

The Board of Selectmen met on Tuesday, February 11, 2020 beginning at 6:30 pm in Room 112 at the Town Hall. The following members were present:

James O'Neil, Chairman
Nancy Mackenzie, Vice Chairman (arrived at: 7:05pm)
Benjamin Barrett, Clerk
Mark Gallivan

Also Present:
James Johnson, Town Administrator
Kristine Brown, Benefits Coordinator

Andrew Flowers, Housing Partnership (Chair)
Phillip Czachorowski, Housing Partnership member
Ashley Clark, Community Planning Director
Elizabeth Gaffey, Town Clerk

Chairman James O'Neil called the meeting to order at 6:37 p.m. following the Pledge of Allegiance.

Action Items:

2-32 Open Meeting Law Complaint – Review, discussion and response to the January 21, 2020 Open Meeting Law complaint filed by Mr. David Salvatore concerning the form of the Board's January 7, 2020 meeting notice with respect to a December 30, 2019 Open Meeting Law complaint filed by Mr. Christopher Mackenzie:

Mr. Barrett stated that for the sake of clarity and to ensure that all relevant information is memorialized appropriately & to ensure that everything is in one place, I am going to put this into two motions.

First, To the extent that Mr. Salvatore's complaint raises concern about the prior meeting notice, I would ask, based upon the statements made and facts summarized here tonight, for a **motion** to ratify, validate and confirm the Board's January 7, 2020 vote to resolve the December 30, 2019 Open Meeting Law complaint by authorizing Town Counsel to file a response with the Attorney General indicating that the vast majority of the matters raised related to meetings held more than 30 days prior to the date of the complaint, and, further, that other matters did not raise issues under the Open Meeting Law, and that the following action be taken:

- (1) Add the minutes of the January 7, 2020 meeting to the minutes of the current meeting, including Mr. Salvatore's written notes:
- (2) Add the Board's response to the December 30, 2019 complaint, filed with the Attorney General, to the minutes of the current meeting.

The motion was seconded by Mr. Gallivan. Voted 3-0-0 (O'Neil, Barrett, Gallivan)

2-33 Vote Open Meeting Law-Ratify, validate and confirm the action taken by the BOS at its January 7, 2020 meeting to review and reply to a December 30, 2019 Open Meeting Law complaint filed by Christopher Mackenzie:

Mr. Barrett, second, with respect to Mr. Salvatore's complaint, I would ask for a motion to direct counsel to prepare a response consistent with the summary of the matter already provided, deny that a violation of the Open Meeting Law occurred based upon the particular facts at issue, and that the following action be taken to promote transparency and further the purposes of the Open Meeting Law:

- (1) Request that the Town Clerk work with Town Counsel to prepare a "best practices" summary for the preparation of meeting agendas; and
- (2) Consistent with past practice, schedule and hold an Open Meeting Law training for staff and boards and committees.

The motion was seconded by Mr. Gallivan Voted 3-0-0 (O'Neil, Barrett, Gallivan)

Mr. Barrett went on to state that the motions & the minutes would be appended to the meeting minutes of THIS meeting. That way everything would be all together in one place.

2-34 Vote to award MSBA OPM Contract to Compass:

Mr. Johnson, about 2 weeks ago I went into Boston with the School Superintendent, members of the school & building committees & Patrick Shield. They voted to affirm the Town's decision to award Compass the contract. They are asking for the BOS to vote to formally move forward with this. We need to get it done because we have to get it in by the end of next week.

Motion moved by Mr. Gallivan, seconded by Mr. Barrett to award the MSBA OPM Contract to Compass and allow Jim Johnson to sign on the Boards behalf.

Voted 3-0-0 (O'Neil, Barrett, Gallivan)

2-35 Vote and sign Absentee Ballot Voting/Early voting policies as requested by Town Clerk:

Town Clerk, Elizabeth Gaffey, we are offering early voting a couple of times this year. The first one is February 24th - February 28th it will be 5 days of early voting here at the Town Hall. We will also run this in the last two weeks of October for the Presidential Election. The Board of Selectmen does not have the Town Hall as a designated polling place, I am trying to cross the t's and dot the i's, Early voting works different than a regular election day. I do not need a constable, it is more relaxed. I spoke with the Board of Registrars we want to see if this policy

could go into place (no political signs or attempts on political persuasion on the municipal building/on the Town property during early voting). They voted in favor 4-0-0. If the BOS is in favor it would be nice to get that policy in place & to have a document in place signed by both the Board of Registrars & the Board of Selectmen to refer to if someone questions this.

With there being no questions for Ms. Gaffey a motion was moved by Mr. Gallivan, seconded by Mr. O'Neil to sign the absentee ballot voting/early voting policy document from the Town Clerk.

Voted 3-0-0 (O'Neil, Gallivan, Barrett)

Discussion on inclusionary Zoning bylaw and Housing Trust Articles:

Mr. O'Neil stated that the Board of Selectmen are sponsoring these two articles and felt it would be good to discuss these articles in detail and have an opportunity to ask questions. It also gives the Board an opportunity to allow questions from others. It is good to have as much dialog up front as we can possibly can. We want to separate fact from fiction and let people know what the real facts are. We have Andrew Flowers here from the Housing Committee to explain & answer questions.

Mr. Barrett, we wanted to thank Ashley Clark the Town's Community Planning Director who has helped craft this with the Walpole Housing Partnership and Courtney Starline a consultant, who is not here tonight. It was great to have their input.

Mr. Flowers, I am happy to be here to answer questions. We can have a quick overview of the two but I wanted to mention that Ashley & Courtney have been very helpful & have done a great job.

Mr. O'Neil, having an overview is always helpful. I am sure people have questions. If we can do this in a way that does not derail the discussion, I would like to entertain questions as we go through the articles. We will let the Board ask its questions first & then go into the audience. This isn't the time for speeches or politicking. It is about the mechanics of the article such as "I don't understand what this means".

Mr. Flowers, a quick overview, the overarching problem is that Walpole is booming with development but affordable housing is scarce. The Housing Partnership Committee, of which I am the chair, has been working with the Select Board and Planning Board on Article 21 & Article 22. Article 21, it requires larger scale developments (6 or more units) to include some affordable housing units as part of their market rate. Article 22 creates a housing trust to create more affordable housing. Lack of affordable housing is a problem in Walpole. About 30% of Walpole home owners and 60% of renters spend more than 30% of their income on housing. This Article would allow Affordable Housing to be done within the existing zoning bylaws. We would change the bylaws to have this inclusionary Zoning Bylaw (IZB) but where you can build multi-family housing would not change. IZB's are very common. More than half of

Massachusetts Cities & Towns have some sort of IZB. For developments that are 6-12 units, 10% would be required to be affordable; 13-20 units, 12.5% would be affordable; more than 20 units, 15% would be required to be affordable.

Article 22 would create a housing trust that would receive funds from payments in lieu. The developer would make a payment. That payment would go directly to the Housing Trust. The purpose of the Housing Trust is to create a Board that is supervised very closely by the Select Board. A trust can provide financial support or help rehabilitate existing affordable housing in town.

Mr. Barrett, let's start with Article 21. A lot of time & effort went into this and also research of different models that would work for Walpole. Section 6 shows the math that is utilized. We get into the parking requirements & density requirements. This would be a good time to see if anyone has any questions.

Mr. O'Neil, what I have heard is that this law would allow us to modify existing house lots and split them into pieces to offer affordable housing. I know that is one of the things being questioned here. Maybe we can talk about the minimum lot size.

Ashley Clark (Community Planning Director), this is a question I have gotten a lot. "Let's say I have a house on a 40,000 square lot, I can tear it down and build a 40B on it. That sounds great", however that is not how the math works. In order to do that you would need a lot that was at least 3.6 acres. Ms. Clark explained the math that went into that. We did an analysis looking at GIS data. The average lot size in Res A is 30,200 square feet. You can't have multi-family development in a single unit residence. Therefore you cannot have someone tear down their house in a single family zone and build a multi-unit building on that lot.

Mr. O'Neil, is it possible that someone could tear down a house on a 3.6 acre lot and then build an affordable housing unit. Do we have any idea how many lots in the Town would qualify?

Ms. Clark, there are not that many parcels that would qualify – there is lots of conservation/protected land that we can't build on. Just for context under zoning today you could do 6 units on over 4 acres. The difference is about ½ an acre.

Mr. O'Neil, under the existing zoning bylaw, I could subdivide the property and build houses today.

Mr. Flowers, there are two separate issues. 1) is the type of structure one can build under IZB and the other is how many. The type of structure doesn't change. You CAN NOT build multi families in a zone that is not zoned for multifamily, that does NOT change. We want to make it economically viable. It's not that different from existing conditions.

Mr. O'Neil, what if we left the bylaw the same way as it is written today.

Ms. Clark, the economic viability of the project. We are not going to be able to sustain it.

Mr. Gallivan, we are under 10% now for affordable housing. Even with the S. Walpole 300 unit complex we would still be under. What could a 40B developer do on that same lot in Residence A.

Ms. Clark, under the IBZ, the Zoning Board of Appeals has a lot more discretion. They are in a better position to say "you need to move that building". Under a 40B we do not have much wiggle room.

Mr. Gallivan, if we don't get to the 10% we are still at the mercy of the 40B's- jamming a lot of units on a small parcel. Can you talk about the numbers and how do those numbers work out.

Ms. Clark, it's a dance – what is on the SHI what is falling off the SHI. I cannot see all 300 units getting approved. We would be at 10.6% with the 2020 census numbers. The best that I can do with my data for projections, if we did the status quo we would be at 9% - Walpole would not typically be at the status quo but I am being conservative.

Ms. Mackenzie wanted to know if the Town would be covered for a little bit because we are working towards the housing goal.

Ms. Clark, there are a couple of ways you can get a safe harbor, for Walpole that means if 90 units are approved we have 2 years where we can hang out and not accept any others. After the 2 years we don't know if that safe harbor will expire or if the consensus numbers work.

Mr. O'Neil, what happens when the clock runs out on the safe harbor?

Ms. Clark, as soon as those 2 years run out you can expect those developers to come - it is like a beacon of light calling the developers.

Mr. Flowers, lets imagine that 5 years ago IZB was in the works, it would give you protection from things like the Summer Street project.

Mr. Damish, that doesn't stop other developers from coming in and building units that are NOT affordable and will not help us get to the quota.

Joe Moraski, I have a question why does this go to the ZBA and not Planning Board.

Ms. Clark, when I started in October the forms said SBGA the default is the ZBA. I wanted to make it clearer. The ZBA deals with 40B applications and in-law apartments.

Mr. Moraski, my concern is that in the case of subdivision control, you would be adding another entity. With parts in Section 6 it seems to replicate the authority of the Planning Board. I would think Planning Board would be to go-to authority.

Ms. Clark, folks have to go to both boards often. Our ZBA chair who is here tonight can speak to this. Applications are going to both Planning & Zoning Board

John Lee, ZBA chair: They go to Planning Board for site plan approval and ZBA for additional approval. I feel this benefits the town because you have 2 boards giving it oversight.

Mr. Moraski, when you go before the ZBA and Planning Board you see the same topics & questions come up. Is there a way we can reconcile that?

Ms. Mackenzie, do you mean regarding setbacks & side yards and things like that?

Mr. Moraski stated yes, it looked to me like that may cause a little bit of confusion. I just wanted to know how we will reconcile that.

Ms. Mackenzie, my thought would be that it would be much like now if they are going for a waiver or a variance. They currently have to go to both Boards.

Mr. O'Neil, I think the question is it properly before the ZBA or Planning board. It seems to be both.

Phil Czachorowski, most of the projects have gone to both ZBA & Planning. I think from the Housing Partnership view, the ZBA already handles those types of Special Conditions, more than the Planning Board does.

John Hasenjaeger, this allows people to bundle lots; there are issues of integrating these housing scenarios into existing areas. In the long run, I think this is a lousy idea. I think 10 units might be a better number, I feel like people would be doing a lot of 5 unit projects. There is no incentive to the developer to take Ashley's suggestions. No one will play in that sandbox, it's double jeopardy. I hope we will be in safe harbor soon. There were assurances made by the BOS & Planning Board that there would be no more changes until after we updated the master plan in the zoning book, now we are turning the zoning book upside down again.

Mr. O'Neil, that is not accurate, I think when we put the Affordable Housing Committee in place that set in motion a number of things that were clearly articulated in those plans - this is part of that. You have raised 2 interesting questions: 1) is a question of the overlay district, 2) would be the economics. Did we consider the overlay district as an option and also what about the economic question that John asked.

Mr. Flowers, I would like to pursue the overlay district to address affordable housing. Several of our neighboring towns have this. It allows denser incentives to have developments near transit & public district's where we want affordable housing. Why do we want IZB first before overlay, well frankly I feel like downtown residents or East Walpole residents probably would feel like they are already seeing that. We felt now was not the right time. Instead have a strategy through IZB that would spread it out throughout the whole town instead of concentrating it in certain areas, especially through 40B's. I think 40R's are a good idea, just not now.

2nd questions, when we started this project we considered the experience of neighboring towns. We found that Medfield just passed IZB, exactly like what we are proposing. It is working well. We did our due diligence. It terms of 6 vs 5 units- and people building under the requirement. IZB isn't about catching these small 6 unit places. If someone is planning to build 150 units and the trigger is 6 they are not going to suddenly build just 5.

Mr. O'Neil, in Medfield where they just put this in place, do we have examples that 6 is a viable number.

Mr. Flowers, I am going by what Courtney Starlight, our consultant has told us. When I look at Walpole, it is very lumpy. We see these 1 or 2 units then all of sudden a huge 40B. This is to address those big projects. We felt 6 units was a viable economically.

Mr. Damish, with the formula for minimum lot size, someone thinking of doing 6 they could do a 7 or 8 because you have redrawn the footprint.

Ms. Clark, it provides more flexibility for the ZBA to make requests or to deny.

John Lee ZBA Chair, if someone builds 6 lots and then 7th affordable one they would still sell that at the affordable rate. Affordable in Walpole would be \$250,000. It is not as if the developer is giving away a house. The developer still gets a quarter of million dollars. John used the term "giving it away" it's not, the developer still sells this house but at an affordable rate.

Bob Steral from ZBA, mechanically even if a project complies with zoning but they want to provide affordable, they would still be required to get a Special Permit. Has any thought been given to why the extra stop for the Special Permit it is another appeal risk, another cost to the developer.

Ms. Clark, the town can come together & develop a set of guidelines and standards under these conditions. Given the flexibility that is in here, I think having the board review it is an appropriate cost.

Mr. Barrett, all of these little items are valuable. Towns do revise this. We are not etching this in stone. We can come back and revise this to fix it.

Ms. Mackenzie, how do you compare this to what Westwood has done? They are one of the towns who did it right. They got to the 10% but still managed to stay beautiful.

Mr. Flowers, I can't speak to it entirely, I do know they used an overlay district. I just can't speak to the specifics.

Ms. Clark, as of 2017 Westwood was at 10.5%. If your goal is to get to 10% this a proactive way to do it on your own terms. I can do more research on Westwood.

Mr. O'Neil, what other objections have come up. I want to make sure we tackle all of the objections and have all the facts.

Ms. Clark, one of the issues I have heard is "if we get to 11% why do we need to keep going? Why is Walpole reaching for 15% when we only need 10%?" You do that because it doesn't account for all the other units that get developed. You have added a little buffer when those units do get added. The other question was "why does this help Walpole, why are we providing these units?" You are allowed to request 70% of local preference.

Ms. Mackenzie, that is in there already?

Ms. Clark, that is part of it. The State allows you to do that.

Mr. Hasenjaeger, I am interested in this ceiling, I don't think a lot of people want to have 25% affordable housing.

Ms. Clark, it's the math, to keep pace.

Mr. O'Neil it gives you a buffer.

Mr. Hasenjaeger , there is not a lot of land left.

Mr. Gallivan, 15% helps neutralize the 1's -5's, don't turn this into an extreme thing.

Ms. Mackenzie, we have a lot of streets with 3 or 4 houses. Those are the properties that creep in. That is what starts bringing our number back down, because we don't have a lot of land. That is what is happening.

Mr. O'Neil, this has been a very good first step on article 21. I think we need to have a straightforward simple story. That says the why. We are trying to get ourselves out of all these 40B's. We have this gap which is #1, #2 to Mr. Damish's point of view. This is something that will go over time and we need to stay ahead of it. This isn't dramatically different. We need to take on the clear objectives that we know will come up and address them. We need to bring more clarity to this conversation.

Mr. Barrett, Article 22 is for the affordable housing trust fund which is...

Mr. Flowers, the purpose of a Housing Trust is that you give the developers a flexible option to receive the payments in lieu. A housing trust is a major tool for towns. Walpole affordable housing trust fund would be a 7 member board. It is mostly copy & paste of State statute which highly regulates what the trust can be used for. You can't just spend the money on fields or sewer; you can only use it on select things. That said it has a flexible range of options. It is smaller projects (\$40,000 in the trust fund to help existing units become ADA compliant) This Board is NOT an autonomous body, not only does the Select Board appoint the board...any expenditure over \$15,000 NEEDS to be approved by the Board.

Mr. Barrett, I would expand that we can help the Walpole Housing Authority by making improvements to those buildings. If we have it in the trust then they can get matching grants from the federal or state government.

Mr. O'Neil, for the Board of trustees - it clearly lays out how the Board would be organized, who would be on that board.

Ms. Mackenzie, out of the 80 communities who have a Housing Trust, how many of them have a CPA? My understanding of this is because some communities do not have CPA.

Mr. Barrett, you create this so you have a place for money to go. You need a housing trust as a place to have that money & spending.

Mr. Gallivan, 8 weeks ago I was pretty cold to the Trust idea. I have been doing research and feel like it is a good thing. I have also learned more about the Housing Authority. The inclusionary zoning hits one piece of the market but there is another piece that we need to continue to think about. Are there any federal grants out there for Housing Authority money, I think that answer is no. Not trying to combine these issues, just something to think about. I have come around to the Housing Trust.

Ms. Clark, we are not talking about huge amounts. New roofs, things like that.

Mr. Barrett, it is just a first step. So many other steps need to take place to get where we need to be. Create a Housing Trust is just creating a vessel to keep the funds. There are a lot of options but we can't do ANYTHING without putting this in place.

Mr. O'Neil, the money comes in to the trust; now the time comes when it is time to take the money out of the trust, what are the mechanics of taking the money out. How can we be confident that the proper decisions are being made?

Ms. Clark, the trust would come before you and identify their priorities & what they want to accomplish in that year - anything over \$15,000 would have to be approved by the Select Board.

Mr. O'Neil, would town meeting have any say in this?

Mr. Flowers, to be blunt no, Town Meeting only meets 2x a year. There are time lines that do not meet up with Town Meeting. We need to be more nimble & quick.

Precinct 7 interested Citizen, Question on the funding mechanism? Where would the money come from? I heard people saying that tax money would go into it.

Mr. Barrett, we don't want to limit ourselves. The feedback we got originally when it said CPA was that people thought it was part of the CPA. We want it to be handled by the BOS & the trustee's.

Ms. Mackenzie, if we were putting tax money into the trust that would have to go through Town meeting. Town Meeting has always had the right to move money around. This won't change that.

Mr. O'Neil, if Town Meeting were to appropriate funds, would it be a 2/3 vote or simple majority

Mr. Johnson, it depends on the amount.

Mr. Hasenjaeger, why wouldn't this go through Capital Budget Committee?

Mr. Flowers, the Capital Budget Committee only meets a couple of times a year whereas the Select Board meets more frequently. The Select Board would be more plugged in to the needs of residents & town.

Mr. Johnson, let's say the Trust came forward and said they wanted \$50,000 from free cash. That would trigger approval from the Capital Budget Committee.

Mr. Damish, these would be dedicated funds that did not come from the town. They were funds received by developers etc. Those funds would be set aside from private sources.

Ms. Mackenzie, it is allowing us outside money to take care of our properties

Mr. O'Neil, this doesn't appear like it would turn into a large pot.

Mr. Hasenjaeger, I think for transparency purposes it should go before the Capital Budget Committee.

Mr. O'Neil, the Capital Budget Committee and Town Meeting do not meet often enough. Select Board meets on a regular basis. I would think if it was a big amount we would ask advice from department heads, Capital Budget Committee etc.

Ms. Mackenzie, is this consistent with other communities

Mr. Flowers, in my understanding it is more stringent than other communities.

Ms. Mackenzie, it is an extra safe guard which I like, I would be uncomfortable if the Trust was managing the Trust alone.

Mr. Damish, the funds are going to be kept in an account through the Town Hall correct?

Mr. Johnson, Town Accountant Jodi Cuneo would verify and then it would go through the Finance Director.

Mr. Damish, with regards to the audit, the BOS could put whatever detail they want into that. It would be available online.

Mr. O'Neil, I would expect that level of transparency

Mr. Moraski, the Trust wouldn't be cutting checks by themselves. You would need the board to approve that. Anything over \$15,000 would then need to be approved by the BOS; I think that is pretty transparent

Ms. Mackenzie, you have a Select Person on the board and then what are your thoughts for the other members who will be on the Board of Trustee's

Mr. Flowers, the Board of Trustee's would have 8 members. 7 members can vote and 1 is a non-voting/observer of the housing partnership just to have their influence. Of the 6 other members that are voting/make up the board. 3 would need to be residents who have the experience mentioned previously.

Ms. Mackenzie, I would like to have a Veteran on the committee. I think a veteran on this committee would be good. I would like it to be a requirement, they add a different perspective

Mr. O'Neil, I am more of a mind to include it as a preference.

Mr. Gallivan thanked the group who has been working on this. Just speaking for myself, I did have concerns at first but I appreciate that you tried to "Walpolize" it. This has come a long way.

Mr. Flowers stated there are a lot of people who have helped including the BOS, Joe Moraski as well as Katie Abate & Sarah Khatib of the Planning Board

Mr. O'Neil thanked everyone in the room for their participation & involvement. He went on to state that it is important to separate fact from fiction.

ADJOURNMENT:

With there being nothing else to discuss

Motion moved by Mr. O'Neil to adjourn the BOS meeting at 8:31 pm, seconded by Mr. Gallivan Voted 4-0-0 (O'Neil, Mackenzie, Barrett, Gallivan)

Respectfully submitted,

Kristine Brown

Minutes approved on: _____

The Board of Selectmen met on Tuesday, January 7, 2020 in the Main Meeting Room of the Town Hall beginning at 7:00pm. The following members were present.

James O'Neil, Chairman
Nancy Mackenzie, Vice Chairman
Benjamin Barrett, Clerk
Mark Gallivan
David Salvatore

Also present
James Johnson, Town Administrator
Cindy Berube, Executive Assistant

Mr. O'Neil called the meeting to order at 7:00pm followed by the pledge of Allegiance.

APPOINTMENTS

1-1 Ken Southwood seeking appointment to the Ponds Committee

MOTION Moved by Mrs. Mackenzie to appoint Ken Southwood to the Ponds Committee as a regular member Seconded by Mr. Gallivan VOTED 5-0-0

1-2 PUBLIC HEARING for installation of Tanks in the around for Prestige Gas located at 2285 Providence Highway

MOTION Moved by Mrs. Mackenzie to open the public hearing for the installation of tanks for Prestige Gas seconded by Mr. Gallivan VOTED 5-0-0

Ronen Drory we put the same size tanks in. We cleaned up the store. The amount of storage capacity is the same.

Mr. Gallivan commented I think it looks good. Mrs. Mackenzie thank you for cleaning up the site.

MOTION moved by Mrs. Mackenzie to close the public hearing, seconded by Mr. Gallivan VOTED 5-0-0

MOTION moved by Mrs. Mackenzie to approve the request of Prestige Gas to install one 12,000 gallon gasoline tank, One 4,000 gasoline tank and one 4,000 Diesel Fuel Tank at 2285 Providence Highway seconded by Mr. Gallivan, VOTED 5-0-0

1-3 Appointment of Dept. Sergeant Richard Kelleher as the New Deputy Chief for Police

Chief Carmichael It is my honor and privilege to recommend Detective Sergeant Richard Kelleher for the position of Deputy Chief of Police, within the Walpole Police Department. As you know, five eligible internal candidates participated in the Deputy Chief Assessment Center, with Detective Sergeant Kelleher earning the highest mark resulting from the promotional process.

Detective Sergeant Kelleher is a fifteen year veteran police officer, twelve of which he has served honorably with the Walpole Police Department. During his tenure with the Department, Detective Sergeant Kelleher worked 4 years as a patrol officer, 8 years as a case detective, and over 3 years as a supervisor overseeing patrol shifts, and the Investigations Division of the Department consisting of 4-7 detectives and school resource officers.

Detective Sergeant Kelleher holds a Bachelor of Science Degree from Bentley University; has extensive training in criminal law and procedure, certified police training council instructor, trained in supervision and management of police personnel, certified sexual assault investigator, and he is a graduate of the prestigious Boston Police Detective Formative Training School.

Detective Sergeant Kelleher has been awarded numerous commendations for his exemplary service to the citizens of Walpole, and has been involved behind the scenes in the most sensitive, complex and high profile cases investigated by our agency.

Detective Sergeant Kelleher has excelled in many areas of the department and is instrumental in assuming responsibility for crucial and onerous tasks within the agency, including tracking and preserving all property and evidence collected by the department, overseeing drug custody and destruction protocol, investigative case management, asset forfeiture, criminal-adult/juvenile court case management and supervision of school resource officers. For the last several years, Detective Sergeant Kelleher has served as a Supervisor on Norfolk County Police Anti-Crime Task Force (NORPAC), overseeing important drug task force & major crime operations, including the review and execution of warrant executions.

In addition to Detective Sergeant Kelleher's strong work ethic, he has also excelled in other areas of leadership within the department. Detective Sergeant Kelleher has consistently mentored younger officers and detectives, has earned the respect and admiration of all police personnel, including civilian staff, dispatchers, officers, and command staff members. He maintains a high level of communication ability, emotional intelligence, and demonstrating leadership by example at the scene of many critical incidents.

Notably, even though Detective Sergeant Kelleher's division is a plainclothes investigative unit, he has ensured that the detectives under his leadership are frequently involved in community policing activities. Detective Sergeant Kelleher and Detectives under his supervision routinely attend Community Policing Events. They attend the Ride-2-School events, basketball cop, street hockey cop, sporting events, and are heavily involved with our strong partnership with our schools, and preparation of ALICE protocol.

Detective Sergeant Kelleher has earned the respect and mutual trust of members of the department, town officials, and the community at-large. He has shown himself to hold the highest degree of integrity, trustworthiness, dedication and loyalty as a police leader. Detective Sergeant Kelleher understands the mission, vision and values of the Walpole Police Department, and the expectations of the citizens of Walpole. He embraces the community policing philosophy and knows operationally what needs to be done, and how.

As the Chief, Detective Sergeant Kelleher has proven himself a well-balanced leader and someone I can trust and have confidence in to complement me with the daily operations of the department. He is someone capable of motivating and inspiring personnel in the department. He holds himself to high personal standards and bearing, and he expects the same of others. He accepts and demands a high level of accountability. He is someone I can confide in as Chief, and someone I can depend on to get the job done during times when I am preoccupied.

There is no doubt that Detective Sergeant Kelleher will enhance the Command Staff of the Department and provide superior leadership for our departmental staff. Most importantly, Detective Sergeant Kelleher is prepared to ensure the quality of policing which the Town of Walpole has come to expect from their police department, is sustained for a long time to come.

I am excited about the new changes within the department and we are unyielding in our desire to continue being one of the best law enforcement agencies in the area. Detective Sergeant Kelleher as Deputy Chief will undoubtedly help us get there!

Mr. O'Neil I know you went through a rigorous process.

Richard Kelleher I have been a detective Sgt. since 2016, I live locally. I am honored to be here tonight. My work since I have been here is to lead by example and plan to go forward, it is important to follow the departments' position.

Mr. O'Neil we had the opportunity to interview, and I thought all candidates were great. You talked about the future of the dept. and you also mentioned that the people that will be put on the streets. Your community engagement that is important to us. I was very pleased with the discussion I had with you and I think you will be an outstanding Deputy Chief.

Mr. Salvatore I liked the process and talking to you all one on one. You always give credit to your group and one thing you were most proud of was the evidence room. I agree this is a good fit. Good Luck.
Mrs. Mackenzie I think it is great and good luck.

Mr. Barrett one thing that stood out to me was the community policing. I am happy that you are as committed to that as well.

Mr. Gallivan I also enjoyed the process as well. Community policing is important to the town. Congratulations and I think you will do a good job.

Mr. O'Neil it is an important role and you are the chief when the Chief is not here. Mr. Kelleher feels we are one of the best police departments

MOTION moved by Mr. Barrett to appoint Dept. Sergeant Richard Kelleher as the New Walpole Deputy Chief of Police seconded by Mr. Gallivan Voted 4-0-1 (Mrs. Mackenzie abstained)

1-4 Appointment of Patrick O'Connor to the position of Police Sergeant.

Chief Carmichael It is my honor and privilege to recommend Officer Patrick O'Connor to the position of Police Sergeant within the Walpole Police Department.

Officer O'Connor has been a police officer since 2012, when he began his career with the Nantucket Police Department. In 2016, Officer O'Connor joined the ranks of the Walpole Police Department and has been a remarkable addition to the department ever since.

Officer O'Connor holds a Bachelor's Degree in Criminal Justice; is fluent in French and Haitian Creole, he is certified in Crisis Intervention Techniques (CIT), Rape Aggression Defense (RAD) Instructor, Street Level Narcotics certified, and is a graduate of the Northeast Counterdrug Training Center - "Top Gun," Undercover Drug Investigation School - co-hosted by Mass State Police and National Guard Counter Drug Bureau.

Officer O'Connor is trained as an instructor in A.L.I.C.E. (Alert Lockdown, Inform, Counter, and Evacuate), and is instrumental in accomplishing the colossal task of training all Walpole Schools and Municipal offices, and the Council on Aging in critical incident response protocol.

Officer O'Connor is also trained in A.R.I.D.E. (Advanced Roadside Impaired Driving Enforcement), which focuses on field sobriety testing involving drugs, and he is trained as an ATV (All-Terrain Vehicle) Instructor for the department.

In addition to Officer O'Connor's education and training, he is the epitome of an officer in which other officers should strive to emulate. He is literally one of the most genuine, nicest people I have ever met, and his personality and charisma allows him to excel our community policing philosophy and initiatives because his pleasantness and compassion for others is so profound.

Over the past few years, Officer O'Connor has assumed responsibilities of the Medical Control Officer for the department, School Liaison to the Bi-County Collaborative (BICO) School and Home for Little Wanderers - Longview.

His personal characteristics, including his compassion, humility, dependability, responsibility, and personal initiative have allowed him to earn the respect and admiration of his peers, command staff, and members of the public.

Officer O'Connor proved himself as a leader long before being offered stripes for his uniform, and he will be an exemplary addition to an already robust staff of first line supervisors for the Walpole Police Department.

Officer Patrick O'Connor has my unrelenting support to be the next Police Sergeant of the Walpole.

Officer O'Connor stated he was only 21 years old when he got into the department. I want to thank the chief and I am looking forward to the next step.

MOTION moved by Mr. Barrett to appoint Patrick O'Connor to the position of Police Sergeant 4-0-1(Mrs. Mackenzie abstained)

Mr. O'Neil it is great that you can appoint from within.

1-5 Change of Manager for Wines and More to Jonathan Gentile

Greg power I am the chief director of Wines and More. Jonathan has about 4.1/2 years of being in the business. I think he is an excellent candidate for this.

Jonathan my dad is from Walpole. Before this I worked at a catering bartending service. Then I took over the warehouse. So I went to wines and more. I was asst. manager and know I am seeking to be manager

MOTION moved by Mrs. Mackenzie to approve the change of Manager for Wines and More to Jonathan Gentile seconded by Mr. Gallivan VOTED 5-0-0

NEW BUSINESS

1-6 Discussion regarding open meeting law complaint

Mr. O'Neil first order open meeting law complaint we need to deal with the complaint, disseminate the complaint and review the complaint tonight. Within 14 days we must respond within 14 days of receipt. I will read the complaint.

Jim O'Neil read the following complaint into the record.

Open meeting law Complaint filed by Christopher Mackenzie

The board of selectmen had a hearing to discuss a contract and instead discussed my character, my physical state, supposed actions by me that had not even been mentioned to me, but discussed with members of the board. Statements that I "dreaded going to the board" When in fact I wanted to go before the board but was told along with my wife present "They didn't want me to go before them, I should "sign or be fired" We were told "you have two people that want to press charges and testify against you" "you will rip the department apart" "you will be on the news because of your status & family status" "they had their minds

made up" and one member of the board has been very public about that statement since. He also sent a letter to a prospective employer postdated Oct. 21, 2019, referencing the executive session. Yes, I strongly believe this violation was and is intentional because it keeps continuing. The Town of Walpole keeps referencing my thoughts, words & actions including the latest email on 12/17/2019 and that email contains flat out lies. In the "clarification email" it is left out that I was told in my driveway about the changes to the contract and told if I didn't sign it right then the BOS would go ahead with my termination. During these dates the BOS also uploaded unapproved short hand notes from executive session, they then released a set of redacted minutes but removed them to replace them with a shorter version with a town council opinion.

One of the selectman has done Facebook posts and now a cable show that continues to slander me when in fact is spreading lies "the condition that I walked into the establishment" from an executive session that should not have been discussing what it was, or I should have been represented.

What action do you want the public body to take in response to your complaint? Review the actions of the board and chief of police and make appropriate sanctions, review the entire mishandling, misrepresentation, slander, and other personal very public attacks that have resulted from a string of executive session violations and public misrepresentation of the truth from the beginning by all of those in power above me.

Mrs. Mackenzie before we go any further I am going to be recusing myself and she sat in the audience.

Mr. O'Neil That is the complaint any comments from Board.

Mr. O'Neil there is a lot of things that were said that fall outside the purview of the open meeting law. Jim Johnson is going to work with town counsel. Mr. Salvatore questioned the agenda is that properly noticed. Town Counsel Lauren Goldberg from Kplaw stated the meeting notice is to be specific it is noticed for tonight. Mr. Salvatore so the fact that it doesn't include the name or date of the complaint is not a problem Attorney Goldberg It is my understanding it is on the boards Agenda and it is the Board that is dealing with it. I don't think it is necessary to include the name of the complaint. If there was an open meeting complaint filed about it in the future you can talk about it again.

Mr. Salvatore today's meeting agenda merely state's open meeting law complaint I don't think it puts the public on notice of what this meeting is about. It should say filed by Christopher Mackenzie against the Board of Selectmen on a particular date. It is almost like the name Christopher Mackenzie is the name that must not be said. We appointed a new Deputy Chief today and we never had any discussion there was an opening. There was no longer an announcement that we did not have a deputy chief. So Christopher Mackenzie names gets mentioned or discussed I get shot down or people are upset.

This is not unusual. On the Nov. 5 Agenda in a discussion of inadvertently released notes on the Executive Session in which Christopher Mackenzie's resignation was discussed the agenda item was listed as: "Town Administrator update regarding October 28th Social Media Post. No mention of what the meeting was about. Does that put the public on notice? This agenda description violates both the spirit and letter of the open meeting law as the possibilities of what was discussed on social media on October 28 are as varied as the world is wide. It failed to put the public on notice of what was to be discussed.

For those keeping score that is Three Open meetings law violations in the 8 months of Mr. O'Neil's tenor as chairman. We have three OML violations in my opinion.

1. The initial executive session where the wrong exemption was used which is the violation that we are discussing tonight. Is a violation.

2. The November 5 meeting where the agenda merely stated - Town Administrator update regarding October 28th Social Media Post. Again a violation.

3. And tonight's agenda which states - "Discussion regarding open meeting law complaint remarkably they all refer to events surrounding Christopher Mackenzie's resignation. It is almost as if Chairman O'Neil doesn't want people to know what is going on.

It almost as if all three of these violations are regarding Christopher Mackenzie resignation and it is almost as if the chairman doesn't want the public to know what is going on. As to the allegation tonight we violated the open meeting law

As I stated prior to my vote in opposition to going into Executive Session on August 6, the Board cited and followed the wrong section of the Open Meetings Law.

Chairman O'Neil chose to use exception # 2.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

The employment contracts contemplated in this rule are contracts between employer and employee regarding an agreement to render services for certain compensation and other conditions of that employment.

The more proper rules should have been Exception 1 which clearly contemplates a situation where the employee/employer relationship is being severed, such as we had here. That section states there exists an exception to the Open Meetings Law:

To discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. Perhaps that is why they chose the other section. In that case the employee should be notified in writing by the public body at least 48 hours prior, allowed to be present, speak, and have counsel present. That did not happen her it was a violation of the open meeting law.

Mr. Gallivan stated I disagree with you David on everything you have said.

Mr. Salvatore stated I agree with Christopher Mackenzie that a violation has occurred.

I also agree that action must be taken

The Open Meeting Law Complaint form requests from the complainant a suggestion as to what action should be taken to resolve this situation. Christopher Mackenzie states that there should be a "review the actions of the board and chief of police and make appropriate sanctions." And to "review the entire mishandling, misrepresentation, and slander."

I agree. We should be open and transparent about the entire investigation as Christopher. Mackenzie suggests. We should bring in an outside agency or firm to address various concerns raised by Christopher Mackenzie in the complaint and by Nancy Mackenzie in a recent Facebook post as well as other lingering issues.

An investigation is necessary because mistakes were made by this Board and it is important to restore the confidence of the people in our Police Department. Because of the vacuum of information that has been allowed to occur by the Chairman's actions. There have been numerous false allegations made. By way of example of the wide range of allegations, we have two diametrically opposed examples.

- a) Nancy Mackenzie has alleged in a Facebook post on January 2 that there was Police Department conspiracy to oust Deputy Mackenzie.
- b) While members of the public have alleged that there was a Police Department conspiracy to protect Mackenzie and cover-up a crime.

They both cannot be true, but in fact, both can be false. No matter the outcome we need to either confirm or refute these rumors with a full and public investigation into the facts.

In order for this process to be legitimate, at minimum, the following allegations need to be addressed.

I apologize for the length of what is to come but Christopher Mackenzie and Nancy Mackenzie made numerous allegations I would be remiss if I left any out of this discussion.

Allegation By Christopher Mackenzie: Christopher Mackenzie alleges that the Board was informed that he (Mackenzie) "dreaded going to the board" when he "in fact [he] wanted to go before the board."

Action Item: An investigation should take place of any efforts to improperly dissuade Christopher Mackenzie from exercising his rights to defend himself against the allegations.

Allegation: Mr. Mackenzie wants to address the fact that statements were made: "They [the Board] didn't want me to go before them, I should "sign or be fired".

Action item: There should be an investigation into who suggested that there not be a full airing of the allegations or that there would not be a full opportunity to be heard if Mr. Mackenzie so chose

Allegation by Mr. Mackenzie: Mr. Mackenzie states and I quote a) "We were told "you have two people that want to press charges and testify against you" "you will rip the department apart" "you will be on the news because of your status & family status" "they had their minds made up" and b) one member of the board has been very public about that statement.

Action Items

- a) An investigation should take place of any efforts to improperly dissuade Christopher Mackenzie from exercising his rights to defend himself against the allegations.
- b) An investigation should be pursued as to whether Mr. Salvatore's statements mat could be construed as supporting the notion that "they had their minds made up" and whether such statements were improper.

Allegations by Christopher Mackenzie: That David Salvatore "sent a letter to a prospective employer post-dated Oct. 21, 2019, referencing the executive session."

Action Item: An investigation into whether I sent or caused to be sent an anonymous note to the Town of Seekonk regarding Mr. Mackenzie and to determine if I violated any Ethical Rules and/or to exonerate me from the conduct alleged.

I will commence that investigation right now. I did not send the letter or do so by proxy. If I chose to contact the Town of Seekonk I would not have done it anonymously. If I were to have chosen to do it anonymously it would not have been in handwriting it would have been in Times New Roman.

Allegations by Christopher Mackenzie: That the email of 12/17/2019 and that email contains flat out lies. In the "clarification email" it is left out that I was told in my driveway about the changes to the contract and told if I didn't sign it right then the BOS would go ahead with my termination.

Action Items:

1. A determination needs to be made of what specifically Mr. Mackenzie believes to be "flat out lies"
2. Make a determination as to whether stating that Mr. Mackenzie needed to sign or proceed toward termination is an improper restraint upon Mr. Mackenzie's right to proceed to a full hearing on the matter.

Allegations by Christopher Mackenzie: That it is a lie that "the condition that I walked into the establishment" from an executive session that should not have been discussing what it was, or I should have been represented.

Action Items:

1. I am correctly being credited with making that statement during the executive session. The determination needs to be made as to whether there is factual truth to the statement.
2. A determination needs to be made as to whether I was within my rights given the information presented and the facts obtained, to make such statements in Executive session.

Allegations by Mr. O'Neil and Mr. Gallivan: That by speaking out about the issue I am violating Provisions of the State Ethics Law. The investigation of this item should be extended to all of the members of the Board that participated in the Executive Session and the Town Administrator. Also, investigated should be any PR consultants or any other individuals that were engaged for assistance.

Action Items

1. Determine as, I first requested on November 1, what is and what is not a public record.
2. Gather all statements of the above individuals regarding this matter up until October 28 and determine if any statements were improper dissemination of information obtained in Executive Session.
3. Gather all statements of the above individuals regarding this matter after October 28 and prior to November 1 and determine if any statements were an improper dissemination of information obtained in Executive Session and was disseminated beyond reporting what was in the released note.
4. Gather all statements of the above individuals regarding this matter after November 1 and determine if any statements were an improper dissemination of information obtained in Executive Session and beyond the information released in the redacted Minutes.

Nancy Mackenzie's Allegation: That people were motivated by "political personal, vindictive, self-serving, or workplace gains, when they make their mission to target them "a power couple"

1. Determine what people Ms. Mackenzie is referring to.
2. Determine if anyone misused their power and position to target the Mackenzie's for political, vindictive, self-serving or workplace gains.

Nancy Mackenzie's Allegation: "Someone claiming to be a friend spent a week plus destroying Chris' reputation and they kept us conveniently not aware or able to defend or stand up for himself...it's probably because they were doing something dirty and untruthful."

1. Determine the person against whom the allegation is levelled.
2. Whether the Mr. Mackenzie or his wife Nancy should have been made aware of the investigation prior to its completion.

Nancy Mackenzie's Allegation: That there was an inadequate investigation and stating "You don't investigate when you're afraid the lie will fall apart."

Action Item

Make a thorough review of the investigation including allowing the outside investigator to talk to any witnesses and assure confidentiality where appropriate.

My concerns: There should be an investigation of any contact between Nancy Mackenzie and members of this Board, legal counsel for the town, the Police Department, witnesses, and the Town Administrator related to the investigation of the conduct of former Deputy Chief Mackenzie.

Action Item:

1. Gather all contacts made between Nancy Mackenzie and the above parties and determine if any of the communications could be interpreted to be intended to affect the investigation.
2. Review the above contacts and determine if they are improper individually and as a whole.

Christopher Mackenzie and Nancy Mackenzie are seeking an open and transparent review of the entire situation. A position that I agree with and have been advocating from the very beginning. I deserve to have a full investigation into the allegations against me, as well. The Town, the Mackenzie family, this Board, the Walpole Police Department and the victim deserve to see this matter made right and for us to be as transparent as possible and as quickly as possible.

Mr. Barrett I think that whole bit David is really mischaracterized this OML we discussed. Talked about this issue a couple of months ago I commented we should reduce the temperature of things instead of increasing. These sorts of issues that are emotional can lead to conflict and personal issues and it degrades the discussion and animosity and it is completely unnecessary. We have processes in place at the State and local level to assess it. To review it and we need to let the inquiry take its course and then we can act on it and have a discussion. Baseless acquisitions, conspiracy theories that we have heard tonight do nothing to bring this dialogue to any conclusion and does not clear up any issue. Ask the Board and residents to conduct ourselves responsible. I think we should take it there. There is a right way to go about it. Once we come back with the findings.

Mr. Gallivan I like the approach of Jim and town counsel, David rants gave a lot of misinformation. He released information on camera.

Mr. O'Neil here is the bare bones we had a personal issue. The people were engaged and there are many things being said, that is what happened. I do not think this Board did anything incorrectly.

MOTION moved by Mr. Barrett I hereby move to designate the Town Administrator to work with Town Counsel to issue a response to the Open Meeting Law Complaint from Christopher Mackenzie dated December 30, 2019 on the Board's behalf consistent with the Board's review of the Complaint and its

discussion of the Complaint at tonight's meeting. Seconded by Mr. Gallivan VOTED 3-1-0 (Mr. Salvatore opposed)

Mr. Salvatore I would like to be involved in that process and offer some information. I think I can be useful. I ask at the next Board meeting to put something on the Agenda about the investigation of the conduct of this board by some outside agency.

Mr. O'Neil please put that in a form of a motion David. Mr. Salvatore did not. Mr. Salvatore stated I will send you an email asking that you put it on the agenda.

OPEN FORUM- Sarah Khatib Frontier drive, we have been working first on the random acts of kindness day this weekend, encouraging, residents, employees, business owner to be kind. We have a list of things that you can do.

Alex Coleman It was an idea that I heard about in Melrose and really took off. Some acts are very small and some more involvement.

Mrs. Mackenzie maybe we can have the Recreation do a blast.

1-7 reimbursement for Chapter 90 project 19-01 Paving and Resurfacing in the amount of \$796,902.62

MOTION moved by Mrs. Mackenzie to approve the request for reimbursement for Chapter 90 project 19-01 Paving and Resurfacing in the amount of \$796,902.62 and to sign the document seconded by Mr. Gallivan VOTED 5-0-0

1-8 request for One day all alcoholic license for knL'hts of Columbus for January 11,2020

MOTION moved by Mrs. Mackenzie to approve the request for One day all alcoholic license for knights of Columbus for January 11,2020 seconded by Mr. Gallivan voted 5-0-0

Town Administrator will update board on Revenue and Expenditures. The current Budget is balanced. Is concerned about licenses. The police dept. is asking for 3 additional officers. 1 Lt. and 2 police officers. How does Walpole compare to other towns and he compared us to Danvers. One other item is the Fire dept. we are adding a FF. School side of things they are looking for 4% increase. They are expecting a 5% from School committee that is almost 1.5 million dollars. I would not be looking to raise the 1.5 and I have discussed them raising the fees. We have to split this somehow. Health insurance is an 8% increase but I am hoping it will come in lower. Talked about the Tri-county fees. The revenues I am projecting will not hurt the town. We may need to make some cuts somewhere. Highway looking to add one person. It is needed. Depts. are asking for a large increase. We have been criticized. They are telling me they want more than what I am projecting.

Mr. O'Neil glad it is a balanced budget. Did you get into any specifics as to what the increase is? There Medicare money they think there will be decrease in this. Expecting sped into the town. They did not see the Medicare thing coming. Also looking at a few mandates, they need another Physical education teacher, Mrs. Mackenzie before Bob O'Brien came in and showed us how many people we had. At that time there were 14 in the 1980's. Now we have seven. We don't have the manpower to do some of the things. Maybe we could have barrels. We do not have people to pick up the barrels.

Mr. Gallivan stated Jim O'Neil I think you have done a great job balancing the budget. He would like to see us get 10 FF per shift. We can't send an engine out without 3 people. Take a hard look at getting to 10.

Chief Bailey would like to have a workshop with the Board. I have asked for 16 and I did a comparison of other towns. With the projected growth I came up with 25,000 to 26,000. When you add that to what we have it is almost 28,000 people. I am looking for 16 Firefighters per shift. I know it is going to take a lot to get to where we need to get. There is a grant coming out soon. What that does it pays 75% first year, 50%

second and the town pays the fool price in the end. NFPA a chart they did in 2014 they are running numbers for us again. Mr. Barrett would like to do a workshop. Mr. Gallivan do police and fire workshop in February on an off meeting night

Ben feels we should have a plan. I am also cognizant of overextending ourselves. Balance we have to strike going forward.

Mrs. Mackenzie Police and Fire should be ahead of the Curve. DPW we are behind but with the change in population we do not want anyone hurt.

IV. CONSENT AGENDA Items | These items will be VOTED as one motion

MOTION moved by Mr. Salvatore to accept with gratitude the following donations

1. Fisher Sunshine Fund to Veterans Committee \$45.00(1-9)
2. New pond Village Association to Library gifts \$500.00 (1-10)
3. Lorraine McCabe to Fire Gift Account \$25.00(1-11)
4. Yuan & Catherine Chen, Fire Gift Account \$200.00(1-12)
5. Helen Hourihan, COA Gift Account \$100.00(1-13)

Seconded by Mr. Gallivan VOTED 5-0-0

V. TOWN ADMINISTRATORS UPDATE

MSBA-the proposals for the opm were accepted and he is pleased to report that the town is recommending that Compass project Management be chose as the project manager going forward. Just before the meeting we are going forward with the February 3rd meeting. Mr. Salvatore the Committee reviewed a large number of resumes and got it down to three and basically was true to the scoring. Compass came in with the leg up. Two other companies were accepted. I think it was unanimous was compass.

Spring town meeting warrant - The board will close the warrant at your next meeting. Cindy and I are currently working on the standard articles to ensure that a draft is ready for your consideration on January 21.

Snow and ice have spent about \$250,000 of the \$818,000 budget. Will continue to monitor the situation.

VI. MINUTES December 3, 2019, December 17, 2019

MOTION moved by Mrs. Mackenzie to approve the minutes of December 3, 2019 seconded by Mr. Gallivan VOTED 5-0-0

MOTION moved by Mrs. Mackenzie to approve the minutes of December 17, 2019 seconded by Mr. Gallivan VOTED 5-0-0

MOTION moved by Mrs. Mackenzie to adjourn at 8:35pm seconded by Mr. Gallivan VOTED 50-0



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January 17, 2020

Lauren F. Goldberg
lgoldberg@k-plaw.com

Assistant Attorney General Carrie Benedon
Director, Division of Open Government
Office of Attorney General Maura Healey
One Ashburton Place
Boston, MA 02108

Re: Town of Walpole – Board of Selectmen
Open Meeting Law Complaint from Christopher Mackenzie, dated December 30, 2019

Dear Ms. Benedon:

KP Law, P.C. serves as Town Counsel to the Town of Walpole. On December 30, 2019, the Walpole Board of Selectmen (“Board”) received an Open Meeting Law complaint, dated December 30, 2019, from Mr. Christopher Mackenzie, alleging that the Board “spoke about my character, physical state, mental status and many false statements were made during the meeting and have continued with the latest email dated 12/17/19 from [the Chief of Police] to the entire Board and not marked confidential & sent to a member that had a known [sic] recuse from the situation.”¹ (complaint, p.1). In accordance with the Open Meeting Law, the Board met on January 7, 2020 in open session for such purposes, to acknowledge the complaint, review and discuss the allegations, and, following such discussion, voted to authorize Town Counsel to respond to same on its behalf. Following such meeting, below is the Board’s response to the complaint, a copy of which is enclosed.

As an initial matter, any allegations relative to conduct prior to November 30, 2019 raised in the complaint are untimely. Under the Open Meeting Law regulations, complaints about potential violations must be filed with the public body within thirty (30) days of the claimed violation. 940 CMR 29.05(3). In the complaint, the complainant claims that the alleged violations started on August 6, 2019.² The complaint does not allege that any allegations were undiscoverable at any time prior to November 30, 2019 (or thirty days before this complaint was filed). Moreover, by the allegations of the complaint, it is not clear on what other dates between August 6, 2019 and December 17, 2019, the complainant alleges that the provisions of the Open Meeting Law were filed. Indeed, if they occurred before November 30, 2019, the Attorney General simply does not have jurisdiction to address any such allegations since they are untimely.

¹ The complainant’s wife is a member of the Board of Selectmen. The complainant resigned from his employment with the Town effective November 1, 2019.

² Specifically, on page 1 of the complaint, the complainant states that “it started on 8/6/2019 with the latest on 12/17/19.”

Assistant Attorney General Carrie Benedon

January 17, 2020

Page 2

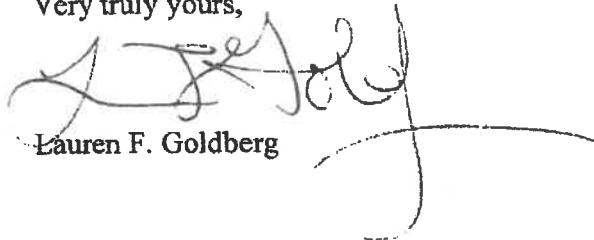
In addition, the allegations in the complaint fall outside of the scope of the provisions of the Open Meeting Law. Specifically, the complaint does not allege that a meeting occurred in violation of the Open Meeting Law, but instead, the complainant simply disagrees with certain statements allegedly made during a meeting, the contents of correspondence purportedly sent on October 21, 2019, which was not authored or authorized by the Board, a December 17, 2019 e-mail from the Police Chief, who is not a member of a public body³, for which there was no deliberation by the Board, as well as unspecified alleged "misrepresentation, slander and other personal very public attacks." (complaint, p.2). As the Division of Open Government has explicitly recognized, such allegations clearly fall outside of the jurisdiction of the Open Meeting Law, and, as such the Open Meeting Law simply does not apply to this situation. Indeed, the Division has advised as follows:

While the Division reviews meeting minutes to ensure that they accurately reflect the discussions that take place during meetings, the Division cannot ensure that the statements made by individuals at meetings are factually true. See OML 2015-133. Similarly, the Division does not investigate allegations that a public body slandered, defamed, or harassed any person. See OML Declination 1-27-14 (Sturbridge Conservation Commission).

Accordingly, in summary, the complainant has not alleged a violation of the Open Meeting Law by members of the Board of Selectmen in the complaint and any complaints relative to any alleged conduct prior to November 30, 2019 are untimely. Therefore, under such circumstances, the Board does not believe that any remedial action is required given the nature of the complaint.

Thank you for your attention to this matter.

Very truly yours,



Lauren F. Goldberg

LFG/JMA/

Enc.

cc: Board of Selectman ✓
Town Administrator
Mr. Christopher Mackenzie

708868/WALP/0001

³ In addition, the December 17, 2019 e-mail referenced in the complaint is protected by the attorney-client privilege since it was sent to the Town's Labor Counsel for the purpose of ongoing legal advice. As such, the communication should not have been disclosed to any third-parties given its confidentiality.

