

SELECTMEN'S MEETING
JANUARY 7, 1999

PUBLIC PARTICIPATION:

Robert O'Neil, 46 Irving Street, discussed strategies for raising tax revenues.

ATTENDANCE: Christopher J. Petrini, Valerie W. Mulvey, John M. Kahn and Charles J. Sisitsky.

Mr. Petrini called the meeting to order at 7:35 p.m.

CONFERENCE: CHRISTOPHER PETRINI AND JOHN KAHN, METROWEST COMMUNITY HEALTH CARE FOUNDATION: REVIEW OF ARTICLES OF ORGANIZATION:

Assistant Attorneys General Elizabeth Reinhardt and Richard Allen, along with Town Counsel, came before the Selectmen to discuss the Articles of Organization and by-laws for the MetroWest Community Health Care Foundation. Mr. Petrini said that draft by-laws had been presented to the Board several months ago when the sale of MetroWest Medical to Tenet Health Systems was announced. Several revisions of the by-laws have been submitted to the Selectmen for review. Mr. Petrini said that there were several major issues to be identified and discussed. Mr. Petrini said that two major concerns were, why no community input was proposed for the election of subsequent Foundation Boards, and how future disclosure and public input could be maximized. Mr. Allen appreciated the Board's concerns and asked that they consider the nature of the new organization. The new Foundation is comprised of twelve persons, six of whom are residents of Framingham, and all of whom were selected by an impartial party, Judge Vincent McKusick. Mr. Allen stated that the Foundation Board is extremely competent and diverse. Mr. Allen expressed concern that, if the Board of Selectmen did not support the Foundation, the entire process might be derailed. Ms. Reinhardt outlined the issues submitted by Mr. Kahn. The first concern was that the Foundation remain open and responsive to the community it serves. Ms. Reinhardt stated this was a major thrust of the Foundation's goals whose mission statement requires that the Foundation be legally bound to the fiduciaries of the charities. By-law 3.4.3, requires the Board to take appropriate steps to insure accountability and mandates an annual report. An added portion of the language requires the annual report to list grants received by the Foundation. To further cement the mandate of the trustees, the judicial order will require the Board of Trustees, within three months, to invite members of the communities served to meet with the Foundation and discuss ways the public can be more fully served. This provision will insure that the Foundation reaches out and establishes bonds with the community. The next topic Ms. Reinhardt addressed, was the subject of the Board becoming a closed corporation after its initial seating. This was an area of concern shared by the Board and the Attorney General. Ms. Reinhardt pointed out that by-law 3.7.4, will insure the concept of the nominating committee structure. Terms limits will require trustees to rotate off the Board. The area of conflict of interest, was then addressed by Ms. Reinhardt. She stated that the provisions in the by-laws were comprehensive and went well beyond what state and federal law provided. If there is a conflict around a particular grant funding, the trustee must recuse himself. The final matter raised by Ms. Reinhardt was with respect to keeping open lines of communication within the board and panels of the Foundation. Mr. Bikofsky stated that several points addressed in his memo have been dealt with by the Attorney General's Office. He went on to say that, although the document is not perfect, he is satisfied with it, as it exists.

Mr. Petrini asked for an explanation as to why the subsequent Board of Trustees will not allow community input in the selection process. He also questioned why there was no provision for meetings to be held under the open meeting law. Mr. Petrini expressed concern about section 3.9 of the by-laws, which provides that any trustee can be removed with a two-thirds vote of the trustees and without cause. Ms. Reinhardt stated that there were no restrictions on how the board or nominating committee could seek input from the community. A healthy recruitment process is generally used by most foundations. Ms. Reinhardt emphasized the need for foundation trustees to be independent. With regard to the open meeting law, Ms. Reinhardt said that the model used was a charitable corporation model, and there are no restrictions forbidding them from adopting an open meeting law.

Mr. Kahn expressed concern about the tendency of institutions to adopt the idea that "they know what is best for the community," particularly when trustees could serve for nine years. He thought a fresh infusion of candidates recommended by the community would insure that new members had sufficient regard for the role of elected officials. Mr. Kahn emphasized the fact that Framingham did not receive a draft of the negotiations until October, and a suggestion that there would be a delay by Framingham was an unfair accusation. Mr. Kahn was also very concerned about the power to remove trustees without cause or without a hearing. He thought this would have the effect of stifling dissension. Finally, Mr. Kahn raised the issue of the non-profit partner who has 20.1% interest in the enterprises and noted that the for-profit partner has a 79.9% interest. This percentage is not fixed forever. In order to maintain the 20.1% interest, the partners must be ready to respond to requests for capital. If the non-profit partner decides not to respond to requests for capital, their share is reduced. The structure of the joint venture may leave the municipality with no interest. Ms. Reinhardt addressed Mr. Kahn's concerns and thought the plan submitted this evening was the best possible one. With regard to the partnering structure, MetroWest Partner Inc. has, as a function of the partnership agreement, certain rights. A condition of the purchase was an audit to test the math and address the net available assets.

Ms. Mulvey asked if there were consensus regarding the suspension language. Ms. Reinhardt said this language was not heavily negotiated, and they had not received adverse comments until this evening. Ms. Mulvey agreed that elected officials in the community would know who to nominate. Mr. Allen said that his office has reached the end of being able to negotiate language. Mr. Sisitsky noted that the document was not perfect and any further "tinkering" might have to be through the courts. He felt the process should not be delayed any further.

Mr. Petrini's suggestion was to file an amicus brief with the Supreme Judicial Court, stating the Selectmen support the proposal, but asking the court to consider ordering or addressing the issues below. He would like it clear that Framingham does not wish to scuttle the plan. Mr. Bikofsky said that, no matter what Framingham calls the document, it is a limited intervention, and he was inclined to think the issues raised would not be included in amicus brief but in some kind of intervention. Mr. Bikofsky's immediate reaction was that this was not possible. Mr. Kahn stated that intervention was at the discretion of the court. He thought the Board should decide among themselves if the issues were worth raising before the Court. It might be entirely possible the court would deny the petition. Mr. Petrini suggested that the amicus include statements about subsequent board involvement and the open meeting law, given that public funds are being disbursed.

Mr. Allen stated that to intervene, a legal interest must be proven, and wondered why the Board persisted in micro-managing. Public charities do not subscribe to the open meeting law. Mr. Allen asked if the Board wanted to risk of jeopardizing the settlement. Ms. Reinhardt stated that the end of negotiations had reached an impasse.

MOTION:

Moved by Mr. Sisitsky, seconded by Ms. Mulvey, to rescind the motion to intervene. No action was taken.

Mr. Petrini asked the Attorneys General if they would canvas the other participants, make one last attempt to incorporate the two issues, correspond, and come before the Board next week. Ms. Reinhardt said she would canvas the other parties tomorrow. Mr. Kahn commented on the open meeting law phrase. He felt it would be useful if a notice of meetings was published and unless prohibited, the public could attend. Mr. Petrini agreed, and would support the petition if there was movement on the two issues. Ms. Reinhardt responded by saying the concepts have repeatedly been discussed but she would revisit the topic one last time. Mr. Petrini stated he would then support the motion to rescind. Mr. Allen said there was a timing problem and suggested that Town Counsel confer with Mr. Schram, Counsel for MetroWest, to address the concerns immediately.

MOTION:

Moved by Mr. Kahn, seconded by Ms. Mulvey to table Mr. Sisitsky's motion until the next meeting of the Selectmen. The motion carried.

Mr. Bikofsky was asked for a memo regarding the amicus brief by next week's meeting.

REPORT: MARK REES; PAUL MORMINO - STATEMENT AND NOTICE OF SALE OF \$20 BOND ISSUE:

Messrs. Rees and Mormino came before the Representative to review the preliminary official statement and notice of sale of a \$20 million bond sale. Mr. Rees stated that the Treasurer was in the final authorization stages of selling \$20 million in bonds. Much of the money in the bond issue has been spent at Woodrow Wilson and other school buildings. The interest is expected to be 4.5% Reimbursement will be received in FY00 for the Woodrow Wilson School. The bond issue will still be within the 5% self imposed debt service limit. Mr. Kahn asked for information about Framingham's bond issue. Mr. Mormino said the town was a double A -3 rating and he was comfortable this rate would remain stable. The five year capital plan has been helpful for Framingham's bond rating. Mr. Sisitsky asked for a copy of the final documents and requested information as to how the items would be funded. Mr. Sisitsky asked how soon bonded money had to be spent. He was told within one year.

MOTION:

Moved by Ms. Mulvey, seconded by Mr. Sisitsky's, to move into Executive Session for the purpose of discussing litigation.

REPORT: REVIEW OF FINANCIAL REPORTS OF TOWN OWNED BUILDINGS:

Mr. Marcoux stated that the reports submitted identified the cost to the town of "out buildings." Mr. Kahn asked whether the income statement of the Maynard Building included any depreciation or if the expense was on a cash basis. Mr. Marcoux will check on this matter. Mr. Kahn would like the study committee to receive the report in a consistent manner with cost analysis included and an operating statement on each building. Mr. Sisitsky would like a breakout of the rents for each building.

Tom Landry, Chief Procurement Officer, submitted a report outlining the twelve month analysis of earnings for the Maynard Building. Earnings for FY98 were \$129,870.330 which was transferred to the general fund. The annual transfer from the Maynard Building to the general fund averaged just under \$80,000.

Danforth Building:

Jim Egan, Director of Town Owned Buildings, submitted a report on several other town owned buildings. The Danforth Museum uses only 21% of the building. In FY98, the town spent \$51,339.45 on costs which included energy, service contracts, supplies, fees and repairs. Indirect costs are in the vicinity of \$75,000; total \$126,339.45. In addition, Town Meeting voted to replace windows with an estimated cost of \$300,000.

Roosevelt School - this property has been abandoned for eight years. The direct costs are for outside security lighting, and vandalism repair materials in the amount of \$1,964.05. Indirect costs total \$14,000, leaving a total of \$15,964.05. The building has been submitted by Town Owned Buildings Department to be razed.

Old Edgell Memorial Library - the structure is currently under lease to the Framingham Historical Society and in the second year of a ten year lease. The town pays for all utilities and infrastructure maintenance. Direct and indirect costs to the town total \$6,193.70.

Academy Building - the structure is currently under lease to the Framingham Historical Society and is in the second year of a ten year lease. Direct and indirect costs to the town total \$7,339.75.

Village Hall - the building is in the first year lease of a ten year lease with the Framingham Improvement Association. The cost of utilities for the building is borne by the association with the exception of the flagpole and parking area. Direct and indirect costs to the town total \$9,295.19.

MOTION:

Moved by Mr. Kahn, seconded by Mr. Sisitsky to accept the report submitted and refer it to the Comprehensive Building Review Committee. So voted.

Mr. Petrini suggested that a member of the Permanent Building Committee be placed on the Comprehensive Building Review Committee.

MOTION:

Moved by Mr. Sisitsky, seconded by Mr. Kahn, to appoint a member of the Permanent Building Committee to the Comprehensive Building Review Committee. The motion carried.

TOWN MANAGER'S REPORT:

AD HOC TOWN MANAGER ACT COMMITTEE:

Mr. Marcoux reported that the Town Manager Act Ad Hoc Review Committee recommended the following:

Selectmen meet annually at the start of each term to identify responsibilities of the Board vis-à-vis the Town Manager.

Clear review of the Act, with an eye to role clarification.

Conservation Commission appointments be returned to Board of Selectmen.

Request that the Moderator fill the current vacancies on the Personnel Board and Permanent Building Committee.

Careful review of the roles of Town Meeting Committees for clarity

Encourage the filling of vacancies in Town Meeting positions.

Suggest that copies of all Town Meeting warrant articles be delivered to ALL Committees.

Mr. Marcoux stated that the committee did not see a conflict between the CFO with the Town Manager Act. The issue of concurrence was also discussed by the Committee.

Mr. Kahn suggested that the Board plan a work session to review the report of the Ad Hoc Committee with particular consideration given to point one.

MOTION:

Moved by Mr. Kahn to note receipt and take up at a further work session. Seconded by Mr. Sisitsky and so voted.

APPOINTMENT OF JOHN BERTORELLI, TOWN ENGINEER:

Mr. Marcoux announced the re-appointment of John Bertorelli, Town Engineer, for a term of three years, to expire in June of 2001.

Mr. Marcoux announced the resignation of Ms. Joyce, Human Resources Director. An interim candidate will be suggested.

Ms. McCarthy suffered a severe injury and is recuperating.

Mr. Marcoux met with Ms. Sheehan regarding regionalization of the town kennel and a report will be forthcoming. There are no real commitments for regionalization from other communities. Mr. Petrini would like a report from Ms. Sheehan and then formulate the committee. A report will be presented on January 21st.

ACTION ITEMS:

The minutes of October 8, 1998 were approved by the Board.

MOTION:

Moved by Mr. Kahn, seconded by Mr. Petrini, to approve the minutes of October 8, 1998. The motion carried. Mr. Sisitsky abstained.

MOTION:

Moved by Mr. Sisitsky, seconded by Mr. Kahn, to rescind the previous vote and correct attendance. So voted.

The minutes of October 15, 1998 were approved by the Board.

MOTION:

Moved by Mr. Kahn, seconded by Mr. Sisitsky to approve and so voted.

Approval of the Executive Session minutes of October 1, 1998 was tabled.

MOTION:

Moved by Mr. Kahn, seconded by Mr. Sisitsky to table.

REVIEW AND APPROVAL OF ETHICS POLICY:

Mr. Marcoux presented the ethics policy which gives general guidance to town employees as to the requirements of Massachusetts law that govern conduct of elected and appointed public officials and employees. Provisions specifically relating to municipal employees are found in Section 3(b) and 23 General Laws Chapter 268A. (the "Conflict of Interest Law"). Specific examples of prohibited conduct are listed in the policy.

MOTION:

Moved by Mr. Kahn, seconded by Mr. Sisitsky to table approval until the full Board is present.

REVIEW AND APPROVAL OF INTERNAL PROMOTION POLICY AMENDMENT:

A report was submitted by Jane Joyce discussing the current internal promotion policy. Currently, there is a recruitment provision in the personnel policies to allow the hiring source to hire external applicants above Step I provided the applicant meets the specific requirements. Ms. Joyce recommended that the hiring source have the discretion to determine the step in grade for all promotional opportunities for internal candidates based on the skills and professional work experience that exceed the minimum qualifications of the position. Mr. Marcoux noted that there was inequity in the current policy not allowing for internal candidates to be promoted beyond step 1. The Board would vote to rescind policy 18 and implement policy 24. Mr. Sisitsky stated that oversight would continue with the Finance Committee and Personnel Board reviewing any changes. Mr. Sisitsky asked how union employees would be effected by the policy, i.e., if there was a conflict between the policy and a union contract.

Mr. Kahn suggested that the Personnel Director prepare the new policy for the Board's review.

MOTION:

Mr. Kahn moved to table approval of the internal promotion policy pending review of the recommended new policy. Seconded by Mr. Sisitsky and so voted.

DECISION ON FSA CONTRACT AWARD:

Ms. Joyce submitted correspondence from New England Plans and Benefits, Inc. regarding the Flexible Spending Plans. This letter demanded that the plan either be implemented or the company is to be reimbursed for \$41,150 for services rendered. Ms. Joyce recommended implementation of this plan with the provision that the town of Framingham no endorsing the life insurance program. Ms. Joyce's report stated that if the decision is not to implement the program or make payment, legal action against the town would be made.

Mr. Petrini asked for a sense as to the validity of the demand made by New England Plans and Benefits. An opinion was requested from town Counsel as to the validity of the Town Manager's signature on the contract. Mr. Marcoux asserted that the contract was signed by him in the absence of the Chief Procurement Officer. Mr. Petrini thought signing the contract on demand of payment was imprudent. Mr. Kahn would like a letter from Town Counsel and a recommendation from the Manager as to how to proceed.

MOTION:

Moved by Mr. Sisitsky, seconded by Mr. Kahn, to table approval of the FSA Contract. The motion carried.

APPROVAL OF BERKSHIRE GRILL OPENING JANUARY 16, 1999:

Representatives of the Berkshire Grill came before the Board to request that a new liquor license be issued tonight for the location at 1 Worcester Road. A January 16th opening is anticipated. The license for the Ground Round on Speen Street will be surrendered this evening leaving no overlap of licenses.

MOTION:

Moved by Mr. Sisitsky, seconded by Ms. Mulvey, to issue a liquor license for the Berkshire Grill located on 1 Worcester Road. So voted.

REVIEW OF CORRESPONDENCE:

TOWN MANAGER SEARCH COMMITTEE QUESTIONNAIRE:

The Town Manager Search Committee sent the Board of Selectmen a questionnaire soliciting their input. Mr. Petriani reminded the Board to report to the complete the questionnaire in a timely manner.

NEW BUSINESS:

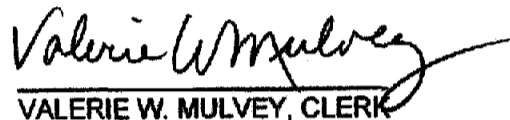
Mr. Petriani announced he heard from Beth Donnelly at MetroWest Medical Center and requested that Mr. Kahn provide a list of documents, fax them to Mr. Petriani, and submit them to Ms. Donnelly. Mr. Marcoux should schedule an agenda item including a letter from the Medical Center, a reply from the Board and attached documents.

Mr. Marcoux suggested that a letter of support be sent to Mr. Soule.

MOTION:

Moved by Mr. Sisitsky, seconded by Mr. Kahn, to send a letter of support to David Soule, regarding the MAPC's request to become Regional GIS Service Center. The motion carried.

Moved to adjourn at 11:10 P.M.


VALERIE W. MULVEY, CLERK