



Town of Abington

500 GLINIEWICZ WAY
ABINGTON, MA 02351

Board of Selectmen Meeting Minutes

March 5, 2014

5:30 p.m.

Cotter Room

Members present: Mike Franey, Ken Coyle, Andy Burbine, Tom Dion

Action/Discussion items:

1. Appointment of the Abington Director to the South Shore Tri-Town Development Corporation:
 - Chris Aiello, 11 Hunts Pond Lane
 - Joe Shea, 3 Wyman Road
 - Bob Toomey, 109 Washington Street

Chris Aiello addressed the Board and provided background information. Chairman Franey asked three questions. (attached). Mr. Aiello stated that the traffic will be an issue regardless due to the widening of route 18 in the years 2016 through 2020. Mr. Aiello stated the obstacle is the differences in the proposed legislations. Mr. Aiello states that the Board should consist of two members that are residents of Southfield. Mr. Aiello stated that the Board of Selectmen should not take a vote in support or opposition to the proposed legislation by Starwood at this time.

Joe Shea addressed the Board and provided background information. Chairman Franey asked the same three questions. Mr. Shea stated that the purpose of the original legislation was to create jobs and that is not being accomplished. Mr. Shea stated that the Master Developer is the biggest obstacle. It was initially proposed as a mall, then office space, now residential. Mr. Shea stated that the Board should consist of one member that is a resident of Southfield. Mr. Shea stated that if and when Starwood files its legislation and if it hasn't changed, then the Board of Selectmen should immediately take a vote of opposition.

Mr. Toomey was not present, and Selectman Burbine read Mr. Toomey's background information.

Selectman Dion votes for Mr. Shea as the Abington Director based on his many years of involvement as member of the SSTTDC Advisory Board.

Selectman Burbine votes for Mr. Aiello based on his private sector experience and local real estate market experience.

Questions for candidates for the South Shore Tri-Town Board of Directors

1. With approximately 12% of the land owned by Abington in Southfield, it has been describe that the major impact to Abington residents will be quality of life issues (e.g., increased traffic, etc.) and municipal service impacts (e.g., fire, water, etc.)... What do you see as the most significant impacts to Abington residents as Southfield gets built out and how would you go about protecting the Town's interest in minimizing these impacts?

2. Development at Southfield has been slow and at this time is stalled. What do you think is the biggest obstacle facing Southfield's future development and what can the Tri-Town Corp. do to overcome that obstacle? And, what possible role do you see for the Abington/Rockland Joint Water Works?

3. Is there anything in Starwood's proposed legislation that you think will benefit development at Southfield, and, do you believe that the Abington Board of Selectmen should take a vote in support or opposition to the proposed legislation by Starwood?

The Chairman has instructed me that each candidate will be provided 2-3 minutes for a brief opening statement outlining their qualifications and interest to be followed by the questions listed above that were summarized by me from the various suggested questions by members of the Board. Also, my office will be making an effort to provide this same information to the candidates prior to the meeting this afternoon.

From: "Joseph S. Fair" <JFair@k-plaw.com>
Date: March 8, 2013 12:02:05 PM EST
To: John D'Agostino <JDAgostino@abingtonma.gov>
Cc: Maureen Jansen <parrothead1164@yahoo.com>, "Lauren F. Goldberg" <LGoldberg@k-plaw.com>
Subject: RE: FinCom Meetings for Week of March 11, 2013

You have requested an opinion concerning the date by which the Finance Committee must make its recommendations if the Annual Town Meeting is delayed until June 10. By way of background, the Town Charter was recently amended to specify that the date of the Annual Town Meeting shall be on a date set by bylaw. The Bylaws provide that the Annual Town Meeting shall be held on the first Monday in April.

In our opinion, if the Board of Selectmen votes to delay the start of the Annual Town Meeting until June 10, then pursuant to both the plain language of the Charter and Bylaws, and consistent with the provisions of G.L. c.39, §9, the Finance Committee recommendations must be prepared no later than 10 days prior to June 10.

General Laws c.39, §9 provides, in relevant part, "notwithstanding the provisions of this section or of any other law, by-law, or charter to the contrary, a town, by the vote of its board of selectmen or town council may delay the annual town meeting; and provided, further, that such a delayed annual town meeting shall complete its business on or before June thirtieth....#157; [emphasis added]. Thus, despite the fact that the Charter and Bylaws establish the date of the Annual Town Meeting, the Board of Selectmen may vote to delay the date of the Annual Town Meeting, provided that the meeting completes its business prior to the end of the fiscal year.

Note that a vote under G.L. c.39, §9 to delay the date of the Annual Town Meeting results in an actual change in the scheduled start of Town Meeting. In other words, the meeting is scheduled to begin on the delayed date. This is completely different in kind from the circumstance when Town Meeting is opened on the date set by the Charter and Bylaws, and then continued to a later time, date and place certain. Under such circumstances, in my opinion, the meeting is actually scheduled for the date set by Charter and Bylaw, and simply "held...#157; on the later date. My understanding of the current circumstances, however, is that the Board intends to delay the start of the meeting pursuant to the provisions of G.L. c.39, §9, and therefore the meeting will be scheduled for June 10.

Section 2-3-2 of the Town Charter establishes the Finance Committee and certain of its responsibilities, in part, as follows:

The finance committee shall report its recommendations on every article contained in a town meeting warrant, in writing, at least ten (10) days prior to ascheduled town meeting. Prior to preparing its recommendations, the finance committee shall hold one or more meetings to permit discussion of the subject matter of all articles contained in the warrant, except those articles subject to public hearings by other multiple member town bodies and not containing appropriations. The finance committee shall have such additional powers and duties as may be provided by Massachusetts General Laws, by this charter or by by-law. [emphasis supplied].

Section 6-5 of the Town Charter provides further:

The finance committee shall, upon receipt of the budget from the Town Manager, consider in public meetings detailed expenditures for each town department and agency and may confer with representatives of each such agency in connection with its review and consideration. The finance committee may require the Town Manager, or any other town

agency, to furnish it with such additional information as it may deem necessary to assist it in its review and consideration of the proposed budget. The finance committee shall file with the town clerk at least ten days prior to town meeting a report containing its recommendation for action to be taken on each line item in the proposed operating budget as submitted by the Town Manager. [emphasis supplied].

Thus, under the Town Charter, the Finance Committee is charged with reviewing articles on Town Meeting warrants and budgetary matters, and providing a report at least 10 days prior to the date of the Town Meeting.

The Town Bylaws, §67-4, impose similar requirements on the Finance Committee, and provide in relevant part:

The Finance Committee shall report its recommendations in writing on every article contained in a Town Meeting warrant at least 10 days prior to a scheduled Town Meeting. Said recommendations shall include a summary of reasons for each recommendation and shall be filed with the Town Clerk. Said report shall also be made available to voters of the Town, forthwith after the filing with the Town Clerk, in the manner provided in § 152-2B, and at Town Meeting. [emphasis supplied].

This language therefore establishes a requirement that the Finance Committee review and provide recommendations with respect to the budget and warrant articles. The date that the recommendations must be provided is keyed to the date of the Town Meeting. The legislative intent of this requirement, in our opinion, is to ensure that the Finance Committee has access to the most up to date copy of the warrant, and the most recent financial information, as well as any other information that would be needed to allow it to make a timely, appropriate recommendation. The purpose for delaying the start of the Town Meeting in this case, as we understand it, is to have a clearer financial picture to allow the budget that is proposed to Town Meeting to present the most accurate financial picture for the next fiscal year. For these reasons, and in accordance with the plain language of the Charter and Bylaws, consistent with G.L. c.39, §9, if the Board votes pursuant to G.L. c.39, §9 to delay the date for the start of Town Meeting, the Town Meeting will be scheduled for June 10 and the Finance Committee's recommendations will be due 10 days prior thereto.

Be further reminded that we have previously opined that while the language in the Charter with respect to the Finance Committee's review and recommendation appears mandatory, courts have interpreted such requirements as directory in nature. For that reason, even if, for the sake of argument only, one could argue that the recommendations were required 10 days prior to the April meeting established by the Charter and Bylaws, failure to prepare such recommendations would not prevent Town Meeting from acting on the matters at issue. Moreover, reading the Charter and Bylaws applicable to Finance Committee recommendations as a holistic whole, it would appear that where the warrant for the June 10, 2013 meeting has not yet been prepared (i.e., it is still a work in progress, particularly where there are no final budget numbers), it would be extremely difficult for the Finance Committee to do the review intended by such provisions.

Please feel free to contact me or Attorney Lauren Goldberg if you have any further questions concerning this matter. Thank you.

Joe

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