

**SELECTMEN'S MEETING  
MONDAY, MAY 5, 2008**

#22-08

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Meeting was opened at 7:00 PM in the Upstairs Meeting Room. Present were Selectpersons Patricia Pruitt and Alan Ross, Patricia Allen (absent), Town Administrator Frank Abbondanzio, Peter Golrick, Tom Bergeron, John Reynolds,

**Approve Minutes of March 31, April 7 and 14, 2008**

Pruitt recommended holding the minutes of March 31, 2008 since she was not at that meeting, and there is only one of us.

*Pruitt made a motion to approve the minutes of April 7, 2008. Seconded by Ross. Approved unanimously. Pruitt – Aye, Ross – Aye.*

*Pruitt made a motion to approve the minutes of April 14, 2008. Seconded by Ross. Approved unanimously. Pruitt – Aye, Ross – Aye.*

**Peter Golrick, Chairman and Airport Commissioners**

Ross: E-mail was received late today from the Airport Commission to not have this meeting. Unfortunately people that are interested in issue were not informed. Peter Golrick is here and I feel that we should at least address some of the issues, albeit it shouldn't be an extensive discussion without the full Airport Commission and the Director of the Airport Commission since they might want to respond to comments that are made.

Pruitt: In reading Peter's letter, I understood that they wanted to discuss the composition of the Airport Commission, assuming that the recommended article had passed Town Meeting or not as the case may be. We haven't even come to it yet on the Town Meeting Warrant. So, there is nothing here before it until that happens one way or another.

Ross: I think the importance of that issue being discussed is relevant in the following way: There are some questions about various legalities that might come up with that possibility. Do you want to just make a few comments? I think we have to limit this conversation to some extent. There is a letter that I just received about three minutes ago and briefly scanned, that involves a more in depth commentary or statement of concern about a broad range of issues signed by the Committee to Save the Airport. To go through this thoroughly at this point without people who could potentially respond, would not be perceived as being fair. I think a defined conversation about the Warrant that is on the Town Meeting is appropriate. This communication, in my feeling, is valuable and should be presented at subsequent meetings. If it is O.K., I think we will have to have a follow-up meeting about the decisions that may or may not be made at Town Meeting. I also have some legal questions that I will share with people. Why don't you state what your questions are and then people can respond, so that we can make it interactive.

Peter Golrick: Basically I was just concerned with how the Airport Commission will be composed, depending upon the passage of the Warrant Article for a By-Law. I have seen eight letters of interest, of them, only three of them are from residents. I am just concerned how that is going to affect the make-up, should the Warrant Article pass. If the Warrant Article does not pass, then that is a mute point. I don't know how many of the people who applied are hangar owners and/or tenants. That would also have an impact depending on whether or not the Article passes. If the Article does not pass, we could still only have a maximum of three tenants to maintain a quorum to be able to discuss tenant issues so that we could solve some of the existing issues.

Pruitt: And you don't know at this point whether the three residents are tenants or hangar owners?

Peter Golrick: Two of the three Town residents are hangar owners. One is a full hangar owner and one is a member of the flying club.

Ross: My understanding of this question involves some legal interpretations and not being a lawyer, but having had some communication with people who have taken stabs from the legal community, I'll share my impression of what might happen. First of all, you came up with a document that suggested that we could only appoint Town residents to the Airport Commission and then we noticed that was just for elected positions. Clearly, as you now know, the statute allows non-residents to be appointed to the Airport Commission.

Peter Golrick: I never thought of it otherwise.

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Ross: In communication with various legal sources, the question is can a local by-law actually trump a state law? I have heard yes it can, I don't know and probably not. There is a question about the legality of a local by-law that contradicts a state law. The other question that comes up is, in order to approve a by-law, it has to pass Town Meeting and then it has to be approved by the Attorney General. Then there are various time limits on that and then there are various options for extending the time limits. My understanding from speaking to the Attorney General's Office via a phone conversation that until the Attorney General approves the by-law, that it is not a valid by-law. So then the question comes up, suppose the Select Board makes the appointments of a non-Town resident before there is a by-law that is in fact an official by-law, assuming that a local by-law would trump state law, is it valid? None of the legal people that I spoke with knew the answer to that. Again, direct communication with people but not a formal written legal opinion. There is also the possibility that they might not know, that there might not be precedent to that, I think this is not crystal clear at this point. The next question that came up was about people having to recuse themselves from various decisions. Initially I heard from your presentation that at Select Board Meetings, there were past practices that would define what people could vote on and what they couldn't. A number of phone calls to the conflict of interest consultation lawyers that are available to all Towns were made and they generally felt that past practices had very little validity and that unless the specifics and past practices were actually written down and approved did not define it as having any strength. So, past practices had no strength in terms of perpetuity, that is the preponderant opinion that I got. Then the question comes up about people with conflicts of interest. I think we had a public discussion about whether people could vote on all financial issues or not. We had that discussion publicly, so there is no point in repeating it. I don't think there is any legal reason not to have people vote on budgetary matters that don't affect their direct conflict of interest. For example; their own lease arrangements, or something that would directly enhance their business interest or personal well being. So then the question comes up about how do we address questions as to suppose we appoint out of town people or more hangar owners than you think would make a quorum. There are ways to address that, because that type of problem comes up in a lot of committees where there is a conflict of interest, and the rule of necessity can apply to that situation. Now I think the statute also refers to that applies to elected committees. I have asked counsel about that including the conflict of interest referral legal service. They say the same process about if people have to recuse themselves from negotiating their own lease, the appointing authority, this is what I was told, in fact we could appoint an independent person to help make the decision. So let's say we appoint a town resident, who happens to be a hangar owner, and he is obviously negotiating his own lease, he can't do that he/she has to recuse themselves. A direct conflict like that, even if the hangar owner reveals everything about what they would gain or lose, it is a clear conflict that they can't do that. The Select Board can appoint somebody who is not a hangar owner, from the Town, say from the Finance Committee or another committee or a respected Town resident, and I have to look into that in detail, who can break the conflict of interest. That is called the rule of necessity and created a quorum and vote on issues like that.

Pruitt: So it would be there on a temporary basis to resolve the issue.

Ross: Yes to resolve the issue and then it would go away. I don't know if you have had any experience using the rule of necessity, because that situation is not unheard of. It is not a common occurrence, but it does come up. I think more with zoning issues. I think while we, as the appointing authority have the responsibility not to look for people with a lot of conflicts because that would in fact encumber decision making, just as a practical thing. I don't think there is anything that would make it a dysfunctional Airport Commission. I think it involves wise choices from the appointing authority, wise choices to potentially appoint an arbitrator, should that be necessary, where the two conflicts can't be avoided to create a quorum. That is my response. I think those issues can be addressed fairly and relieve potential conflicts of interest.

Peter Golrick: What I saw at the State Ethics Commission in regards to the rule of necessity, I don't recall anything that specifically mentioned two particular documents or directives that they had, and I read both of them. I don't recall anything in there allowing the appointment of a temporary person to deal with it, but I may not have read it in its entirety, and again, I am not a lawyer. There maybe something in there for that, and that is something that I am not aware of. It did appear from that from that in order to use the rule of necessity, it seemed that both of the documents listed identified that Town Counsel should be consulted before using that, and that perhaps even the Attorney General in some cases that need to be contacted before using the rule of necessity. I don't disagree that there maybe a way to overcome this, but that will also certainly be a time consuming process, if we come across an issue and we have to get Town Counsel before we can go ahead and use the rule at the next meeting.

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Pruitt: How often do leases come up? Every two or three years?

Peter Golrick: The current term of most of the leases is ten years. We have eight of them and they don't all come up at the same time. They are staggered over the next several years.

Pruitt: It is not something that will occur every single week.

Peter Golrick: In terms of the lease themselves, no, but in terms of other terms and conditions at the airport, there maybe things that would generate, perhaps not a huge conflict, but there are just small conflicts and perhaps there are ways to get around them. It is just a matter of making sure that we are all on the same page and everything is above board. That is my only concern.

Pruitt: I guess for me the big question is does a local by-law trump a state law? What would that mean for us if it doesn't? What would that mean for us? Would that mean that we would have to go and find non-residents for our other committees, where we clearly want residents on? There are residence requirements on the other Committees; for example, the Finance Committee.

Ross: I think that is pretty common. I have not reviewed all of the statutes but the Airport Commissions are the one specific Commission where it explicitly says that there is not a residential requirement. Whether or not the Attorney General would actually approve a local by-law? I think with those kind of legal questions, I certainly don't have any doubt that the Select Board would follow the appropriate protocol having it reviewed by Counsel, etc. before evoking that. There might be other needs for appointment; first of all, my understanding is that one of your members, Brian Carroll has moved, is moving, so there is going to be a need to make the appointment to replace him. Then there are other members whose term is up and whether they are going to be re-appointed or not, or resign, is also a current issue. So, I think everybody is concerned about having a highly functional Board. It is important for the Airport, it is important for the Town.

Pruitt: Do we expect to have a reading on this legal question before Town Meeting comes up to discuss or decide on the one Article, because it seems to me, if it is the case, that state law trumps local law, in this case, that we are wasting Town Meeting time.

Abbondanzio: We had to put it on and we couldn't change the wording on it. Even if the Article is voted in the affirmative, it still wouldn't apply if it were breaking the law. If the State Law contravenes the local law, then the local law wouldn't be valid anyway.

John Reynolds: Why do we have to wait and pay for the guy to come to the Town Meeting?

Abbondanzio: He is at the Town Meeting anyway. As far as the Article being on the Warrant, we wouldn't have done anything differently. We had an obligation under the law to have that Article on the Warrant because it was petitioned.

John Reynolds: (said something about prior to the meeting on Wednesday night, ) so that Frank can say something at Town Meeting, so we don't waste our time. We are going to be buried in Articles.

Ross: I wish people would ask to be recognized. There are some legal questions and then there is the question that I mentioned that even if a local by-law does have effect, what happens before the Attorney General. Then there is also the question that the Attorney General actually can receive information to question the appropriateness of the matter.

Peter Golrick: That is another question that I was potentially going to ask if no one else did. I think that John Reynolds has hit the nail on the head. Do we ask Town Counsel at Town Meeting when would that by-law become effective? That may help or it may influence your decision as to who to appoint if that would become effective in 80, 90 or 120 days, whatever the time frame is, would you want to be appointing someone who would then fall subject to that in that short period of time. Knowing the answer to the question would help you arrive at a decision. It won't put you in a situation where you have somebody that is just going to be removed.

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Ross: I think the flip side of that is that if an appointment is made before the Attorney General makes a decision, whether in fact that is an invalid appointment.

Peter Golrick: We may have to wait until that time is up anyway. Until we know whether it is approved, by the Attorney General, how does that affect anything.

Ross: I don't think that is what I was communicating. If they were appointed before the by-law, in fact, was an official by-law, it would be a valid appointment, would that person have to be removed?

Peter Golrick: It depends upon what the by-law says.

Ross: Any questions or comments from the floor?

Abbondanzio: I think what we are talking about here is policy and if you went back to the selectmen's minutes years ago, I am sure you would find something in writing as to why the selectmen took the position that they did with regard to who they appointed to the Airport Commission. It doesn't mean that they couldn't have appointed somebody from outside the Town, because the law does allow that. It is just that they chose not to. Policies are subject to change, and I think as Boards change, the policies can be changed.

Ross: Mr. Josh Simpson submitted a statement that he wanted read at the meeting.

Josh Simpson: The statement is actually not my submission. It is from the Committee to Save the Airport. It is a group of pilots and users. I am just curious as to why this meeting has been cancelled.

Peter Golrick: I think we have already raised what we just discussed all these issues as far as there are a lot of unanswered questions. We have gotten really as far as we can tonight, I think, without having the answers resolved by the Attorney General and certainly by Town Counsel as far as going forward. The Article has to be voted on at Town Meeting, but then what does it mean. I think Town Counsel needs to be involved in that, and if it is approved, then the Attorney General has to be involved in the process, until we know the answers to that. I was expecting that Town Meeting was going to get through more of the Warrant Articles last Saturday when I put the request in. That is why I expected that we would be able to discuss it with more detail because all this would have come out at Town Meeting, so it is probably just as well that we did this discussion of it so that we have some record of some of the issues that handled that Article. Until that Article is resolved they don't know that there is much more than we can discuss about the make-up of the Commission.

Pruitt: Can we amend a petitioned article?

Abbondanzio: No, we can't. The problem is that people who signed the petition may not agree with the amendment that is offered at Town Meeting. It is not like a regular Article that is subject to an amendment. That is why we have the wording it will pass any vote or votes in relation thereto. It allows the amendment to be made through motions. With a petitioned article, you don't have that flexibility. You could have 500 or 1,000 people who signed onto this thing, thinking something and then all of a sudden it changes at Town Meeting. It changes the intent of what the petition was really designed to do.

Chuck Meyer: I just wondered where we stand on – Whether people who signed the petition, whether a discussion did occur on that night. An amendment was made (hard to understand as was speaking far away from the mic)

Abbondanzio: My experience is that petitioned Articles aren't subject to that kind of change like the other articles would be.

Chuck Meyer: It seems that this mainly pertains to the Airport Commission. Couldn't hear the rest of his conversation.

Ross: People who are not Town Meeting Members can speak once on each Warrant Article. The Moderator has a fair amount of discretion about how many and how long so I would definitely let the Moderator know that you want

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to make a statement. There are ways for non-Town Meeting Members to make a presentation and that frequently can generate discussion. Non-Town Meeting Members can't. They have to sit in the back and they are not allowed voting rights.

Josh Simpson: Speak of the confusion that I have seen it talking to people in Town, thinking that if they don't vote for this Article that suddenly all Committees on the Town are suddenly open to non-residents that you have a predominance of non-Town Members on your Finance Committee and all the other Committees. I think it is just crazy.

Jean Golrick: Is there kind of urgency by someone to make this decision right away? Issue was put on hold until more information is gathered.

Ross: I think there was some talk at the beginning, by hopefully prudent leadership to kind of define the conversation. I think this is important. I think important things, I am sorry that people further down on the agenda have to wait including the Highway Dept. person. I think there are important issues that have to be clarified to the extent that we can do that, there are a bunch of people who came here, thinking that there was a meeting and were not properly informed that the meeting was cancelled, and I think there is some obligation to them. The misunderstandings by Town Members thinking that the appointing authority, the Select Board, is going to load up other committees is just totally far from the truth. This was very specifically done about the Airport. I have no doubt that there are people who might even spread that they oppose it, but clearly people aren't all the other Boards, Finance Committee, Assessors, etc, those are very clearly defined by being a resident in Town. That point should be brought out. The other question that comes up that I have heard people talk about appointees from out of Town might not be sensitive to the issue that the Airport budget is a very serious consideration to the Town, and they are going to want to spend all kinds of money because they don't live here. As we have all experienced, certainly on Saturday, that it is pretty hard to spend money that Town Meeting doesn't want to spend, and that is the final common pathway. There are a lot of arguments that I think should be clear to people but might not be. Are there any further comments on this?

Pruitt: The misinformation about other Committees is something that we will take efforts to put out the straight story at Town Meeting, so that it doesn't continue.

John Reynolds: Is that statement going to be published?

Pruitt: He has to have it entered into the record either by reading or by being included in the minutes. Your first choice was to have it read out loud.

Josh Simpson: I thought this meeting was gong to be more comprehensive, but we can certainly wait until the next time there is a more comprehensive meeting.

Ross: I don't think it is appropriate without the ability to change.

**Tom Bergeron, DPW Superintendent- Request to work 10 hour days**

- Beneficial to the Town for us to work this schedule. Garage would be closed on Fridays, no energy used, no trucks moving
- More work would be accomplished as equipment would be at sight all set up
- Would like to try this schedule for the summer months
- Schedule would be Monday through Thursday, 10 hours per day
- No overtime paid until after the ten hour shift
- Dick, the foreman, who carries a pager, will be on call for emergencies
- Emergency calls would go to answering machine with a directive to call the Police Dept., who in turn would page the DPW foreman
- Three month trial period. Follow up after August 1<sup>st</sup> to see how the schedule is working out

Discussion followed regarding this schedule during the winter months, and how emergency situations would be resolved.

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*Pruitt made a motion to approve the DPW's request to work ten hour days, four days a week between May 6, 2008 and August 1, 2008 as a trial, which will be evaluated in August. Seconded by Ross. Approved unanimously. Pruitt – Aye, Ross – Aye.*

**Town Administrator's Report  
Summer Meeting Schedule – 2008**

The meeting schedule will begin on Tuesday, May 20, 2008, with meetings being held every other Monday after that through September 8, 2008. This is the typical summer schedule. Right after that I am going to offer a suggestion regarding the next meeting.

- Narragansett Tribe requested scheduling a screening of a film for work that was done at the Airport.
- Non-Open posted private screening on Wednesday, May 14th, 2008 for the Select Board.
- Two public screenings to be shown on Monday, May 19th in the Upstairs Meeting Room of the Town Hall.
- First one is at 6:30 PM and second one is at 8:30 PM
- Tribal Representatives had a reason for wanting to show it to the Select Board first.

Discussion followed regarding the private showing to the Select Board being a non-open posted meeting. Obviously not an Executive Session, but the Tribal Representatives had a reason for wanting to show it to the Select Board first.

- **Select Board Meeting** on Tuesday, May 20, 2008 is a re-organizational meeting following the elections.
- **Contract for 43D work for Strathmore**
- The 43D contract is actually an agreement between the State, the Town and the owner of the building. The goal is to make sure that the project or that building is developed as a priority project. It is not so much focusing on the owner of the building as in the facilitation of the development of the building for the owner whoever he or she is.

*Pruitt made a motion to sign the Agreement for Professional Services by and between the Town of Montague and Fuss and O'Neil. Seconded by Ross. Approved unanimously. Pruitt – Aye, Ross – Aye.*

Discussion followed regarding the work which will include the infrastructure within the building, the access issues with the road, title issues, developing a permitting process to insure that the permitting gets done in an efficient way, looking at utilities, like sewer and water lines.

Detmold: The agreement recorded in last week with the Land Court said that in 60 days the new owner has to work out a payment plan. Does that mean that within 60 days, the owner has to pay one quarter of the agreed upon taxes and construction costs?

Abbondanzio: We explained that at the Town Meeting. The first payment had to be within 60 days and then the balance had to be paid within a year. There is some possibility of extension on part of it. The Treasurer/Collector needs to sit down with Mr. Anctil and negotiate that agreement.

Detmold: To negotiate the rest of it, but the first quarter has to be paid.

Abbondanzio: By law, you have to have that first quarter payment.

**Farmers' Market May 7th, 2008 – October 25<sup>th</sup>, 2008**

- Farmers' Market opening on May 7, 2008 from 3 PM to 6 PM on the lawn next to the Great Falls Discovery Center, at the corner of Avenue A and 2<sup>nd</sup> Street.
- Have proof of insurance. Currently running under same policy as last year because the term was from June 14, 2007 to June 14, 2008. Will obtain new policy after June 14, 2008.
- One farmer from Gill will be doing organic farming.

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- The Brickhouse Kids have painted a huge 4 x 8 mural advertising the Farmers Market.
- Anyone is welcome to come and sell items that they have knitted, painted or grown at home.
- Strolling minstrels have signed up to come down and play for half an hour or so.

*Pruitt made a motion that the Chairman of the Board of Selectmen approve the Registration for Assembly for Public Demonstration for the Farmer's Market. Seconded by Ross – pending – operator will speak with Wendy on Tuesday.*

- **Meeting on Wednesday with the Streetscape Committee**

- Provide water on the Avenue for the people who take care of the planters.
- Currently tapping into existing systems and putting in faucets.
- Additional funds might be needed

- **Town Meeting**

Ross: Town Meeting was certainly a challenge in many, many ways with some clearly surprising and sudden developments that are going to challenge all of our imaginations, patience and ability to get through this quite difficult period.

Pruitt: When I was reading through the minutes, it struck me. You know how you hear something and at the time you don't know what the context is for, it struck me that Mrs. Hanold had mentioned that Town Meeting needed to be brought into the budget process because we needed more minds on the problem than we have, with just the seven of us between the Finance Committee and the Select Board. So, her suggestion proved very true at the Town Meeting.

Ross: We had a lot of impact, I'm not sure if it was positive, but it certainly presented a bunch of challenges. I think one immediate thought I had to learn from is that it seems like we should have pre-Town Meetings, almost on a quarterly basis. So, people who, appropriately are somewhat knowledgeable as to what goes on in Town and what doesn't go on can be involved in a way that might allow more consideration of the twists and turns that happen to come up. There are probably a number of comments in terms of a follow-up to this particular chapter in our budget efforts.

*Pruitt made a motion to go into Executive Session for Collective Bargaining, at 8:07 PM and come out only to adjourn the regular meeting. Seconded by Ross. Approved unanimously. Pruitt – Aye, Ross – Aye.*