

**BOARD OF SELECTMEN
MINUTES OF MEETING
January 16, 2017**

Present: Chair, Ladleah Dunn, Arthur Durity, Keryn Laite, Jr., Rosey Gerry, David Barrows, Temporary Town Administrator, Jodi Hanson, Town Administrator, David Kinney & Town Attorney, Sally Daggett (By Conference Call)

1. Citizens' Forum:

There were none.

2. Review of January 13, 2017 email from the Town of Lincolnville to BOSN3 Robert Nichols of the United States Coast Guard:

Dunn started the meeting by stating, "Jodi Hanson (Temporary Town Administrator) sent out an email on Friday, January 13 that indicated that she met with the Town Attorney, Sally Daggett and David Kinney regarding the upcoming Select Board agenda and touched on the topic of the Coast Guard coming to visit us. The first thing that peaked my interest and surprised me was that I was not made aware of this conversation, seeing as, we the Board, have been trying to pay attention to this issue and I was surprised that this conversation was happening. Then attached to this email was the contents of an email that was forwarded to representative, Mr. Nichols of the United States Coast Guard and reading through the contents of the email, there were several things that surprised me and struck me as odd that were not run by the Select Board first."

Dunn also explained that the Coast Guard indicated that they would like to find a resolution, which would have to take place at a Select Board meeting.

David Kinney stated that he and Harbor Master Hutchings, visited the Harbor last year for a similar conversation and last week, Jodi sent an email to both David and Dunn explaining this would be on the next agenda. Kinney then explained to Hanson that more information would be needed, since we didn't have any. The state statute in the town ordinance specifically delegates authority for mooring locations to the Harbormaster. If someone wants a decision, it should come from the Harbormaster and after he makes a decision and someone is dissatisfied with his decision, it then goes to the Board of Selectmen.

Kinney also noted that there isn't anything written down in the file as to what the issue is, what the appeal is, or what Hutchings decision was, if there was one. Kinney

suggested to Hanson that he call the Town Attorney to give her some information and try to get some information back. Kinney then put an email together, which he then gave to Jodi to review and forward on to the Town Attorney and once it, came back, it was then sent out.

Dunn reported there were repeated attempts to contact the Harbormaster, which never received a response.

Gerry commented this was a little bit of a procedural glitch and some of the wording in the letter should have been run by the Chair of the Board first, especially since the Harbor is a very sensitive issue.

Durity said it's not so much about the contents then the process and it speaks on behalf of the Selectmen and if the letter had been sent a copy, then 90% of the letter didn't have to be sent, since all of the questions came out of that meeting. They are already on the agenda, so they wouldn't need to confirm anything to come. The Chair had already asked them to attend, so it's not about what's in the letter, it's about not including someone from the Select Board in the process of reviewing and drafting the letter before it went out.

Durity also felt that the letter was a little bit suspect in tone and also contained information that had already been discussed.

Dunn stated, "It's not so much about the Chair being involved or not involved, the Selectmen as a body, were invoked enough times in the preamble to this email. The email states that the Board of Selectmen is willing to meet with you in a workshop session and the Board requires additional information prior to the meeting and when this information is provided, they will be confirmed on the agenda. I feel like I had words put in my mouth and I would not have given it my approval and I'm not ok with the fact that this email went out."

Kinney told the Board that he takes responsibility for using the term "Board of Selectmen" and perhaps should have used the global word, WE.

Durity wanted a legal opinion in writing from our town attorney confirming either our Harbormaster has absolute authority or telling us who has authority over the Harbormaster to determine a mooring change.

Town Attorney, Sally Daggett explained that she does not have enough information and does not know what the issue is with the two moorings.

Durity reported that the Department of Transportation says they cannot safely dock the ferry with the location of one of the moorings, especially in certain wind conditions. The DOT has not received a satisfactory answer from town officials, so they have taken

their complaint to the Coast Guard. The Coast Guard is in agreement with the Department of Transportation and that the mooring presents a threat under sub-optimal conditions.

Durity wanted clarification, before the next Board meeting, from Attorney Daggett on who might have the authority to require or order the town to relocate a mooring for safety reasons.

Dunn suggested drafting new emails addressing the Coast Guard with Coast Guard specific items and then addressing the DOT with DOT specific items.

Gerry felt that another letter should be sent and he suggested reconstructing the letter with different questions.

Dunn suggested that the right questions be asked and the proper information be provided.

Durity suggested that the tone of the letter be a little softer. The Coast Guard, while adamant that the mooring would need to be moved, seemed to consider ways to help us with that. The State seemed to soften a very hard stand initially to explore ways to help the Town of Lincolnville with this situation.

Durity certainly did not want to challenge the spirit of their cooperation with a letter that was harsher in tone than it needed to be and he recommended this would be an opportunity to send another letter with a softer tone prior to the next Board meeting.

Durity asked Town Attorney, Sally Daggett the following questions: "If the Harbormaster were to have the authority to decline the request to move the mooring, even though the Coast Guard and DOT has said it's in an unsafe position, what is the liability to the Town of Lincolnville if there is an accident?"

Attorney Daggett responded by saying, "Can someone successfully sue the Town of Lincolnville and or its officials because it has not moved a mooring when someone else has declared it unsafe? I don't know if the claimant could successfully tag the Town of Lincolnville for the liability, but if there is a decision to not move the mooring, then after information is presented to the Harbormaster about why the mooring should be moved, there is an appeal process. I feel that the town needs more information as to why this mooring is deemed unsafe from the Maine State Ferry Service and the Coast Guard and more information from the Harbormaster as to why he believes it is safe."

Durity wanted to know how the Harbormaster declares a decision so that they can decide whether or not to accept his decision or appeal it.

Attorney Daggett stated that somebody has to put the information in front of the Harbormaster.

Durity noted that this step has already been taken and that the Harbormaster stated in public session that he will not move the mooring.

Attorney Daggett then stated the Harbormaster would need to notify whoever is requesting the mooring to be moved and that his decision is that he doesn't believe the mooring needs to be moved. The next step of the appeal process goes to the Board of Selectmen to appeal the Harbormaster's decision.

Durity then suggested that the Board consider that the Temporary Town Administrator and Town Administrator ask the Harbormaster to formalize his decision in writing.

Dunn stated there needs to be a massive clearing up in communication, whether it is from the Coast Guard or the Harbormaster. There is a shocking lack of documentation when it comes to the Harbor.

Dunn stated, "I'm also upset that she was looped into an email that was purported to represent the Board of Selectmen and the conversation that we didn't ok for apparently a topic that we're not authorized."

Kinney stated that the email was sent on the Town's behalf in the attempts to get more information because there was going to be a meeting next Monday night.

Durity wanted the town administrators to make sure that the Harbormaster responds in a timely fashion in writing. The reason why the Board has been brought in is because that was not happening.

Town Attorney, Daggett stated, "If the Board of Selectmen is going to be the Appeals Board, on any decision of the Harbormaster, you all have to be careful not to be involved in the Harbormasters decision or the decision making process. You don't need to be involved until it comes in front of you as an appeal. On an appeal, from a Harbormasters decision, the Board of Selectmen needs to be fair and impartial."

Dunn stated, "That precise language needs to go out in a communication first thing tomorrow morning to the recipients of the email that was sent out last Friday, with that very language explaining that we are sorry that we sent out that last email, please ignore it. The Board of Selectmen, for the following reasons, can't consider your information directly because we have to remain neutral as we are the fair and impartial Appeals Board, in the event of any appeals."

Kinney finished by stating that he and Temporary Town Administrator, Hanson will work diligently, so these recipients and anyone else has an apology for this email and a corrected procedure, so they know what they have to do in order to get what they want, following our ordinance.

3. Adjourn:

Gerry made a motion to adjourn. Laite seconded the motion. The motion passed on a 5-0-0 vote.

Respectfully submitted,

Melissa A. Geary
Administrative Assistant