

IN BOARD OF SELECTMEN

July 14, 2009

Present: Chairman Nancy Daly, Selectmen Betsy DeWitt, Jesse Mermell, Richard Benka, and Kenneth Goldstein

The Minutes of June 30, 2009 were approved as amended

EXECUTIVE SESSION

Upon motion duly made and seconded, it was moved that the Board of Selectmen go into EXECUTIVE SESSION.

The Chair then stated the reason(s) for the Executive Session: (SEE THE REASONS CHECKED)

- _____ (1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of a particular individual¹.
- _____ (2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual¹.
- X (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with non-union personnel, and to conduct collective bargaining sessions or contract negotiations with non-union personnel.
- _____ (4) To discuss the deployment of security personnel or devices.
- _____ (5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
- _____ (6) To consider the purchase, exchange, lease or value of real property, if such discussion may have a detrimental effect on the negotiating position of the governmental body with a person, firm or corporation.
- _____ (7) To comply with the provisions of any general or special law or Federal grant-in-aid requirements.

The individual involved in such Executive Session must be notified in writing at least forty-eight (48) hours prior to such session and is (1) entitled to be present (2) to have counsel or other representative present and (3) to speak in his or her own behalf. Upon the request of the individual involved, no Executive Session shall be held and the meeting shall be held in open session. See G.L.c.39, §§23B(1) and (2).

_____ (8) **To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants: provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.**

_____ (9) **To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a.) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b.) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.**

The Board of Selectmen, during a properly constituted and noticed meeting:

VOTED: to go into Executive Session

**Roll Call Vote: Voting in the Affirmative: 4
 Voting in the Negative: 0**

Selectmen Goldstein absent for roll call

The Board of Selectmen (WILL) RECONVENE in Open Meeting after the Executive Session.

In Board of Selectmen

July 14, 2009

Page 4 of 20

PUBLIC COMMENT

Harvey Bravman, Coolidge Corner Merchants Association spoke on the proposed tax increase for local meals and hotel tax. He hopes that the government, community, and business community can work together on the proposal. Mr. Braveman suggested that a portion of the revenues be devoted to the business community.

MEMORANDUM OF UNDERSTANDING

The Board considered the question of re-executing the final Memorandum of Understanding in connection with Phase I of the Muddy River Restoration Project.

Chairman Daly stated that the State did not accept the Board's signatures with annotations.

Selectman Goldstein expressed concern with the language of the MOU. He noted that it is an enforceable commitment from the Town, a binding agreement. The Commonwealth has the right to terminate, but not the Town.

Selectman Benka expressed similar concerns. He is unsure of the State's level of commitment to see the project through. He did note that the new version is acceptable to the State.

Town Counsel Jennifer Dopazo stated that the agreement is based on the Commonwealth's commitment to fund the entire \$42 million. Any partial funding would be considered a change to the project. As for the work being done up river, or down river, this has not been detailed out yet by the Army Corps of Engineers.

Chairman Daly added that she was concerned with the earlier version in recognizing Town Meeting's vote. The Chair is comfortable with this revised MOU.

On motion, it was,

VOTED: 3-1-1 (Goldstein No, Benka abstained) to re-execute the final Memorandum of Understanding in connection with Phase I of the Muddy River Restoration Project.

Selectman Mermell stepped out

The Board considered the question of awarding and executing contract No. PW/09-23 “Intersection Improvements at Netherlands Road and Parkway Road” to BTB Construction, Inc., of Walpole, in the amount of \$60,324.46. Said contract to be funded from acct 4910K083 6T0014 (Traffic Calming)

Director of Engineering Peter Ditto stated that the contract consists of installing two curb and concrete sidewalk bulb-outs on Netherlands and Parkway Roads, removing and resetting existing curb as well as installing new curb. Contract also includes installing bike lanes, reconstructing handicapped ramps and miscellaneous pavement markings.

On motion, it was unanimously,

VOTED: to award and execute contract No. PW/09-23 “Intersection Improvements at Netherlands Road and Parkway Road” to BTB Construction, Inc., of Walpole, in the amount of \$60,324.46. Said contract to be funded from acct 4910K083 6T0014 (Traffic Calming).

SPECIAL ENVIRONMENTAL COUNSEL

The Board considered the question of authorizing Town Counsel to retain Special Environmental Counsel Nancy Kaplan of Keegan Werlin, LLP and engineering consultants to proceed with the necessary site survey and phase one study in connection with the redevelopment of the Fisher Hill Town Reservoir

Town Counsel Jennifer Dopazo stated that there will be two consultants required; one for site survey and one for testing.

Barry Fogel from Keegan, Werlin LLP stated that they will provide retention of consultation with Consultants and Client, research and review all applicable documents relating to the Fisher Hill Project, and advise on any relating environmental issues. Mr. Fogel added that he expects there would be no contamination at the site, it was not an industrial site.

Selectman DeWitt stated that it has been suggested that the site is fairly clean, but proper analysis is required.

On motion, it was unanimously,

VOTED: to authorize Town Counsel to retain Special Environmental Counsel Nancy Kaplan of Keegan Werlin, LLP and engineering consultants to

In Board of Selectmen

July 14, 2009

Page 6 of 20

SPECIAL ENVIRONMENTAL COUNSEL cont'd

proceed with the necessary site survey and phase one study in connection with the redevelopment of the Fisher Hill Town reservoir"

RELEASE OF FUNDS

The Board considered the question of authorizing the Chair to sign the Request for Release of Funds (RROF) and Certification for the FY 2010 (FFY 2009) CDBG funding. The Town's request certifies to HUD that it has undertaken an environmental review process and that projects requesting release of funds are in compliance with regulations.

Assistant Director of Planning & Community Development Joe Viola stated that these projects have previously been approved, and it is now required authorization to release CDBG funding for them in compliance of environmental review.

On motion, it was unanimously,

VOTED: to authorize the Chair to sign the Request for Release of Funds (RROF) and Certification for the FY 2010 (FFY 2009) CDBG funding. The Town's request certifies to HUD that it has undertaken an environmental review process and that projects requesting release of funds are in compliance with regulations.

Selectman Mermell returned

CDBG SUBRECIPIENT AGREEMENTS

The Board considered the question of approving and authorizing the Chairman to execute the following FY 2010 (FFY 2009) CDBG Sub-recipient Agreements.

Barry L. Price Rehabilitation Center, Inc. (Humanity House Kitchen II)

Brookline Community Mental Health Center (BCMHC Facilities Improvements: Windows & Weatherproofing)

Brookline School Department (Parent Child HOME Program/Brookline)

Brookline Housing Authority (Next Steps Program) HCRA Brookline Housing (Project 112)

In Board of Selectmen

July 14, 2009

Page 7 of 20

CDBG SUBRECIPIENT AGREEMENTS cont'd

Assistant Director of Planning & Community Development Joe Viola stated that these projects have been previously approved and are now ready for execution.

On motion, it was unanimously,

VOTED: to approve and authorize the Chairman to execute the following FY 2010 (FFY 2009) CDBG Sub-recipient Agreements.

Barry L. Price Rehabilitation Center, Inc. (Humanity House Kitchen II)

Brookline Community Mental Health Center (BCMHC Facilities Improvements: Windows & Weatherproofing)

Brookline School Department (Parent Child HOME Program/Brookline)

Brookline Housing Authority (Next Steps Program)

HCRA Brookline Housing (Project 112)

CHANGE ORDER

The Board considered the question of approving Change Order # 2 (deduction) in the amount of (\$16,127.50) for incomplete work and plantings damage done by Ace Restoration Co. in connection with Brookline High School Masonry repairs.

Program Administrator Tony Guigli stated that this credit is for work that was not done, and damages to plantings and walkways around the High School. These funds will most likely be added to another contract.

On motion, it was unanimously,

VOTED: to approve Change Order # 2 (deduction) in the amount of (\$16,127.50) for incomplete work and plantings damage done by Ace Restoration Co. in connection with Brookline High School Masonry repairs.

The Board considered the question of approving Change Order #1 to Falite Bros. (no cost - time extension) for substantial completion of HVAC renovations to Putterham Branch Library from September 30, 2009 to October 30, 2009.

In Board of Selectmen

July 14, 2009

Page 8 of 20

CHANGE ORDER cont'd

Program Administrator Tony Guigli stated that this is a no cost change order, just a time extension. The facility was used as a polling place which caused a delay in the project, and also to keep a portion of the Library open to accommodate the neighborhood will result in a slight delay of the project.

On motion, it was unanimously,

VOTED: to approve Change Order #1 to Falite Bros. (no cost - time extension) for substantial completion of HVAC renovations to Putterham Branch Library from September 30, 2009 to October 30, 2009.

ZONING BYLAW COMMITTEE

The Board considered the question of appointing a Selectman to the Zoning Bylaw Committee.

Chairman Daly stated that Selectman Goldstein has previously served on the Zoning By-law Committee as the Planning Board's representative. Selectman Goldstein added that he is looking forward to serving on the Committee.

On motion, it was,

VOTED: 4-0-1 (Selectman Goldstein abstained) to appoint Selectman Goldstein to Zoning Bylaw Committee as Chair.

GATEWAY EAST CITIZENS ADVISORY COMMITTEE.

The Board considered the question of appointing a Selectman to Gateway East Citizens Advisory Committee.

Chairman Daly stated that this would be to replace former Selectman Allen as a Committee member.

On motion, it was,

VOTED: 4-0-1 (Selectman DeWitt abstained) to appoint Selectmen DeWitt to the Gateway East Citizens Advisory Committee.

GRANTS

The Board considered the question of accepting the following Police Department Grants:

**E911 Grant Funding Program \$124,458.00
(Dispatch Center Costs)**

**Mass Statewide
Telecommunication Board \$ 22,105.00
(Dispatcher Training)**

Chief O’Leary stated that Brookline was eligible to apply for these grants under recent legislation. The funds will be use towards equipment and/or personnel costs that are necessary in order to run a dispatch center. Acceptance by the Board is required to begin to draw down the funds. The State grant will be used for training as well as overtime cost incurred while the dispatcher is in training.

The Board is pleased to see theses finds come in during these difficult budget times.

On motion, it was unanimously,

VOTED: to accept the following Police Department Grants:

**E911 Grant Funding Program \$124,458.00
(Dispatch Center Costs)**

**Mass Statewide
Telecommunication Board \$ 22,105.00
(Dispatcher Training)**

BROOKLINE IS ARTFUL

The Board considered the question of endorsing the Brookline Is Artful initiative as proposed by the Economic Development Office.

Commercial Areas Coordinator Marge Amster and representatives of the Brookline Artist community were present on behalf of the Brookline is Artful Initiative. Working with local real estate owners in the commercial areas, local artist will be able to receive free rental space to display their work in empty storefronts. This is provided at no cost or liability to the Town.

The Board was pleased to hear that this would not only support local artist, but provide an alternative to unattractive empty storefronts.

In Board of Selectmen

July 14, 2009

Page 10 of 20

BROOKLINE IS ARTFUL cont'd

On motion, it was unanimously,

VOTED: to endorse the Brookline Is Artful initiative as proposed by the Economic Development Office.

POLICE DEPARTMENT PERSONNEL

The Board considered the question of authorizing the filling of a vacancy in the Traffic Division for the position of full-time Parking Control Officer.

Chief O'Leary stated that due to a recent resignation this position has become available. The duties of this position include school crossing guard, and administrating parking tickets. He hopes to fill it by the beginning of the school year.

On motion, it was unanimously,

VOTED: to authorize the filling of a vacancy in the Traffic Division for the position of full-time Parking Control Officer.

The Board considered the question of hiring as Student Officers the following five (5) applicants for the upcoming State Police Municipal Academy, beginning July 20, 2009:

Duane Danforth
James Ballard
Elbert Jordan
Lauren O'Connor
Michael Fay

Chief O'Leary stated that the State Police Municipal Academy begins on July 20, 2009. This process began in January when the Commonwealth of Massachusetts's Department of Human Resources provided a candidate list.

Chairman Daly expressed concerns about the reduction of the Quinn Bill funding by the State. This may prompt the Board to reassess when new applicants come before them in the future.

On motion, it was unanimously,

VOTED: to hire as Student Officers the following five (5) applicants for the upcoming State Police Municipal Academy, beginning July 20, 2009:

In Board of Selectmen

July 14, 2009

Page 11 of 20

POLICE DEPARTMENT PERSONNEL cont'd

**Duane Danforth
James Ballard
Elbert Jordan
Lauren O'Connor
Michael Fay**

FIRE DEPARTMENT PERSONNEL

The Board considered the question of authorizing Chief Peter Skerry to requisition a list from the Department of Human Resources to fill three vacancies (1) Captain and (2) Lieutenants.

Chief Skerry stated that this requests stems from recent retirements.

On motion, it was unanimously,

VOTED: to authorize Chief Peter Skerry to requisition a list from the Department of Human Resources to fill three vacancies (1) Captain and (2) Lieutenants.

SPECIAL TOWN MEETING

The Board considered the question of calling a Special Town Meeting to be held prior to September 1, 2009 in order to consider adopting by local option recently enacted increases in meals and lodging taxes.

Chairman Daly stated that this is to determine whether to have a Special Town Meeting or not, the question of adopting the local options tax will be decided by Town Meeting.

Stanley Spiegel, Advisory Board member and TMM#2 stated that he is grateful to see this on the agenda. Neighboring cities are moving on this and swift action is needed. If the Town waits until the Fall Town Meeting to vote on this, the revenues would not come in until January 2010. A Special Town Meeting allows revenues to be collected in October 2009. He added that this would bring in considerable revenue, and there needs to be measures taken to allow for a healthy commercial community.

Chairman Daly stated that she has reservations on having this Special Town Meeting in August. She feels that there may be too many Town Meeting members out of town, and it could appear that the Town is trying to push this through.

In Board of Selectmen

July 14, 2009

Page 12 of 20

SPECIAL TOWN MEETING cont'd

Selectman DeWitt shares Chairman Daly's mixed feelings. She hopes for open dialog from the business community, and was glad to hear Mr. Bravman speak in favor of the local tax earlier in the evening. Selectman DeWitt added that it would allow revenues to come in this year. Selectman DeWitt has concerns about a quorum. The word needs to be put out and public discussion be encouraged.

Selectman Mermell stated that failing to call a Special Town Meeting would be a real disservice to the community. We are operating under constraints where there is little control over the fiscal situation with the Town and the State, by green lighting this does not green light these taxes, it just allows discussion at Town Meeting in a timely way that would allow us to maximize the impact that this could have on the Town fiscal situation. Hopefully this would give enough time for residents to make rearrangements.

Selectman Goldstein feels that it would be wrong not to give Town Meeting the opportunity to consider this and vote on it. He feels that the fact that it is in August should not be much of a problem, work still goes on. Mr. Goldstein has a stronger opinion that this should pass based on the fact that surrounding communities are planning to pass this, which would relieve a burden to our local establishments, by not putting them at a competitive disadvantage.

Jonathan Stearns, President of the Brookline Chamber of Commerce asked if when the community sees better financial times, could these taxes be removed. Chairman Daly replied that in all honesty taxes rarely get rolled back.

Chairman Daly went over some dates for the Special Town Meeting. Wednesday August 26, 2009 was suggested.

On motion, it was unanimously,

VOTED: to call a Special Town Meeting for Wednesday, August 26, 2009, at 7:00 p.m. pursuant to Article 2.1.4 of the General By-Laws and to waive the requirements of Sections 2.1.2 through 2.1.4 of the By-Laws; to open the Warrant to include articles for the acceptance of certain option excise taxes as follows:

Article 1

To see if the Town will accept G.L/ c 64L § 2(a) to impose a local meals excise.

Article 2

To see if the Town will amend its local room occupancy excise under G.L. c. 64G, § 3A to the rate of 6 percent;

And to close the Warrant.

In Board of Selectmen

July 14, 2009

Page 13 of 20

SPECIAL TOWN MEETING cont'd

On motion, it was unanimously,

VOTED: to execute the Warrant for the August 26, 2009 Special Town Meeting.

CITIZEN COMPLAINT REVIEW COMMITTEE

The Board considered the question of adopting the proposed revisions to the Police Policy Manual based upon the recommendations of the Citizen Complaint Review Committee (CCRC) and input received in public hearings.

Chairman Daly stated that the citizen complaint/police discipline policy has been revised to incorporate some of the recommendations made by citizens, Town Counsel's office, and Selectmen.

Associate Town Counsel Patty Correa reviewed her memo as follows:

The Selectmen have before them tonight the question of whether to adopt proposed revisions to the police discipline policy based on the recommendations of the Citizen Complaint Review Committee, or CCRC, as set forth in the draft before them tonight dated July 13.

First, I'd like to briefly mention several minor corrections and changes in this July 13 draft from the July 7 draft posted last week on the Town's website.

This draft dated July 13 contains headings on pages 15 and 16 in Section 9, the Section dealing with Civilian Appeal Hearings, Action by the Board of Selectmen, and Disciplinary Hearings, to make clear which provisions apply to which of these three topics, and the paragraphs were renumbered accordingly.

This draft dated July 13 also deletes paragraph III(1)(D)(4), which affords complainants the opportunity to identify information in a complaint they regard as private, as redundant of paragraph III(2)(B)(2).

Finally, this draft deletes the term "written summary" in paragraph III (1)(D)4 on p. 3, consistent with the deletion of this term throughout the rest of the document, as the Police Department will principally be relying on the brochure that they are in the process of developing to explain the complaint process to the public, rather than on the written summary the Department now uses.

Now I'd like review the principal changes contained in this July 13 draft compared with the 1987 policy the CCRC reviewed, and also some of the

In Board of Selectmen

July 14, 2009

Page 14 of 20

CITIZEN COMPLAINT REVIEW COMMITTEE cont'd

improvements in the July 13 draft made in response to comments received at the public hearing on June 16, and after that during the comment period.

Like the April 21 draft, the July 13 draft that is before the Board this evening continues to be faithful to the CCRC's recommendations.

According to this draft, any complaint alleging any type of bias based on a person's membership in a category of persons protected by law, such as a person's race, sex, sexual orientation, and national origin, will be classified as a Class A complaint, the most serious type of complaint.

Now, the complainant, and all members of the public, will receive better information about the complaint and appeal process in a brochure that is in the process of being developed by the Police Department, and the complainant, witnesses, and the subject officer will all be entitled to have a representative present during his or her interview.

The Internal Affairs Officer, or IAO, will receive training on such matters as the weighing and evaluating of evidence, including the weighing and evaluating of the credibility of witnesses, and will be better guided on techniques to maximize the integrity of investigations, such as recording witness statements and having witnesses sign them.

All parties will have a better understanding of the basis for a decision regarding a citizen complaint and will have the opportunity to offer informed comment about that decision and its basis, as the statements of parties and witnesses will either be included in the investigative report or appended to it.

With regard to appeals, citizens will now be afforded a hearing at the time the Selectmen take up the citizen's appeal, at the proceeding that is now called a Civilian Appeal Hearing at Selectman Benka's suggestion.

At that hearing, citizens will be able to present their side of the story to the Selectmen, and, in another enhancement proposed by Selectman Benka, they will as of right be permitted to present three witnesses, and more if the Selectmen agree by a majority.

The July 13 draft incorporates other changes from the April 21 draft intended to incorporate the suggestions of, or to address the concerns voiced by, commentators at the June 16 public hearing or during the comment period.

The comments of several people revealed continuing ambiguity in the April 21 draft's use of the word "hearing."

CITIZEN COMPLAINT REVIEW COMMITTEE cont'd

Several simple but significant terminology changes proposed by Selectmen Benka should provide much greater clarity.

The July 13 draft now refers to what had previously been termed a “public meeting” on a citizen’s appeal as a Civilian Appeal Hearing, and it refers to what had previously been termed a “hearing” as a “Disciplinary Hearing.”

This hopefully will make other aspects of the policy clear, for example, why the policy states that the parties to the “hearing” – now referred to as the “Disciplinary Hearing” -- are the Town and the subject officer.

Perhaps more importantly, the use of the term “Civilian Appeal Hearing,” rather than “public meeting,” to refer to the proceeding held on a citizen appeal more accurately reflects the nature of that proceeding, both in terms of its intended purpose and how it will actually function, particularly with the enhancements incorporated into the July 13 draft, such as the right by the complainant to bring up to three witnesses to the Civilian Appeal Hearing, and more, if the Selectmen so agree.

Another improvement to the Policy made based on public feedback regarding the April 21 draft is that it now makes explicit and clear that the class designation is subject to review and approval by the Selectmen, that the designation itself can be the subject of an appeal, and that citizens can appeal the designation of a complaint as a Class “D,” or frivolous, complaint.

On a related note, the Selectmen now can explicitly add or change the class designation of a complaint to Class “C,” the class applicable to complaints that raise policy questions, which in turn would afford the Selectmen the opportunity to hear from anyone about any policy concerns raised by specific complaints.

This July 13 draft also makes improvements to the investigation process in response to a number of comments received.

Several commentators thought the entire process from the filing of a complaint to its final resolution, including any appeals, takes too long.

Under the July 13 draft, the IAO will now complete investigations within 30 days, down from the 60 days mentioned in the April 21 draft.

And the Town Administrator will now complete his or her review in 15 days with regard to Class A complaints and 30 days with regard to Class B and C complaints, down from 30 days with regard to Class A complaints and 60 days with regard to Class B and C complaints.

CITIZEN COMPLAINT REVIEW COMMITTEE cont'd

In addition, now, any prior complaints by the complainant that are more than two years old will be redacted from copies of the investigative report distributed to anyone other than the complainant, under new language added to parallel similar language already applicable to the officer.

Now, the policy states that all persons identified by the complainant or subject officer who reasonably appear to possess information relevant to the investigation will be interviewed.

The IAO's interview summaries will make clear whether interviews are done in person or by telephone and whether they were conducted as joint interviews.

Periodic assessments of the process will attempt to involve volunteers with relevant experience, including experience in dealing with people of diverse backgrounds and viewpoints.

Several suggestions received at the June 16 public hearing or during the comment period were not incorporated.

One commentator expressed a concern regarding language in the April 21 draft that permits the mediation of Class A complaints.

This provision was included at the recommendation of the CCRC, as I understand it, in consideration of emerging best practices from around the country.

While that provision permitting the mediation of Class A complaints is in the July 13 draft too, I point out language in the provision that hopefully responds to the concern underlying this comment, namely, language specifying that mediation will not occur until the conclusion of an investigation and only upon the approval of the Chief.

Finally, on the issue that has been most extensively debated – that is, the request that the policy state that a Class A matter may be moved to a disciplinary hearing upon the vote of one or two Selectmen -- the proposed draft does not implement that request.

That is in consideration of Civil Service Law, although it is not dictated by the Civil Service Law.

It is my opinion that consistent with legal requirements, the Selectmen could choose to draft the policy to permit the docketing of a disciplinary hearing on a Class A complaint upon a minority vote, and without the issuance of written charges by the majority, but only if any disciplinary decision that results is made upon a

CITIZEN COMPLAINT REVIEW COMMITTEE cont'd

majority vote, and only if the Selectmen limit themselves to minor discipline, for example, a suspension of five days or less or other forms of lesser discipline.

However, there is a question of whether it is good policy for the Selectmen to forego forms of discipline such as termination, demotion, and a suspension of more than five days for the purpose of permitting themselves the latitude -- within the constraints of the Civil Service Law -- to docket a hearing upon a minority vote, when it is precisely in substantiated Class A cases that such stiff forms of discipline will be most appropriate, warranted, and indeed, necessary.

It is for that reason that the July 13 draft proposes that the Selectmen may move to a disciplinary hearing upon the vote of a majority and after the issuance of any written charges they, as a body, deem fit, so that they may, consistent with Civil Service Law, consider *any* type of discipline, *particularly* regarding Class A complaints, which are the most serious type of complaint.

This approach seems especially fitting in light of the greatly enhanced process that complainants and witnesses will enjoy at the inception of the appeal process, at the stage now called the Civilian Appeal Hearing, when the Selectmen may hear not only from the citizen complainant, but also from at least three witnesses for the complainant, even more if they choose to do so.

Thank you.

Chief O'Leary stated that he feels this is a good document; it is fair to both the citizen and the Officer. This new policy is both open and transparent. The document is a result of a very thought-out debate that went through a good process to go forward.

Mariella Ames, TMM#15 would like to postpone the vote on this tonight in order to allow the public to weigh in on the newest proposed version. She asked if the Selectmen have the power to overturn the Chief's findings and impose discipline less than 5 days, after the citizen's appeals hearing, without holding a disciplinary hearing. Associate Town Counsel Patty Correa replied Civil Service law implies that the appointed authorities can impose a suspension of 5 days or less.

Selectman Benka added that theoretically that could be possible under Civil Service law; it is not the way that these procedures are set up. We have not operated like this; but, less than 5 days suspension has been imposed by the Police Chief. The Officer under the Civil Service law then has the right to appeal.

CITIZEN COMPLAINT REVIEW COMMITTEE cont'd

Ms. Ames asked if the civilian appeal hearing will be open to the public in all cases? Chairman Daly replied that if there is a disciplinary hearing, under Civil Service, the Police Officer has the option of it being open or not. If it is a citizen's complaint coming before the Board, it will be public. Ms. Ames asked why class "C" appeals are not included in the appeals hearing process. Selectman Benka added that class "C" matters can be appealed to the Board of Selectmen. Class "C" are matters that challenge policy and procedures, as opposed to the actions of a Police Officer. Class "C" has a broader appeals process than the other class complaints. She asked what the point of the Town Administrator having 30 days to review a complaint. She feels this is an unnecessary time frame. Chairman Daly replied that this gives the Town Administrator time to gather information for the Board. This timeline has been shortened from the previous document due to your comments on this earlier at the June Public Hearing. Ms. Ames suggested that there be an individual assigned to guide the complainant through the process.

Marty Rosenthal TMM#9 stated that he commends the Board and Town Counsel's office for their work. There is progress with the class "C" complaints. Mr. Rosenthal had previously questioned who the "parties" were. He has difficulty envisioning the parties, one is the Officer, one the Chief, but who is speaking for the complainant. The grieved person is not being represented. It notes that the Town would be involved, but who is that really. He hopes that more thought would be put into this. Mr. Rosenthal asked the Board to hold the vote tonight to allow public viewing of it.

Brian Decker, Police Union representative responded about the "parties". In a disciplinary hearing, it involves the employee, and the employer. He does not see any other parties being involved in a disciplinary hearing. On the question of discipline for less than 5 days suspension, Civil Service does not require a pre-disciplinary hearing. There is a separate source of rights for Police Officers for any form of discipline. They are all subject to grievance and arbitration. Arbitration is a serious process with full rights of the witnesses. He added that with good governance the appropriate guideline is the Board, acting as a Board, be the body that moves the matter forward.

Arthur Conquest, TMM#6 stated that not being a lawyer, some of this is confusing. Mr. Conquest questioned why the Board is going from a 1 Selectmen vote to a 3 Selectmen vote to address the issue of an appeal. Mr. Conquest added that when you include the issue of race, this whole thing goes out the window. We have not come to point in our society where that it's not a factor in terms of how we address any issue.

Frank Farlow, TMM# thanked everyone for their work on this document. There have been a lot of welcome additions. He added that there is confusing language on page 15, 1st paragraph. It does not ask for a majority vote. Selectman

CITIZEN COMPLAINT REVIEW COMMITTEE cont'd

Benka replied that this is under the Civil Service law. They do not require a Selectman vote to get to a Civil Service hearing. Ms. Correa added that this paragraph does not pertain to civilian appeals.

Selectman Benka stated that when you get to a disciplinary hearing there are only three ways to get there. One is that the Chief has imposed discipline and the Officer has appealed it. or the Chief has recommended severe discipline and the Officer has a right a civil service hearing, or the Chief has not imposed disciplinary action but, the Board has made a decision to bring disciplinary charges. In each scenario it is the Town as the employer that is prosecuting the case.

Selectman Benka requested some minor changes on page 12, at the last paragraph he would like to add, "or police officer" after complainant. On page 14, he would like to include the same. He would like the word "informal" be put back in, on page 15; paragraph D. Selectman Benka added that the document goes beyond the recommendations of the CCRC.

Selectman DeWitt stated that it is now an entitlement for a citizen to come forward and make a presentation, with the maximum of protection without being in judgment. This new policy is fair to all parties.

Selectman Goldstein stated that some good has come out of an unfortunate incident. It is not perfect, but we have reached a point where we need to get it in place. Mr. Conquest originally did not have an opportunity to come before the Board, now none would be denied. There is now an absolute right to be heard from someone with a legitimate complaint. We also need to recognize that our Police Officers have a right too. As for the vote of three, or majority vote by the Selectmen is only a matter of fairness.

Selectman Mermell stated that she is undecided on the issue of the majority vs. a minority vote. She encourages citizens and others that feel compelled to bring a complaint to the Board to have a voice. She also feels strongly about respecting our Police force, keeping in mind we are bound to follow the Civil Service laws.

Chairman Daly added that there were some serious flaws within the old policy. There has been a tremendous job in addressing and improving on some of those flaws. She is happy with the citizens' comments and that so many of them have gotten worked into the document. Chairman Daly has concerns about a minority vote. Although we try to make this as fair as possible to the citizens, we need to be fair to our employees as well. It may be a little too easy to have politics play a part when deciding a very serious matter; this is why she is leaning towards a majority vote. The Police Department does a great job in policing themselves already.

In Board of Selectmen

July 14, 2009

Page 20 of 20

CITIZEN COMPLAINT REVIEW COMMITTEE cont'd

There was no vote on this agenda item.

FALL TOWN MEETING

The Board considered the question of setting the opening and closing dates of the Warrant for the Fall Town Meeting to commence on Tuesday, November 17, 2009.

On motion, it was unanimously,

VOTED: to set the Open and Closing dates for the November 17, 2009 Fall Town Meeting as follows:

Open Warrant	August 6, 2009
Close Warrant	September 3, 2009
	(12N)

ATTEST

Richard J. Kelliher
Town Administrator

IN BOARD OF SELECTMEN

July 28, 2009

**Present: Chairman Nancy Daly, Selectmen Betsy DeWitt,
Jesse Mermell, Richard Benka, and Kenneth Goldstein**

**The Minutes of July 14, 2009 were approved as
amended.**

EXECUTIVE SESSION

Upon motion duly made and seconded, it was moved that the Board of Selectmen go into EXECUTIVE SESSION.

The Chair then stated the reason(s) for the Executive Session: (SEE THE REASONS CHECKED)

- _____ (1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of a particular individual¹.
- _____ (2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual¹.
- X (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with non-union personnel, and to conduct collective bargaining sessions or contract negotiations with non-union personnel.
- _____ (4) To discuss the deployment of security personnel or devices.
- _____ (5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
- _____ (6) To consider the purchase, exchange, lease or value of real property, if such discussion may have a detrimental effect on the negotiating position of the governmental body with a person, firm or corporation.
- _____ (7) To comply with the provisions of any general or special law or Federal grant-in-aid requirements.

The individual involved in such Executive Session must be notified in writing at least forty-eight (48) hours prior to such session and is (1) entitled to be present (2) to have counsel or other representative present and (3) to speak in his or her own behalf. Upon the request of the individual involved, no Executive Session shall be held and the meeting shall be held in open session. See G.L.c.39, §§23B(1) and (2).

_____ (8) **To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtained qualified applicants: provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.**

_____ (9) **To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a.) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b.) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.**

The Board of Selectmen, during a properly constituted and noticed meeting:

VOTED: to go into Executive Session

**Roll Call Vote: Voting in the Affirmative: 5
 Voting in the Negative: 0**

The Board of Selectmen (WILL) RECONVENE in Open Meeting after the Executive Session.

In Board of Selectmen

July 28, 2009

Page 4 of 22

PUBLIC COMMENT

TMM#16 Regina Frawley expressed concern on recent car break-ins in her precinct. She hopes there will be enhanced police presence in the area.

POLICE PERSONNEL

The Board considered the question of approving the promotion of Patrol Officer Ilya Gruber to Sergeant.

Chief O’Leary was pleased to recommend the promotion of Patrol Officer Ilya Gruber. The position of Sergeant is an important role within the Police Department and he is confident that Officer Gruber will succeed. Mr. Gruber speaks fluent Russian, which has been helpful with interactions within the Russian community. He holds an undergraduate degree in Criminal Justice and is currently studying for his Master’s in Criminal Justice.

Mr. Gruber thanked the Chief, his family and fellow officers for their support. The Board congratulated him and thanked him for his dedicated service to the community. The Board also acknowledged his support within the Russian community.

On motion, it was unanimously,

VOTED: To approve the promotion of Patrol Officer Ilya Gruber to Sergeant.

EXTRA WORK ORDER

The Board considered the question of approving Extra Work Order #2 in connection with Contract PW/09-09 “Street Light Maintenance for work to be completed by Republic Intelligent Transportation Services, Inc. of Billerica, in the amount of \$4,244.09. Said Work Order to be funded from account 4908KL054 6H0020.

Director of Engineering Peter Ditto stated that this Extra Work Order is for additional street lights. Selectman Mermell commented on the poor lighting in the Beaconsfield “T” stop area. Mr. Ditto replied that he will look into it. It may be on a private way.

On motion, it was unanimously,

VOTED: To approve Extra Work Order #2 in connection with Contract PW/09-09 “Street Light Maintenance for work to be completed by Republic Intelligent Transportation Services, Inc. of Billerica, in the amount of \$4,244.09. Said Work Order to be funded from account 4908KL054 6H0020.

CONTRACT

The Board considered the question of awarding and executing Contract No. PW/09-25 "Disposing of Leaves and Related Work" in the amount of \$85,295.00 to Lorusso Corporation of Plainville, MA. Said contract to be funded as follows:

40004300 523593	\$45,295.00
4991EW40 523593	\$40,000.00

Director of Engineering Peter Ditto stated that although Jayco Landscape Supply Co was the low bidder, they were declared informal because the bid contained a conditional statement. The contract consists of removal and off-site disposal of leaves, yard waste, and roadway materials, as well as removal and disposal of catch basin sediments.

On motion, it was unanimously,

VOTED: To award and execute Contract No. PW/09-25 "Disposing of Leaves and Related Work" in the amount of \$85,295.00 to Lorusso Corporation of Plainville, MA. Said contract to be funded as follows:

40004300 523593	\$45,295.00
4991EW40 523593	\$40,000.00

CONTRACT

The Board considered the question of awarding Contract No. PW/10-01 "Repair of Cement Concrete Sidewalks to G.R. Construction Corp., Fitchburg, MA in the amount of \$192,010.00. Said Contract to be funded as follows:

4909K056 6H0022	\$ 40,769.97
4910K056 6H0022	\$131,240.03
4910K073 6P0044	\$ 20,000.00

Director of Engineering Peter Ditto stated that this contract is for the removal of existing sidewalks and replacing with cement at various locations throughout the town.

On motion, it was unanimously,

VOTED: To award Contract No. PW/10-01 "Repair of Cement Concrete Sidewalks to G.R. Construction Corp., Fitchburg, MA in the amount of \$192,010.00. Said Contract to be funded as follows:

4909K056 6H0022	\$ 40,769.97
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4910K056 6H0022	\$131,240.03
4910K073 6P0044	\$ 20,000.00

CONTRACT

The Board considered the question of awarding Contract No. PW10-02 "Repair Bituminous Concrete Patches" to Allied Paving Corp of Chelmsford, MA in the amount of \$129,825.00. Said Contract to be funded as follows:

4909K058 6H0026	\$109,825.00
4910K073 6P0044	\$ 20,000.00

Director of Engineering Peter Ditto stated that this contract is for patch repair in sidewalks and various locations. It is usually done on an emergency basis.

On motion, it was unanimously,

VOTED: To award Contract No. PW10-02 "Repair Bituminous Concrete Patches" to Allied Paving Corp of Chelmsford, MA in the amount of \$129,825.00. Said Contract to be funded as follows:

4909K058 6H0026	\$109,825.00
4910K073 6P0044	\$ 20,000.00

FY2009 ENVIRONMENTAL REVIEW RECORD

The Board considered the question of executing the Environmental Review Record for the use of FY2009 CDBG-R Funds.

Director of Planning & Community Development Jeff Levine stated that the Town is required to conduct an environmental review for proposed projects which will utilize CDBG funding. The Town has not received formal approval of the grant request, but HUD has requested the entitlement move forward with required aspects for grant funding.

On motion, it was unanimously,

VOTED: To execute the Environmental Review Record for the use of FY2009 CDBG-R Funds.

CDBG AGREEMENTS

The Board considered the question of approving and authorizing the Chairman to execute the following FY2010 CDBG Sub-recipient Agreements.

Planning & Community Development Microenterprise Assistance	\$ 64,250
Council on Aging Elder Taxi System	\$ 36,000
Council on Aging Home Escort Linkage Program	\$ 5,000
Council on Aging Job Opportunities for Elders	\$ 11,913
Planning & Community Development CD Grant Administration	\$170,801
CD Comprehensive Planning	\$ 85,414
Preservation Planning	\$ 63,037
Housing Division	\$282,525

Chairman Daly noted that there has been some questioning on the cost of administration. She added that the preparing of documents and the protocol that is required in order to obtain CDBG funds is extensive. It requires numerous hours of administrative work, on an ongoing basis. Director of Planning & Community Development Jeff Levine agreed; the work is precise and time consuming.

On motion, it was unanimously,

VOTED: To approve and authorize the Chairman to execute the following FY2010 CDBG Sub-recipient Agreements.

Planning & Community Development Microenterprise Assistance	\$ 64,250
Council on Aging Elder Taxi System	\$ 36,000
Council on Aging Home Escort Linkage Program	\$ 5,000
Council on Aging	\$ 11,913

CDBG AGREEMENTS cont'd

Job Opportunities for Elders

Planning & Community Development	
CD Grant Administration	\$170,801
CD Comprehensive Planning	\$ 85,414
Preservation Planning	\$ 63,037
Housing Division	\$282,525

CONSOLIDATED PLAN GRANT AGREEMENT

The Board considered the question of approving and executing the Consolidated Plan Grant Agreement between the Town and the Department of Housing and Urban Development (HUD) for FY2009 Community Development Block Grant Funds.

Director of Planning & Community Development Jeff Levine stated that this agreement is for funding of FY09, which is the Town's FY10. The agreement is that the Town will spend the funds as they were requested for.

On motion, it was unanimously,

VOTED: To approve and execute the Consolidated Plan Grant Agreement between the Town and the Department of Housing and Urban Development (HUD) for FY2009 Community Development Block Grant Funds.

TEMPORARY WINE AND MALT BEVERAGE LICENSE

The Board considered the question of granting a temporary Wine & Malt beverages license to Pine Manor College in connection with the following events to be held at 400 Heath Street

August 8, 2009	Wedding
2:00 p.m.- 8:00 p.m.	(Lisa Malley)
August 16, 2009	Baby Shower
12N – 6:00 pm.	(McDermott)
August 30, 2009	Wedding
2:00 p.m. – 8:00 p.m.	(Judith Michaelson)

On motion, it was unanimously,

VOTED: To grant a temporary Wine & Malt beverages license to Pine Manor College in connection with the following events to be held at 400 Heath Street

August 8, 2009 2:00 p.m.- 8:00 p.m.	Wedding (Lisa Malley)
August 16, 2009 12N – 6:00 pm.	Baby Shower (McDermott)
August 30, 2009 2:00 p.m. – 8:00 p.m.	Wedding (Judith Michaelson)

TEMPORARY WINE AND MALT BEVERAGE LICENSE

The Board considered the question of granting a temporary All Kinds of Alcoholic beverages license to Pine Manor College in connection with a Wedding (Simon Family) to be held on August 2, 2009 from 2:00 p.m. – 8:00 p.m. at 400 Heath Street.

On motion, it was unanimously,

VOTED: To grant a temporary All Kinds of Alcoholic beverages license to Pine Manor College in connection with a Wedding (Simon Family) to be held on August 2, 2009 from 2:00 p.m. – 8:00 p.m. at 400 Heath Street.

GRANTS OF LOCATION

Public Hearing on the petition of Boston Edison Company d//b/a NSTAR Electric for permission to construct and a location for such a line of conduits and manholes with the necessary cables therein under the following public way:

Cottage Street – Northwesterly, thence turning northeasterly, approximately 405 feet southeast of Warren Street. A distance of 19 feet – conduit @ pole 18/3.

Marshall Street – Approximately 85 feet south of Beacon Street, thence turning and running easterly a distance of 85 feet conduit.

Director of Engineering Peter Ditto stated that the conduits are for new service.

GRANTS OF LOCATION cont'd

Selectman Goldstein asked about a second conduit, and what is the purpose. Mr. Ditto replied that the second line is for the Town's use.

On motion, it was unanimously,

VOTED: To grant Boston Edison Company d//b/a NSTAR Electric permission to construct and a location for such a line of conduits and manholes with the necessary cables therein under the following public way:

Cottage Street – Northwesterly, thence turning northeasterly, approximately 405 feet southeast of Warren Street. A distance of 19 feet – conduit @ pole 18/3.

Marshall Street – Approximately 85 feet south of Beacon Street, thence turning and running easterly a distance of 85 feet conduit.

MBTA –DEAN ROAD BRIDGE

MBTA Project Manager Elizabeth Ozthail and a representative of the Louis Berger Group appeared to present an overview of the rehabilitation of the Dean Road Bridge over the Green Line scheduled to occur in 2010.

MBTA representatives Joe Nolan, Elizabeth Ozthail, and the project consultant updated the Board on their plans to rehabilitate the Dean Road Bridge. The bridge was constructed in the 1920s. The project will replace the bridge superstructure, and repair the granite abutments and the stairs to the MBTA Beaconsfield Station. The road closure will be in effect for approximately 9 months. Detours will be provided. The project is expected to begin in the Spring of 2010.

The Board expressed concern on the nighttime noise level the project may bring to the neighborhood. Mr. Nolan replied that the loudest work would be the demolition which would occur during the day and expected to last only one day, although it would be hard to determine any night time work should a emergency arise. Selectman Mermell noted that the neighborhood is currently dealing with repairs to the green line in the area which has been an inconvenience. Selectman Goldstein addressed the detour which will head onto Chestnut Hill Ave. There is a traffic situation there that brings the flow to a stand still when a trolley is entering the train yard. The timing is not in sync with the traffic lights. He feels there could be some relief if the situation were looked at. Mr. Nolan made note of it, but stated that the signal tie in is not included in the project.

The Board will continue to receive updates on the project.

In Board of Selectmen

July 28, 2009

Page 11 of 22

FISHER HILL – UPDATE

Selectman DeWitt and members of the Fisher Hill Project Committee appeared to update the Board concerning the pending Letter of Intent with New Atlantic Development Corporation.

Selectman DeWitt stated that the first step in order to move forward is a Letter of Intent Agreement between the Town and the developer, and an amendment to the zoning by-law. Both are required before Town Meeting.

Town Counsel Jennifer Dopazo stated that the Letter of Intent captures the terms and provisions of the project and discusses the next steps. Special environmental study will be prepared with a site survey. After that there will be a title search. The Letter of Intent is being circulated to solicit the Board's comments. The Board will submit their comments by July 31.

Director of Planning & Community Development Jeff Levine added that the Zoning By-law Committee has begun its process.

CITIZEN COMPLAINT REVIEW COMMITTEE

The Board considered the question of adopting the proposed revisions to the Police Policy Manual based upon the recommendation of the Citizen Complaint Review Committee (CCRC) and input received in public hearings.

Associate Town Counsel Patty Correa made the following statement:

You have before you tonight a new draft of the citizen complaint and police discipline policy dated July 24, 2009, along with copies of the three sets of written comments received during the most recent public comment period that ended on July 20.

The July 24 mark-up before you shows changes from the last draft dated July 13.

It is the culmination of the year-long review undertaken by the CCRC that resulted in a detailed report recommending key improvements.

It is also the culmination of two public comment periods resulting in numerous additional proposals, most of which have been incorporated.

The July 24 draft largely incorporates the changes suggested for the July 13 draft by the three sets of written comments the Town received during the most recent comment period. Most of those proposals were welcomed as helpful language and organization changes that enhanced the readability of the document and improved its focus.

In addition, the July 24 draft incorporates a few minor changes by Dick Benka and by me to correct typos and for clarification. My changes include edits to Section III(5)(A) and III(5)(C) regarding the redaction of the investigative report and the Chief's report and the materials accompanying each, as, in my opinion, the language of those paragraphs had become increasingly cumbersome and difficult to follow in the various iterations of the policy written since the original April 21 draft. My edits to these paragraphs reflect my attempt to incorporate a proposed edit received during the public comment period that just ended, and at the same time make the entire paragraph more easily understood and internally consistent.

At Dick Benka's suggestion, the July 24 draft of the policy also incorporates changes to the second paragraph of Section III(9)(A), which specifies that disciplinary matters will go directly to a Disciplinary Hearing, in order to make the language more clearly conform with civil service law.

It also incorporates a request by the Police Department that the language of the policy reflect that an Internal Investigation Appeal Form will be sent by the Department to the parties along with the Chief's final report, to reflect the Department's current practice.

Several proposed language changes were not incorporated, as it was felt that the existing language of the Policy served the Town well.

An additional several proposed changes were not incorporated due to policy considerations, based on input from Chief O'Leary or Town Administrator Kelliher. They are as follows:

A suggestion was made to create the volunteer position of citizen guide. The policy, as revamped, calls for much better public education about the citizen complaint and police discipline process than previously, including a new brochure and the development of biennial plans to better educate the public about the process. In addition, it seems reasonable as a policy matter to believe that the Department is most knowledgeable and best situated to guide citizens through its own process, and now the policy makes clear that complainants and witnesses may have a representative of their choosing present to offer them support.

A suggestion was made to change the language in III(1)(D)(5), which deals with complaints that are Class C complaints only, to say that such complaints shall immediately go into the investigation process without the Department first trying to explain the policy to the citizen. This suggestion proposed to change a long-standing provision of the policy pertaining to complaints that are Class C complaints only. The existing provision providing for an early attempt at public education prior to the filing of a complaint did not seem unreasonable and was retained, although the language has been modified for clarity reasons.

A suggestion was made for the Town to notify specifically witnesses, as it does complainants and subject officers, of the docketing of the Civilian Appeal Hearing. It was

felt that it is the parties to the proceeding who should be notified, and of course, under the changes that have been made, either party is entitled as of right to bring up to 3 witnesses to the Civilian Appeal Hearing, and more if the Selectmen agree.

A suggestion was made to publicize in a newspaper, on the Town's website, and otherwise any explanation and other materials the Chief offers with regard to a Citizen Appeal from a Class C complaint pursuant to Section III(9)(D)(2). It was felt that this recommendation posed undue burdens for the Department and for the Selectmen's Office and was not necessary.

A suggestion was made to require that the content of the investigative report be organized according to a specific chronology the comment recommended. It was felt that the Policy should afford latitude to the Department to organize the content of the report as seems best in any particular case.

Finally, several proposed changes were not incorporated based upon legal considerations. They are as follows:

A comment was received expressing the view that the policy is unfair because it states that if the Chief has imposed or recommended discipline of an officer, then the officer proceeds directly to a disciplinary hearing, but if the Chief has not recommended discipline, then a citizen must prove in a Civilian Appeal Hearing that there is a basis for discipline. However, if the Chief has recommended discipline, then the officer is, or may be, entitled to a Disciplinary Hearing under the law, and in any event there should be no need for a Civilian Appeal Hearing even from the complainant's point of view, as the Town has in effect sided with the complainant. On the other hand, if the Chief has not recommended discipline, then the Civilian Appeal Hearing is for the benefit of the complainant, by allowing the complainant an additional opportunity to present his or her case directly to the Selectmen regarding a complaint which the Chief felt was unfounded or otherwise did not warrant discipline. Affording the complainant this type of opportunity was one of the major innovations to the policy recommended by the CCRC.

A suggestion was again made to include the citizen as a party to the Disciplinary Hearing. The language deleting the citizen as a party to such hearings is not new: the version of the policy adopted by the Selectmen in 1998 and that the CCRC considered stated in Section H(1): "The parties shall consist of the accused officer and the Chief or his designee." This was a change from the 1987 version of the policy which stated in that same section: "The parties shall consist of the complainant (if any, the accused officer and the Chief or his designee.)"

Additional language changes were made in the April 21 draft and thereafter in the interest of clarity, but that basic change occurred in 1998.

As I have said previously, as a legal matter I recommend against the policy stating that the parties to the Disciplinary Hearing shall include the citizen complainant, because by definition and legally, it is the Town – through either its Police Chief or its Board of

In Board of Selectmen

July 28, 2009

Page 14 of 22

Selectmen – which presses for discipline in the Disciplinary Hearing. Moreover, the arguments in favor of discipline are represented by the Town, either by the Chief where he recommends discipline, or by the Selectmen, after hearing the evidence at a Civilian Appeal Hearing. In addition, the civil service law does not contemplate that a person who has a complaint against an employee may be joined in some fashion as a party to a disciplined employee’s disciplinary hearing. Of course, any complainant with relevant testimony to offer would still participate in the Disciplinary Hearing as a witness.

A suggestion was made that the policy should specify that all civilian appeal hearings be public. I recommend against including such language, as it is inconsistent with the Open Meeting Law and it would be the Open Meeting Law that would govern in the event of any conflict between the law and the policy. Exemption (2) of the Open Meeting Law supplies a governmental body with the opportunity to vote to go into executive session to hear allegations or charges against an individual. One can imagine facts where the Selectmen may see a compelling need to hear the details of an incident in executive session, out of respect for the privacy interests of potential victims or witnesses, in addition to those the police officer may have.

All in all, the July 24 draft incorporates approximately 25 further suggestions received during the additional public comment period the Board supplied at the July 14 Selectmen’s meeting, in addition to numerous additional changes included in the July 13 draft as a result of comments received during the first public comment period.

Selectman Benka thanked the CCRC, the Board, the Chief, Town Administrator, and Associate Town Counsel Patty Correa for their hard work on this policy as well as the Citizens for their input. He added that the most fundamental difference in the policy stems from when a complainant is made against an officer. Reports were not required to go to the complainant, which are now provided, and the opportunity for the complainant to address the Board of Selectmen is now incorporated into the new policy. On the question of the number of votes needed to move onto a disciplinary hearing, it is now recommended that a majority of Selectmen votes is needed to move forward in order to ensure the rights of the Officer as well. This policy goes beyond the recommendation of the CCRC because the Selectmen have included the right for the complainant to present witnesses at the Civilian Appeal Hearing. Selectman Benka added that this is a working document, and is there is opportunity for further improvement if needed.

The Board thanked everyone for their work on the policy and feel that the new document is much improved.

On motion, it was unanimously,

VOTED: To adopt the proposed revisions to the Police Policy Manual based upon the recommendation of the Citizen Complaint Review Committee (CCRC) and input received in public hearings. Dated July 24, 2009.

SURVEILLANCE CAMERA PUBLIC HEARING

Public comment on the Surveillance Camera Pilot Program.

Chief O'Leary stated that in response to the continuing debate of the CIMS cameras, the Police Department has been looking for ways to operate the cameras on a scaled down version. He had become aware of a product that provides a self contained enclosure that provides a cover over the camera lens. The cover can be opened and closed as needed. When it is closed there is a different color and it can not record. The cover can be opened remotely by designated computers under predetermined conditions, and be allowed to record for a specific length of time. This system is currently being used in the Town of Marshfield. The company has proposed a trial period for the use of a camera to test it out. The Chief hopes this would provide an option that would allow the cameras to operate quickly in a case of emergency or criminal incident. The Chief feels this would add to the public safety of the citizens, and outlined a recent instance where private cameras assisted in obtaining important information in an attempted rape case near Washington Square. He reiterated that there will not be 24/7 surveillance.

Selectman Mermell asked about the cost. The Chief replied that the cost had not been discussed yet.

Selectman DeWitt added that perhaps there could be a notification when the cameras are turned on, maybe appointing a point person as a moderator. Selectman Benka asked if the public could see when the cameras are closed. The Chief replied yes.

Jack Corrigan, Surveillance Camera Oversight Committee member stated that the benefits are crime solving, and the question is the intrusion on civil liberties. This would help decide how often civil liberties are intruded on. This seems like a reasonable way to address the issue.

Abraham Chipman PAX member stated that this is a question of 4th amendment rights to privacy and the functioning of democracy in Brookline. He is troubled that Town Meeting voted to dismantle the cameras, and the Selectmen are considering going against Town Meeting.

Eunice White TMM#2 hopes that the Board will follow through with the Resolutions of Town Meeting. She stated that Brookline is not crime ridden, and we have an effective police force. Town Meeting waived the merits of having the cameras. Town Meeting clearly understood what was before them. She is disappointed that that there is a continuous focus on how the cameras could be acceptable. Ms. White does not object to private businesses using the cameras to protect their customers and staff, she is against government monitoring, and concerned about future technology advances.

Linda Olson Pehlke, TMM#2 stated that Town Meeting voted to terminate the trial period. They do not want to be under surveillance. She feels this is sincere attempt to complicate the policy, procedures and oversight.

Karen Weiss, Summit Ave, stated that the Advisory Committee voted for the cameras. They provide public safety to the community. Public safety should override privacy intrusion.

Susan Allen, precinct 13 stated that Town Meeting voted to remove the cameras,, and the Selectman have chosen to ignore Town Meetings recommendation.

Andrew Ghobrial, St. Mary's Street, was in support of the cameras. He feels they are a source of deterrence of crime. He added that perhaps the police website can show the live footage an indication for when the cameras are off.

Sarah Wunsch, Brook Street stated that Town Meeting rejected this. She hopes that the Board respects those who educated themselves in making the Town Meeting decision.

John Bassett, TMM#6 is opposed to the cameras. He feels that it is still big brother watching; only now is watching opened or closed with the new proposal.

Ross Richmond, Greenough Circle, stated that he is not willing to trade his privacy for the marginal benefits of the cameras. This is a massive infrastructure, and we do not want to be part of this system.

Bobby Murphy TMM#16, and Police Sergeant, stated that he appreciates the concern of big brother, but the cameras are nothing more than a tool for the Police Officers to assist in crime. The new proposal addresses most concerns on privacy; and are in the public where the cameras will be. Cameras are used all the time to assist the police, they are around everywhere. He feels it would be a disservice to the Town not to have them for our protection. They are subject to public records law. Mr. Murphy appreciates the Town Meeting vote, but the Selectmen are voted into office as well, and he thinks that they should decide how they feel about it. He also noted that the vote at Town Meeting could have been different if it was taken up at a different time, when there were more in attendance.

Selectman DeWitt asked about the data, where does it end up. The Chief replied that the data is recorded over every 14 days.

There was no vote on this agenda item.

LIQUOR – TRANSFER OF STOCK

Public Hearing on the application of Bertucci's Restaurant Corp., d/b/a Bertucci's Brick Oven Ristorante holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 4 Brookline Place for a transfer of stock.

Attorney Gregory DeMakis representing Bertucci's stated that this stems from a corporate level. Creditors are trading in debt for equity.

On motion, it was unanimously,

VOTED: To approve the application of Bertucci's Restaurant Corp., d/b/a Bertucci's Brick Oven Ristorante holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 4 Brookline Place for a transfer of stock.

LIQUOR - CHANGE IN OFFICERS/DIRECTORS/MANAGER

The Board considered the question of approving the application of Ginze Inc., Nadide Gurel, President holder of any All Kinds of Alcoholic beverages license as a Common Victualler at 1002 Beacon Street for a changes in officers and change in manager as follows:

OFFICERS:

President	Toru Oga	to	Nadide Gurel
Treasurer	George Chan	to	Nadide Gurel
Secretary			Nebi I.Gunasti

DIRECTORS

Toru Oga	to	Nadide Gurel
Nancy Chan	to	Nebi I. Gunasti
Chien Kuang Chen		
Yasar Gunasti		
Resul Gunasti		

MANAGER

Nancy Chan	to	Nadide Gurel
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Nadide Gurel stated that she had run this business for many years, and decided to remain as a silent partner. She has since decided that she would like to return to the position of manager, to bring the business to where it once was.

Selectmen Goldstein asked if she would have any help running the business. Ms. Gurel stated that her son, Nebi Gunasti will be working with her. He has worked in several restaurant establishments in recent years. Selectman Goldstein would like Mr. Gunasti to apply for the Alternate Managers position at a later date.

St. Mary's resident Andrew Ghobrial spoke in favor of the applicant.

On motion, it was unanimously,

VOTED: To approve the application of Ginze Inc., Nadide Gurel, President holder of any All Kinds of Alcoholic beverages license as a Common Victualler at 1002 Beacon Street for a changes in officers and change in manager as follows:

With the condition that Mr. Gunasti applies for the Alternate Managers position at a later date.

OFFICERS:

President	Toru Oga	to	Nadide Gurel
Treasurer	George Chan	to	Nadide Gurel
Secretary			Nebi I.Gunasti

DIRECTORS

	Toru Oga	to	Nadide Gurel
	Nancy Chan	to	Nebi I. Gunasti
	Chien Kuang Chen		
	Yasar Gunasti		
	Resul Gunasti		

MANAGER

	Nancy Chan	to	Nadide Gurel
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LIQUOR – CHANGE IN MANAGER

The Board considered the question of approving the application of Golden Apple, Inc. d/b/a Pomodoro, Jon Pell, Operations Manager, holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 24 Harvard Street for a change in Manager as follows:

FROM:	Jim Scoon
TO:	Samuel Allore
	Stephen Shellenberger (alternate)

Jon Pell, Samuel Allore, and Stephen Shellenberger were present. All papers were in order.

On motion, it was unanimously,

VOTED: To approve the application of Golden Apple, Inc. d/b/a Pomodoro, Jon Pell, Operations Manager, holder of an All Kinds of Alcoholic beverages license as a Common Victualler at 24 Harvard Street for a change in Manager as follows:

FROM:	Jim Scoon
TO:	Samuel Allore
	Stephen Shellenberger (alternate)

LIQUOR/COMMON VICTUALLER OUTSIDE SEATING

The Board considered the question of approving the application of Jerusalem Pita, LLC, Rada Roda, Owner, Manager, holder of a Wine & Malt beverages license as a Common Victualler at 10 Pleasant Street for outside seating with a total seating capacity of 21, (17 seats inside and 4 outside).

Rada Roda, Manager was present. The Board discussed the size of the sidewalk, and expressed concern on the size of the table and chairs. It was hard to determine the scale of the seating through the application. It was decided to approve the outdoor seating on a trial basis.

On motion, it was unanimously,

VOTED: To approve the application of Jerusalem Pita, LLC, Rada Roda, Owner, Manager, holder of a Wine & Malt beverages license as a Common Victualler at 10 Pleasant Street for outside seating with a total seating capacity of 21, 17 seats inside and 4 outside, until August 26, 2009.

WINE & MALT COMMON VICTUALLER INCREASE IN HOURS

The Board considered the question of approving the application of Genki, Inc., d/b/a Genki Ya, Jason J. Yu President, holder of a license to a Wine and Malt beverages license as a Common Victualler at 398 Harvard Street, for an increase in hours as follows:

FROM:	Sun-Sat	11am – 11pm
TO:	Sun-Sat	11am – 1:30am

Jason J. Yu was present. Town Administrator Richard Kelliher stated the Chief had recommended that alcohol be off the tables by 1:00 a.m. The Chief concurred.

Neighbors Louis Lowe, Emily Stein, and Beth Kates all appeared in opposition to the extended hours. They stated that the area has been a nuisance with delivery trucks coming and going in the early hours. It was also stated that it is unreasonable to have patrons there at such a late hour. The neighborhood is residential with children and senior citizens; there has been no demand for restaurants to stay open that late.

Mr. Yu replied that he has followed all the rules and regulations and feels that he has been a good neighbor. He is just trying to increase business since the lunch hours has slowed down. The Board was not comfortable with these hours. Chairman Daly would like to find a middle ground where the hours could be later on the weekends, but not during the week.

This agenda item was held.

In Board of Selectmen

July 28, 2009

Page 20 of 22

FOOD VENDOR LICENSE

The Board considered the question of approving the application of Haisai International LLC d/b/a Japan Village Mart, Kazuma Uemura, Owner for a Food Vendor license at 200 Washington Street.

Kazuma Uemura, Owner, and Attorney Neil Kreuzer were present. All papers were in order.

On motion, it was unanimously,

VOTED: To approve the application of Haisai International LLC d/b/a Japan Village Mart, Kazuma Uemura, Owner for a Food Vendor license at 200 Washington Street.

COMMON VICTUALLER LICENSE

The Board considered the question of approving the application of El Pelon Taqueria Corp., James Hoben, Owner for a Common Victualler license at 1669 Beacon Street.

James Hoben was present. All papers were in order.

On motion, it was unanimously,

VOTED: To approve the application of El Pelon Taqueria Corp., James Hoben, Owner for a Common Victualler license at 1669 Beacon Street.

The Board considered the question of approving the application of El Pelon Taqueria Corp., James Hoben, Owner holder of a Common Victualler license at 1669 Beacon Street for an Entertainment license to include: radio and taped music.

On motion, it was unanimously,

VOTED: To approve the application of El Pelon Taqueria Corp., James Hoben, Owner holder of a Common Victualler license at 1669 Beacon Street for an Entertainment license to include: radio and taped music.

INFLAMMABLES LICENSE

Public Hearing on the application of St. Aidan's Realty Trust for a license for the keeping, storage and use of gasoline in the tanks of sixty-six (66) automobiles in an underground parking facility at 150 Pleasant Street.

Lisa Alberghini representing St. Aidan's Realty Trust stated that this is required for the underground parking lot at the St. Aidans site. Ms. Alberghini added that the development is coming along and the sales are ahead of schedule.

On motion, it was unanimously,

VOTED: To approve the application of St. Aidan's Realty Trust for a license for the keeping, storage and use of gasoline in the tanks of sixty-six (66) automobiles in an underground parking facility at 150 Pleasant Street.

LIQUOR/COMMON VICTUALLER

Public Hearing on the application of Beta Two, LLC, Kristian Deyesso, Manager for an All Kinds of Alcoholic Beverages license as a Common Victualler at 308 Harvard Street. Hours of operation Sun-Thurs 11:00 a.m. – 12 Midnight Fri-Sat 11:00 a.m. -1:00 a.m.

Attorney Paul Sporn, and Kristian Deyesso present. All papers were in order.

On motion, it was unanimously,

VOTED: To approve the application of Beta Two, LLC, Kristian Deyesso, Manager for an All Kinds of Alcoholic Beverages license as a Common Victualler at 308 Harvard Street. Hours of operation Sun-Thurs 11:00 a.m. – 12 Midnight Fri-Sat 11:00 a.m. -1:00 a.m.

The Board considered the question of approving the application of Beta Two, LLC, Kristian Deyesso, Manager holder of an All Kinds of Alcoholic Beverages license as a Common Victualler at 308 Harvard Street for an Entertainment license to include radio and television.

On motion, it was unanimously,

VOTED: To approve the application of Beta Two, LLC, Kristian Deyesso, Manager holder of an All Kinds of Alcoholic Beverages license as a Common Victualler at 308 Harvard Street for an Entertainment license to include radio and television.

WINE AND MALT COMMON VICTUALLER

Public Hearing on the application of R&R Ventures, Inc., d/b/a Café Nicholas, Richard Siber, President, for a Wine and Malt beverages license as a Common Victualler at 1632 Beacon Street.

In Board of Selectmen

July 28, 2009

Page 22 of 22

Richard Sibor, and Richard Kommit were present. All papers were in order.

On motion, it was unanimously,

VOTED: To approve the application of R&R Ventures, Inc., d/b/a Café Nicholas, Richard Siber, President, for a Wine and Malt beverages license as a Common Victualler at 1632 Beacon Street.

The Board considered the question of approving the application of R&R Ventures, Inc., d/b/a Café Nicholas, Richard Siber, President, holder of a Wine and Malt beverages license as a Common Victualler at 1632 Beacon Street for an Entertainment License to include radio and taped music.

On motion, it was unanimously,

VOTED: To approve the application of R&R Ventures, Inc., d/b/a Café Nicholas, Richard Siber, President, holder of a Wine and Malt beverages license as a Common Victualler at 1632 Beacon Street for an Entertainment License to include radio and taped music.

There being no further business, the Chair adjourned the meeting at 10:20 p.m.

ATTEST