



**BOARD OF SELECTMEN
MINUTES**

**Joseph F. Bilotta Meeting Room, Town Hall
October 16, 2018**

Board of Selectmen: Jamie Toale, Chairman; Robert Ebersole, Vice Chairman; Damon McQuaid, Clerk; Phyllis Luck, Member; Katey Adams, Member

Also Present: Heather Lemieux, Town Manager; Adam Costa, Town Counsel; James Marino, Police Chief; Adam Burney, Land Use Director; Elaine Peterson, Executive Assistant

The meeting opened at 7:01 p.m. with the Pledge of Allegiance.

Mr. Toale announced in accordance with the requirements of Open Meeting Law, the meeting was being recorded and broadcast over the Lunenburg Public Access channel.

PUBLIC COMMENT:

Ms. Luck reminded everyone the next Lion's Club Pancake breakfast will be the first Wednesday of November due to the Lions' Club getting Thanksgiving baskets ready for distribution.

INTERVIEWS/APPOINTMENTS/REAPPOINTMENTS/RESIGNATIONS

Resignation from Cultural Council- Christopher Letarte, effective October 7, 2018

Mr. Toale read Mr. Letarte's resignation aloud. "After plenty of thought on the matter I find it easier on my mental health to resign from Cultural Council. This is my resignation letter. I'm sure I will find reason to sit on another board in town or be involved with other things but for now I just need to step away."

Cultural Council Interviews-

Mr. Toale announced one applicant, Daron Massey, 300 Holman Street, has withdrawn his application in an email sent to Ms. Peterson, "I've reviewed the terms of the Massachusetts Cultural Commission Grants. The MCC gives examples of possible conflict of interest situations in potentially being on a commission and applying for grants. The possibility for conflict of interest being present or absent is dependent on various factors regarding applying for a grant. I do not have the information I need to evaluate if my application may potentially lead to a situation of a conflict of interest. I would like to request your withdrawing my application for consideration to the Cultural Commission at this time. Please remove my appearance at the Board of Selectmen meeting tonight due to the above. "

Tyler Hathaway, 872 Northfield Road, stated he moved to town about a year and a half ago, he previously lived in Ashburnham. He is a digital designer (websites, etc.) and an illustrator. He felt this was a good way for him to get involved in the town.

Motion: R. Ebersole

2nd: K. Adams

To appoint Tyler Hathaway to the Cultural Council with a term to expire June 30, 2021

Vote: All in Favor

Jamie Merrill Blood, 1387 Massachusetts Avenue, moved here 6 years ago. When she attended the Stillman Fair recently, she filled out a talent bank form and was asked to consider joining the Cultural Council. She feels the arts are an extremely important fabric of our society and they add a lot of value.

Motion: R. Ebersole

2nd: D. McQuaid

To appoint Jamie Merrill Blood to the Cultural Council with a term to expire June 30, 2021

Vote: All in Favor

The Board thanked both applicants.

TOWN MANAGER REPORT

Summer Street Project Update from MassDOT:

The Contractor has reclaimed the roadway from Rocky's Hardware in Fitchburg to the Baker's Brook Bridge. Emulsion injection of the reclaimed material is scheduled for October 12th and 13th. Paving of the base and intermediate courses in this area is scheduled for the week of October 15th. The drainage trunk line has been completely installed in Lunenburg. Installation of the trunk line is progressing in Leominster, but was slowed last week when ledge was encountered. The hope is to complete the drainage main in Leominster by October 19th. The Contractor will then begin tying catch basins into the new drainage main starting at the Baker's Brook Bridge in Lunenburg and progressing towards Leominster. Additionally, after paving, it is anticipated that curb and sidewalk work will begin in Fitchburg starting at the John Fitch Highway intersection and progressing towards Lunenburg. This work is subject to the availability of the curb/sidewalk subcontractor.

Given the condition of the existing pavement on North Street in Leominster, MassDOT has decided to do some patch paving prior to winter to alleviate further deterioration of the road this winter. MassDOT has also decided to reclaim the North Street portion of the project instead of milling. Reclaim of Lunenburg and Leominster will be done in the spring / summer of 2019.

Update on the Town Hall weather vane:

The Historical Commission provided us with an estimated replacement cost and once we receive a formal quote from the vendor we can submit the property claim with our insurance company. Beyond the actual replacement of the weathervane, the DPW Director has cautioned that the structural integrity of the Clock Tower and mount that the Weathervane would be installed on need considerable work. This will need to be reviewed and may be a capital project request in the FY20-24 Capital Plan.

Business-Town Partnership Update (TM Goal #1 and #3):

The next Business Town Partnership meeting will be Thursday, October 25th at 5 p.m. in the second floor meeting room at Town Hall. We will be reviewing a draft of the Business Brochure. Meetings and other announcements:

- Town Counsel Office Hours: Tuesday, November 27th 12-4 pm; Monday, December 17th 8 am-12 pm.
- Municipal Aggregation Electricity Rates: The new rates for residents that are municipal aggregation customers with Constellation NewEnergy will be .10998 cents per KWh starting on their November meter read date. Our municipal aggregation consultant, Colonial Power, procured this rate from Constellation after going out for competitive bids. This rate will be fixed for the next 36 months. As of December 1, 2018, Unitil's electric winter service fixed residential rates will rise to .12915 cents per kWh. Residents can opt in or opt out at any point. We will post

a public notice on the town website with the new rates under this program that includes the contact information to opt in or opt out of the program.

Meetings and other announcements:

- Massachusetts Office on Disability Training: I will be attending a Community Access Monitor Training through the Massachusetts Office on Disability tomorrow and Thursday. This training is to better understand the Town's obligations to provide access to the disability community.

Vacancies:

The following paid positions are currently posted:

- Town Mechanic
- Assistant Town Mechanic
- Heavy Equipment Operator/Laborer

The following is a list of vacancies on the following committees:

- Agricultural Commission (2 regular vacancies, 2 alternate member vacancies)
- Architectural Preservation District Commission (1 vacancy for a design professional/craftsperson)
- Cultural Council (multiple vacancies)
- Public Access Committee (2 vacancies)
- Zoning Board of Appeals (2 Associate vacancies)

CURRENT BUSINESS-

1. Warrants

The Board signed an accounts payable warrant in the amount of \$329,577.20, a payroll warrant in the amount of \$779,721.38 and a payroll deductions warrant in the amount of \$161,511.81.

2. Committee Reports

Ms. Luck reported the Storm Water Task Force will meet on the 25th of October. The School Committee meets tomorrow. She will be attending the MMA Selectmen's Meeting at Devens this Saturday. Mr. McQuaid reported Capital Planning meetings will be November 6th (School and IT Depts.), November 20th (Police & Fire Depts.) and November 27 (DPW). Mr. Toale reported he will be attending the MPO meeting tomorrow representing subregion 3.

3. Discussion about Special Town Meeting Warrant articles; votes on recommendations may be taken; Sign Final Warrant

Ms. Lemieux referred the Board to the final version of the Special Town Meeting warrant. She referred to the article regarding the American Disabilities Act (#10); it expands the definition of term of appointments, voting power, resignations, how vacancies are handled, provides new sections on meetings and selection of officers. She tried to mirror what was in other committees' charges/descriptions such as PACC and Cultural Council.

Ms. Luck asked what has changed in the Salary Administration Plan (Article#7). Ms. Lemieux stated it cleans up the language on how vacation time is accrued, amends the provision of carrying over of excess time and changes the payout from the last week in June to the first week of July, brings the Family Medical leave section to be more in line with our town policy and defines what is an hourly employee.

Motion: R. Ebersole

2nd: D. McQuaid

To sign the Special Town Meeting Warrant

Discussion: Ms. Adams asked Attorney Costa if there was any input on Article 18, the land conveyance and the fact that we may not own that piece of land. Mr. Costa stated he had reviewed it and generally it is in the appropriate form. Our recommendation is that there be certain items done such as a title examination or survey. In an instance like this the Town is not at risk, the burden is on the buyer. We would coordinate the title search with the buyer at their expense. He would recommend that that process be followed. Article #18 grants the authority to the Board of Selectmen to convey the property.

Vote: All in Favor

WORKSHOP ON BOARD OF SELECTMEN REGULATIONS AND POLICIES

Special Event Permit Policy

Land Use Director Burney reported this was a followup to previous discussions. He has made some revisions to what a special event is. Draft #4 incorporates all the changes from #3-we had talked about one property holding multiple events and that becomes a zoning issue. We talked about prohibiting alcohol and recreational drug use (marijuana); obviously you can dictate that on Town property. Private events are not subject to requirements of liquor licensing. He is still proposing special events not exceed four days. Mr. Burney spoke to the Board of Health regarding restrooms and trash. Restrooms shall be cleaned daily or as necessary and trash should be picked up per the Board of Health.

Regarding fireworks, the applicant must be licensed. He added wording regarding buffer zones as requested. He gave some guidance with a little leeway, if needed. The Board can waive the distance with written permission from the abutter. He moved on to layout, plans and documentation; what is this event going to look like and how is it going to impact the area? Mr. McQuaid had concerns about the buffer zone – he did not like the idea of getting permission from a neighbor to hold an event. This could affect churches, the farmers’ market, the band concerts at the Town gazebo; to assume neighbors are always going to be reasonable is unrealistic. He believed the Board of Selectmen should make the final judgement. Further discussion ensued about the setback requirement.

Steve Weaver, 288 Holman Street, talked about a resident holding private events where the music is loud and over 150 feet away, upsetting people who have to listen to that all hours of the night. The zoning should be taken into consideration. Ms. Adams asked about repetitive requests from the same person, where is the guidance on that? Mr. Burney pointed out the last part of the first paragraph under Guidelines, “Events that recur multiple times within a calendar year will not be considered.”

Mr. Toale asked how do you define a special event, how many people, how much music? We need to define special event a little differently because when you introduce music or alcohol or “the public,” are they the criteria? Ms. Lemieux stated the original distinction was “open to the general public.”

Daron Massey, 300 Holman St, stated the word he wanted to keep repeating was reasonableness. We have had multiple popular events in Town. Events are critical to the social and economic health of our Town. Looking through the lens of legal counsel and land use could curtail events. He suggested to look at other towns that have noise ordinances and buffers that are reasonable. Mr. Ebersole stated we have a zoning discussion. When does a residential use turn into something else that is not residential because of the frequency? What are we regulating? What is a properly zoned event? Ms. Adams requested a more specific definition of a special event. Ms. Lemieux saw the distinction as a special event open to the general public on private property and

private events held on public property. Suggestion was made to change the hours to match the noise bylaw.

Thia St. Martin, 488 Holman Street, believed the reasonable aspect was key as it can be subjective and that is why you should put in the buffers but leave room for discretion.

Mr. Ebersole stated this draft is better than before but additional discussion is needed. The zoning aspect needs more research. When does something become commercial?

Steve Weaver, concerned as a neighbor to 300 Holman Street, stated that this is going to turn into a business venue and it is a zoning issue. We aren't concerned about birthday parties or something like that. With the noise and smoke from campfires from events held at 300 Holman Street, we can't keep our windows open. By being invited on Facebook and being charged for those events, that is different than a private party. The zoning aspect needs to be taken into consideration.

Tom Alonzo, 284 Lancaster Avenue, stated it comes down to what is the intent of this? You need to balance property owners' rights and protect the neighborhood by creating noise, health and parking ordinances.

Police Chief Marino stated in Cambridge there is a committee that reviews special event permits. It is based on the location, any traffic or public health issues, how it affects the public safety; what changes it is the word "public," that is the trigger for a special event.

Kathleen Wnuk, 503 Holman Street, stated she lives on a quiet little street. People have events, that is life. But having an advertised event on Facebook is really different. Having people there you don't know, wandering through the woods, makes us nervous. We are all worried about our property values.

Daron Massey, stated it is important that we have a reality based conversation about what is happening in town, past and present. What's happened in the more recent history and what we would like in the future; to keep to facts would serve everybody. When it comes to noise, reasonable comes in again.

Mr. Toale stated more work needs to be done. Ms. Lemieux asked what would you like for next steps? Mr. Ebersole stated he would like to see what other towns have and how they deal with it, especially the Cambridge one. He noted the proposed noise bylaw addresses noise during daytime hours. That may address the noise issue. Do we have regulations for traffic/parking during an event? If there are different standards out there that we can refer to, he would like to see them.

Ms. Adams requested some simple exceptions listed, like weekly band concerts. Defining limits would be good too. Chief Marino stated you are already doing this, like with the car show, the tollbooth fundraisers; you make a plan to cover all these bases, pedestrian and neighbor issues, traffic etc. Under c. 181, issuance of a license, issues like pedestrian traffic, noise levels; these are all factored in. Mr. Toale recommended making this an agenda item considering everything we discussed tonight and publicize holding a public hearing in advance with a public draft.

Board Policies

Section 2.01 Access to Town Counsel

Ms. Lemieux referred the Board to the amended language.

Use of Town Counsel monthly office hours is restricted to town employees, board, committee, and commission members and legal questions must directly pertain to matters within their realm of jurisdiction and cannot be for personal interests. The Town Manager will assist citizens interested in submitting citizen's petitions for town meetings by acting as the conduit between Town Counsel with the legality and form of citizen petition articles.

She stated this is clarifying statement for a process that we already do.

Motion: R. Ebersole

2nd: P. Luck

To accept the wording change to Section 2.01 Access to Town Counsel

Discussion: Ms. Lemieux requested the word “will” be changed to “may” assist citizens interested in submitting citizen’s petitions for town meetings by acting as the conduit between Town Counsel with the legality and form of citizen petition articles.

Attorney Costa stated there was a second modification as well. He was in favor of citizen’s petitions being submitted well in advance of town meeting to give us opportunity to modify it, even before signatures are obtained. One concern he had was there was an inferred obligation on the part of the Town, Town Manager and Town Counsel to assist with the submission and the language that states acting as a conduit to Town counsel with the legality and form of citizen petition articles; and opining on the legality of petition articles while it should be on the citizen. We are happy to work with them but it puts the Town in a difficult position, particularly if this is submitted on the eve of a deadline. He recommended “may” versus “will,” so as to not obligate the Town to assist with citizens’ petitions. I’d further recommend that that latter part of the sentence, i.e. “by acting as...” be replaced with the following: “and may seek the advice of Town Counsel relative to the form and substance of these petitions, and their lawfulness and effect,” or something similar.

Ms. Adams stated having submitted a citizen petition before, she preferred “will” versus “may.” She believed town government should be available for a citizen working on a petition, as they are a member of the legislative body of the town. Mr. Toale preferred Town counsel’s wording as it does offer assistance and welcomes citizens to participate in government, but it also protects the Town as an entity on a legal level. Ms. Luck stated it protects the Town from increased legal expenses and it would be nice to have a timeline so it is not submitted at the last minute. Mr. McQuaid stated you need to have discretion; yes, the Town is working to serve the people but you don’t get to tell a town employee that they are going to help you. Mr. Ebersole stated he was okay with the word “will,” if it’s not the legality. I think we should be helping people with the form of the citizen petition to make it proper to come before town meeting in order to vote on it. Mr. Costa clarified he is not looking to place an obligation on the Town unless you want to and also to be sure that you are not placing yourselves or Town counsel in a position to be giving legal advice to individual citizens. Yes, they (citizens) are the legislative body, but from a legal perspective you are the Town. My duty as Town Counsel is to the Board of Selectmen as the chief executive officials. So aside from changing the word “will” to “may” and that is left to your discretion, after the term Town Meeting where it says “by acting,” I removed the portion that suggests the Town Manager would act as a conduit between Town counsel specifically where it then says with the legality in form of citizen’s petition articles. I had said the Town Manager may seek the advice of Town Counsel relative to the form and substance of these petitions and their lawfulness and effect. She is still seeking the advice of Town Counsel but is not acting as a conduit between the individual for the purposes of getting legal advice.

Further discussion ensued. Mr. Ebersole withdrew his motion.

Motion: R. Ebersole

2nd: D. McQuaid

To come up with wording as proposed by Town Counsel

Vote: 4 in Favor, 1 against (Adams)

Section 4.01 Liquor License Regulations

Mr. Ebersole stated lighting came up during a liquor license violation hearing. He referred to 1.05(e) Physical Premises: The premises shall be lighted in all public areas in a manner sufficient for the safety of the patrons and in a manner sufficient for the agents of the Authority to make observations at the premises without the need to identify themselves or the need to seek assistance. Ms. Peterson noted the defense attorney was challenging Section 1.08(f) in reference to the "lighting degree of not less than one foot candle".

(Excerpt from May 18, 2018 Minutes: "With regards to the lighting, there has been no talk about one candle, what does that mean? Typically the lighting is one light foot per square foot. That is not in your regulations. I believe that most towns require five light foots per square foot. Your regulation is incredibly low. If the officer had to go in and could see the people and use a flashlight to read the licenses, that's not odd.") Mr. McQuaid added part of issue at that time with the owner was that the business was closed so why have the lights on.

Attorney Costa stated any bylaw that addresses things like lighting and noise is a challenge. There are two ways to regulate these, qualitatively or quantitatively or both. When you regulate qualitatively it is a more subjective standard which gives you some discretion. When you regulate quantitatively, it is more objective. The challenge is do you have the resources or the mechanism to complete the measurement and to then determine if there has been a violation and then to enforce the violation in a manner that will upheld in appeal? What Costa sees more often is a more subjective qualitative standard where it states lighting shall be sufficient to ensure the public safety at all times on the premises.

Mr. Toale stated one of the reasons he wanted to review our alcohol-related regulations was to ensure that ours were within reason vis-a-vis other towns or legal statutes to be able to defend them when an occurrence happens. So are ours sufficient to allow us to enforce them as the local licensing authority? Attorney Costa stated he believed the answer was yes, he has seen all sorts of liquor licensing policies and guidelines. Lunenburg's are in the middle compared to others; he believed they had enough substance, but if you want recommendations or me to provide a more section by section narrative approach, he could provide that. Mr. Ebersole suggested checking with the Police Department, as the agents of the local licensing commission, whether they feel supported enough and they understand the language.

Chief Marino commented with respect to the lighting issue, windows cannot be obscured; we need to be able to see inside the building from the outside. Officers should be able to see a driver's license indoors without the assistance of a flashlight. They have had to address this before. Mr. Ebersole stated another reason we review these regulations is to become familiar with them so when we hold a violation hearing we are prepared. Some of the discussion we had is when do you issue a warning, suspension or revocation of a license? What do we really think is important? He suggested Town Counsel do a cursory review of the regulations with the Police Chief on what things might be changed and bring it back to us.

Section 4.02 Bring Your Own Bottle

Attorney Costa reported he did a section by section review of this and Lunenburg's policy is nearly identical to what he has seen in other towns. One question presented to him was can there be a carry in permit for a place such as Shady Point Campground or some other locale that is not a restaurant? The easy answer to that is no. Municipal BYOB regulation is for food service establishments that are open-to-the-public per the issuance of a common victualler's license. He was not aware of a community that has regulated the consumption of alcoholic beverages

brought for personal consumption to private properties like campgrounds or any regulation for bringing in alcohol for consumption on private property.

2. General Rules: Costa did not see any guidance relative to when and how an application is to be made; what fee(s) may be assessed to process the same; what process follows, e.g. notice, public hearing, opportunity to be heard; etc.

3. (c) Costa noted there was no definition of a fast food restaurant. But there is a provision here that states no carry-in permit shall be issued to any fast food restaurant which is part of a restaurant chain or franchise. For example: "An establishment the principal business of which is the sale of pre-prepared or rapidly-prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, in cars on the premises or off the premises altogether."

3. (g) The Board may refuse to grant a carry in permit in certain geographical areas of town...or when not allowed as permitted use under a Special Permit...Costa asked when "what" is not allowed? He found the wording to be confusing. To qualify for a carry-in permit, the applicant must be a common victualler. It is the restaurant use that qualifies it. He questioned "no common victualler's license will be issued to operate a food-and-beverage establishment where it is prohibited by zoning." Suggestion was made to find out why it was in the policy and that we shouldn't have any wording that we can't defend.

4. Obligations of a Common Victualler

Attorney Costa noted other possible obligations of the Permittee, for consideration: (i) a requirement to order and consume food on the premises; (ii) restriction(s) on uncorking, pouring or sealing of bottles by common victuallers; (iii) mandatory employee training. **(b.)** mentions dining room or dining rooms but what about outdoor seating areas?

6. Penalties for Violation

Attorney Costa stated he clarified the first paragraph and commented on the second paragraph regarding multiple violations by the same customer or patron or arising out of the same event; he was unsure about the enforceability of penalties imposed as part of a licensing/permitting policy that are due from the customer or patron. He will further research this.

7. Suspension, etc. of Carry In Permit

Attorney Costa wondered about the provision to revoke or deny; does the Board wanted to use the word "willful." What about negligent or grossly negligent? Willful is a different standard legally than negligent. Negligent gives you more flexibility in enforcement.

4.17 Taxicabs

Attorney Costa stated Ms. Lemieux has asked if anyone was regulating Uber and Lyft? These services are regulated at the state level.

G.L. c. 159A½, adopted by the Legislature as Chapter 187 of the Acts of 2016 (Aug. 5, 2016), entitled "Transportation Network Companies," and specifically Section 10 thereof, states in part: "Except where expressly set forth in this chapter, no municipality or other local or state entity, except the Massachusetts Port Authority, may... require any additional license for a transportation network company or transportation network driver... or... subject a transportation network company to the municipality's or other local or state entity's... requirements, including but not limited to entry or operational requirements; provided, however, that a municipality or other local or state entity may regulate traffic flow and traffic patterns to ensure public safety and convenience."

Mr. Ebersole asked if we CORI limousine drivers rather than just the owner. Ms. Peterson stated since she has been here she has run CORIs on any new drivers.

5.01 Pole Petitions

Attorney Costa stated double poles have been the topic of discussion in a number of communities. Ms. Lemieux's notes for this section read "Define the number of feet for abutters. MGL C. 166 § 22 reads "written notice of the time and place of the hearing shall be mailed at least seven days prior thereto by the clerk of the city or by the selectmen of the town to all owners of real estate abutting upon that part of the way upon, along, across or under which the line is to be constructed, as such ownership is determined by the last preceding assessment for taxation". Look into including prohibition of double poles, petitioner responsible for costs of notice of hearing (look at Hopkinton, MA regulations and speak with Town Counsel if this type of regulation requires approval by Department of Public Utilities."

Attorney Costa stated the Town cannot prohibit double poles. Acknowledging that the presence of double pole sets for prolonged periods while attachments are transferred from the old to the new pole present aesthetic and safety concerns" and further conceding "that G.L. c. 164, § 34B places a ninety-day limit on the utility pole replacement process," the Supreme Judicial Court nonetheless concluded, in *Boston Edison Co. v. Town of Bedford*, 444 Mass. 775 (2005), that although there is no express legislative intent to forbid local activity regarding double pole removal, the comprehensive nature of G.L. c. 164 implies that the Legislature intended to preempt municipalities from enacting legislation on the subject." It was noted the utility company can't just remove poles due to other lines (cable, phone etc.) being attached. It has to be done sequentially. Ms. Lemieux asked if this would prohibit the Board from not granting a pole petition due to other double poles in town? Attorney Costa stated legally he would not recommend it.

5.02 Road Acceptance or Road Discontinuance

Attorney Costa noted his changes in the section mimicking statutes but also providing some flexibility for language and others that just made sense. Ms. Lemieux had asked, "Isn't it a requirement to vote to layout the road at public meeting and then can be voted at town meeting?" Attorney Costa had answered "Not a statutory requirement, except where the road acceptance includes a taking by eminent domain (where the owners-of-records of the road must be given 7 days' notice)."

Motion: R. Ebersole

2nd: D. McQuaid

To change Section 5.02 Road Acceptance changes as provided by Town Counsel

Vote: All in Favor

7.10 Social Media Policy

Attorney Costa stated he did not make section by section comments purposely but made some comments. He had associate, Kate Feodoroff, review it as she has done this for a number of communities. She believed this to be sufficient. One question Ms. Lemieux had was can this be applied to both elected and appointed officials? Ms. Feodoroff agrees whole heartedly with applying the social media policy to elected and appointed officials. Sarah Bellino (of our firm) drafted Easton's policy, which Ms. Lemieux included in the Board's packet. Including public officials is critically important because residents who appear before public bodies should feel that they are receiving a fair hearing (which is undermined by misbehavior on social media). If Ms. Lemieux is interested, Ms. Feodoroff is working on a draft policy with Newbury that addresses use of equipment, email, social media and public records/OML compliance when using technology. It is still a working draft and we are trying to figure out if our policy

provisions relative to elected and appointed officials should be separated. However, I think it is a good start on something more comprehensive, if that is what Lunenburg wants.

Ms. Lemieux believed "employee" should be defined. ("Employees" as elected and appointed officials and paid employees of the Town.) Mr. Ebersole believed anyone serving the town should know what standards they are going to be held to. Also, how does it fit with all our other policies? Ms. Adams suggested defining posting on town sanctioned sites and separating it from personal sites; that is not really well defined here.

Mr. Ebersole, referring to employee's use of social media sites at work, asked about an appointed official who is considered an employee; can they not use their social media when they are at their committee meeting? Discussion ensued about making personal comments on social media while at work.

Mr. Costa stated the Town has a zero tolerance policy, but there will always be exceptions. So does it make some sense to try to place some limitations on it as opposed to just adopting a zero tolerance policy that you know from the day it is adopted will be violated?

Mr. Toale thought this was important enough to not talk in generalities. We should drill down and be specific as to how it affects paid employees of the Town, what they say on behalf of the Town, what they say on their own personal sites on their own time. We should talk about representatives of the town that are not employees, but are employees by this definition. Committee members, elected and appointed, maybe they are different. We should be very specific about what is appropriate and what isn't. Even if it is unenforceable it should be a norm that we understand is appropriate.

Mr. Ebersole stated there would be value to split it up three ways; employees, appointed and elected officials and cite some examples. Mr. McQuaid stated the important sentence to him was "As representatives of the Town of Lunenburg, employees should exercise caution with respect to comments they post concerning the Town as employees or officials." We should be holding ourselves to a higher standard not engaging in misinformation, fear mongering or bullying or anything like that online and we shouldn't be doing anything that could portray your personal thoughts as the thoughts of the Board.

Further discussion ensued about free speech, open meeting law and communication by elected officials versus multiple member bodies. Mr. Ebersole believed as a public official he has the ability to speak on a topic in a public forum and it doesn't count as deliberation. Ms. Lemieux noted electronic communication by one member of a multiple member board, even though no one else on that board responds back, is deemed deliberation and a violation of open meeting law. Attorney Costa confirmed that is the case for electronic communications like emails. The challenge with other sorts of social media is that some of that deliberation is occurring in public. Mr. McQuaid presented a possible scenario to Attorney Costa: if Mr. Toale goes on Facebook and says something about a topic the board has been discussing that I disagree with or I believe is factually wrong, and then the comment section starts going, I have to wait until we convene again to express my opinion? Costa stated that is the challenge because the argument is if you respond, one could argue that is deliberation because you are discussing a matter that is within the jurisdiction of the Board and you are doing so outside of a Board meeting. Ms. Luck stated if I go to "Discussing Lunenburg" and I express my opinion on something we are going to deliberate next week, I have just silenced all four of you; you can't respond because then it's deliberation. So it is inconsiderate of me to say it to begin with. Mr. Toale stated we should have our discussions here where we are in public on an agenda in front of anyone who wants to know about it. If it happens at three in the morning on a FB page that somebody is moderating, that

half the town may or may not know it is there, and the other half may live and die by it, to me that is a standard that I don't believe is appropriate for us. Mr. Ebersole believed he has the right to talk about how he is going to vote in a semi-public meeting. Are we talking about any comment or the way we are commenting because I am struggling with this? Suggestion was made to get more social media policy models from other towns. Attorney Costa stated the discussion is policy versus legal. There is a distinction between what the law requires and what would constitute an open meeting law violation and what a policy should and shouldn't include. There is not a lot of determinations by the Division of Open Government that addresses social media. Mr. Ebersole would like to have specific guidelines on what would be the best practice on what to say or not. Mr. Toale stated Town counsel can provide some guidance but further discussion by the Board is needed.

Mr. Toale reviewed the upcoming meeting schedule. The next meeting is November 6th, we meet with the School Committee on the 7th.

PUBLIC COMMENT:

Ms. Adams noted Saturday is Homecoming and the parade, Sunday is the Miles for Myles Run and the Ham and Bean Supper is Saturday at 4 pm at Eagle House.

Motion: R. Ebersole

To adjourn the meeting at 10:30 p.m.

2nd: K. Adams

Vote: All in Favor

Respectfully submitted,



Elaine M. Peterson

Executive Assistant to the Town Manager

RECEIVED & FILED

DEC 10 2018

**LUNENBURG TOWN
CLERK OFFICE**