

IN BOARD OF SELECTMEN
TUESDAY, APRIL 29, 2014
EXECUTIVE SESSION (6:46 PM – 7:45 PM)

Present: Chairman John C. Drobinski, Selectman Lawrence W. O'Brien, Selectman Charles C. Woodard, Selectman Leonard A. Simon, Selectman Robert C. Haarde, and Town Manager Maureen G. Valente.

The statutory requirements as to notice having been complied with, the meeting was called to order by Chairman Drobinski, at 6:46 PM in the Silva Room, Flynn Building, 278 Old Sudbury Road.

A roll call was taken regarding a vote to enter into Executive Session: Simon, Woodard, O'Brien, Drobinski - Yes. Haarde - No.

Discussion began with Mr. Haarde expressing his opinion on why this should not be an executive session meeting but should be a public meeting. Mr. Drobinski and Mr. Woodard both expressed confidentiality concerns. Mr. Haarde felt that this meeting was not a negotiation but a review of a rubber stamp of negotiations that were already concluded. He expressed his concern that he had not been asked or included in any contract negotiations and again stated his position that his discussion should be done in a public meeting. Mr. Simon and Mr. Drobinski reminded Mr. Haarde that a sub-committee had been established to negotiate on behalf of the Board of Selectmen.

Mr. Haarde reminded the Board that in his opinion Chairman Drobinski had scheduled the meeting to vote to renew the Town Manager and Town Counsel's contracts and establish the negotiation sub-committee at a meeting in the spring as soon as Mr. Haarde informed Chairman Drobinski that he was being called out of town on business. Mr. Haarde explained that in his opinion just three days before the meeting, Chairman Drobinski decided to put the contract renewal votes on the agenda upon hearing that Mr. Haarde would not be able to attend that meeting. Furthermore, Mr. Haarde explained that an agenda item was on the Public Session agenda for later this evening "to vote to approve the Town Manager and Town Counsel contracts." Mr. Haarde asked how we could be negotiating these contracts if we were going to vote to approve these contracts later on the same day? Mr. Haarde also pointed out that the Town Manager and Town Counsel were not present in the room with them so who were they negotiating with? Mr. Haarde also pointed out that the sub-committee appointed to negotiate these contracts in his absence was flawed because Chairman Drobinski was no longer going to be on the board during the term of the contracts and Selectman Woodard had less than one year of experience on the board and was not the appropriate choice to negotiate contracts. Mr. Haarde explained that he did not feel this was a negotiation since the contract was already negotiated and on the agenda to be approved later that night. Mr. Haarde also explained that this could not be a strategy session because the negotiation had already occurred. Mr. Haarde said there have been no strategy sessions with regard to these contracts. Mr. Haarde said a board should determine strategy before the contract is negotiated, not after. Mr. Haarde explained the right way to do this would be to hold a strategy session before the negotiation takes place and solicit input from all members of the elected board. Mr. Haarde explained he did not think it was right to negotiate a contract and then hold an executive session to determine strategy after it has been negotiated.

Mr. Woodard provided each board member with handouts that detailed highlights and changes between the current contract and the new contract, and comparable rates of compensation for similar Town Manager contracts in comparable communities. Mr. Woodard noted in referring to those handouts, entitled "Town Manager Contract" and "Town Manager Compensation Survey", that the proposed changes to the existing contract were modest and that the Town Manager's overall compensation package fell within the range of the Town Manager compensation of peer communities, neither at the high end nor the low end. Specific changes pointed out by Mr. Woodard: three year contract extension; clarification of the notice provisions; confirmation that the Town Manager is entitled to the benefits provided other employees; provision for annual increases in salary and deferred compensation at the same percentage as

the cost of living salary adjustment of non-union managers; and, increase in the amount of severance pay from 10 months' salary to 12 months.

Discussion of contract language and a section by section review took place.

Selectman Haarde recommended changing Section 1.B which reads "the Town Manager may teach or consult on a part-time basis, so long as such teaching or consulting does not interfere with, or conflict in any way with, the Town Manager's duties and responsibilities to the Employer, nor constitute a conflict under the terms of the Chapter 268A of the General Laws of the Commonwealth. Any such consulting or teaching shall be subject to prior approval of the Board." Selectman Haarde recommended that the paragraph should include the words: "No teaching or consulting for-pay on-the-side during the workday and during the workweek when the Town Manager should be working for the Town of Sudbury will be permitted."

Selectmen Woodard and Simon disagreed with Selectman Haarde and said that was not necessary.

Suggestions were made to change Sec. 1 B. Last sentence - changed Any to Each. Chairman Drobinski took suggested change to Town Managers office. Change was accepted.

Neither Town Manager nor Town Counsel were in the room during this negotiation.

Selectman Haarde pointed out the last sentence in Section 4 A, which states: "The Town Manager will continue to have access to and use of the Town provided phone and tablet computer for 30 days after termination under this section." Selectman Haarde explained the risk of doing this and said he had never seen the case where an ex-employee still had access to resources and information belonging to the employer. The town computer could have sensitive resident and taxpayer information on it and it would not be prudent to allow an ex-employee to have access to such town resources post-employment.

Changes were made to Sec. 4 A. Last sentence was removed.

Selectman Haarde recommended changing the Termination Clause Section 4 B, which reads: "In the event the Board votes to terminate the Town Manager because of her conviction for embezzlement or fraud against the Town, then the Board shall have no obligation to pay the aggregate severance sum designated in this section." Selectman Haarde recommended replacing that sentence with the following sentence: "If termination is based on the Town Manager's engaging in any criminal offense, violation of State Ethics Law, embezzlement, fraud, conduct involving moral turpitude, or as a result of willful failure to perform the duties and responsibilities of Town Manager, the severance pay and associated benefits may be rescinded at the direction of the Board of Selectmen."

The other members of the board disagreed and said the change was not necessary.

Selectman Haarde explained that he has seen this language used to protect other towns in Town Manager contracts.

Selectman Haarde pointed out the third to last sentence in section 4 B, which read: "The Town Counsel shall conduct the hearing." Selectman Haarde explained it would be difficult for our Town Counsel to overcome bias and act impartially during a hearing over termination of the Town Manager. Selectman Haarde explained that the Town Counsel functionally reports to the Town Manager and having the Town Counsel preside over a hearing about firing his boss, was not appropriate.

Changes were made to Sec. 4 B. The hearing shall be conducted by "Special Counsel mutually acceptable to both parties." rather than Town Counsel.

Both changes were agreed to by Ms. Valente. Chairman Drobinski left the room and returned to say the Town Manager approves of the changes.

Discussion of item Section 9 B and C. Mr. Haarde expressed great concern over taxpayers being responsible for Attorney's fees for the Town Manager in the event of charges of criminal activity.

Selectman Haarde recommended adding the language: "Willful torts and criminal acts by the Town Manager shall not be indemnified for any fees or costs attributable to disciplinary proceedings brought by the Board of Selectmen."

Selectmen Woodard and Simon both stated that did not agree it was necessary. Selectman Simon said there was a legal term called "acting on a lark" which protected the town in this case.

Selectman Haarde disagreed and said this contract puts the town at risk.

Selectman Haarde recommended changing section 9 B which reads: "If the Town Manager is required to return to testify in any legal matter or is otherwise compelled to return to Sudbury after she has left the employment of the Town, the Town shall pay all costs of travel and lodging in connection with this matter as well as compensate her at the rate of compensation she was paid when she left the Town's employment." Selectman Haarde recommended changing this section to exclude payment of any fees or compensation whatsoever if the legal matter arising after her employment was a matter of her own doing. Selectman Haarde explained this section was too vague and broad because the words "or is otherwise compelled to return to Sudbury" could mean anything. She could come back for any reason and we would have to pay her food, lodging and salary.

Selectman Simon stated he did not agree with Selectman Haarde's interpretation of the 14-day cancellation provision of Mr. Kenny's contract, and further stated that because the contract was with an attorney, it could be cancelled at any time.

All members of the Board participated in this spirited discussion. Mr. Haarde proposed changing the indemnity clause. All other members felt no change was required.

At 7:30 PM Chairman Drobinski moved to approve the Town Manager contract extension as amended.

Mr. O'Brien seconded. The vote was four in favor: O'Brien, Woodard, Simon and Drobinski.

One opposed: Haarde

Discussion of the successor agreement with Town Counsel Paul Kenny

Agreement was reviewed with a general discussion of agreement. Mr. Haarde was opposed to any extension and was very upset with the successor agreement being for a period of three years.

Mr. Haarde once again expressed his belief that this discussion should not be undertaken in Executive Session but in public for the same reasons he expressed during the Town Manager discussion.

Mr. Haarde pointed out that Mr. Kenny was not present and we were not negotiating with anybody so it was not a negotiation. Mr. Haarde also pointed out that an agenda item for later that evening was to vote to approve the Town Counsel's contract so that must mean it has already been negotiated. Mr. Haarde

explained that you do not conduct a strategy session after the contract is negotiated. Mr. Haarde stated there were insufficient grounds to call this an executive session and the general public should have been allowed to bear witness to these proceedings.

Mr. Woodard and Mr. Simon repeatedly pointed out that although the agreement is for three years, it is cancellable without cause with 14 days notice, thereby making it effectively a 14-day contract.

Mr. Haarde disagreed adamantly. Mr. Haarde explained that a 14-day contract expires in 14 days. Mr. Haarde explained that Mr. Kenny has been Town Counsel for 37 years and has had this standard two-week notice in his contract for the entire 37 years. Mr. Haarde explained that this two-week notice is nothing new and it does not equate to a 14-day contract. Mr. Haarde repeated that a 14-day contract expires in 14 days and Paul Kenny has been Town Counsel for 37 years.

At 7:40 PM the motion was made by Mr. Simon to approve the successor agreement as reviewed by the Board of Selectmen. Mr. Woodard gave the second.

The vote was 4 in favor: Woodard, Simon, Drobinski and O'Brien and 1 opposed: Haarde.

There being no further business, the meeting concluded at 7:45 PM.

Minutes prepared by Selectman O'Brien.

Attest: _____
Lawrence W. O'Brien, Selectman