

**Minutes of Regular Meeting
Board of Selectmen
Wednesday, February 15, 2017
Selectmen's Meeting Room – Town Hall
Called to Order at 7:00 p.m.**

Present were Selectmen Michael Harrity, Douglas P. Gillespie and Christopher Houston, chair. Also present were Town Manager Donna S. VanderClock, and Assistant Town Manager/Human Resource Director Lisa Yanakakis. Recording Secretary is Kara Fleming.

Videographer – James Tremble, Weston Media Center

Item 1 – Resident Comments

Ms. Julie Barry, attorney representing 104 Stony Brook LLC, the developer of the 40B project proposed at 104 Boston Post Road, read a letter aloud and for the record (attached). The letter asserted that Mr. Harrity has a conflict of interest and requested he recuse himself from rendering any further decisions or taking any other actions concerning 104 Boston Post Road, as well as 133 Boston Post Road. She also stated that the Selectmen failed to send a letter of support from the Housing Trust to MassHousing. Mr. Harrity said there are several significant inaccuracies in the letter, but addressed two: 1) he did not persuade the Rail Trail Advisory Committee, at its February 8th meeting, to support the conversion of a portion of the future rail trail to a two-lane access road for the 133 Boston Post Road project. He clarified that Boston Properties' access route concept had some positives that he and the committee had only just realized at that meeting, which was the extent of his statement; and 2) Mr. Harrity said his wife's employment is correct, but because of her position they cannot invest in real estate nor does she have the ability to dictate her firm's portfolio. Mr. Houston added that the Housing Trust's letter of support was received by the Selectmen after they had signed the Selectmen's letter to MassHousing, but the Trust's letter was definitely submitted to MassHousing with the other department and committee comments on the project proposal. Ms. Barry asked for confirmation from Mr. Harrity that he would be recusing himself from discussions this evening. The Selectmen responded that there was nothing on the agenda regarding either property.

Item 2 – Approve Settlement Agreement with First Parish Church Regarding Sale of 41 Ripley Lane

Michael Harrity

Mr. Harrity explained that Ms. Janet Bent had left her property to the church as long as it could use the property; however if the church decided it no longer had a need for the property it should go to the Town for use by the Conservation Commission. Mr. Harrity said the exact intent of the will is not very clear and it will need to go to probate court; however, after receiving notice from members of the church that it no longer had a need for the property, he had spoken with the Conservation Commission. The Commission also decided that the property does not fit within its plans, but it does wish to obtain an easement across the northern portion of the First Parish Church parcel in order to provide access to abutting conservation lands. Mr. Harrity added that living relatives to Ms. Bent had been contacted to ask for their interpretation of the bequest and this plan seems to be consistent with those wishes.

A settlement agreement to sell the parcel and share the proceeds equally between the Church and the Town and to purchase an easement on the First Parish parcel has been negotiated and approved by the Conservation Commission. Weston Forest and Trail Association has also agreed to pay the cost of the

easement, which is \$40,500, instead of reducing the Town's share of the proceeds by that amount. The agreement includes the following terms:

- 1) The Town's purchase of an easement at 343-349 Boston Post Road, at its agreed appraised value, would be linked to the sale of 41 Ripley Lane;
- 2) First Parish Church could manage the sale process for 41 Ripley Lane as they see fit;
- 3) All cost directly associated with the sale, including title clearance issues, standard brokerage and legal fees, closing costs, etc. , would be paid first out of the net proceeds of a sale;
- 4) The remaining funds would be split equally between the church and the Town, and;
- 5) Out of the Town's share of the funds the agreed appraised value of the easement would be paid to the First Parish Church

Mr. Gillespie noted that a few Trustees of the Affordable Housing Trust were in attendance with an interest in why the land cannot be used by the Town for affordable housing. Mr. Harrity explained that the Town does not have the discretion to transfer the land or the funds from the Conservation Commission, but a vote of Town Meeting could ask to purchase the land.

MOTION: Mr. Harrity moved to approve the settlement agreement with First Parish Church regarding the sale of 41 Ripley Lane the terms of which are outlined above, with the exception that Weston Forest and Trail Association will pay the cost of the easement, leaving the full 50 percent of the proceeds for the Conservation Fund. 2nd by Mr. Gillespie. **Approved unanimously**

Item 3 – Conservation Commission: Parcels 6 and 9 of the Case Estates

Laurie Bent, Chair, and George Bates

Ms. Bent said the Conservation Commission would like to seek Article 97 preservation for these two parcels at the upcoming Annual Town Meeting. She also asked for the Selectmen's support in this effort. She explained that the two parcels are a part of the existing vista and connect to other conservation trails. Ms. Bent said her commission has a subcommittee that has been working on creating a stewardship fund that would be established through fundraising and would be used to care for the land. Mr. Bates further explained that since the Town had originally anticipated spending \$22 million on the land and planned to sell of these parcels in order to offset the high price, now that the purchase price turned out to be much lower there was no longer a need to offset the high price. Ms. Bent added that parcel 7 is much larger and could be earmarked for future municipal use.

Mr. Houston asked for clarification on the stewardship fund. Mr. Bates explained the Conservation Commission currently has \$100,000 available from past donations and his commission would seek to raise an additional \$400,000, which would provide an annual income of approximately \$25,000 to put towards land management. Mr. Houston asked Mr. Harrity for a history of the purchase price. Mr. Harrity said the Town appropriated \$22 million purchase price and part of the presentation at Town Meeting included selling off certain parcels to offset that cost; however the Town asked for a Right of First Refusal, which dropped the price to \$22.5 million. After soil contamination was found, agreement was reached to drop the price to \$19.5 million. After a lawsuit, the settlement dropped the purchase price to \$13.74 million. Mr. Harrity continued to explain that parcel 9 is suitable for six house lots and the estimated land value is placed at \$2.3 million. He added that the lot can be configured to provide for connectivity and easements to the existing trail system and the Planning Board is amenable to a flexible subdivision. Parcel 6, however, still has active use limitations (AUL) in place and would require about \$500,000 in remediation work if used for anything other than open space. The reassessment of land with an AUL is \$100,000 per acre.

Mr. Harrity reminded the Board that they had recently closed on the Town side of the financial responsibilities with short-term bond anticipation notes and if these parcels are held, then those notes would need to be reissued. Further, it would require about \$3 million in Town funds to preserve the property in perpetuity. Mr. Harrity said he is concerned with the Town losing flexibility for municipal land and that perhaps a long-term lease could be employed so a future Town Meeting could decide what to do with the land. Mr. Gillespie said he liked the idea of retaining ownership of parcel 6 since it is a part of the Hillcrest Corridor, but was not interested in tying future needs of the Town by binding parcel 9. Mr. Houston felt the request was coming too soon and that other Town interests should have the opportunity to be heard and taken into account, especially because no plan is in place for the property. He added that he is not in favor of a long-term lease, but would like to give the Conservation Commission the assurance that the Selectmen will not make any decisions towards use of the land until time has been given towards planning through a deliberate process with all stakeholders working together.

The Selectmen continued discussing holding off on the warrant article request with Ms. Bent and Mr. Bates. Mr. Houston asked the commission to wait for one year, to which Mr. Hugh Jones of the Affordable Housing Trust asked the Selectmen to reconsider imposing a one year deadline and questioned the benefit since there is a process for all stakeholders to work towards a consensus. Mr. Houston said a timeframe would allow for consensus and decisions to move forward. Ms. Susan Haber of the Affordable Housing Trust asked the Selectmen to consider broadening the process of getting various stakeholders talking and working towards that consensus when working with municipal land in general. Mr. Gillespie said other towns have policies in place for these situations and perhaps this should be discussed further. Mr. Houston said this particular situation would provide for that framework.

Item 4 – Fiscal Year 2018 DPW Budget and Capital Requests

Tom Cullen, DPW director

The Selectmen asked for additional information on the following: increased roadway maintenance appropriation; addition of capital projects engineer; wireless water meter reading system proposal; and the status of guardrails.

Roadway Maintenance

Mr. Cullen said for the past three years, the funding appropriation has been slowly increasing in order to bring the pavement management closer in line with where it should be according to the 2015 Pavement Management Study. This year's request is \$750,000, not including state appropriations. Ms. VanderClock said the 2015 study found that the town was behind in funding road maintenance and the annual appropriation should be closer to \$1.5 million. Mr. Houston asked if sidewalk maintenance is factored in, and Mr. Cullen responded that there is a separate amount appropriated, which is level funded for fiscal 2018. Mr. Cullen has also been coordinating with National Grid's planned gas relay projects in town.

Capital Project Engineer

Ms. VanderClock said the Town Engineer is overwhelmed with the many different projects in town. Mr. Cullen added that the Southside Drainage Project still has a few years until completion and National Grid's gas relay projects, as well as roadway maintenance, take significant oversight. This position could eventually fill the Town Engineer position when the incumbent retires.

Wireless Water Meter Reading System

Mr. Cullen explained the technology of this system would allow his department to monitor and read water usage electronically rather than physically reading each individual residential meter, which is what is currently done. The system also flags atypical usage, so if a particular resident's use goes above its baseline, the Water Division would be alerted and can respond more quickly. Currently, after water bills

are issued, the Public Works Department receives roughly 200 complaints. Each complaint is investigated and typically results in the discovery of a plumbing leak in the house. The system also allows for residents to utilize a smart phone app to self-monitor water usage. Mr. Houston asked if a water conservation policy is being developed, to which Ms. VanderClock said several departments are working on it.

Guardrail Update

Mr. Cullen said since receipt of the Planning Board's guardrail report, he has been working with the Planner and a member of the Board to identify appropriate treatments for deficient guardrails planned for replacement.

Item 5 – Rail Trail Advisory Committee: Request for Funds for Program Development, Schematic Concepts and Outreach

Michael Harrity

Mr. Gillespie recused himself from the discussion, due to him being an abutter to the abandoned rail tracks.

Mr. Harrity explained that since the Massachusetts Department of Conservation and Recreation (DCR) has secured funding to pave Eversource's maintenance roadway, the Town needs to act sooner since the trail will get used. The Rail Trail Advisory Committee received \$10,000 in administrative funds to have Nitsch Engineering conduct a study and conceptual design to determine the best approach and the funds required to unblock the Conant Road overpass. Further, the committee is requesting assistance from a consultant to conduct public outreach and other issues related to the trail development. The committee would like to engage Utile, which is the firm assisting the Town Center Planning Committee, to assist with this effort. Lastly, the committee is speaking with the DCR about sharing the cost of unblocking the overpass, since it is mutually beneficial.

MOTION: Mr. Harrity moved to approve up to \$10,000 to be used from the Selectmen's Consulting and Professional Services account to hire a consultant to work with the Rail Trail Advisory Committee on outreach and planning. 2nd by Mr. Houston. **Approved unanimously**

Item 6 – Consider Revisions to the Town Manager Review Policy

Chris Houston

Mr. Houston suggested a few revisions to the policy in order to clarify the process. The two primary substantive additions are: 1) clarifying that the process may and perhaps should start before June 30, any time after Annual Town Meeting, so it can be completed closer to June 30; and 2) clarifying that departing Selectmen are intended/expected to participate in the process and have their feedback taken into account, but that departing and new Selectmen will generally have their feedback taken into account relative to their service during the review period (and thereafter, with respect to future goals and expectations for the Town Manager). Mr. Houston also wished to adjust the measurement scale of expectations on the review form and to separately provide for a 360-review process.

MOTION: Mr. Gillespie moved to approve the revised Town Manager Review Policy and Review Form as proposed. 2nd by Mr. Harrity. **Approved unanimously**

Item 7 – Discuss Volunteer Recognition Event

Chris Houston

Mr. Houston said he was working with Ms. VanderClock’s office to hold a May 18th dinner at the Community Center, to which volunteers and their families will be invited.

Consent Agenda

MOTION: Mr. Gillespie moved the consent agenda as follows:

Approve minutes from the following Board of Selectmen’s meeting: January 25, 2017

Move to call the Town Caucus for Monday, March 6, 2017 at 7:00 p.m. at the Town Hall Auditorium and sign the notice of the Caucus.

Accept a gift of \$500.00 from Scott and Beverly Shane, Mid-America Fittings, Inc., to be applied to the Dana W. Carter Memorial Fund.

Approve a request from the Council on Aging to accept a gift of \$1,100 from the Friends of the Council on Aging for Volunteer Coordinator for the second half of fiscal year 2017 to be applied to the Miscellaneous Gift Account.

Approve a request from the Recreation Department to accept several gifts in the total amount of \$3,200 to be applied to the Lamson Park Gift Account.

2nd by Mr. Harrity. **Approved unanimously**

Item 8 – Executive Session: Exemption 6 – value of an interest in real property related to the Josiah Smith Tavern (Historic Preservation Restriction held by Historic New England)

MOTION: Mr. Houston moved that the Board of Selectmen vote to go into executive session for the following purpose: Exemption 6 - to discuss the value of an interest in real property related to Josiah Smith Tavern. Mr. Houston declared that an open meeting will have a detrimental effect on the negotiating position of the Board. And further, that the Board will not resume in open session. 2nd by Mr. Gillespie

Roll call vote: Mr. Harrity, Mr. Gillespie and Mr. Houston all voted in the affirmative

Regular meeting adjourned: 9:20 p.m.

Douglas P. Gillespie
Clerk

Note: A copy of all documents, explanatory material, and exhibits presented to and used by the Board of Selectmen as part of this meeting are attached to the approved minutes.

February 15, 2017

By Hand

Christopher E. Houston, Chairman
Town of Weston Board of Selectmen
Weston Town Hall
11 Town House Road
Weston, MA 02493

RE: 104 Boston Post Road, Weston, MA
MassHousing ID No. 906

Dear Chairman Houston and Members of the Board of Selectmen:

I am writing on behalf of 104 Stony Brook, LLC ("104 Stony Brook"), and in connection with the proposed 40B development to be located at 104 Boston Post Road known as Stony Brook Weston ("the Project"), to request that member Michael Harrity immediately recuse himself due to a conflict of interest from rendering any further decisions or taking any other actions concerning the Project and the affordable housing project proposed by Boston Properties, Inc., to be located across the street at 133 Boston Post Road ("the BP Project").

As you know, 104 Stony Brook is seeking approval for the Project, which it presented to the Planning Board¹ on November 16, 2016. The Project has received the unanimous support (with conditions) of the Weston Affordable Housing Partnership and Weston Affordable Housing Trust.² On November 22, 2016, 104 Stony Brook filed its Comprehensive Permit Site Approval Application with the Massachusetts Housing Finance Agency ("MassHousing") for a Project Eligibility Letter ("PEL").

On January 4, 2017, the Selectmen reviewed Mr. Harrity's draft letter to MassHousing requesting that it withhold approval of 104 Stony Brook's PEL application, claiming that the Town is addressing its affordable housing needs with the BP Project.³ On January 10, Mr. Harrity sent a version of this letter including the Selectmen's comments, to MassHousing. Notably, Mr. Harrity's letters are filled with misrepresentations and inaccuracies about the Project, including the inappropriate assertion that the BP Project is a "vastly superior project." Such favoritism is not permitted under the state's affordable housing regulations, 760 CMR 56.06(4)(a), in which the paramount issue to be considered in reviewing a project is consistency with regional and local needs for Low and Moderate Income Housing. This means all Comprehensive Permit applications are to be weighed on their own merits and not compared to other projects the way that Mr. Harrity wrongly compared this Project to the BP Project. While there is no competition between the two projects as to financing and/or

¹ The Project, which consists of 154 rental units (39 affordable) on 2.1 acres of land, has been reviewed, formally or informally by numerous departments and/or agencies including the Historic Commission, Weston Affordable Housing Partnership, School Committee representatives, and the Town Planner.

² See letter dated November 16, 2016 and memorandum dated January 13, 2017.

³ It is notable that Mr. Harrity did not forward to MassHousing the letter of support from the Weston Affordable Housing Partnership.

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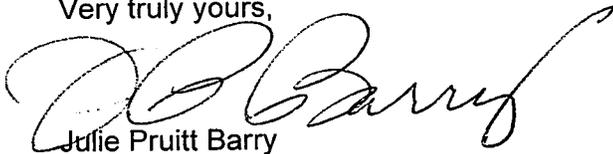
tenant market share, the Board's letter wrongly claims that only one project would be financially viable.⁴ Previously, Mr. Harrity advocated in favor of the BP Project in his letter to MassHousing dated December 8, 2016, in which he requests "swift approval" of the BP Project. It is wholly inappropriate for the Board to request that MassHousing only support the BP Project. We also understand that Mr. Harrity recently spoke in favor of the BP Project at a February 8 meeting of Rails for Trails, asking that the group "see the positives" and support the conversion of a portion of the recreational walking and bike trail to a two lane road serving the BP Project.

Mr. Harrity's inappropriate advocacy on behalf of the BP Project is compounded by a conflict of interest, which may have biased his evaluation of the Stony Brook Weston Project. It appears that Mr. Harrity has not filed with the Town Clerk a disclosure of this conflict for this Project or the BP Project.⁵ Specifically, we understand that Mr. Harrity's wife, Maureen A. Joyce, is a director of AEW Capital Management, LLP ("AEW"). According to public filings, AEW manages approximately \$34.2 billion of real estate assets, and has invested approximately 5.2% of its portfolio in Boston Properties. Given Ms. Joyce's position, it may have been improper for Mr. Harrity to negotiate with Boston Properties and to execute the First Amendment to the 2008 Declaration of Restrictions, which provided conditional support for the BP Project.

In light of this significant conflict, 104 Stony Brook requests that Mr. Harrity immediately and without further delay voluntarily recuse himself from rendering any decision and/or from playing any role – advisory or otherwise – on the review and potential approval of this Project and the BP Project, as he will not be able to overcome the presumption of bias inherent in his decisions concerning these two projects. In the event that Mr. Harrity does not immediately recuse himself, it would be 104 Stony Brook's intent to bring this issue to the attention of the State Ethics Commission.

Thank you for your attention to this issue.

Very truly yours,


Julie Pruitt Barry

Direct Dial: 617-456-8090
Email: jbarry@princelobel.com

⁴ The determination of whether or not a developer has met the requirements to receive state or federal financing is left solely to the appropriate State or Federal funding agency, *not* the Board. See Zoning Bd. of Appeals of Amesbury v. Housing Appeals Comm., 457 Mass. 748, 764 & n.20 (2010), citing Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 379 (1973).

⁵ The only disclosure apparently filed by Mr. Harrity is a 2013 disclosure relating to Harvard University and a purchase and sale concerning the Case Estate.

The logo for PRINCE LOBEL features a square icon on the left containing a stylized, abstract design. To the right of the icon, the words "PRINCE LOBEL" are written in a clean, uppercase, sans-serif font.

Christopher E. Houston, Chairman
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cc: Planning Board Director
Conservation Commission
Weston Affordable Housing Partnership
Weston Affordable Housing Trust
MassHousing