

SELECTMEN'S MEETING  
JULY 28, 1997

**PUBLIC PARTICIPATION:** - Mr. Edwards asked for a bicycle trail to be created on the Cushing property, to be named for former representative Barbara Gray. Mrs. Bernstein commented on Mr. Edward's suggestion and hoped it could be implemented. Ms. Bernstein also commented on the show to be presented at the Cushing Site. She was particularly concerned with the prices of tickets. There was also anxiety about the seating arrangements or a rain date. The tickets are not available locally. Mrs. Bernstein asked that the Selectmen could investigate the ticket purchasing process. Mr. Petrini asked Town Counsel to speak to this issue and also invite Mr. Madnick and Flame to come before the Board to discuss the situation. Mr. Petrini moved and Mr. Kahn seconded the motion that Mr. Madnick be invited to speak to the Board and clarify the ticket process and prices. The meeting of August 11th was chosen for that conference. Mr. Marcoux was also requested to meet with the promoters and get a report in writing. It was so voted.

**ATTENDANCE:** Kathleen M. Pendergast, Christopher J. Petrini, Joyce A. Tolman, Valerie W. Mulvey and John M. Kahn.

The meeting was called to order at 8:10 P.M. by Ms. Pendergast.

**WARRANTS:**

#980104	Accounts Payable	\$253,038.22
#980204	Miscellaneous	\$2,936,062.78
#980403	Capital Project	\$339,595.92
#72697	Payroll	\$1,225,350.37
#0	Payroll	\$93,265.35

**CONFERENCE - WOODCREST ACRES ASSOCIATION:** Ms. Mulvey recused herself from the discussion and sat in the audience. Mr. Kahn also abstained from the discussion. Mr. Michael Gatlin and Irwin Taub of Woodcrest Acres came before the Board to discuss the existing situation with the Ballard Hill development abutting Woodcrest Acres. Mr. Gatlin explained that he was instructed to contact Attorney Marzelli and that he, as the Special Town Counsel of Framingham, Selectmen should contact the Ashland Planning Board and take some action. Mr. Gatlin respectfully disagreed with this approach and felt that Framingham did not need to take any action and felt that a letter to the developer, affirming the Board's position in opposition to the access road with a carbon copy to the Ashland Planning Board was the appropriate way to handle the situation. Mr. Gatlin felt that it was not Framingham's position to tell the Ashland Planning Board it's business and, additionally, the Ashland Planning Board has no responsibility to take any action; the responsibility lies with the developer who requires subdivision approval. If he fails to do so, it is at his own risk and in the face of well documented opposition from this Board. Furthermore, raising the stakes with the Ashland Planning Board may very well subject the Town of Framingham to possible litigation in the area of an economic relationship. Mr. Gatlin advised the Board to send a letter to the developer along the lines of the sample he presented to the Board. Mr. Taub then stated that the Ashland Planning Board has been led to believe that the developer has the right to use William J. Heights as access to the subdivision. Mr. Taub stated that it was the duty of the Selectmen to inform the Ashland Planning Board as Ashland is looking for something official for their records. The Town of Ashland should be informed of the new road access by-law which has recently been passed by Town Meeting. It is feared that Framingham will be confronted with a fate accompli. Ms. Pendergast read a letter drafted by Mr. Gatlin which she felt would be sufficient for halting construction by the developer. Mr. Taub was insistent that the Framingham Selectmen correspond with the Ashland Planning Board. Mr. Taub also pointed out that Framingham could invoke it's by-law and issue the appropriate letters. Mr. Petrini stated that he was in favor of sending a letter to the Planning Board and could also include a portion of Mr. Gatlin's draft. A letter should be developed with an appropriate disclaimer which would make it clear to Ashland the intentions of the Selectmen. Ms. Tolman asked about the language. Mr. Petrini moved that an appropriate letter be sent to the Ashland Planning Board which states that Framingham does not intend to approve the road access. A paragraph should be included in the letter which states that, "the Framingham Board of Selectmen and the Town of Framingham do not intend to interfere with the legitimate intended uses of that subdivision, but, that none the less, we have the duty and obligation to enforce our by-laws, and so, therefore to make it clear, if there is any claim that we are interfering with the economic opportunity of the developer." Ms. Tolman questioned the language necessary to include the language on the by-law.

Mr. Petrini proposed that an appropriate letter be sent to the Chairman of the Planning Board of Ashland and that Mr. Gatlin drafts a letter which reflects that and includes the disclaimer and makes it very clear what Framingham's position is. The actual motion should state, "that an appropriate letter be sent to the Ashland Planning Board with a cc to the developer's attorney, stating Framingham's position on this matter with respect to improvement of the right of way from the Ballard Hill Estates to William J. Heights and including language that clarifies that the Town of Framingham does not intend to interfere with the legitimate prerogatives of the Ashland Planning Board or the legitimate prerogatives of the developer, but that any development on that property, it should be understood that there will be no approval and the Framingham Board of Selectmen stands opposed to approving that subdivision and that access road become a right of way." Ms. Tolman seconded the motion. Mr. Petrini asked Mr. Gatlin if he was willing to send a letter as requested. Mr. Gatlin said he would do what the Board instructs; however he felt that it was ill advised. Ms. Pendergast noted that Mr. Gatlin was retained to further the interests of the Town and agreed with special counsel and thought it was unduly escalating events. Paul Quigley, an abutter, noted that this struggle has been going on for ten years and hoped for quick action. It was also noted by Mr. Petrini that a copy of the new by-law be attached to the letter sent. The Board voted to send a letter to the Ashland Planning Board.

Ms. Mulvey moved and Mr. Kahn seconded the request of the Town Manager to support the recommended members of the MWRA Working Group. It was so voted.

REPORT OF TOWN COUNSEL RE: TOWN MEETING MEMBERS SERVING ON COMMITTEES, COMMISSIONS & BOARDS: Mr. Bikofsky was asked to report his opinion regarding town meeting members serving on committees. Town Counsel stated that the crux of the issue was what constituted a town office. Under the special act of the legislature, you may not hold a town office and be an elected town meeting member. A distinction should be made between a town office and a town employee, such as was used in the "Tillinghast Case." Each case needs to be reviewed individually and an ad hoc decision must be made on each case.

The method suggested for review referring to the town by-laws and taking those positions enumerated in Article 1, Section 1.1 and Article 1, Section 1.2, and using those as a guideline as to what constitutes a town office. Section 1.3 will necessitate an ad hoc decision. The two commissions to be reviewed were the Council on Aging and the Governments Study Committee. The Council on Aging is established as a by-law under the general laws of the Commonwealth so state statute authorizes municipalities to set up by-laws and therefore is more like a town office. The Government Study Committee is seen as more of an internal town board, not set up under the general laws of the Commonwealth and dealing with issues relating solely to the town. Other committees will have to be looked at on an individual basis. Mr. King, Town Clerk, had a letter of response to Mr. Bikofsky's memo. Mr. Bikofsky's response was that there could not be a simple answer to Mr. King's letter and still recommended a decision on an ad hoc, case by case basis, such as the Cable TV Committee. Committees such as the Real Property Committee or the Capital Budget which are enumerated in Article 1, Section 1.5 of the by-laws are exactly the kinds of committees to be looked at on an ad hoc basis and neither one constitute a town office. Mr. Bikofsky noted that if someone else had to authority to swear in people, they might have to make decisions on their own. Ms. Tolman asked if Town Meeting should consider changing the wording of the 1949 special act to allow for more participation. Mr. Petrini seconded this statement which was considered a motion, and Ms. Mulvey supported to send this issue to Town Meeting. Mr. Kahn asked for more clarification before the Board could take a position of the issue and before a vote of Town Meeting took place. Mr. Kahn felt that Mr. Bikofsky's memo was quite clear and the precedents cited were quite lucid. Mr. Kahn would be content with Town Counsel reviewing the issue on a case by case basis. Ms. Pendergast asked that the Government Study Committee be instructed to review this situation and come into the Selectmen with some report. For the interim, the Town Clerk could proceed. Ms. Mulvey inquired of Town Counsel how time consuming this issue would be for him. Mr. Bikofsky also stated the legislature might have to get involved in amending a special act. Ms. Pendergast requested an amendment which would ask the Town Clerk to present a list of each of the town committees and office holders to the Government Study Committee and ask them to come up with an appropriate amendment to the current by-law. Mr. Kahn asked that an amendment be implemented including the reference as to where the studies originated. Mr. Petrini seconded the motion. Ms. Tolman motion was amended to state that the Government Study Committee review the issue and draft a report prior to Town Meeting. Ms. Mulvey asked Town Counsel how much time his review of each committee would consume.

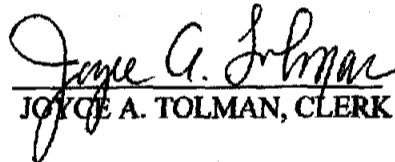
Ms. Pendergast further amended Ms. Tolman's motion to request that the Town Clerk be asked to present a list of each of the town committee's and office holders a list to the Government Study Committee at the earliest possible convenience and to address his questions to the Government Study Committee and ask them to come up with an appropriate by-law. Mr. Kahn added an additional amendment to the motion where-by the Town Clerk could look at the reference as to where the committees originated; whether by by-law or vote of Town Meeting. Ms. Mulvey seconded the motion as did Mr. Petrini. It was so voted.

SHOPPER'S WORLD LITIGATION - UPDATE:

Mr. Petrini updated the Board and the audience about the status of litigation and requested that Mr. Garrahan send a letter to the Board of Selectmen proposing that Developers Diversified send a memorandum of understanding to the Board of Selectmen, ready for execution, no later than the first week in September and would then ask for an update from Mr. Bikofsky. Ms. Tolman seconded the motion. Ms. Pendergast agreed with both Ms. Tolman and Mr. Petrini. Two members of the Planning Board present, (Helen Lemoine and Sue Bernstein) agreed with the Selectmen. Mr. Bikofsky stated that he has met with Mr. Garrahan and suggested that a document be composed outlining the unfinished or unsatisfactory issues outstanding. Town Counsel has been notified that there has been substantial progress with regard to the list. A draft document was to be received by Mr. Bikofsky, but has not been sent by Mr. Garrahan. Town Counsel felt that a letter of reminder was important. Mr. Petrini noted that it was imperative to keep the agreement within the framework of the initial agreement. The motion carried unanimously.

Ms. Mulvey moved and Ms. Tolman seconded the motion to go into Executive Session. The Board moved into Executive Session at 9:40 P.M. for the purpose of discussing collective bargaining issues, the litigation process, outstanding litigation and Town Counsel's recommendations with respect to the above, and a discussion regarding the Mass Pike and a potential legal suit. A roll call vote was taken with all Selectmen voting in the affirmative. The Board will return to public session only for the purpose of adjourning.

The Selectmen returned to regular session at 11:45 P.M. and a motion to adjourn was entertained. It was so voted.

  
JOYCE A. TOLMAN, CLERK