, himself and Michael Newhouse who, at that time, was a member of the Board of Selectmen. He reported that there was an indication that Mr. Ristuccia would be interested in selling the property to the Town. There was no formal negotiation but there was an expression of interest. He stated that the amount that was discussed as a potential cost was \$2,250,000. The lease with Mr. Rotundo was due to expire in 2015. During 2105, Mr. Ristuccia decided to extend the lease to 2018. In the spring Mr. Rotundo filed suit against Mr. Ristuccia alleging that Mr. Ristuccia engaged in negotiations with the Town and he had a right of first refusal in his lease. Mr. Rotundo took Mr. Ristuccia to court and the Town was locked out. The Town was going to wait until the lease expired in 2015 to begin negotiations. When the lease was extended it created an issue and when the suit was filed, it inhibited the Town from engaging in formal negotiations. In 2018, as the suit was due to be heard in court, there was discussion between Mr. Ristuccia and Mr. Rotundo to resolve the issue. Former Town Counsel had discussions to address ice time and the cost for ice time, not being party to the lease, the Town did not have leverage. There had not been any discussion with Mr. Ristuccia since that time and he became aware of the sale of the rink this past week when Selectman Bendel contacted him. The sale had been posted on social media and he confirmed it was sold.

Selectman McCoy stated that he served on the Planning Board from 1984 to 1987 and recalled his experience with the property. He believe there were broken promises regarding the ice rink.

Selectmen commented about the tribute to former School Superintendent Joanne Benton when the High School Auditorium was dedicated to her on Sunday.

Selectmen wished Selectman Loud well as tonight is his last meeting. They expressed their appreciation to him. Selectman Loud offered his comments noting how the new job came about. He recognized members of the Board of Selectmen, Town Manager and others. Selectman Loud recognized members of his family who were present this evening and introduced his wife, son, daughter, mother-in-law, sister-in-law and his best friend and thanked them for their support.

### IMPORTANT DATES

Town Manager Hull reviewed important dates including:

- February 12 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.  
*DEPARTMENT OF PUBLIC WORKS, PUBLIC BUILDINGS*
- February 14 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.  
*TOWN CLERK, BOARD OF HEALTH, VETERANS' SERVICES*
- February 21 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.  
*HISTORICAL COMMISSION, INFORMATION TECHNOLOGY*
- February 25 – Board of Selectmen – Town Hall – Room 9 – 7:00 p.m.
- February 26 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.  
*POLICE DEPARTMENT, PUBLIC SAFETY DISPATCH, FIRE DEPARTMENT*
- February 28 – Finance Committee Meeting – High School – Room 1-062 – 7:00 p.m.  
*WILMINGTON PUBLIC SCHOOLS*
- March 5 – Finance Committee Meeting – Shawsheen Tech – 7:00 p.m.  
*SHAWSHEEN TECH*
- March 7 – Finance Committee Meeting – Memorial Library – 7:00 p.m.  
*ELDERLY SERVICES, LIBRARY*
- March 11 – Board of Selectmen – Town Hall – Room 9 – 7:00 p.m.
- March 19 – Finance Committee/Planning Board Joint Public Hearing Relative to the  
Warrant for the Annual Town Meeting – Town Hall Auditorium – 7:00 p.m.
- May 5 – Plastic Bag Ban in Effect

A motion was made by Selectman Loud, seconded by Selectman Eaton and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen adjourn.

Meeting adjourned at 10:28 p.m.

Respectfully submitted,

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Recording Secretary