Board of Selectmen
Minutes of September 18, 2012
Bourne Community Building
Bourne, MA 02532

TA Guerino

John Ford, Chairman
Don Pickard, Vice-Chairman
Peter Meier, Clerk
Earl Baldwin
Linda Zuern

Members of the Press: Diana Barth, Bourne Enterprise

List of documents

-

Meeting called to order
6:00 pm by Chm. Ford

Pickard MOVED and SECONDED by Meier to move into Executive Session to discuss pending litigation for Police (Sgt. Michelle Tonini) and Fire (Firefighter Julio Pomar) and to convene in open session. Roll call – Zuern – yes; Pickard – yes; Meier – yes; Baldwin – yes; and Ford – yes.

Note this meeting is being televised and recorded. If anyone in the audience is recording or video-taping, they need to acknowledge such at this time

Moment of Silence/Salute the Flag

Public Comment
None requested.

Approval of minutes – regular: 9/11/12
Pickard MOVED and SECONDED by Meier to approve regular session minutes of 9/11/12 as submitted. VOTE 4-0-1 (Baldwin abstained).

Correspondence
Baldwin read correspondence into record. Hard copies are available at the Town Administrator's office upon request.

Item C – letter for board signature tonight to be put in the file.

Charter – Town Counsel Robert S. Troy and Special Counsel Michael Ford
Discuss Attorney's findings on Charter Compliance Complaints. Inform public why Selectmen mentioned in the Charter Compliance Complaint did not participate in hearings. Address findings of Charter Compliance Committee, their preference to having wording changed in Town Administrator's Contract and request for another Attorney.

Atty. Ford – In early June 2012 was contacted by Town Counsel to provide independent counsel services to the Town of Bourne, the Compliance Committee and Selectmen relative to two complaints of violations. He provided independent opinion based on the law and facts with regard to the first complaint to the Charter Committee.

The first compliant was a 4/23/12 letter of Richard Conron and James Milatos (SPELLING) with regard to the Home Rule Charter. The second complaint was a 6/25/12 letter which dealt with questions involving the employment agreement of 3/12 with TA Guerino.

Conclusions
The first complaint stated there was a provision in the contract that superceded the Home Rule Charter. The language was not proper as you cannot supercede a Home Rule Charter. However, it seemed reading the contract in its entirety, Section 1 did not need to be superceded nor did Section 17 as it could be construed to be interpreted with the Town Charter. In conclusion, he put the town on notice for such superceding language as it is outside the authority of the town and conflicted with the Town Charter. He found no reason to amend the contract as it is still to be interpreted to be consistent with the Charter.

Atty. Ford met with Charter Compliance Committee to walk through the agreement in its entirety. No further action was needed with respect to the first complaint.

Discussion
Chm. Ford – contacted TA Guerino to do his contract over, and TA Guerino responded he did not want to do the contract over.

Zuern – if open contract, could look at other items as well and not to change one word. Atty. Ford said they would have to open the contract but only with TA Guerino's consent.

No comment from members of the public.

The second complaint, Atty. Ford was given direction from the board through Atty. Troy that the board and the committee request look and provide opinion. Difficult to get "his arms around" since facts evolved as participation in the matter involved. Facts in the 5/30/12 complaint from Mr. & Mrs. Conron with regard to actions of Selectmen Pickard – Section 3.3 violated Policy Rule.

Complaint dealt with three items:

1) Selectmen Pickard worked independently by obtaining copies of emails with regard to the hiring of COA Director

2) Selectmen Pickard conducted independent analysis

3) Selectmen Pickard published independent conclusion to the board as his opinion.

The violated language in Section 3.3 was read into record by Atty. Ford. Language is in Section 3.3 of the Policy Section related to policy role of the Board of Selectmen. This is 'curious' language that it was in this section (it is in the Powers and Duties section of Orleans). Atty. Ford read charter as a whole to figure out what the town and the voters meant when they adopted this specific language.

7/31/12 letter – Atty. Ford suggests one factual difference between his letter of information, with regard to analysis and published conclusion by Pickard. He read not to approve TA Guerino's appointment for COA Director. Activities took place after that vote. At the Charter Compliance Committee meeting discussed if this made a difference. It was decided that it would not change the ultimate conclusion of violation of Section 3.3 of the Charter. No member of the board has authority to take an action or to suggest it has the color of authority of the town. You need to get the authority of the rest of the board as an official act on behalf of the town. The gathering of emails is a right any citizen has and it didn't seem to Atty. Ford that once elected as a Board of Selectmen that they lose the right to ask for emails. Town Counsel authorized getting emails. Atty. Troy said he only confirmed that the emails were public records and seems it should be a right of being a member of a Board of Selectmen in carrying out their duties.

With regard to conducting independent analysis, Atty. Ford's feels that those who make the best decisions, make the analysis to come to a conclusion. In order to gain a consensus, you share the analysis.

With regard to analysis shared, Atty. Ford said this is the way a board works and that if you combine all three of the issues – independently, analysis and publishing conclusion - is labeled an "investigation". In doing all three, an investigation would have needed a vote from the board. Unlike Atty. Ford's first opinion, the Charter Compliance Committee didn't agree with this second opinion and indicated to the committee that with the facts, he couldn't conclude actions were in violation.

<u>Discussion</u>

Chm. Ford – the board didn't go to the hearings as it was a matter of law. The Charter Compliance Committee received a lot of assumptions. What was perceived as the initial

complaint was an email to Pickard and had nothing to do with the HR Director directly. The assumption about the HR Director is not warranted. The TA is the board's subordinate and when the board went into Executive Session to make a determination based on the obtained emails, the board voted 3-1 to support the chairman. Complaints had to do with the TA being told it was a blatant lie that all members of the selection committee knew that the COA Candidate had been fired, and Don Pickard went to the IT Department to obtain the emails. To go to the individual (TA Guerino) wouldn't have the same credibility. At the conclusion of the Executive Session, no action taken by the board, but did address that Estelle Blake Chair of the COA and Louis Carr the acting Director of the COA were not given information on the COA candidate. Town Administrator was addressing a different question that they should have known by the interview. Town Administrator did admitted mistake where made that were documented in an executive session.
Baldwin – won't disagree he had a right to get the emails. He feels Pickard should have gone to the board and request to do the search for employees as he didn't have the authority to do so. If any member of the board wants a copy of an email from any employee in Bourne, you go through the TA for a town employee. Baldwin sees it as an investigation on the TA. Atty. Ford disagrees and doesn't feel it was an investigation.

Chm. Ford – an investigation isn't getting public information; it is going to individuals to get information.

Pickard – on 5/1/12 the board vetoed the appointment of proposed COA Director appointment TA Guerino put forward. The finding of 8/12 said once the veto was done, the situation was over. The board received an email from V. Chm. Ford of allegations made by Lois Carr against TA were troubling and wanted to restore public confidence. This is when Ford made a request of Finance Director to obtain emails with regard to the candidate of the HR Director and TA Guerino. Having made request, had previous knowledge Ford had done so. At the time, Fin Director. Ms. Mazzelli wanted to check with Town Counsel before doing so. Ford requested three emails for disciplinary action based on the flawed hiring process. He saw the three emails where some members of the hiring committee had no idea the candidate was fired from her previous position. On 6/5/12 the board entered into Executive Session to hear complaints against TA Guerino with regard to the hiring process of the COA Director. A roll call vote was taken. At 6:35 pm, discussion with Atty. Troy took place, and no action was taken upon TA Guerino.

Baldwin – asked why in executive session Pickard didn't say Ford was the one who sent the email.

Pickard – he wanted to confer with Ford before discussing with Baldwin and the board.

Ford – he received an email where response from TA Guerino was a "blatant lie" and felt it had to be addressed. Estelle and Lois Carr were telling the truth. TA Guerino said should have known he was answering a different question. Ford also raised issue of possible sexual

harassment committed by TA Guerino and he asked for those emails of TA's. He went to the IT through Atty. Troy to obtain. In summary, TA Guerino was cleared of any sexual harassment.

Ford – The Compliance Committee did an excellent job. As a member of the board, it is his fiduciary duty to investigate. He agrees with Pickard and he would obtain public information again. TA Guerino agreed that the appointment of the COA Director, it was his first time he had given information to the board and the press at the same time. No disciplinary action was taken. Selectmen have done due process as it is owed to the public.

Atty. Ford – forwarded a copy of the letter dated 9/5/12 from the Charter Compliance Committee where they were reluctant to address Section 3.3. He assured the board made every attempt with respect to Section 3.3. The Charter Compliance Committee had a very difficult job to figure out the intent of the voters and what they meant and assured the board he did address, gave opinion and attempted to address issues related to Section 3.3.

Chm. Ford – agreed Atty. Ford addressed Section 3.3.

Zuern – called it homework.

Atty. Troy – publicly and personally thanked Atty. Ford for his time and the town owes its gratitude to him.

Chm. Ford – agrees. He asked for the public why Atty. Troy advised the Chm. and V. Chm. not to go to the Compliance Committee.

Atty Troy – the Charter Compliance Committee had not made any requests as they were looking for guidance as far as a legal issue. He feels out of respect to a separate independent committee, the board should not have interfered or influenced the investigation. If it was the case, he would have referred them to Atty. Ford.

Chm. Ford – thanked the Compliance Committee and thanked Atty. Ford.

Pickard – each time there was a Charter Compliance Committee meeting, he was notified in writing that they were having one, but notification never stated "request presence or comment"; if it did, he would have sought Atty. Ford's opinion.

Mr. Agrillo – made sure the Compliance Committee received recognition (Chm. Ford clarified to Mr. Agrillo he wasn't giving any praise to the complainant). He extends his thanks to the Compliance Committee as well as the Board of Selectmen.

Chm. Ford advised the public that Town Counsel is counsel to all members of boards and committees.

Atty. Troy – explained when any matter involving any entity within the town that implicates any actions of the board of selectmen, he needs to recuse himself and it is necessary to obtain Special Town Counsel.

Pickard – asked about the need of additional counsel. Ford thought there would be challenges. Atty. Ford requested a temporary Special Counsel as he was reluctant to address issues with regard to Section 3.3. He was trying to assure the board that he made every effort to address issues and apologizes if that is the feeling.

Pickard – the Chm. of the Charter Compliance Committee agreed with Atty. Ford on the first complaint and unanimously voted to adopt findings. The second option, the committee didn't get opinion they wanted and shopped for attorneys. He has stated his own opinion and appreciates Atty. Ford's work and feels no other reason to hire other counsel. Pickard requested to put on as a future agenda item so the Charter Compliance Committee can review beforehand.

Atty. Troy – if there are additional questions that have not been answered, in view of Atty. Ford's efforts, bring back to Atty. Ford. If keep hiring new counsel, the town will have to go back to square one and will not be cost effective for the town.

Ford – if the Charter Compliance Committee finds more questions, to go through Atty. Ford.

Town Administrator's report
Facility Manager update – 4 candidates and narrowed to one select individual whom he is meeting with tomorrow. He will ask the board to enter into Executive Session to enter into contract and also to appoint person with/without waiver of 15 days.

Auction date – 11/15/12 at the Bourne Veterann's Community Building at 11:00 am.

Selectmen's business
Zuern – attended ceremonies of 9/11.

Pickard – commented on the 9/11 Ceremony at the Sagamore Beach Fire Station.

Adjournment
Meier MOVED and SECONDED by Pickard to adjourn. Meeting adjourned at 8:11 pm.

Respectfully submitted - Lisa Groezinger, sec.