

TOWN OF ACTON SELECTMEN'S MEETING
November 15, 2021
6:00pm

- 1. CALL MEETING TO ORDER / PLEDGE OF ALLEGIANCE**
- 2. TOWN ADMINISTRATOR WEEKLY UPDATE – TABLED**
- 3. WARRANTS/BILLS - TABLED**
- 4. APPROVAL OF AGENDA - TABLED**
- 5. MINUTES OF LAST MEETING - TABLED**
- 6. DEPARTMENT HEAD / COMMITTEE CHAIR UPDATES - TABLED**
- 7. OLD BUSINESS - TABLED**
 - A. None
- 8. NEW BUSINESS**
 - A. Executive Session MRSA 405 6-A.1 Personnel Issue

Selectmen Kimberly Stacey-Horn made a motion to go into Executive Session pursuant to MRSA 405 6-A.1 Personnel Issue with the Transfer Station; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

Mr. Broader III spoke up indicating that he questioned the propriety of an executive session on this tonight. Selectmen David Winchell Jr. invited Mr. Broader to sit down as the Board was going into Executive Session for a Personnel matter. Mr. Broader countered and stated for the record that he believed this should not be an executive session because there hasn't been sufficient disclosure of what was being discussed, the reason for this.. The Town Administrator spoke up addressing Mr. Broader.

The Town Administrator noted that there was two different issues at play here because a camera person was recording the meeting that normal pauses the recording when the Board goes into an executive session. Selectmen David Winchell Jr. said that the reason the Board was going into the executive session before it is found out what the Board is going into executive session for is that it is a personnel matter; the Board can not discuss the personnel matter without identifying the personnel.

Mr. Broader III countered Selectmen David Winchell Jr. to listen to what he had to say; he'd be glad to explain. To simply state it's a personnel issue, in his opinion, does not meet the requirements of executive session in Title 1 MRSA Section 405 which states the executive session doing it in public having the discussion in public must be reasonable expected to cause harm to the individual's reputation or the individual's right to privacy would be violated. As Mr. Broader III understood the issue, if it is the same issue that was raised at last week's meeting, it is a concern about the propriety of a hiring of a Select....Selectmen David Winchell Jr. stopped the commentary. This will not be discussed until after the Select Board met in executive session.

Selectmen David Winchell Jr. continued to Mr. Broader III that he can tell them all of this as they are not lawyers and Mr. Broader is. However, this is how business has always been conducted and was how it was going to be done this evening as well. The individual for which the Board is speaking about, is not in the room. Unless this individual was here, the Board was not doing anything in a public setting.

Mr. Broader replied that anyone who alleges misconduct must be permitted to attend the Executive Session, so anyone in this confidence that hiring is misconduct on part of the Board has a right to be in that session. Mr. Broader III further commented that he alleged it was misconduct as well as others in attendance. Mr. Broader continued that the Board could go ahead and continue their business but that they would be making another mistake on top of one that was already made.

The Town Administrator explained that regarding an executive session, section E 405; it was posted as 405 6A; if amended to 405 6A E and swap it, E is consultation between a body or an agency and its attorney concerning the legal rights and duties of the body or agencies pending or contemplating litigation settlement offers matters whether the duties of the public body or agencies council to the attorney client the code responsibly clear conflict with general public knowledge would take place.

Discussion ensued regarding motion and staying with motion.

Selectmen Kimberly Stacey-Horn made a motion to come out of Executive Session pursuant to MRSA 405 6-A.1 Personnel Issue at 6:41 pm; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

Selectmen David Winchell Jr. informed the public that the Board went into executive session not knowing the information exactly of what the Board was going in to discuss. The Board knew it was a personnel issue on an employee that is still an employee of the Town of Acton. That is why what was done was done.

Selectmen David Winchell Jr. made a motion to read a statement prepared; seconded by Selectmen Kimberly Stacey-Horn. No discussion. All in favor.

Selectmen Kimberly Stacey-Horn explained that the Board asked the Town Administrator to draft the following statement for them:

In August the Board of Selectmen were notified that the current Transfer Station Superintendent Robert Mann, was looking to step down from his position but wanted to stay on as a regular employee, thus creating a vacancy in his Supervisor position.

Shortly thereafter, the Board of Selectmen advertised the position as it currently existed; this job opportunity appeared on the Town's website, cable channel, local Face Book page and also in the September 9 Waterboro Reporter. After two weeks of not receiving applications or inquiries about the position, the Board of Selectmen began discussing other options.

At the September 29, 2021 Board of Selectmen's meeting Selectmen Ed Walsh publicly recused himself from any future involvement regarding this position.

Due to this recusal, the term Selectmen, from here on out in this statement, shall only refer to David Winchell Jr. and Kim Stacey-Horn.

After discussion, the Selectmen decided to combine the Superintendent position with the current Handyman position and advertised it according - this combined position offered more hours and the Board had hoped it would be more appealing to the public. Another reason for combining it and increasing the hours, is so that the chosen candidate would qualify for health insurance. Previously the Town's personnel policy offered this insurance at 21 hour, therefore the Superintendent stepping down, and other full time staff were already eligible for insurance. This updated job opportunity appeared on the Town's website, cable channel, local Face Book page and also in the September 30 Waterboro Reporter edition.

5 applications were received from prospective candidates, which later turned into 4 after one withdrew on their own.

The Board of Selectmen reviewed all applications submitted and interviewed the 4 candidates. After careful consideration the Board of Selectmen narrowed their search down to the top two candidates, based on their Supervisory and Transfer Station experience.

At this point, it is public information that Ed Walsh, who was later given the position, was one of the top two candidates.

The Board of Selectmen had many candid conversations regarding a possible conflict of interest with the highly qualified Ed Walsh, who had over 5 years of full time direct Transfer Station experience, unlike any other candidate. During their discussions, the Board referenced prior Select Boards in Acton, who allowed similar positions - once, when a termed out Selectman became the Executive Secretary back in 2005 and when a sitting Selectmen worked as a Driver for a sitting Road Commissioner in 2012. The Board also confirmed other neighboring Towns had active Selectmen, also as current employees in different position. Even as it appeared to not be a conflict, based on past practice, the Board agreed they would not offer this position to a fellow Selectmen. The Selectmen just didn't feel like it was a good idea. The Selectmen eventually shared their feelings with Candidate Ed Walsh and at that time, he chose under his own free will, to resign the position. To the current Board that changed everything, their ideal candidate, the only one with 5 years of Transfer Station experience and strong supervisory experience was no longer a Selectmen. At this time, they agreed Ed Walsh was the best candidate for the Town of Acton and offered him the position at a public meeting on October 20, 2021.

Since then, Mr. Walsh gave a 2 week notice at his current job and began working as the Transfer Station/Handyman.

At the November 10, 2021 Board of Selectmen meeting, Rollin Waterhouse presented the Board with a Maine State Statute from Title 30-A. This law reads as follows, " No municipal officer, during the term for which that officer has been elected and for one year thereafter, may be appointed to any civil office of profit or employment position of the municipality, which was created or the compensation of which was increased by the action of the municipal officers during the officer's term. This section shall not be construed to prohibit actions allowed or required under state or federal law, municipal ordinance or municipal charter." This can be found in Chapter 123 Section 2606.

The Board of Selectmen immediately instructed the Town Administrator to reach out to Town Council. Mrs. Roux spoke to Attorney Brad Morin Wednesday evening after the meeting, Durwood Parkinson several times on Veteran's Day and Brianna Gersen from Maine Municipal on Friday November 20th - all of which brings us to today's special meeting, dissecting of the statute.

First the statute says, no municipal officer may be appointed to a position which was created - the Selectmen stand behind this position was not so much created as to it was two current positions already in existence combined. Legal council agrees this argument could be made easily, should the Board want to pursue it.

Secondly the statute says, no municipal officer, may be appointed if the compensation of which was increased - Robert Mann was making \$25.75 an hour when he stepped down, Ed Walsh was offered \$25.00 an hour. However the prior handyman was making \$20.00 an hour.

Options from here, the Board could leave Ed Walsh in the position, as a Selectmen or regular member of the public, at the \$25 hourly rate they offered him and simply uncombine the positions. According to legal council they could also increase the amount of hours he worked, so long as the hourly rate stayed below the prior Superintendents.

Another option from here is that the Board of Selectmen call a special town meeting. The last line of the statute states, "This section shall not be construed to prohibit actions allowed or required under state or federal law, municipal ordinance or municipal charter." Which means the Board could ask the voters of Acton if they want to put an ordinance in place which supersedes the statute.

After discussions with Mr. Walsh, legal council and amongst the Board - Ed has no interest in pursuing this with the Town of Acton. Mr. Walsh is heartbroken that after serving the Town of Acton for over 10 years, that he would be leaving on this note. The Board of Selectmen share Ed's thoughts, although the Board knows that they did not intentionally violate this or any statute, this was simply an oversight in the Title 30-A law, which contains 866 pages governing municipal provisions. This was an honest mistake and simply an oversight; the Board believed whole heartedly they were making the best decision for the Town of Acton. However, as soon as it was pointed out, the Board took all measures to comply with it, as soon as possible. Mr. Walsh did not work at the Transfer Station, once we notified of the possible conflict.

What saddens the Board the most in all of this, is since this was presented to them last week, they have since learned today, by numerous people that this possible violation has been known. The statements have been made, to those who came to us, indicating people knew full well what they were doing, and intentionally waited for the right time to present to the Board. We plead with the residents of Acton, if you feel or have information that we have done something outside of State Statute, please come to us immediately, we are all human and make mistakes. To prolong this, in an effort to ruin someone's live hood is beyond comprehensible.

In closing, we would like to thank Ed Walsh, and apologize to he and his family at the same time for all of the disruption this as caused. It was a Statute that none of us, Ed included were aware of. In regards to his seat as Selectmen - Ed was given this information by our Town Administrator Friday morning Nov 12 and he understood that although he couldn't rescind his Selectmen resignation, he still had time to take nomination papers out and return them should he want to be

on the December ballot. Although he chose not to, we again want to thank him for all he's done for our Town and hope he'll be back in some capacity down the road.

It was reiterated for the record that the Town Administrator only was the reader of the statement, it was written by the Board of Selectmen.

Selectmen Kimberly Stacey-horn apologized to Mr. Ed Walsh and stated she was very very sorry that the Board did not find this out and takes full responsibility for not digging as deep as should have been.

Selectmen Kimberly Stacey-Horn made a motion to rescind the position as Acton Transfer Station Supervisor/Handyman offered to Mr. Ed Walsh; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

9. PUBLIC COMMENT

None

10. ANNOUNCEMENTS

11/17/2021 - Board of Selectmen 6:00pm

11/18/2021 - Planning Board 6:00pm

11/24/2021 - Board of Selectmen 6:00pm

11. MEMBERS PRESENT

Selectmen David Winchell Jr., Selectmen Kimberly Stacey-Horn and Town Administrator Jennifer Roux.

12. ATTENDANCE

Bernard Broader III, Dennis Long, Joyce Bakshi, Rollin Waterhouse, Karen McManus, Susan Meehan, Tucker Pearson, Pat Pearson, Bonnie Shugrue, Chris Whitman, Ralph Ham, Adam Doliber, Deborah Lopez, Ramiro Lopez, and Tom McGurty.

Selectmen Kimberly Stacey-Horn made a motion to adjourn; seconded by Selectmen David Winchell Jr. No discussion. All in favor.