

TOWN OF KINGSTON
BOARD OF SELECTMEN

MINUTES
March 27, 2007

Chairman Joseph D. Kelleher opened the meeting of the Board of Selectmen held on March 27, 2007 at 7:00 p.m. in Room 200 at the Town House, 26 Evergreen Street, Kingston. Present were Vice Chairman Mark S. Beaton, Paul M. Gallagher, Jean M. Landis-Naumann and Town Administrator Kevin R. Donovan. Selectman MacFarlane was absent.

The Chairman recognized the passing of former Acting Police Chief Alfred Darsch with a moment of silence.

The Chairman announced the dates to note and the Open Forum. Mr. Gallagher recognized that Boy Scouts from Troop 4480 were present to fill a requirement of a merit badge.

Robert Pinato of the Cable Advisory Committee came forward to encourage residents to submit the cable survey forms.

Rui Santos came forward to request that the Board not support Article 43 which would reduce the CPA surcharge from 3% to 1% as was being supported by the Finance Committee. Mr. Santos read a letter from a Wareham resident, published in the newspaper, which detailed what the small CPA contribution from each taxpayer had enabled the Town of Wareham to fund.

Ralph Calderaro came forward and read a letter also requesting the Board not to support Article 43. Mr. Beaton stated that speaking for himself; the CPA money was like having a savings account with 100% interest and that he did not support Article 43.

Mr. Gallagher stated that the Finance Committee's fiscal responsibility was to the taxpayer and this Article was a way to alleviate the burden of the 3% charge by reducing the amount to 1%.

Pine duBois came forward and stated that by reducing the average surcharge by \$63.00 the Town would lose \$700,000 annually. She further stated the 1% collected would not be enough money to make investments to sustain the quality of life, preserve historical treasures and protect open space.

Ken Moali came forward and announced that he would vote unfavorable action of Article 43 because it had just been passed and the Town has not yet seen the benefits in action. He further stated that using the CPA funds would potentially be the only way the Adams Library would be restored.

Frances Hoeg, Town Moderator came forward to announce that she was seeking volunteers to fill several Finance Committee vacancies after Town Meeting and encouraged interested persons to apply.

Clive Beasley was present for an appointment to introduce his concept for Howland Bay Terrace, a 32 home development for seniors who may need monitoring and specialized services.

Mr. Beaton stated that the project had noble intentions but that the proposed 32 homes created a very dense development. He further stated that the project would have to go before the ZBA and that it was conceivable that the project could receive the approval of DHCD for an age restricted development but not as a 40B project on only 3 acres of land.

Mr. Gallagher also expressed concern for the number of homes on the designated area of the 3.4 acre property.

Mr. Beasley stated that he had not made the decision about the 40B but would if needed.

Mr. Kelleher stated that the Board would address the Smart Growth Zoning letter to the State and that the Board would speak on it first, then the public followed by Mr. Geisinger.

Mr. Gallagher stated that Representative Calter was present and asked if he could speak first. Mr. Beaton advised that he had requested that Representative Calter and Senator Murray be present to update the Board on the 40R funding from the State.

Mr. Kelleher advised that he wanted to make a statement. He stated that he had made an independent inquiry regarding the Water Overlay District and stated that it was an issue for Town Meeting to address. He further stated that the three memorandums do not mention Thorndike by name but reference the "developer" and he had concern that if Thorndike was not the developer the promises made may not come to fruition; that some conditions rely on outside agencies signing off and he felt they needed guarantees in place. Mr. Kelleher advised that the 40R concept was developed under Governor Romney and that the funding was not in Governor Patrick's 08 Budget. He concluded by saying that the project would change the face of Kingston.

Mr. Beaton stated; no road, no development and if the developer walks from the project the design standards were in place for the next developer. He further stated that the revenues of \$3,000 per unit were now being guaranteed by Thorndike Development.

Representative Calter praised the Town Boards and Committees for their exhaustive review of the 40R project. He added that the state was committed to funding six projects and that the financial incentive payment of \$600,000 was available in the Smart Growth Trust Fund. Representative Calter advised that the Governor's budget did not include the funding because the funding mechanism was the Trust Fund that would be funded through the sale of surplus state property. He stated that supporting the Smart Growth Article on April 9th would give Kingston the opportunity to control its destiny regarding affordable housing and that this project had been environmentally supported, would provide 2.7 million dollars in discretionary funding to be used any way the Town wants and once the land was designated for 40R it could not be rezoned for 40B. Representative read and submitted a letter from DHCD confirming the availability of the \$600,000 incentive payment for the Town of Kingston. He further read a letter from Senator Murray, a strong supporter of the 40R legislation.

Mrs. Landis-Naumann expressed concern that under Governor Patrick, the funding may not be available and asked who authorized the sale of the surplus property. Representative Calter stated that it was under DECAM and that the first twenty-five million dollars went to the state and the second twenty-five million dollars went to the Trust Fund. Mrs. Landis-Naumann expressed concern again that there was no mention in the Governor's budget. Representative Calter advised that it was not in Governor Romney's budget either and that Governor Patrick ran on a platform which supported affordable housing development.

Mrs. Landis-Naumann asked what would happen if there was no sale of surplus property and what were the options if funds were not available. Representative Calter stated that the Trust Fund was also funded by fines and penalties or an appropriation.

Mr. Kelleher asked Mr. Donovan to clarify the funding by DHCD for the Kingston project. Mr. Donovan advised that the funding was sufficient for the \$600,000 incentive payment to the Town and the remaining projects but not for the \$3,000 per unit and that the fund could not operate in a deficit and was dependent upon the sale of vacant state buildings and property for funding.

Judy Lewis, Finance Committee Chairman stated that she had spoken with Donald Schmidt regarding the Trust Fund and was advised that a sale was expected to close which would put 8-10 million dollars into the Trust and it would cover the \$3,000 per unit incentive.

Mr. Gallagher stated that he wanted to clarify that the \$600,000 was in the Trust for Kingston as required by the 40R law.

Mr. Beaton stated that they had a commitment from the Developer to pay the \$3,000 per unit to the Town and if it were not to be Thorndike it would be any other Developer that picked up the project. He further stated that if the Developer does not provide the funding then there would be no building permits issued and with the three signed Memorandums, the Town had taken control.

Mr. Gallagher stated that the third financial impact report that was completed estimates the annual tax revenue to the Town at \$700,000 from the project and does not consider the payments from the State. He further stated that the \$3,000 per unit offered by Thorndike was not in the previous agreement but was now part of the Memorandum along with the other eight key elements. Mr. Gallagher read the Memorandum in to the minutes. (The document is incorporated by reference and is on file in the Selectmen's office)

Lloyd Geisinger came forward and advised that he had started early in the process to involve the Water Commissioners on the Overlay Water District and it had been effectively addressed and that it would be inappropriate to remove the Overlay District. He stated it was more effective to change the zoning from Commercial/Industrial on the 27.8 acres to allow for residential. He advised that passing this zoning change would remove the dangers of a commercial/industrial use and if the 40R goes forward all the commitments would be satisfied and there would be a recharge of 300,000 gallons of water per day. Mr. Geisinger advised that they had the Davis property under agreement in order to locate a new leaching field. Additionally, he stated that 14 acres of the property would have a conservation restriction and

remain wooded and would be gifted to the Town. Mr. Geisinger advised that the land was classified at 61A and must be offered to the Town for first refusal but questioned why the Town would want to buy the property if they could get it for free from the Developer.

Robert Koska, Water Commissioner came forward and advised that hundreds of hours had been spent on review of this project and that the Commissioners were very comfortable that the Overlay District was well protected with the Memorandum that the Commissioners signed.

Mrs. Landis-Naumann expressed concern that the 61A should be resolved. Mr. Donovan advised that the Town had 120 days from notification to the Town that there was a bonafide offer for the property to exercise or not exercise its option.

Mrs. Landis-Naumann asked why it had not come to the Town. Mr. Geisinger stated that a new provision in the law provided 120 days once the purchase and sale agreement was contingency free and the purchase and sale agreement that he had on the Davis property was contingent upon the passage of the Smart Growth Development Article at Town Meeting.

Mr. Geisinger stated whether the Town or Thorndike was to purchase the property was immaterial. If he did not have the land, he would reduce the project and again questioned why the Town would purchase the land when they could get it free.

Mrs. Landis-Nauman asked what impact a reduced project would have on the promises and agreements, should the Town purchase the land. Mr. Geisinger said that it would have none and that he had faith that the Town would not opt to spend the money when they could have the land for free.

Mr. Beaton added that the Town would not exercise its option because it had no money.

Mr. Kelleher invited members of the public to speak or ask questions.

Ralph Calderaro came forward and stated that the promises made were in a legally binding contract. He reminded the Board that there was currently a 200 unit 40B on the table for the site and there was enough land to support two more each with 200 units. He encouraged the Board to vote favorably on signing the Memorandum.

Ken Moali stated that this was good for Kingston and urged the Board to vote favorably.

Helen Gavin stated that it would be best if the development were made smaller. She asked whether Town Counsel would be provided to help frame amendments to the Article for Town Meeting. Mr. Donovan stated that the amendment must be in writing and would be reviewed by Town Counsel for legality.

Frances Hoeg, Town Moderator was present and advised all amendments must be in writing and that they be funneled to the Moderator, the Town Clerk and Town Counsel for review.

Mr. Beaton asked Mr. Geisinger why they had set the number of units at 730. Mr. Geisinger stated that it was set for the percentage for the Town to meet the affordable housing unit

criteria. He further stated that postponement of the Article beyond April 9th could jeopardize the payment of the \$600,000 from the state because the Town could lose its position in the order of projects to be funded. He stated that MA Highway had issued an unprecedented letter of serious commitment to the construction of the ramp to Route 3. He added that this was due to the efforts of Senator Murray on behalf of the Town. Mr. Geisinger advised that due to the thousands of hours of work on this project he was requesting that the Board hold a special meeting next week to allow for the full Board to vote on the Memorandum.

Mr. Kelleher asked the status of the 200 unit 40B application before DHCD. Mr. Geisinger stated that the application was on hold pending the Town Meeting vote on the 40R. He added that he was looking at this project from a common sense point of view; it was a good 100 acre site located next to the Train Station. He also stated that his feeling the Smart Growth Trust Fund had lagged was due to a soft real estate market following a ten-year boom and that he had faith that it would not last forever and that he would not have to make good on paying the \$3000 per unit incentive bonus because the State would meet the commitment.

Matt Langer of the Indian Pond Association stated that every year funding was a problem resulting in an override and that this project would bring in new revenue and would give the Town improvements in the infrastructure that the Town would not be able to fund for many years.

Mauro Mazzilli expressed concern that the Contractor use union labor and for the building quota and wanted everyone be given an equal opportunity to build a home.

Mrs. Landis-Nauman asked if Tom Bott would address the building quota and if the project would impact it. Mr. Bott advised that it would not impact the building quota because the ByLaw addressed conventional buildings.

Mr. Gallagher stated that he was sufficiently convinced that the positives of the zoning changed far outweighed the negatives. He added that the only earth removal allowed at the O'Donnell site was in the MBTA Right-of-way and that a fine that the Board had imposed for removing earth outside the Right-of-way had been satisfied with the payment of \$30,000. He suggested that the Board convene a special meeting on Tuesday, April 3rd to allow the full Board to vote on the Memorandum. Mr. Gallagher's motion, seconded by Mr. Beaton, failed on a 2 to 2 vote. Mr. Beaton and Mr. Gallagher supported the motion, Mr. Kelleher and Mrs. Landis-Nauman did not support the motion.

Mr. Beaton made a motion to sign the Memorandum and stated that the Board had no right to side track this Article from coming forward at Town Meeting and that it was not the Board's call to bury the project. He further stated that the citizens had a right to weigh in on it.

Mr. Gallagher requested that the Board reconsider allowing the full Board to vote it and reminded Mr. Kelleher that he had voted at the last meeting to accommodate Mr. Kelleher when he asked for more time.

Mrs. Landis-Naumann stated that she had also agreed to hold off and had the answers to a lot of issues and was ready to vote in the affirmative.

Mr. Gallagher reiterated that Ms. MacFarlane should have the opportunity to vote. Upon motion made and seconded, following a discussion and a 3 to 1 vote, it was –

VOTED: To schedule a special meeting on Tuesday, April 3, 2007 to allow the full Board to consider signing the Memorandum for the Smart Growth Development.

Ralph Calderaro, Chairman of the Community Preservation Committee came forward to present the Committee's recommendations for the projects to be funded from CPA funds. Mr. Calderaro detailed the scoring method used by the Committee. Projects selected were; Kingston Public Library-digitizing library collections; Historical Commission-Town-side archeological survey; Open Space and Conservation Commission-MacFarlane Land purchase; Heritage Center Committee-preservation of the Adams Library Building; and Jones River Village Historical-Bradford House structural analysis.

Mrs. Landis-Naumann thanked Mr. Calderaro for his presentation and asked how much money was available.

John LaBrach, Town Treasurer advised that since the Town did not have a Special Town Meeting in the Fall, the funds from FY07 will not be available until July 1 so currently only the 06 funds of \$403,000 were available. He further stated that if to purchase the MacFarlane property, the funds would have to be borrowed since the 07 funds would have to be allocated at the Fall Special Town Meeting.

Pine duBois offered to arrange a tour of the MacFarlane property for anyone who wished to see it.

The Board reviewed and assigned the motions for the Town Meeting.

Upon motion made and seconded, following a discussion and a 5 to 0 to 0 vote, it was –

VOTED: To adjourn at 10:30 p.m.

Respectfully submitted:

Nancy M. Howlett, Assistant to the
Town Administrator/Board of Selectmen