Town of Needham
Select Board
Minutes for Tuesday, August 9, 2022
Needham Town Hall
and
Via ZOOM
https://us02web.zoom.us/j/82150346162

6:00 p.m. Call to Order:
A meeting of the Select Board was convened on Zoom by Chair Marianne B. Cooley. Those present were Marcus Nelson, Kevin Keane, Heidi Frail, Matthew Borrelli, and Town Manager Kate Fitzpatrick. Dave Davison, ATM/Finance, Kristin Scoble, Administrative Specialist, and Mary Hunt, Recording Secretary attended the meeting by Zoom.

6:01 p.m. Public Comment Period: Richard Pollack, 32 Crescent Road urged the Select Board to reject the Memorandum of Agreement for 100 West Street, as the proposed use of the property is a significant departure from what was originally approved by the Town. He said more public comment and debate are needed to reveal the significance of the proposal to residents of Needham. He commented on independent, assisted living, the number of affordable housing units, and the proposed financial contribution to offset the burden to the Town.

6:02 p.m. Proclamation: Opioid Awareness Day
Mr. Nelson read a proclamation recognizing August 31, 2022 as Opioid Awareness Day in the Town of Needham.

Motion by Mr. Nelson that the Select Board vote to approve August 31, 2022 as Overdose Awareness Day in Needham.
Second: Mr. Borrelli. Unanimously approved 5-0 by roll call vote.

6:03 p.m. Public Hearing: Dangerous Dog Hearing (con't)
Diana Rasoul-Agha, Dog Owner and Robert Stewart, Counsel spoke with the Board regarding a complaint about a dog by the name of "Axel" residing at 233 West Street in Needham.

Christopher Heep, Town Counsel gave an overview. He noted new information received from Ms. Rasoul-Agha since the last Board meeting on July 26, 2022, included a letter from Concord Animal Hospital indicating Axel is scheduled to be neutered in October 2022, a report from dog behavioral analyst Vera Wilkinson, and that an insurance policy for not less than $100,000 for any future loss or damage was secured. He commented on next steps, noting a new decision for the Board's consideration has been prepared requiring continued actions.

Discussion ensued on videos, insurance, recommendations from the dog behaviorist, and orders put in place by the Select Board. It was noted Ms. Rasoul-

Agha has worked hard with Alex, but he remains a dangerous dog as deemed by the Select Board in April 2022.

Mr. Borrelli noted the process has been exhausting and the Board has come very close to ordering euthanasia. He said the Board has tried to be fair, noting a lot of miscommunications. Mr. Borrelli acknowledged the work done by Attorney Heep, saying he can support the language in the revised order. He noted the dog will not have the life that it should be having due to all of the conditions imposed by the Select Board, saying the choice is up to Ms. Rasoul-Agha. Mr. Borrelli concluded one misstep from the order and a very different conversation will take place.

Mr. Keane said he is torn and very concerned, noting the dog is “magnificent, but incredibly dangerous.” He noted the videos he viewed from the behaviorist, saying he is not comfortable with the situation in the neighborhood, and it is not responsible to wait for another incident to happen. Mr. Keane said he would entertain other options, including euthanasia.

Mr. Nelson concurred with Mr. Keane, saying the videos were “chilling.” He said he is reluctant to wait and risk another incident. He acknowledged the steps taken by Ms. Rasoul-Agha, but the neighbors are frightened by the dog.

Ms. Cooley invited public comment.

Maureen Walsh, 51 Booth Street said she doesn't feel safe or comfortable with Axel in the neighborhood and that she avoids walking on West Street. Ms. Walsh said while she is a dog lover, the conditions imposed are not fair to the dog and she is unsure if Ms. Rasoul-Agha can control Axel. Ms. Walsh noted there have been six attacks, but only four reported to the Town. She acknowledged and thanked the Select Board for their time, effort, and patience.

Lisa Madkins, 15 Bobsled Drive said her dog was attacked and she is scared to walk in the neighborhood. She said it is sad, concurring with comments made by Ms. Walsh.

Mr. Stewart acknowledged the time, effort, energy, and considerations by the Select Board. He noted the effort made by Ms. Rasoul-Agha. Attorney Stewart said there is no reason to believe the progress that has been made will not be successful, commenting the re-drafted order reflects a safe and fair resolution to all concerns. He encouraged the Board to recognize the progress made and the commitment to safety by Ms. Rasoul-Agha.

Mr. Keane asked Attorney Heep for a motion to allow for re-homing and/or a euthanizing order with a deadline?

Discussion ensued on re-homing the dog, an order and waiting period for euthanization, and an appeal period.

Ms. Cooley said the decision is difficult and the Select Board does not seek to euthanize animals. However, she said the Select Board is committed to the Town and the safety of the neighborhood. Ms. Cooley commented the conditions imposed by the Select Board may work to ensure safety, but there are no guarantees.

Ms. Frail acknowledged the work by Ms. Rasoul-Agha, saying new information came late and at the treat of euthanasia at the last Select Board meeting. She said she is pained by the decision she must make, concurring with Mr. Keane's suggestion for euthanasia. Ms. Frail said she is not confident safety in the neighborhood can be maintained.

Mr. Keane asked Attorney Heep to craft a motion for euthanasia.

Mr. Borrelli reiterated the steps taken to not reach this point, noting the missteps, miscommunication, and late information. He said he understands comments from members of the Board, but at this point, he will vote against a motion for euthanization.

Ms. Rasoul-Agha said she has fulfilled all of the orders and requirements set by the Select Board within the 90 days. She commented if the Board intended to order euthanization, she would not have attempted to fulfill all of the requirements.

Ms. Cooley said she understands the perspective of Ms. Rasoul-Agha and that she is unsure of how she will vote. She reiterated that Axel is a dangerous dog.

Mr. Borrelli said all of the requirements have been fulfilled and that is the reason why he will vote "no" on the motion for euthanization. He noted, however, any further incident will force him to the next step.

Mr. Keane said the requirements were not a list to absolve Ms. Rasoul-Agha from what happened, but to get to a solution. He noted the videos confirmed for him the dangerousness of the dog to the neighbors.

Jeremy Cohen, attorney for Ms. Rasoul-Agha joined the discussion.

Ms. Frail said part of the issue for her is oversight and control of how Ms. Rasoul-Agha handles the dog. She said if weekly updates were a requirement, she would do it, without repeated threats or urging of further action.

Mr. Cohen said if the Select Board does anything tonight, other than recognize that Ms. Rasoul-Agha has done everything she was supposed to do and spent a lot of money. He said the order is unlawful and the Select Board is overstepping its bounds and bullying Ms. Rasoul-Agha. He restated there has been no human contact or aggression. He reiterated insurance has been secured, and that if anything in the order changes tonight, he will "bring his army" and will go to the media to tell them about how the Select Board has overstepped its bounds. He stated the Board is wrong, "way off," and he will go through the courts. He stated when the government oversteps its bounds, it needs to be punished and called out. He said his client went above and beyond the statute and if the Board goes back on its word, it will be his mission to expose what the Board put his client through over the last three months. He said if he has to go to court, then everyone is going with him. He urged the Board not to make the wrong decision.

Ms. Rasoul-Agha said she has been diligent with the weekly updates, except the last one which was a mistake by her.

Ms. Cooley said she doesn't think the updates were the only issue.

Mr. Borrelli restated his position. He reiterated proper decorum is necessary even if someone does not agree, and that attorney Cohen attacked, mischaracterized, and made veiled threats of litigation to the Board. Mr. Borrelli stated the Town has "an army too." Mr. Borrelli said no one wants it to get to that point, saying the order is sufficient for him to move forward and not euthanize the dog. He reiterated he does not know where the rest of the Board currently stands, as it is in the middle of discussion and a motion. He said cooler heads must prevail.

Ms. Cooley concurred with Ms. Frail that the only option will be because of a bad outcome. She restated the pieces of the order were to help inform a decision and were not received until later in the process. She acknowledged the efforts of Ms. Rasoul-Agha, but the dog will not have much of a life, saying she hopes Ms. Rasoul-Agha takes that into consideration.

Motion by Mr. Keane that the Select Board vote that a dog by the name of "Axel" residing at 233 West Street in Needham be euthanized and that the date be one month, with an order to be crafted by Town Counsel to that effect and to be served by the Town Manager's office at the conclusion of the public hearing.
Second: Ms. Frail. Approved 3-2 by roll call vote. Mr. Borrelli and Ms. Cooley voted "no."

Ms. Rasoul-Agha said she is so disappointed. She said she did everything because she wants to contain her dog, not because she is afraid of the Select Board. She reiterated she would not have spent all the money had she known the result.

7:05 p.m. Joint Meeting with Park and Recreation Commission:
Stacey Mulroy, Park & Recreation Director and members of the Park & Recreation Commission including Chris Gerstal, Cindy Chaston, and Fredericka LaLonde met with the Select Board to discuss priorities for the upcoming year.

Ms. Mulroy gave an update of the current capital improvement plan submitted last year and discussed whether the priorities need readjustment based on additional projects such as action sports park, pickleball and tennis courts, and shade structures at the Rosemary Pool Complex. She said many residents have sent emails on priorities, including playgrounds.

Mr. Gerstal said the Town wants to adapt and change based on what people want, but everything comes down to timing and resources. He commented on the importance of due diligence, so projects are done right the first time.

Ms. Cooley commented on new programs and efforts to maintain existing programs. She asked for comments on the current pool season.

Ms. Mulroy said the pool season has been extended and over 80 part time lifeguards were hired this season. She said credit goes to staff.

Ms. Chaston said the staff is terrific. She noted public attendance at Park and Rec meetings over the last year and a groundswell of interest in many programs. She commented on space and funding, asking the Select Board for suggestions. Ms. Chaston said people are nice and respectful with their comments, but there is pressure to make things happen.

Mr. Borrelli noted the dire lifeguard situation, congratulating Ms. Mulroy in her hiring efforts this season. He commented on an action park and suggested forming a working group to explore locations throughout town.

Discussion ensued on locations for off leash dog parks and the pilot program at Pollard Middle School, the hiring of 60 program staff in addition to lifeguards, evening use of Park and Rec property for youth to gather, and multi-use pickleball and tennis courts, budget cycle, when to hold a space summit meeting, and forming a focus group to study space availability.

Ms. Cooley and the Board thanked the Park and Recreation Commission for all of their work this summer.

7:45 p.m. Director of Public Works:
Carys Lustig, Director of Public Works provided the Board an update of the operations and projects of the DPW.

Ms. Lustig thanked the staff for their work. She commented on challenges including internal staffing issues she is hoping to rectify before the winter season, supply chain disruptions, infrastructure improvements, coordinating work with Eversource, and communications with neighbors. Ms. Lustig commented on the Dedham Avenue, Harris Street, and Warren Street construction project, widening/narrowing and changing the layout Central Avenue at Booth Street, and topical treatments (rubber chip/micro surfacing) to extend the life cycle of pavement on several roads. Ms. Lustig commented on recruitment of drivers and equipment for the snowplow program, Town Common renovation, the water main project on Marked Tree Road, Walker Gordon Pond clean up, rebuilding the Lake Street sewage pump station, the Town's lead abatement program, and clean up of the brooks and culverts to ensure free flowing stormwater.

The Board thanked Ms. Lustig for the update, noting the large volume of projects currently being worked on by the DPW.

8:00 p.m. Water and Sewer Rates:
Dave Davison, ATM/Finance reminded the Board it held a Public Hearing regarding the water and sewer rates at its July 26, 2022, meeting. The Water and Sewer Rate Structure Committee voted to recommend the rate structure that was presented to the Board that evening. The step rates for both water and sewer, both primary and secondary meters would be increased. The sewer basic service charge would increase by $1 for a monthly account and $3 for a quarterly account.

Mr. Davison stated the recommendation is for the proposal to take effect on October 1, 2022.

Ms. Cooley noted that part of the challenge with water rates is that as people conserve and water usage decreases (i.e., Coca Cola is no longer bottling in Needham), infrastructure costs continue to increase proportionally. She noted no public input was received.

Motion by Mr. Borrelli that the Select Board approve the proposed water and sewer rates identified on schedule below and that they be effective October 1, 2022; further that the Board approve a Septage Disposal fee of $85.00 per 1,000 gallons.
Second: Mr. Nelson. Unanimously approved 5-0 by roll call vote.

8:04 p.m. Appointments and Consent Agenda:
Motion by Mr. Borrelli that the Select Board vote to approve the Appointments and Consent Agenda as presented.

APPOINTMENTS: No appointments were made at this meeting.

CONSENT AGENDA *=Backup attached

1.* Approve minutes of July 26, 2022 (open session).
2.* In accordance with Section 20B of the Town Charter, and upon the recommendation of the Town Manager and the Personnel Board, adopt revisions to the classification plan (Schedule A).
3. Grant permission for the following residents to hold block parties:

Name	Address	Party Location	Party Date	Party Rain Date	Party Time
Nicole Foster	**38 Mayflower Road**	**Mayflower Road**	**9/10/22**	**9/11/22**	**3pm-8pm**

Second: Mr. Keane. Unanimously approved 5-0 by roll call vote.

8:05 p.m. Town Counsel Discussion:
Kate Fitzpatrick, Town Manager and Christopher Heep, Town Counsel, Miyares & Harrington discussed with the Board the services provided by Miyares & Harrington. It was noted Nick Anastasopoulos, Labor Counsel, Mirick O'Connell was unable to attend the meeting.

Ms. Fitzpatrick said the Town has been working for years with Miyares & Harrington on many special projects as a trusted partner. She noted the Board voted (during the pandemic) to create an adjunctt Town Counsel, noting the firm of Miyares & Harrington. Ms. Fitzpatrick stated it has been very helpful over the last 2 years to have Miyares & Harrington as Town Counsel, as there is a team of lawyers with many areas of practice (i.e. permitting, zoning, property acquisition, taxation and financing, alcohol licensing, etc.) available to the town. Ms. Fitzpatrick said it is important to work with a firm that focuses on the business of a municipality, has high ethical standards, and achieves results. She said she will recommend approving Miyares & Harrington as Needham's Town Counsel at the next Select Board meeting.

Christopher Heep, Miyares & Harrington gave a brief background of the firm, how it is composed, and their philosophy.

The Board thanked Ms. Fitzpatrick and Mr. Heep for the discussion.

8:37 p.m. Town Manager:
Kate Fitzpatrick, Town Manager spoke with the Board regarding 4 items:

1. <u>Open Special Town Meeting Warrant, October 24, 2022</u>
   Ms. Fitzpatrick reviewed articles contained in the draft Special Town Meeting Warrant. She asked the Select Board to open the warrant for the October 24, 2022 Special Town Meeting, noting the Board is scheduled to close the warrant on September 13, 2022.

   Motion by Mr. Borrelli that the Board vote to open the warrant for the October 24, 2022, Special Town Meeting.
   Second: Mr. Nelson. Unanimously approved 5-0 by roll call vote.

2. <u>Memorandum of Agreement – 100 West Street</u>
   Ms. Cooley commented the Board does not currently have a Memorandum of Agreement, as the draft provided to the Board has been pulled. She noted a different, re-drafted version is expected.

   Mr. Heep gave a brief overview explaining the negotiation process, the drafting of the Memorandum of Agreement, and how the Town got to this point which began when the applicant proposed a new special permit, rather than an amendment to the existing special permit for a project that was permitted approximately two years ago. He noted the applicant proposed substantial changes to the type of units in the project and approached the Select Board about the possibility of making a financial contribution in an attempt to offset the loss of approximately 70 independent living units and nine affordable independent living units as permitted for the original project. Mr. Heep said the applicant also wanted to make further revisions to the draft Memorandum of Agreement that the Select Board was to consider tonight. He said no financial agreement from the applicant to the Town has been made to this point, and any changes and/or revisions to the special permit or approval to proceed with a new project is entirely within the purview of the Planning Board.

Discussion ensued on the owner of the building, nursing home related services they provide to senior citizens, and continuing the business at the location. Zoning, permitting, community benefits, and the value of the loss of nine affordable units (as set by the state) of approximately $2 million were discussed.

Ms. Cooley commented on resident concerns, noting everyone on the Select Board constantly has the Town of Needham's best interest in their hearts, minds, and actions.

Mr. Borrelli reiterated the Select Board does not control zoning, and any monies are separate and will not influence the zoning process. He commented on the use of monies for affordable housing, but also suggested other affordable components i.e., transportation or last mile. He said the Select Board is aggravated, but the decision regarding monies is a way to mitigate some of the aggravation.

Mr. Keane concurred with comments, saying he is frustrated with the owner, and reiterated Town Meeting had already voted on the issue. He said it is a 'bitter pill" and he understands the outrage.

Mr. Nelson thanked Ms. Cooley for her summation. He said even though people may not agree, the decision regarding the money is the best course of action and will help do good things to help people in Town. He said some of the comments received from residents were tough to read, but he hopes people listen and watch tonight's meeting to understand what happened and why it happened. He summarized there is no way the Select Board would do something that is not in the best interest of the Town.

Ms. Cooley said no matter what happens, having the building come "back to life" will be valuable to everyone.

Ms. Frail emphasized the Select Board, Town Manager, and Attorney Heep have worked to honor the spirit of the original design. She said everyone is upset at the loss of the independent affordable units, but to allow any benefit to Needham just slip away would be a disservice. She reiterated that since joining the Select Board, she has found everyone to be diligent and dedicated public servants who do their best in every instance for the benefit of the Town. She invited the public to ask questions without jumping to assumptions.

Ms. Cooley said she believes the Planning Board will be making similar efforts within their jurisdiction.

3. Review FY2023-FY2024 Goals
   Ms. Fitzpatrick reviewed with the Board the draft goals for FY2023 - FY 2024, noting a total of 59 goals. She asked the Select Board to let her know if they have any further ideas or thoughts on timing. Ms. Fitzpatrick said the goals will be voted upon at a meeting in September 2022.

   Ms. Cooley said input was received from other boards and committees, and that staff does an amazing job. She commented she is confident this year will be no different.

   Mr. Borrelli acknowledged the list is long, suggesting ranking the goals. He commented on the Town Clerk and whether the position should be elected or appointed.

   Ms. Cooley commented some suggestions for appointed or elected positions came from a study by the League of Women Voters.

4. Town Manager's Report
   No Report was made.

9:15 p.m. Board Discussion:

1. Town Manager Performance Evaluation
   In accordance with the Town Manager Evaluation Policy, the Select Board prepares an annual performance evaluation of the Town Manager. Each member of the Board completes his or her own evaluation. The individual evaluations are then compiled into a consensus evaluation overview document. Board policy calls for the overview to be released at a meeting of the Select Board.

   Mr. Borrelli stated he compiled the results, noting the excellent remarks for Ms. Fitzpatrick. He said Ms. Fitzpatrick is a strong and qualified Town Manager, and the Town is very lucky to have her. He noted her leadership throughout the pandemic, as well as her dealings with residents. He thanked Ms. Fitzpatrick for her work.

   Mr. Nelson said he appreciates Ms. Fitzpatrick's responsiveness and willingness to help. He said trust is built by good faith, and thanked Ms. Fitzpatrick for her leadership.

Ms. Cooley thanked Ms. Fitzpatrick for the care she has for the staff and residents. She said she embodies what servant leadership means, and that she is grateful for her dedication to Needham.

Ms. Fitzpatrick thanked the Board for their confidence and staff who work for the Town to make a difference in people's lives.

Motion by Mr. Borrelli that the Board vote to approve the Town Manager Consensus Evaluation Overview Document dated July 31, 2022 and authorize a merit award payment in the amount of $2,500.
Second: Mr. Nelson. Unanimously approved 5-0 by roll call vote.

2. Board Discussion Federal Lawsuit
   Ms. Cooley stated the Board is committed to keeping residents up to date on the Marvin Henry vs. Town of Needham and members of the Needham Police Department. She stated the case is currently in the discovery phase, with the exchange of documents and witness depositions. She commented that the court recently extended the fact discovery deadlines until September 30, 2022. She said a court status conference has been set for the first week in October 2022, where the court will address any discovery issues and set the schedule for expert disclosures, dispositive motion practice, and trial. Ms. Cooley said the Board will update the town as more information becomes available.

3. Committee Reports
   No Committee Reports were made.

9:21 p.m. Adjourn:
Motion by Mr. Nelson that the Select Board vote to adjourn the Select Board meeting of Tuesday, August 9, 2022.
Second: Mr. Borrelli. Unanimously approved 5-0 by roll call vote.

A list of all documents used at this Select Board meeting is available at:

http://www.needhamma.gov/Archive.aspx?AMID=99&Type=&ADID

The next Select Board meeting is scheduled for Tuesday, September 13, 2022, at 6 p.m.