

AGENDA
BOARD OF SELECTMEN
December 1, 2009
7:00 p.m.
Town Building

Public Input

Chairman's Comments

Town Administrator's Report

Meeting Minutes

Visitors

- **7:15 p.m.** Update on Minuteman Regional building project – Superintendent Ed Bouquillon, School Committee member Alice Deluca, and Capital Planning Subcommittee Chair Ford Spaulding

Action/Discussion

- Eagle Scout recognition
- Annual re-appointment of full-time police officer
- Establish policy on fundraising
- Next step on Marlborough WWTF permit amendment
- Decide how to determine Pompo future use
- Additional funding for Master Plan work by Ciccolo Group
- Finalize Board priorities (from 11/17)
- Discuss Selectmen's webpage content
- Decide Board of Selectmen's vote at annual MMA business meeting

Selectmen's Master Planning

Liaison Reports, if any

Correspondence

Executive Session, for the purpose of discussing municipal water contract negotiations, per MGL C.39, s.23b.

Adjournment

Posted 11/25/09

Correspondence

Town:

Email from resident re posting Selectmen's meetings on YouTube, rec'd 11/17

Mass DOR notice of Stow tax rate approval, rec'd 11/18

Marlboro WWTF permit modification link from OAR, rec'd 11/18

CC of letter to Minuteman School Committee, rec'd 11/19

Letter to member towns from Minuteman School Committee, rec'd 11/20

Boston Globe article on Marl WWTF ruling, from OAR Alison Field-Juma, rec'd 11/22

Memo from Planning Board on 11/20/09 regional housing trust meeting, rec'd 11/23

Letter from Town Counsel on Town fundraising, rec'd 11/24

Memo from Town Accountant on Town fundraising, rec'd 11/24

Letter from Knapp, Schenck rep on Town fundraising and insurance, rec'd 11/24

Stow Selectmen's Office

From: Stephen Dungan [s.dungan@comcast.net]
Sent: Tuesday, November 24, 2009 1:10 PM
To: Bill Wrigley; Ellen Sturgis BOS; Kathy Farrell; Laura Spear; Susan McLaughlin (bos); Tom Ruggiero
Cc: Alice DeLuca
Subject: Heads up on Ed Bouquillon visit

The Minuteman superintendent will visit the Board on 12/1 to discuss plans for a major upgrade and renovation of the facility. Laura and I attended a presentation at Minuteman on 10/23, and I wanted to give you a quick summary of their proposed project.

Their plan includes various energy conservation measures. Among other items, they want to replace the heating and cooling systems. The other part of the plan calls for a full facility renovation including a complete overhaul of the building interior and major updates for program-specific technology and equipment. This would be the first facility refurbishment since the school opened in 1974.

They have submitted a Statement of Interest to the MSBA, and it contains two priorities:

1. Replacement of, renovation, or modernization of the heating system in a schoolhouse to increase energy efficiency conservation and decrease energy-related costs in the schoolhouse.
2. Replacement of, renovation, or addition to obsolete buildings in order to provide for a full range of programs consistent with state and approved local requirements.

In a letter dated 7/29/09 from the MSBA, they were invited to proceed with a feasibility study.

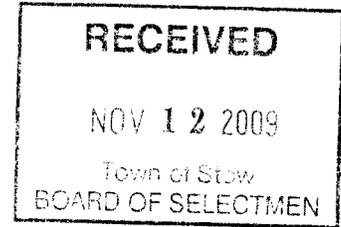
I am sure Ed will review the estimated project cost, the member-town contributions that would be required, and the necessary approval steps. I have a binder with a lot more detail, and I'll bring that on Tuesday.

Steve

11/24/2009

897-1829 *hus*
897-4828 *here*

81 Circuit Drive
Stow, Massachusetts 01775-1351



November 7, 2009

The Board of Selectmen
Town of Stow
380 Great Road
Stow, MA 01775

Dear Members of the Board,

Our son, Daniel H. Blanton., a resident of Stow, MA and a member of Boy Scouts of America Troop 1 in Stow, MA for the past six years, received the rank of Eagle, the highest rank of the Boy Scouts, on June 1, 2009.

Danny has earned 22 merit badges, and his Eagle Service Project, which benefited the Stow Conservation Commission and the community of Stow, was to build and install seven kiosk markers in the Gardner Hill conservation land. A map was located on each kiosk giving the location of that specific kiosk and the newly created blue trail. In addition Daniel made and installed new trail blazes for the blue trail loop.

This letter is to ask your assistance in recognizing Danny's achievements and service. Would you be so kind as to send a letter of greeting for Daniel to be presented to him at his Court of Honor on December 27, 2009 at the Old Town Hall, Stow, Massachusetts? All of Danny's recognitions will be placed in a binder and will be displayed during this special occasion for him.

Please address your letter of recognition to Eagle Scout Daniel H. Blanton., 81 Circuit Drive, Stow, Massachusetts 01775-1351.

Thank you very much for taking time from your extremely busy schedule, to help this community and Troop 1 Stow recognize the personal achievement and service of Eagle Scout Daniel H. Blanton.

Thank you for your service to the Town of Stow.

Sincerely,

Robert and Susan Blanton

Robert and Susan Blanton



Town of Stow
TOWN ACCOUNTANT
380 Great Road
Stow, Massachusetts 01775
(978) 897-5012
FAX (978) 897-4534

M E M O R A N D U M

Date: November 24, 2009
To: Board of Selectmen
From: Julie Costello
Town Accountant
Subject: Fundraising for New School Building

Pursuant to M.G.L. Ch. 44 Sec. 53A, and with your acceptance as the Board of Selectmen, a donations fund has already been established for the purposes of accepting donations for the new school building. These monies can only be spent for construction of the new school building and cannot be used for fundraising purposes. If the committee chooses to go beyond just soliciting donations there is no question in my mind that the best way to do so would be to establish a non-profit organization to raise these monies and then gift the monies to the town for the express purpose of the new school building. According to Volume 19, No 2 February 2006 City and Town, a publication of the Department of Revenue's Division of Local Services "Fundraising activities that go beyond applying for grants or soliciting donations and involve **raising and dispersing** significant monies are problematic, because they are more in the nature of a profit on the business or transaction. DLS believes better practices may be to have a private entity sponsor and conduct fundraising events and turn over the net proceeds to the municipal department as a grant or gift."

MEMORANDUM

TO: Board of Selectmen of the Town of Stow, Massachusetts
COPY: William Wrigley, Stow Town Administrator
FROM: Jon Witten, Daley and Witten, LLC, Town Counsel
DATE: November 24, 2009
RE: Fundraising and the Elementary School Building Project

Question Presented:

You have asked for my opinion as to whether the Town of Stow, a subcommittee thereof, or a private organization, may permissibly accept or solicit gifts or donations from the public and others for the purpose of assisting in the Elementary School Building Project. You have asked this question with regard to solicitation on Town owned and non-Town owned property.

Discussion and Analysis:

Two principal issues are raised by the above noted question. First, is the Town, a subcommittee thereof or a private organization, lawfully permitted to solicit gifts or donations for a public project and second, are the individuals soliciting the gifts or donations covered by the Town's insurance policy if the solicitations occur on Town property?

1. May the Town, a Town subcommittee or a non-profit organization, accept or solicit gifts or donations for a public project?

There is little question that the Town, a subcommittee or a non-profit organization may accept gifts or donations for a public project such as the expansion of the Elementary School. See G.L. c.44, s.53A and s.53A ½. The procedures for accepting gifts or donations of money and tangible personal property are articulated in the above noted sections of state finance law.

At issue is whether the Town, an appointed subcommittee or non-profit organization may solicit gifts or donations for a public project.

Solicitations of gifts by public agencies or on behalf of public agencies by private organizations are disfavored, but not unlawful, per se.

As discussed more fully below, it is my recommendation that the Town not actively engage in the solicitation of funds for the Elementary School project, either on Town owned property or elsewhere, given the: (A) possible violations of public policy triggered by attempts to solicit funds for a public project outside of the legislative

process; (B) possible violations of the Anti-Aid Amendment should the solicitation be performed by non-profit (or for profit) organizations using Town resources and (C) possible violations to statutory limitations on committee or subcommittee expenditures without appropriation.

A. Solicitation of Funds May Violate Public Policy

The solicitation of gifts or donations by the Town or a committee of the Town may, given the degree of solicitation, violate public policy. A violation of a public policy is not measured by a “bright line” test. While it is clear that a Town sponsored “bake sale” or “car wash” designed to raise funds for the Elementary School project would not violate public policy as the donor likely does not believe that s/he is compelled to contribute, solicitations via telephone or email, “tolls” on public rights of way or other more aggressive efforts to solicit private donations by the Town may be perceived as coercive and violate principals of public policy.

The public policy at issue is the use of the Town’s name, seal, and official status, or employees and elected and appointed officials engaged in lobbying for a public project outside of the legislative process. In so lobbying, the Town would be allowing its name, seal and official status to resemble a private entity—or so it would be perceived—rather than that of a governmental agency, thus suggesting a possible compromise of the Town’s police powers to protect public health, safety and welfare.

Please note that it would not be a violation of public policy for a non-profit organization to actively solicit funds for the Elementary School project and offer those funds to the Town in the form of a gift, pursuant to G.L. c.44, s.53A and s.53A ½.

B. Solicitation of Funds May Violate the Anti-Aid Amendment

The determination as to whether the solicitations are (or could become) unlawful turns on fine line between the use of municipal resources to benefit—aid—a private organization, notwithstanding that the private organization’s goal is to assist the municipality. The violation would arise where the Town, using Town resources, assisted (directly or indirectly) a private organization to serve the end results desired by the Town or a committee. Put another way, the Town must be careful not to engage the services of a private organization, using public funds, to either do the tasks the Town was lawfully precluded from undertaking (see discussion above with regard to public policy) or use public funds to benefit the private organization.

The controlling law is the “Anti-Aid Amendment” of the Massachusetts Constitution, Mass. Const. Amend. Art. 46, §2. (See also, Opinion of the Justices,

357 Mass. 836 (1970)). The Anti-Aid Amendment was intended to ensure that public funds were not expended to aid private charities. See Commonwealth v. School Committee of Springfield, 382 Mass. 665 (1981); Helmes v. Commonwealth, 406 Mass. 873 (1990).ⁱ While incidental benefits to a private entity *may* be acceptable, the primary purpose of public fund expenditures must be to benefit the public and, the expenditures must be under the “exclusive control, order and supervision of public officers or public agents”. See Opinion of the Justices, 357 Mass. 836 (1970) and Mass. Const. Amend. Art. 46, §2.

The Supreme Judicial Court held that the relationship between public and private entities raises possible violations of Massachusetts finance laws where a non-profit corporation was allowed to arrange for commercially sponsored concerts on the Boston Common.ⁱⁱ These violations included G.L. c.44, s.53 governing the use and disposition of municipal funds as “the non-profit corporation is for certain purposes an agent of the city...” and “the city is about to expend money for an illegal purpose”.ⁱⁱⁱ The Court also stated, “The wrongs allegedly committed by the city seem not so much to be the unlawful expenditure of appropriated funds as the city’s exceeding its municipal authority in the manner in which it has permitted the Common to be used and in the use of a non profit corporation”.^{iv}

Likewise, the Department of Revenue has opined that “[s]haring the expenses of a community event co-sponsored by a municipal department and a private organization also raises the Anti-Aid Amendment issues because the event is not under the exclusive control of public officers”. *City & Town*, February 2006, page 5, Massachusetts Division of Local Services, Boston, MA.

With regard to fundraising events such as those contemplated by the Town, the Department of Revenue has stated, “DLS believes better practice may be to have a private entity sponsor and conduct fundraising events and turn over the proceeds to the municipal department as a grant or gift”. *Id.*

Please note that as recommended by the Department of Revenue, above, it would not be a violation of the Anti Aid Amendment for a non-profit organization to actively solicit funds for the Elementary School project and offer those funds to the Town in the form of a gift, pursuant to G.L. c.44, s.53A and s.53A ½. Put another way, there is no prohibition or suggestion of impropriety if there existed in the Town of Stow a private organization that worked to solicit funds for the Elementary School project without use or reliance on Town resources. Funds solicited by this organization could be offered and accepted by the Town on a regular basis pursuant to G.L. c.44, s.53A and s.53A ½.

C. Solicitation of Funds May Violate Statutory Limitations Imposed on Committee Expenditures

The Town may not spend money in excess of appropriations authorized by Town Meeting. See G.L. c.44, s.31. In other words, the Town (either through the School Committee, Board of Selectmen or an appointed subcommittee) is prohibited from expending municipal resources on any activity for which an appropriation has not been made (or gifts, donations or grants otherwise received).^v Accordingly, the Town may not appoint a committee or subcommittee to engage in fundraising activities that have not been previously authorized by Town Meeting, if those activities involve the expenditure of public funds.

2. Are the individuals accepting the gifts or donations insured by the Town's insurance policy?

Following discussions with the Town's insurance carrier (Ms. Deborah O'Hara) and a review of Ms. O'Hara's letter to the Board of Selectmen (undated, transmitted via email on November 10, 2009), it is my opinion that the Board of Selectmen may lawfully appoint a subcommittee to work on issues relating to the matter discussed above and that the individuals appointed to the subcommittee would be protected by the Town's general liability policy while acting within the scope of their appointments.

Provided that the subcommittee members (or volunteers, pursuant to Ms. O'Hara's letter) are performing activities within the scope of their duties, the Town's insurance carrier has made clear that municipal insurance coverage extends to their activities.

Thus Ms. O'Hara's letter would remove from possibility the unfortunate events that were the subject of Sentry Insurance Company v. Sahlberg, 1995 WL 809951 (Mass. Super., 1995) involving a volunteer who provided services to a Stow recreational field (at the Pompositticut School) and an accident resulting from the volunteer's activities.

Conclusion:

As noted in the letter from Ms. O'Hara, the Town's insurance carrier has made clear that coverage is provided to "any elective or appointive officer or a member of any board or commission or agency" but not to "outside vendors or sponsors that a town committee works with". Accordingly, as stated by the Town's insurance carrier, volunteer members of Town boards, committees and subcommittees, including those working on the Elementary School project, if duly appointed, are covered by the Town's general liability policy.

Notwithstanding this coverage, and based upon the considerations before the Board of Selectmen as I understand it, case law, Constitutional law and opinions from the Department of Revenue, it is my opinion that allowing a Town committee, subcommittee or non-profit organization to use Town facilities for the purpose of raising revenue for the Elementary School may violate public policy, the Anti Aid Amendment of the Massachusetts Constitution and/or G.L. c.44, s.31.

In addition, while the question before me is the permissibility of the use of Town property to engage in solicitation activities (e.g. use of school property) the same public policy issues, Anti Aid Amendment and G.L. c.44, s.31 issues are implicated if the Town, a committee or a subcommittee were to engage in solicitation activities elsewhere (e.g. on property not owned or controlled by the Town). The operative concern is not the location of the activities but the activities themselves.

Accordingly, it is my recommendation that the Town, its departments, boards, committees or subcommittee not engage, directly or indirectly, in the solicitation of private funds for public projects, including, but not limited to, the Elementary School project.

While there is no limitation upon the Town's acceptance of gifts or donations (other than the procedural requirements contained in G.L. c.44, s.53A and s.53A ½), the use of public resources to assist a committee or subcommittee for which appropriations have not been made (see. G.L. c.44, s.31) or the use of public funds to assist a non-profit organization raises possible violations of statutory and Constitutional law.

It is important to note that there is no suggestion that an appointed committee or subcommittee is precluded from meeting or working on Town (or other) property to improve the Town's financial position with respect to the Elementary School project. Further, there is no suggestion that an appointed committee or subcommittee is barred from strategizing with consultants or retaining consultants (provided that an appropriation therefore has been made) to assist the Town, committee or subcommittee raise funds for the Elementary School project.

Please let me know if I can provide any additional information.

Thank you.

ⁱ Helms contains a summary of the history and purposes of the Anti-Aid Amendment, including its original focus on the use of public funds to assist private schools but having been more broadly interpreted to include forbidding the use of public funds for maintaining or aiding any non-public institution. *Id.* at 874-875.

ⁱⁱ Pratt v. City of Boston, 396 Mass. 37 (1985). The Court dismissed each of the Plaintiffs claims on standing grounds, but nevertheless and uncharacteristically, remarked as to the possible violations of finance laws. *Id.* at 48.

ⁱⁱⁱ *Id.* at 49 citing to G.L. c.44, s.53. “All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.” G.L. c.44, s. 53.

^{iv} *Id.* at 49.

^v “No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only by a vote in a city of two-thirds of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with

provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such proceedings. Payments of final judgments and awards or orders of payment approved by the industrial accident board rendered after the fixing of the tax rate for the current fiscal year may, with the approval of the director of accounts if the amount of the judgment or award is over ten thousand dollars, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

The provisions of this section, so far as apt, shall apply to districts, and the prudential committee, if any, otherwise the commissioners, shall act in place of the members of the city council or selectmen.”



KNAPP SCHENCK
INSURANCE SERVICES

11/24/09

Town of Stow
Board of Selectmen
380 Great Road
Stow, MA 01775

Re: Insurance coverage for committees and subcommittees

Dear Board Members:

This letter is a follow-up to my letter dated 11/10/09 which addressed providing clarification regarding "Who is an Insured" under the Town of Stow's insurance program. The intention of this letter will be to provide additional information in regards to appointment of a subcommittee, operation of the subcommittee and volunteers who participate in activities of town committees/subcommittees.

The following guidelines and statements are a result of consultation with the town's insurance company, Trident Insurance Services:

Appointment of a Subcommittee

For insurance purposes, the insured body that appoints the subcommittee whether it is the Selectmen or the ESBC is not material. The criteria the insurance company uses to determine insured status on the policy is that the committee/subcommittee operates under the same Federal Employer Identification Number and is not a separate legal entity.

Operation of a Subcommittee

As stated in the letter dated 11/10/09 included in the general liability policy language definition of "Who Is An Insured" is amended to include any elective or appointive officer or a member of any board or commission or agency with the stipulation that these individuals are acting within the scope of their duties under the direction of the town. The following guidelines would in the event of a claim be beneficial in clarifying if a subcommittee member or a volunteer for the subcommittee was acting within the scope of the duties determined by the town and under the direction and supervision of the town:

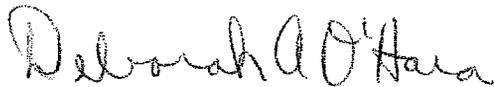
- There should be a written charge that defines the duties of the subcommittee which is voted and approved by the board or committee that will be responsible for supervising the subcommittee.
- Any event that the subcommittee plans should be reviewed and approved by the board or committee responsible for supervising the subcommittee.
- A representative from the supervisory board or committee should be present at any approved event.

Volunteer Participation

In the appointments of many municipal committees and subcommittees, volunteers donate their time to a special project or a service the town provides to the residents. The question will often arise as to how coverage is provided on the town's insurance policy for volunteers who are acting under the supervision of the town and within the scope of duties determined by the town. For an individual volunteer to be considered an insured on the policy the general liability form requires that individual meet the following criteria as stated on Form # CG 0001 (12/07) Commercial General Liability Coverage Form **Section V- Definitions 20**. "Volunteer worker means a person who is not your employee, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you." (Form # CG 0001 (12/07) is attached). Should a claim arise involving a volunteer the claims department would use the criteria above in determining if the individual meets the definition of "volunteer" on the policy. The insurance company does not require that the town keep a list of volunteers and does not have specific guidelines concerning a required level of volunteer supervision as the above definition of a volunteer lists the criteria required for the company to determine if an individual meets the definition of a volunteer and would be covered under the town's policy in the event of a claim. Therefore, the guidelines outlined in the *Operation of a Subcommittee* should be applicable to volunteers as previously indicated as a means of clarifying if a volunteer was acting within the scope of the duties determined by the town and under the direction and supervision of the town.

Please feel free to contact me directly with any additional questions. I can be reached at 617-619-0230 or dohara@kscins.com.

Sincerely,



Deborah A. O'Hara, CIC
Account Manager

Enclosure



KNAPP SCHENCK
INSURANCE SERVICES

11/10/09

Town of Stow
Board of Selectmen
380 Great Road
Stow, MA 01775

Re: Insurance coverage for committees and subcommittees

Dear Board Members:

This letter is to provide clarification regarding "Who is an Insured" under the Town of Stow's general liability policy currently insured with Argonaut Insurance through Trident Insurance Services of New England, Inc. Policy # MGL700077100 effective 7/1/2009 – 7/1/2010.

Under Governmental Subdivisions Form # CG 24 09 (07/98) "**Section II – Who Is An Insured** is amended to include as an insured any elective or appointive officer or a member of any board or commission or agency of yours while acting in the scope of their duties as such." (Form # CG 24 09 (07/98) is attached)

If the RECESS group is an appointed subcommittee under the School Building Committee the RECESS group would fall into the definition of an insured while they are acting within the scope of their duties under the direction of the town. A certificate of insurance for liability would be able to be issued for occasions when the "appointed subcommittee" is using premises that are not owned by the Town of Stow.

Any outside vendors or sponsors that a town committee or subcommittee works with are not covered under the Town of Stow's liability policy. The same practices should be employed with outside vendors such as requiring an outside vendor to provide the Town of Stow with a certificate of liability insurance naming the town as additional insured and having a hold-harmless agreement signed.

Please feel free to contact me directly with any additional questions. I can be reached at 617-619-0230 or dohara@kscins.com.

Sincerely,

A handwritten signature in black ink that reads "Deborah A. O'Hara". The signature is written in a cursive, flowing style.

Deborah A. O'Hara, CIC
Account Manager

Enclosure

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GOVERNMENTAL SUBDIVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. **Section II – Who Is An Insured** is amended to include as an insured any elective or appointive officer or a member of any board or commission or agency of yours while acting within the scope of their duties as such.
- B. Paragraph **b.** of the definition of "mobile equipment" in the **Definitions** Section is replaced by the following:
 - 12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
 - b. Vehicles maintained for use solely on or next to premises you own or rent. However, any land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus that is attached) owned or leased by you shall be deemed an "auto" and not "mobile equipment" if the only reason for considering it "mobile equipment" is that it is maintained for use exclusively on streets or highways owned by you.

Stow Selectmen's Office

From: Karen Kelleher [planning@stow-ma.gov]
Sent: Tuesday, November 24, 2009 12:33 PM
To: Susan McLaughlin; Steve Dungan
Cc: Bill Wrigley; Marcia Rising
Subject: Master Plan - The Ciccolo Group Contract



Memo to
Selectmen - Contract

Hi Susan and Steve,
See attached Memo from the Master Plan Committee. It would be appreciated if this issue could be added to your next agenda.

Thanks,

Karen Kelleher
Planning Coordinator
Town of Stow
380 Great Road
Stow, MA 01775
978-897-5098
978-897-2321 (Fax)
www.stow-ma.gov

Memo

To: Board of Selectmen
From: Karen Kelleher, Master Plan Committee Member
CC: Planning Board
Date: November 24, 2009
Re: Master Plan Expenses

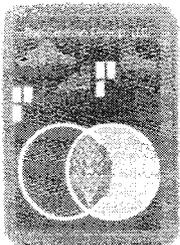
Attached, please find a request for Contract Amendment from The Ciccolo Group, LLC for the ongoing Master Plan effort. As you are aware, thanks to the professional support from The Ciccolo Group, this effort is near completion. As indicated in the attached letter, dated October 15, 2009, from Michelle Ciccolo, Principal Consultant, the original contract called for a 3-6 month contract duration. The Master Plan Committee did not anticipate the amount of hours and number of meetings necessary to complete the project.

The Master Plan Committee has been extremely happy with the services provided by The Ciccolo Group and understand that they have and continue to provide services well beyond the anticipated time frame as outlined in the original contract.

At its meeting of October 27, 2009, the Planning Board voted unanimously to support an amendment to the contract with The Ciccolo Group, not to exceed \$6,710.00, and requests that the payment be split equally between the Planning Board's Consultant Account and the Board of Selectmen's Consulting Account.

At its meeting of November 19, 2009, the Master Plan Committee voted unanimously to support the requested Contract Amendment in the amount of \$6,710.00.

We respectfully request your approval of the requested contract amendment and funding from the Selectmen's Consulting Account in the amount of \$3,355.00.



The Ciccolo Group, LLC

November 19, 2009

Karen Kelleher, Planning Coordinator
Marcia Rising, Chair
Stow Master Plan Committee
380 Great Road, Stow Town Hall
Stow, MA 01775

RE: Contract Amendment

Dear Karen, Marcia, and Committee Members:

This letter is intended to formalize the Contract Amendment proposed in a letter to the Town, dated October 15, 2009 and agreed upon by the parties. This letter and the October 15th, 2009 are hereby incorporated into the Contract between The Ciccolo Group, and the Town of Stow, signed October 30, 2008.

In consideration of the extra work items outlined in that letter and to cover expenses incurred due to the extended duration of the project, the parties agree to increase the total contract amount by an additional \$6,710. This yields a total new contract obligation of \$16,660. This fee will cover services up to and through January 14, 2009.

The parties further agree that any services required from January 15, 2009 onward will be charged at a rate of: \$95/hour for Principal Consulting Services and \$60/ hour for Associate Consulting Services. Any work performed beyond January 15, 2009 will be subject to a new maximum contract value which shall be established and agreed upon by the parties hereto prior to proceeding.

Accepted and approved by the Town of Stow:

by: *William Wrigley, Town Administrator*

by: *Marcia Rising, Master Plan Com. Chair*

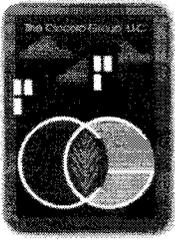
Sincerely,

Michelle Ciccolo, Principal Consultant

The Ciccolo Group, LLC

50 Shade Street, Lexington, MA 02421 / WWW.CICCOLOGROUP.COM
781-307-7330 Phone / 866-541-5389 Fax / Email: michelle@ciccologroup.com

- 1 -



The Ciccolo Group, LLC

October 15, 2009

Karen Kelleher, Planning Coordinator, Marcia Rising, Chair
Stow Master Plan Committee
380 Great Road, Stow Town Hall
Stow, MA 01775

RE: Request for Contract Amendment

Dear Karen, Marcia, and Committee Members:

As you all know, this “little” project of ours is progressing along but not at the pace at which we had originally envisioned. Nonetheless, I firmly believe we are making great progress and will ultimately be quite proud of the Master Plan which we are producing together. Notwithstanding our intention to see the project through and ensure the full satisfaction of the Committee, I am compelled to ask for a considerable contract amendment to reflect what I believe is the additional services The Ciccolo Group has been providing to the Town.

The original contract, signed in October 2008 – one year ago - called for a 3-6 month contract duration. The project has gone on for more than double the anticipated time frame and may be close to triple the time frame when completed. The original project did not, to the best of my understanding, anticipate bi-monthly meetings which has been our Committee’s norm. Additionally, we did not contemplate, when preparing our fee, the production of weekly newspaper articles which we did for the Stow Independent at the start of the project. The Stow Independent articles alone, had they been billed at an hourly rate would have cost \$1,660. We did not expect to have to generate the amount of original content which we ultimately have had to supply with long hours of writing and information data gathering. Meetings with other boards and committees, staff, and other research has considerably exceeded the scope.

To date, Nancy and I combined have invested approximately 462 labor hours. If I had been charging the Town at my normal hourly rate which I used for the Lundy project (\$95/hr) and billing Nancy at the rate I normally bill for her services (\$60/hr) this project would already have cost the Town \$32,620. As you know, our project has turned into more of a full production of a Master Plan and not a mere “update.” Many communities pay \$100,000 or more to have a consultant produce a Mater Plan for their town. Moreover, we still likely have 12 weeks of work left to do which would cost, at an hourly rate, approximately \$16,500.

At this point, I am not looking to actually make any money on this project but rather merely to recover my costs. Not doing so will actually impede my ability to continue as a small business consultant as my regular expenses (personnel, insurance, accounting) are considerable.

The Ciccolo Group, LLC

50 Shade Street, Lexington, MA 02421 / WWW.CICCOLOGROUP.COM
781-307-7330 Phone / 866-541-5389 Fax / Email: michelle@ciccologroup.com

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Respectfully, I request an amendment of \$6,710 which is the equivalent of the actual cost of Nancy's services through the end of the project and \$1,000 to cover my expenses. With this amount, I will not earn anything for my services but will at least be able to pay for costs I will incur. If approved, the new total contract obligation with this amendment included will be \$16,660.

This fee increase enables us to continue working until mid-January. If we are not finished at that time, I would like the Committee to also approve a switch to an hourly billing system come January 15, 2010. If that occurs, (which I sincerely hope it does not), I will keep my rates at the level I have been charging Stow in the past \$95/hr for my services and \$60/hr for Nancy's.

Please let me know if you would like to have any additional detail or a discussion about this matter.

Sincerely,



Michelle Ciccolo
Principal Consultant

The Ciccolo Group, LLC

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| | Priority | Comment |
|---|---|--|
| A | Increase affordable housing stock | SCHC project would provide huge boost |
| B | Build more sidewalks | Need identified in MP survey |
| C | Explore mixed use zoning in Lower Village (117 only) | Would provide housing close to shopping, post office, etc. |
| D | Support expanded agriculture | Agriculture Commission established; nearly half of Stow Community Park land set aside for farming |
| E | Implement elementary school project | Local votes and MSBA funding in place; project should be complete by 2012. |
| F | Determine best use of land that becomes available to town | Discussions underway (BOS, PB, ConsComm); proposal ready by end of Nov., 2009) |
| G | Support expanded recreation | Stow Community Park nearly complete; will consider other recreational opportunities as other parcels become available. |
| H | Support economic development | Many comments in MP survey re: desire for more retail and dining options, but these are limited by lack of water (see below). |
| I | Protect more open space | Town already has significant open space. Interested parties need to consider other land use priorities as well as open space. |
| J | Obtain water for LV, Center School, town buildings, etc. | Aggressive effort underway (Town Administrator); hopefully a contract with a private water company will be in place by year-end. MP has identified water as a critical need for current and future businesses and affordable housing project in and near LV. |
| K | Develop plan for expansion/replacement of fire station | Facility has been overcrowded for a long time. Fire Chief working on plan that may involve using part of Pompositicut School. |
| L | Develop plan for senior/community center | Under active consideration by COA. Options include expansion of current space at Town Building and using space at Pompo. |
| M | Flu preparedness | BOH has excellent distribution system in place, but vaccine supplies very limited. |
| N | Follow up on last "Planning Summit" (December 2, 2004); consider follow-up session. | Some action items still outstanding; may be best to start fresh once MP is complete; priorities from 2004 may have changed. |
| O | Establish commuter shuttle service to S. Acton station; expand COA bus service. | May be possible to build on current RTA arrangement with MART, but financial feasibility needs careful analysis. |
| P | Complete rail trail | This project needs to be concluded, at least to the point of a route through most of Stow. Collaboration with Assabet National Wildlife Refuge should be pursued. |
| Q | Collect back taxes | As of 9/30/09, back taxes, interest, and fees total 296,481 with over 62,000 owed by one person. Need to explore legal and regulatory options, especially for repeat offenders. |



Welcome to the Official Website for the
Town of Stow, Massachusetts
 An Old New England Town - Incorporated May 16, 1662

Board of Selectmen
 Board of Selectmen, Vermont

Contact:
 Stephen M. Duggan
 Chairman
 Susan McLaughlin, Admin Asst
 897-4515
 Deborah M. Robertson, Office Asst
 897-4515
Address:
 380 Great Road
 Stow, MA 01775-2127
 Phone: (978) 897-4515
 Fax: (978) 897-4631
Meetings:
 2nd and 4th Tuesdays, Jan - Aug
 1st and 3rd Tuesdays, Sep - Dec
 7:00 PM @ Town Building

Board Members

| Member Name | Year |
|---------------------------|------|
| Kathleen K. Farrel | 2010 |
| Elisa S. Shugart | 2010 |
| Stephen M. Duggan, Chair | 2011 |
| Thomas H. Ruggiero, Clerk | 2012 |
| Laura Y. Spear | 2012 |

The Board of Selectmen historically dates back to the early 1600's. Prior to that, residents were answer to ensure the wishes of the townpeople were carried out between their meetings. Much has changed over the years and yet the fundamental function of today's selectmen remains the same. The Board continues to work to ensure the roles of town meetings are carried out. The Board also disseminates public notices and publishes to be delivered by town carriers and oversees. It also oversees and approves and/or adjusts all other financial and/or general laws that uphold the Board to act in the role of municipal resources.

- Additional Links:**
- Meeting Minutes
 - Meeting Minutes
 - Meeting Packets
 - Documents of Interest
 - Stow - At a Glance
 - Town Meeting Operations

Navigation and utility area including:

- Search:
- Site Map
- Home Page
- Departments & Boards
- How Do I...?
- Meeting Calendar
- Town Documents
- Know Public Schools
- Police Department
- Fire Department
- Library
- Links
- Opportunities
- Town Meeting Minutes
- Online Tax Payments

Local Office: Turn on suggested.

Business Meeting

Saturday, January 24, 2009

10:15-11:50 a.m.

Ballroom A, Hynes Convention Center, 3rd floor

At the 2009 MMA Annual Business Meeting, members will consider amendments to two of the MMA's standing policies as well as resolutions on water infrastructure funding and energy.

The MMA's Policy Committee on Personnel and Labor Relations is recommending that the association update its standing policies by adding a provision on binding arbitration, adding a provision on municipal retirement, and rewriting the section on health insurance.

The proposed additions state the MMA's long-standing opposition to binding arbitration and call for comprehensive reform of the retirement system, with an emphasis on the disability retirement system.

The health insurance portion calls for changing state law to give cities and towns the same authority that the state government has for making health insurance plan decisions for employees.

In its proposal, the MMA's Policy Committee on Energy and the Environment is calling on the state to involve local government in the development of energy policies and programs. The new policy also calls for giving cities and towns the authority to approve energy facilities, and for the state and federal governments to provide assistance in energy procurement and management.

The resolutions proposed by the Policy Committee on Energy and the Environment outline a progressive energy plan for a long-term plan for water infrastructure funding.

Policies and resolutions presented at the Annual Business Meeting are drafted by the respective policy committees, at the direction of the MMA Board of Directors, to support the MMA's lobbying agenda. The proposals are intended to clearly communicate the MMA's basic policy directives to the appropriate state and federal officials.

The MMA Board of Directors on Nov. 10 voted unanimously to recommend the proposed policy changes and resolutions to be presented at the MMA Annual Business Meeting.

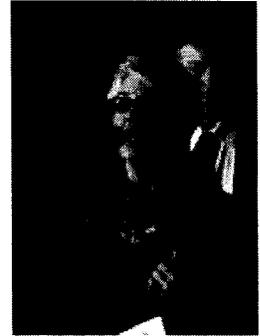
Proposed changes to MMA's Policy on Personnel and Labor Relations

Proposed new MMA Policy on Energy

Proposed Resolution on a Progressive Energy Plan for the Cities and Towns of Massachusetts

Proposed Resolution on Water Infrastructure Funding

→ Voting at the MMA Annual Business Meeting



Voting at the MMA Annual Business Meeting

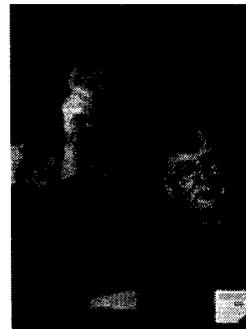


Each city or town that is a member of the MMA is entitled to one vote at the Annual Business Meeting, under the guidelines established in the association's bylaws [Article II, Sect. 6].

According to the bylaws, the person who votes on behalf of a member community must be:

- The mayor or chief executive of a member city; or
- The chair of the Board of Selectmen of a member town.

In the event that the designated official from a member community cannot attend, a councillor, selectman, or manager from that community can vote in the person's place, but only with written authorization from the designated official. Those eligible voting officials who cannot attend the Annual Business Meeting and who designate someone else to take their place must provide written authorization.



Voting delegates may obtain voting cards at the credentials table before the meeting begins. Only one voting card will be issued per community.