

*Board of Selectmen's Meeting Minutes
7:00 p.m., Monday, September 8, 2008
3rd Floor Meeting Room, Town Hall*

Meeting moved to the Durham Library

Meeting Minutes-Approved

Call to order and roll call

Laura Francis called the meeting to order and led with the pledge of allegiance. John Szewczyk and James McLaughlin present.

Approval of the agenda

MOTION BY LAURA FRANCIS SECONDED BY JOHN SZEWCZYK TO APPROVE AGENDA AS PRESENTED. ALL AYE

Public comments

Amy Bloom came to the meeting to represent the Democratic Nominating Committee submitting Campbell Barrett to the Planning & Zoning alternate appointment. She stated she understood the appointment was at the discretion of the Board of Selectmen and that the Town of Durham had a tradition of open government that tolerates healthy differences. She referred to the last Board of Selectmen's meeting of August 25th when the original nomination of Campbell Barrett was made stating if questions would have been asked at that time they would have been answered, but that did not happen. She stated the Democratic Committee was back again to nominate C. Barrett saying there was no actual legal reason to disqualify him; many boards and commission members are forced by conscience to recuse themselves at meetings. She stated C. Barrett spoke up about what he felt but she did agree that he should not have used his legal letterhead to do so. She continued by stating C. Barrett would not be in the courtroom, that what he prepared was not a legal brief, just an opinion that was well thought out using careful analysis and integrity. She stated it was possible that Laura or John and C. Barrett do not see everything, in the same way including development. She ended by saying that she hoped to hear that John and Laura are with the committee on C. Barrett's nomination.

Michael Good stated he was in attendance to vouch for C. Barrett. He has known C. Barrett for several months; they met at a Planning & Zoning meeting on the Silver Eagle application. Looking ahead to the future he sees citizens coming together of different expertise such as safety, legal, traffic, and environmental areas for the good of the community. When he heard that C. Barrett's name was put forth he was very pleased. He stated the Silver Eagle project stirred very strong emotions commenting that C. Barrett was a voice of calm, reason and integrity. He finished by saying he thinks the town couldn't find a more capable person that would bring expertise on complex issues to the board.

Joe Pasquale stated he was an independent voter and over the past year he has become aware of town happenings. One thing he has struggled with was being able to distinguish who was a democrat or a republican and he thinks this is something the town should be proud of. He feels that C. Barrett is a good candidate, very knowledgeable, although he recognizes that there will be differences in opinions. He stated he does not think C. Barrett should be excluded because he was involved with Silver Eagle and hopes the Board of Selectmen change their mind.

Peggy Ryder who also stated she was an independent voter and does not personally know C. Barrett, feels he only voiced his opinion in a very large auditorium and was very impressed. She said she read about the no second on his appointment and does not want people to be intimidated to serve. She commented that we live in an age where we need expertise and would like more people involved, not less even if they have to recuse themselves.

Laura Francis stated she would like to clear up any misconceptions; yes it was true that there was no second to the nomination of C. Barrett but there was some discussion at that time and then again during public comment. She continued by clarifying the process of government on a committee vacancy stating

when it is proper for the Board of Selectmen to make an appointment the opportunity is given to both parties to nominate a person. There is no charter requirement to do so, but the courtesy was given nevertheless and the Board of Selectmen did not act inappropriately.

James McLaughlin wanted to clarify a comment that was made in an letter authored by John Szewczyk stating since there was no seconding of C. Barrett's nomination, no discussion of the agenda item was permitted to take place until the proper line. J. McLaughlin referred to the Town Charter, Section 4.2 Procedures, where it states each Selectman shall always retain the ability to make a motion or offer a proposal which shall be considered by the Board without the necessity of a second.

P & Z alternate appointment

Laura Francis entertained a motion, James McLaughlin made a motion to nominate Campbell Barrett for Planning and Zoning alternate position, Laura Francis seconded the motion.

L. Francis said she admired the way the nominating committee came up with a name and acknowledged and thanked C. Barrett for meeting with her. She stated it would only be fair if she was to object to his candidacy that she nominates an alternative, Stuart Keating. She stated S. Keating served on the DMIAAB, Midstate Regional Planning Agency and Inland/Wetlands. She noted that he is heavily involved with senior issues and recently attended a workshop regarding municipal tax issues hosted by Senator Ed Meyer; he is also on the Board of Directors of Habitat for Humanity and has a weekly meeting tonight and would be attending this meeting shortly. She asked the Board of Selectmen if they wanted to wait to discuss the nomination to talk to him.

J. McLaughlin commented that they were looking to fill a term for fourteen months today, and there was no reason to believe that any member from Planning & Zoning would be involved in an appeal for Silver Eagle.

L. Francis stated she did not know what was going to happen with the appeal. She feels the perception of conflict is just as dangerous as a monetary issue. She stated that similar topics will be coming before the Planning & Zoning Board in the springtime with a piece of property on Route 17. She hoped they could respectfully disagree commenting that many people are accusing her of being disrespectful. She offered no disrespect to C. Barrett and hopes he serves on other town boards.

J. McLaughlin spoke about a letter he drafted to the Durham Planning & Zoning Commission where he had a conversation with Attorney Thomas Byrne about the opinion he offered L. Francis on C. Barrett's nomination to Planning & Zoning. He asked Attorney Byrne why he would offer such advice and Attorney Byrne stated he wanted to keep the commission pure. J. McLaughlin said he was very much offended by this and feels C. Barrett's nomination should be determined on the facts of the case and this was not a proper reason.

John Szewczyk stated he didn't agree that C. Barrett cannot make a decision to recuse himself, but would give him the benefit of the doubt. He stated the brief C. Barrett wrote on legal letterhead carry's more weight than the average citizen and asked why the town would take a chance.

L. Francis wanted to clarify that she asked Attorney Byrne a different question and did not ask if C. Barrett was qualified to serve. She asked if the Silver Eagle case came back to Planning & Zoning can this individual, based on the official record, participate and Attorney Byrne stated no. J. McLaughlin stated he was looking for the Board to be judicial not judgmental and questioned J. Szewczyk's statement of why the town would be taking a chance.

P. Ryder commented that she was stunned and disappointed that the Democratic Nominating Committee did not have an opportunity to nominate another person. L. Francis stated there would be an opportunity for another nomination.

MOTION BY JAMES MCLAUGHLIN TO TABLE NOMINATION TO NEXT BOARD OF SELECTMEN'S MEETING, SECONDED BY JOHN SZEWCZYK. L. FRANCIS NOT IN FAVOR. 2 AYE

Historic District Commission membership discussion

The current membership and alternate positions of the Historic District Commission were discussed. L. Francis clarified the membership criteria from the Town's Ordinance. Because of the confusion surrounding the current listing it was agreed upon that L. Francis would ask Duncan Milne to meet with her to discuss. She would then bring this back to the next meeting.

Request for permission from the Durham Democratic Town Committee to serve alcohol at a fundraiser, Saturday, October 18, 2008

MOTION BY LAURA FRANCIS SECONDED BY JAMES MCLAUGHLIN TO GRANT PERMISSION TO THE DURHAM DEMOCRATIC TOWN COMMITTEE TO SERVE ALCOHOL AT A FUNDRAISER, SATURDAY, OCTOBER 18, 2008. ALL AYE

Approval of Authorizing Resolution granting permission to the First Selectman to execute an application and contract between the Town of Durham and the State Library for a Historic Documents Preservation Grant

MOTION BY LAURA FRANCIS SECONDED BY JAMES MCLAUGHLIN TO APPROVE AUTHORIZING RESOLUTION GRANTING PERMISSION TO THE FIRST SELECTMAN TO EXECUTE AN APPLICATION AND CONTRACT BETWEEN THE TOWN OF DURHAM AND THE STATE LIBRARY FOR A HISTORIC DOCUMENTS PRESERVATION GRANT. ALL AYE

Approval of Cell Phone Policy

L. Francis stated she requested the Compensation Review/Personnel Policy Commission to review the policy and noted that she was unable to attend their last meeting due to scheduling conflicts. She is aware that the CR/PPC was unclear about what the policy was trying to achieve. She stated she would be attending their next meeting and would make it clear that she just wants to put policy and procedure in place.

MOTION BY LAURA FRANCIS SECONDED BY JOHN SZEWCZYK TO APPROVE CELL PHONE POLICY. ALL AYE

Arboricultural Services bid award

L. Francis stated that (6) bids were received and after Tree Warden, Terence Keenan reviewed them with Finance Director, Maryjane Malavasi he recommended Jandreau's Tree Service be awarded the FY08-09 bid. He based his decision on cost and response times.

MOTION BY LAURA FRANCIS SECONDED BY JAMES MCLAUGHLIN TO AWARD THE FY08-09 ARBORICULTURAL SERVICES BID TO JANDREAU'S TREE SERVICE. ALL AYE

Tax refunds

MOTION BY LAURA FRANCIS SECONDED BY JOHN SZEWCZYK TO APPROVE (5) FIVE TAX REFUNDS TOTALING \$388.52. ALL AYE

Approval of Board of Selectmen meeting minutes July 22nd, 28th, August 21st, 25th, and September 3rd, 2008

MOTION BY LAURA FRANCIS SECONDED BY JAMES MCLAUGHLIN TO APPROVE JULY 22, 2008 MEETING MINUTES. ALL AYE

MOTION BY LAURA FRANCIS SECONDED BY JAMES MCLAUGHLIN TO APPROVE JULY 28, 2008 MEETING MINUTES. ALL AYE

MOTION BY LAURA FRANCIS SECONDED BY JAMES MCLAUGHLIN TO APPROVE AUGUST 21, 2008 MEETING MINUTES. ALL AYE

MOTION BY LAURA FRANCIS SECONDED BY JOHN SZEWCZYK TO APPROVE AUGUST 25, 2008 MEETING MINUTES. ALL AYE

MOTION BY LAURA FRANCIS SECONDED BY JOHN SZEWCZYK TO APPROVE SEPTEMBER 3, 2008 MEETING MINUTES. ALL AYE

Old/New business

L. Francis discussed the following old business

- 1.) She will be meeting with Selectman, Jon Brayshaw and Pamela Kilby-Fox regarding a health district. She will also discuss other ways for Durham and Middlefield to share costs. J. Szweczyk reiterated that he felt she should be careful about what towns Durham and Middlefield may go with. L. Francis stated this would be a fact finding situation and the process would be the same as the last time; a town meeting would be required to make a decision. She also stated there is no law requiring the town to do so, but as other towns are moving forward with health districts there are fewer options available.
- 2.) Results from the first sampling of the five test wells at the Firehouse were received. One well requires reporting to the Department of Environmental Protection; it showed unacceptable levels of petroleum based elements but is very well contained to one area; this well is where the HAZMAT material was located. She suspects that DEP will require further testing on this well.
- 3.) L. Francis found three consultants capable of conducting a review of safety measures employed by the owner of the Blue Trail Range. She is working with the Resident State Trooper, neighbors and the Connecticut State Police on a scope of services to issue a Request for Proposal. J. Szweczyk commented he is more and more in favor of going forward with the review stating he feels this is a safety issue. J. McLaughlin asked if the State Police has finished their testing yet. L. Francis stated no, there were two forensic tests that they were still working on. She also stated that no funds have been appropriated at this time and if they should need funding they would have to go to the Board of Finance.
- 4.) A short and long term bond processing procedure is in place for better record keeping and accounting of bonds. Some of the old un-cashed checks that were found in the Building Department have been returned to rightful owners, one bank check has been deposited, and letters are going out this week to have new checks re-issued. She is currently working with staff and Town Counsel. J. McLaughlin questioned if the checks should be recorded and deposited by the Treasurer. L. Francis responded yes, that process and procedures are being put in place.
- 5.) L. Francis is continuing to research a Standard Operating Procedure for the Board of Selectmen regarding Legal Traffic Authority actions. She met with Robbin Cabelus, Executive Director of the State Traffic Commission. She stated she should have something soon for the Selectmen to look over.

L. Francis discussed the following new business

- 1.) L. Francis posted a brief in the Town Times searching for those interested in the Public Safety Renovations Planning Committee. She has received several responses already and will forward them for discussion at the next meeting.
- 2.) L. Francis attended a meeting in Middletown with Clean Energy Task Force Chairman, Jen Muir on Municipal Energy Issues, Options and Solutions by Attorney Jennifer Janelle of Shipman and Goodwin. J. Muir is going to research the possibility of issuing a Request for Proposal for clean energy and cost saving solutions for the Town. L. Francis will keep the Selectmen informed.
- 3.) L. Francis is asking specific departments for 2009-2010 budget considerations. She asked the Selectmen if they have any ideas on what to research now and asked that they get back to her with their thoughts.

Selectmen's comments

L. Francis stated she appreciated all the effort made on behalf of the Democratic Committee and noted the freedom as a board to disagree.

Public comments

Mary Ryan commented that she took L. Francis at face value when she stated she meant no disrespect to C. Barrett and agreed that she did not want to incur further expenses if he was seated. She stated that she was also named on the Memorandum of Law as she worked together with C. Barrett and is appalled that C. Barrett is not being considered because he used company letterhead. She feels that L. Francis was given misguided information, that the legal opinion was way off the mark, and C. Barrett should not be penalized for this.

Diana McCain stated she felt the Board of Selectmen was presented with a candidate who is young, demonstrated concern, talented, and brought expertise to Silver Eagle. She commented that C. Barrett researched information and made Planning and Zoning aware of case law. She is concerned that because C. Barrett's nomination was not accepted because he used business letterhead this would discourage other people from wanting to be boards. She stated the law provides for C. Barrett to recuse himself from discussions. In response to L. Francis's nomination of S. Keating; not being an attorney and having no involvement with Silver Eagle, the perception of what has gone on can only be politics or partisanship. She finished by saying she believes if this goes through it will discourage people from speaking up.

Gail Gordon stated she also believes this will be taken as political or personal; that C. Barrett is not being taken seriously and the town is working in a bipartisan way.

Jay Berardino stated he did not agree with the majority in the room. He spoke about a personal experience he had six years ago; wanting to become involved he considered some of the different boards and commissions that had vacancies. Because he had a background as a realtor he offered himself to the Planning & Zoning Board. In speaking with the Chairman of the Republican Town Committee he was told that he would have a conflict of interest in certain circumstances and he responded that he would recuse himself if needed. The Chairman responded by saying what was important was a matter of public trust. He believes this had nothing to do with politics and he decided to do what he thought was best for the town; the discussion ended there. J. Berardino continued by saying that he personally does not know C. Barrett but he doesn't pass the smell test; adding an anti-development voice to the mix, he is surprised C. Barrett hasn't removed his name for nomination putting the town's interest first. J. Berardino applauded and thanked L. Francis for putting the Town first and stated she should not be accused of playing politics.

Elmer Clark asked the Board of Selectmen to reconsider an ordinance for tax refunds less than \$10.00. He feels the excessive cost incurred by the town to issue a refund for this amount or less is unnecessary. He also asked the Board to consider moving alternate members from the Historic District Commission up and endorses Clay Howe to a regular membership.

Kurt Bober expressed his respect for the Board of Selectmen on their opinions and asked that they not be disrespected. He also commented on the Blue Trail Range and stated if the town moves forward with the study he believes the town should not have to bear the expense when the Range is located in Wallingford.

Clay Howe spoke about energy conservation and urged the Board to find a way to turn off the lights at Town Hall. He also spoke about the pedestrian lights on Main Street stating five of the twelve between the Town Hall and the Durham Pharmacy are not working and suggested either fixing them or getting rid of them.

Susan Good stated she doesn't think Durham is anti-developmental and asked L. Francis how Mr. Keating's nomination came about. L. Francis stated she has known S. Keating for several years and during this time has talked to him on issues such as taxes; and also has gotten to know him while he served on the Senior

Board; and further stated he has ties on issues he feels strongly about. She said she wrote the bio and called him.

Maryann Boord commented that it would be very unfortunate if what came out of this is political; she sees none of this. She stated consideration was given by L. Francis by meeting with C. Barrett and feels there are likely other boards that he should consider. She noted that other proposals and important decisions are coming up for Planning & Zoning now and in the future and feels the town needs people to look at all aspects of the proposals to make informed decisions. She continued by saying she has seen no evidence but the proper procedure taken and now that the matter is tabled she would support S. Keating acknowledging his experience and knowledge as being very valuable.

Patricia Dynia commented about the lights at night at the Town Hall as being unbearable. She also stated that everyone should stop assuming politics are involved. L. Francis stated that Tom Starr from the Clean Energy Task Force is researching the light issue and Bill Witecki is looking into the alarm system.

Helen Pearce stated she differs with M. Boord and continued by saying the committee interviewed four people for the nomination and commented that it would have been nice if the First Selectman referred Mr. Keating to the Democratic Committee.

Campbell Barrett thanked the Board for their consideration and also thanked L. Francis for meeting with him. He talked about the suggestion that he does not have an open mind on development. He also stated he did not have a lot of experience on land issues and thinks commercial development is imperative to Durham; the town needs tax revenue, smart development and smart growth consistent with the towns Plan of Development; should try to strike middle ground on development. He ended by saying to base a decision on the letter written is a mistake.

Michael Good said he was disappointed that the appointment for C. Barrett is being resisted and is at a loss that C. Barrett came before the town to get involved and is told that he is not neutral and also that being an attorney would disqualify him.

J. Szewczyk reiterated that it was not about C. Barrett being an attorney it was what was put on his letterhead. He stated he feels he is doing the right thing for the entire town and is sorry for the difference of opinion. He also stated there was public opinion that he is doing the right thing and made assurances that it was not political. M. Good commented that C. Barrett has not been a political person and does not understand why Attorney Byrne said what he did.

L. Francis stressed that she has not said C. Barrett was disqualified because he participated in a town meeting or because of a personal opinion; C. Barrett's letter became part of an official record of Planning & Zoning that could come up in the future and she prefers to have someone who is not. She stated she put an opinion forward, no less than anyone else in the room; her choice is someone else and asks for respect stating she feels there are other people less likely to have biased opinions.

M. Good stated there were scores of letters giving opinions on Silver Eagle and to say that because C. Barrett did a similar thing would be to disqualify hundreds of people.

J. McLaughlin stated he felt that Attorney Byrne was way out of line and it was not his decision to say who should or should not serve. He also commented that he hopes that the town adheres to the Plan of Development and would like to see it revised.

L. Stevens said as someone who attended many Planning & Zoning meetings as an advocate and opponent; do think they are bi-partisan. When people are elected they are not acting as a democratic or republican commission, they are a board commission and she honestly feels that C. Barrett is the best candidate and thinks he will add to this commission.

L. Francis then read the following letter drafted by Attorney John Corona into the record:

September 8, 2008

Hon. Laura Francis
First Selectman, Town of Durham
30 Town House Road
Durham, CT 06422

Re: Durham Agricultural Fair Association, Inc. / Durham Water Commission

Dear Mrs. Francis:

Our firm represents the Durham Agricultural Fair Association, Inc.

In October of 2005 the Fair and the Town of Durham executed an agreement concerning the water supply system at the White Farm off Maple Avenue. Under this agreement, and in exchange for the transfer rights and improvements belonging to the Fair, the Town committed to provide the Fair with perpetual water service at no cost to the Fair.

This year's Durham Fair will be the first fair to fully rely on the Town's public water system. While both the quantity and quality of the water supplied to the Fair should continue with the new system, the loss of water service, even briefly, during the Fair could seriously compromise public health and safety and would be disastrous to the Fair and its many reliant non-profit organizations and commercial vendors.

Historically, the Fair has invested significant resources to mitigate the risk of water supply interruption during the Fair. An on-site plumber and a reserve of replacement parts were key components in this effort. In addition, tanker trucks of water were utilized to supplement and support the system.

Now that the Town owns and controls the water system, the Fair recognizes that judgments concerning its repairs and redundancy rest with the Town. It remains important to the Fair, however, that a plan exist for the possibility of system failure.

Fair personnel would like to meet with designated water system personnel prior to the commencement of the Fair to review the Town's plan and to obtain contact information for those responsible in the event of emergency. Please let me know when you would like to meet.

Sincerely,

John A. Corona

cc: Gene Chiappetta, President
The Durham Agricultural Fair Association, Inc.

Raymond Bahr, Chairman
Durham Water Commission

L. Francis stated she has already met with Connecticut Water representatives, Sanitarian Bill Milardo, and Gene Chiappetta and John Mitchell from the Durham Fair Association. She said they have cost estimates and are trying to come up with a comfort level saying it could be very costly to the town. J. McLaughlin commented that the water system was adequate last year with a minimum amount of expense. He believes there is no reason to believe there isn't more that enough water now than before the new

system. L. Francis agreed with J. McLaughlin and stated she would like to have Connecticut Water on stand by in case of an emergency.

J. Pasquale thanked C. Barrett for going at the nomination twice and hopes he serves for the town. He offered a suggestion that the Board seek another legal opinion. He said many people have a perception of anti-development and is very concerned about the town's growth and suggested that the Plan of Development may need to be updated; the regulations should reflect what the people want while achieving tax relief. He stated he feels a long term plan needs to be developed and Planning & Zoning has a set of regulations that projects need to comply by, not interpreted. L. Francis responded that she did not receive written legal advice.

Adjourn

Meeting adjourned at 9:15 p.m.

Respectfully submitted:

Beth Moncata

Received October 7, 2008
Kim Garvis, Town Clerk