Town of West Bath
Select Board Meeting Minutes
Thursday, February 1, 2024

Town of West Bath Select Board:	Madelyn Hennessey, Chair	**- Present**
	Suzanne Andresen	**- Present**
	Kathleen Lavallee	**- Present**
Town Staff Present:	Kristine Poland, Town Administrator Karly Perry, Town Clerk	
Public:	Nancy Hamlin, Nick Hamlin, Michael Hennessey, Lloyd Johnson, Robin Johnson	

A meeting of the Select Board was held at West Bath Town Hall **Thursday, February 1, 2024, at 5:30 pm.**

I. CALL TO ORDER at **5:30 am**

II. ATTENDANCE AND ESTABLISHMENT OF QUORUM – **Yes**

III. PLEDGE OF ALLEGIANCE WAS SAID.

IV. CONSENT AGENDA

1. Approval of Minutes:
   a. January 18, 2024
   b. January 25, 2024
      Ms. Perry presented clerical edits to the minutes. Municipal Officer Andresen stated that she had an additional change but could not remember what it was.
      Select Board approved the amendments by unanimous acclamation.
2. Approval of Warrants:
   a. Municipal
   b. School
3. Upcoming Board of Selectmen Meeting(s):
   a. Thursday, February 15, 2024, at 5:30 pm at the West Bath Fire Hall

Municipal Officer Lavallee moved, seconded by Municipal Officer Andresen, to approve the Consent Agenda as presented. Select Board unanimously approved.

V. BUSINESS ITEMS Acting as the Select Board

1. Investment Committee Recommendation
   Ms. Poland stated that the Investment Committee met prior to the Select Board meeting and has no formal recommendation for the Board. The investment has matured and is currently in the money market account, which is presently the best available rate. Municipal Officer Andresen asked what the rate was. Ms. Poland stated that the rate is 5.26%
   Municipal Officer Hennessey moved, seconded by Municipal Officer Lavallee, to follow the recommendation of the Investment Committee and leave funds in the money market account. Select Board unanimously approved.

2. Ex Parte Communications, Review of Attorney Opinion
Municipal Officer Hennessey recalled questions she had asked the Town Attorney at the previous workshop regarding ex parte communications. She then read Attorney Bower's response into the record as follows:

    1. *Are "ex parte" communications between applicant and a Board member regarding pending abatement request permitted?*

        No. As a reminder, the Board of Assessors sits in a "quasi-judicial" capacity when hearing abatement requests. This means that any communications between an applicant for an abatement and a Board member must occur during the hearing on the abatement, which must occur at a properly noticed meeting of the Select Board/Board of Assessors. (For abatements, the Board is sitting as the "Board of Assessors.") There are several reasons for this rule, including that the ex parte communication is not recorded or made part of the record, and therefore cannot form the basis for a decision by the Board. Typically, the assessor's agent will assist taxpayers if they need help in filing an abatement request or gaining access to information regarding the assessment.

    2. *How many emails back and forth among Board members constitute a meeting?*

        My opinion is that <u>any</u> communication among Board members by email outside of meetings could constitute a "public proceeding" under FOAA, thereby requiring public notice and the ability of the public to attend. The exception to this rule is that emails that are sent solely for ministerial purposes (i.e., scheduling a meeting or informing other members regarding attendance at a meeting) do not constitute a meeting because they do not involve "transactions of any functions affecting any or all citizens" of the Town. Therefore, it is possible that even one substantive email exchange among Board members – about an abatement request or other pending matter – could constitute a public proceeding under FOAA.

    Municipal Officer Hennessey then recalled a question posed by Ms. Poland regarding penalties for ex parte communications and read Atty. Bower's response into the record as follows:

    There aren't "penalties" per se but it is not an appropriate practice for administrative decision-making. It could be the basis for an appeal of the Board's decision (as a due process violation), and furthermore, it doesn't allow all decision-makers (i.e., Board members) to be operating with the same information.

3. Freedom of Access Act (FOAA) Requests, Discussion
Municipal Officer Hennessey presented a draft policy for public record requests under the Freedom of Access Act (FOAA).

    Municipal Officer Andresen stated that following the workshop wherein Ms. Poland shared that she had additional information pertaining to the revaluation process, she personally requested the information in order to evaluate what is happening in the Town and to prepare for the meeting with Maine Revenue Services. Municipal Officer Andresen stated that she was inappropriately denied access by Ms. Poland, citing FOAA. Municipal Officer Andresen expressed her opinion that as an elected official asking an employee for information does not fall under FOAA and that Ms. Poland's behavior was inappropriate.

Municipal Officer Hennessey asked Municipal Officer Andresen how being an elected official is different than being a member of the general public when requesting documents. Municipal Officer Andresen stated that the documents are necessary in order for her to do her job and that waiting five days for information is an act of insubordination.

Ms. Poland asked Municipal Officer Hennessey to respond to Municipal Officer Andresen, to which she agreed. Ms. Poland then clarified that she sent an email to the Board referencing the FOAA statute, which allows five days to respond to a request; and in no way meant to imply that elected officials are either the same or different. Ms. Poland further stated that she was not denying the information, rather taking time to digest the new information, and that it was appropriate to wait until after the visit from Maine Revenue to supply any additional information. Ms. Poland added that had she supplied Municipal Officer Andresen with the requested information, it would likely have been further disseminated. Ms. Poland then recalled that she discussed with Municipal Officers Hennessey and Lavallee, who both agreed that Ms. Poland should hold off on releasing additional information.

Municipal Officer Andresen noted that the email to the Select Board references FOAA statute, which allows five days to respond to request. Municipal Officer Andresen then clarified that as an elected official it is inappropriate for her to wait five days to receive information pertinent to her job. She reiterated that this behavior is an act of insubordination. She then stated that it was inappropriate of Ms. Poland to check with the other members of the Select Board, as she was unable to justify her reasoning to the other members outside of a public meeting.

Municipal Officer Hennessey acknowledged Municipal Officer Andresen's concerns and stated that further discussion would be a personnel matter that would need to be discussed in executive session.

Ms. Poland clarified that her behavior was not the subject of the agenda item and asked that the Board focus on the policy before them as requested by Municipal Officer Hennessey.

Municipal Officer Hennessey added that she requested a policy to be drafted in order to address recent complaints regarding the information provided from TRIO software, and to allow a formal process for requesting public records by which information may be requested more specifically. She stated that it was not her intention to have the policy enacted at this meeting, rather to have it available for Board review for discussion at a later date.

Municipal Officer Andresen expressed her offense to Municipal Officer Hennessey's statement that she was complaining; and stated that her position is not a complaint, rather it is her position. **Municipal Officer Andresen moved that current Chair is removed from her position and that the Board revert to their prior Chair, Municipal Officer Lavallee.** Municipal Officer Andresen stated that her relationship with Municipal Officer Hennessey is stressed, stating that it was a more harmonious Board with Municipal Officer Lavallee as Chair. Municipal Officer Lavallee agreed that she does not like the current environment, then stated that the Board has three strong personalities with three different positions and that all of them need to figure out how to get along. Municipal Officer Andresen asked Municipal Officer Lavallee if she would take the position of Chair, to which Municipal Officer Lavallee stated her belief that it would not help. **The motion failed with no second.**

Municipal Officer Andresen acknowledged that the Board will be following the agenda, then expressed her frustration that the previous workshop failed to address the questions submitted by the public, adding that the only question answered was that asked by Municipal

Officer Hennessey. Municipal Officer Hennessey noted that she asked the Board if they had additional questions prior to adjournment. Municipal Officer Lavallee suggested that this also be discussed as a personnel matter.

Municipal Officer Lavallee expressed her support of the policy, offering clarification and the ability to track information.

Ms. Perry clarified that under FOAA, it is not required to put a request in writing, however, some people do prefer to have something in writing but have difficulty determining where to start. She stated that the form provides a starting point for these requests. Municipal Officer Lavallee added that the form also offers accountability on the part of the Town.

Municipal Officer Hennessey asked how requests are handled should someone not wish to submit a formal request. Ms. Perry explained that she would take notes on what information is being requested and follow up with the requestor. Or, if they prefer to remain anonymous, decide on how to follow up. Ms. Perry then recalled the draft policy is based on that in Old Orchard Beach and based on language in State statute. She spoke in support of a policy for consistency as well as clarification.

Municipal Officer Andresen suggested creating a communication binder for all communications that come into the Town for reference and readily available for review by the public.

4. Procedures for Addressing the Select Board, Discussion
   Municipal Officer Hennessey presented proposed procedures for addressing the Select Board.

   Municipal Officer Lavallee noted that the proposed language is similar to that used in the City of Bath. She stated that she recently attended a City Council meeting in Bath and spoke to the professional handling of the meetings and the benefits to West Bath creating a more professional atmosphere.

   Municipal Officer Hennessey reviewed the proposed procedures, which include those wishing to speak needing to be recognized by the Chair, decorum when reinforcing a point made by another speaker, limiting comments to opinions or concerns, the disallowance of debate among the public, the disallowance of personal attacks, time limits of five minutes per comment, and comments limited to two per person per agenda item.

   Municipal Officer Andresen asked if the Board would be discussing this proposal. Municipal Officer Hennessey suggested that the Board review the information for discussion at the next meeting, to which the Board agreed.

5. Town Administrators Report
   Ms. Poland reminded the Board that the Sagadahoc County will hold its annual caucus on Tuesday, February 6, at 5:00 pm. There is currently one position for public representative.

   Ms. Poland announced that the Town Attorney and the attorney representing Sagadahoc County have agreed on the language for the proposed lease for the County communications tower. The Planning Board will review the application for the tower at their next regular meeting and may grant conditional approval pending the approval of the lease at Town Meeting,

Ms. Poland presented the MDOT 2024-2025-2026 work plan. Municipal Officer Hennessey asked Ms. Perry to post the work plan to the website. Ms. Perry stated that work plans can be found under road postings on the Town website. Municipal Officer Andresen asked Ms. Poland to reach out to the State representatives to see if Witch Spring Hill can be added to the work plan.

Municipal Officer Andresen asked for a status update on the Comprehensive Plan. Ms. Poland announced that the committee has a tentative date of February 20 at 6:00 pm for the next meeting.

VI. BUSINESS ITEMS Acting as the Board of Assessors

1. Discussion Concerning the Upcoming Consultation with Maine Revenue Services
   Municipal Officer Hennessey announced that Steve Sullivan of Maine Revenue Services will be conducting an consultation with the Town Administrator for an audit of assessing materials at Town Hall on Friday, February 2, 2024, at 9:00 am.

   Ms. Poland noted that she had reached out to Atty Bower regarding who should be attending the consultation, to which he responded that one Select Board member should not attend the meeting by themselves. If more than one member of the Select Board were to attend, that would constitute a public proceeding. She recalled the previous discussion on ex parte communications, wherein all members of the Select Board should be receiving the same information. Mr. Bower's legal opinion is that the meeting should be restricted to staff and consultants.

   Municipal Officer Andresen announced that she would be in attendance, stating that she would not speak but wanted to be privy to the conversation. Ms. Poland expressed her discomfort with Municipal Officer Andresen attending the meeting and stated the importance of the staff being given time to review materials. Municipal Officer Andresen reiterated her intent to attend the meeting and expressed her discomfort not being in attendance.

   Municipal Officer Hennessey stated that she would attend the meeting as well in order for it to not be an ex parte communication. Ms. Poland asked how the staff would accommodate a public meeting with the review of the materials. Ms. Perry reminded the Board that public meetings require 24-hour notice.

   Ms. Poland expressed her frustration that she is not being allowed to meet with consultants independently, noting that Select Board and public do not attend financial audits or workers compensation audits conducted by the Town. She assured the Board that Mr. Sullivan would provide a report following the consultation with his findings, which the Board as a group should review at a public meeting.

   Municipal Officer Andresen noted that she was the person who initially reached out to Mr. Sullivan, then reiterated that she would not participate in the meeting. Ms. Poland asked for a vote from the Board on whether a Select Board member be allowed to attend the meeting. Municipal Officer Hennessey noted that she too reached out to Mr. Sullivan for assistance. Municipal Officer Andresen stated that Municipal Officer Hennessey reached out only after her initial contact with Mr. Sullivan. Municipal Officer Lavallee called for decorum and expressed her frustration with the other Board members.

   Mike Hennessey asked how meeting with a State employee is not considered a public activity. Ms. Poland stated that audits are not considered a public activity. Mr. Hennessey

recalled previous requests for information and recalled that the Select Board and not the Town Administrator are the Assessors. He stated that it is not a function of the Town Administrator to act as the Assessing Agent. Ms. Poland stated that she has never claimed to be the Assessing Agent and clarified that reviewing documents held by the Town is an administrative function, comparable to a financial audit. She noted that the meeting is not an extension of the workshop, but rather a consultation by staff with a professional. Ms. Poland further clarified that request made by her and not the Board.

Municipal Officer Andresen stated that she is most concerned among the Board and that it would be in the best interest of all to allow her to attend to ensure those concerns are put to rest. Ms. Poland reiterated that Atty Bower has stated that a single member of the Board should not attend by themselves.

Municipal Officer Lavallee confirmed with Ms. Poland that Mr. Sullivan is coming to review document and would meet with the Board as a whole at a later date. She stated that the consultation is important to move forward with the revaluation process. Municipal Officer Lavallee expressed concern that if the meeting cannot be held that the process will further be delayed.

Mr. Hennessey stated that having a meeting with Mr. Sullivan after the consultation would be an acceptable resolution.

Municipal Officer Andresen asked for clarification on whether one member could attend. Ms. Poland clarified that one member attending would be considered an ex parte communication and explained that having a group following the staff around would be a distraction from the process. Municipal Officer Andresen reiterated her desire to attend the meeting.

Municipal Officer Hennessey proposed a procedure wherein staff meet with Mr. Sullivan and a member of Parker Appraisal. Ms. Poland recalled discussion with Parker Appraisal prior to the workshop during which it was revealed that there was additional information located on the server and additional information was offered. Ms. Poland then reached out to Mr. Sullivan to see if he would like a member of Parker Appraisal attend the meeting, to which he agreed it would be helpful.

Municipal Officer Andresen stated that she was unaware that a member of Parker Appraisal would be at the meeting and emphasized her need to attend, as she is most concerned with the work of the contractor.

Municipal Officer Hennessey continued to propose a procedure, wherein staff and Mr. Sullivan review data, identify issues, issue a written report and provide an in-person meeting.

Municipal Officer Andresen asked if Municipal Officer Lavallee was aware that a representative of Parker Appraisal would be at the meeting and expressed her concern that this information was kept from the community. She stated her opinion that the Board has not been given all the information available.

Mr. Hennessey asked if the Board was acting under Public Comment, to which Ms. Perry noted that the Board is acting under agenda item 1 of the Board of Assessors.

Municipal Officer Lavallee recalled that this was discussed at the previous meeting and expressed the importance that the Board stick to their agreements. Municipal Officer Andresen countered that when the Board agreed to this meeting, Parker Appraisal was not included in the conversation. Municipal Officer Lavallee expressed concern that Municipal

Officer Andresen becomes too involved and doesn't allow for information to be processed. Municipal Officer Andresen stated that she did not intend to speak at the meeting, which Municipal Officer Lavallee questioned.

Municipal Officer Hennessey reiterated that the Town Attorney has advised against a single member of the Select Board being present at the meeting.

Mr. Hennessey asked for clarification that the spreadsheet referenced is not contained in the TRIO software. Ms. Poland confirmed that the spreadsheet is an Excel spreadsheet on the server and not in TRIO. Mr. Hennessey stated that this information was requested seven months ago, to which Ms. Poland reiterated that she was unaware this information was on the server. Mr. Hennessey expressed frustration and suspicion about the process. He then asked if Parker Appraisal would be providing a neighborhood analysis. Municipal Officer Hennessey stated that this discussion was a part of the workshop, and that Mr. Sullivan was aware. She then asked Ms. Poland to note this question for the meeting.

Municipal Officer Andresen asked that the date recorded in the system be determined.

Municipal Officer Lavallee asked that the Board compile a list that be included in Mr. Sullivan's analysis. Ms. Poland assured the Board that Mr. Sullivan is aware of what information the Town needs to be in possession of.

Municipal Officer Andresen stressed the importance of her attendance at the meeting to ensure that the questions are answered, and further expressed a lack of confidence in the revaluation process.

Municipal Officer Lavallee stated that the list would clarify information the public may be requesting that Mr. Sullivan finds not to be required. Municipal Officer Hennessey stated that the most important question is whether or not the Town has the information necessary to continue to assess property.

Municipal Officer Andresen spoke to previous meetings that she has attended without participating, stating that she is prepared to do so at the consultation. She expressed concern that there may be questions that are not asked that would be helpful in moving forward should she not be allowed to participate.

Municipal Officer Hennessey stated that the Board would be wise to follow the advice of the Town Attorney. Municipal Officer Lavallee expressed concern that the meeting may be delayed.

Municipal Officer Hennessey continued to propose a procedure where Town staff, with Mr. Sullivan and Jessica Westhaver of Parker appraisal review the data, submit a written report, meet with report, and personal responses. Municipal Officer Andresen asked that time stamps from information on the server be verified and a timeline of data on the server. She then expressed concern that Parker Appraisal may have access to the server, which Ms. Poland stated they do not. Municipal Officer Andresen asked for information on comps, neighborhoods and when they were established, boundaries of neighborhoods, and when were these documents provided. She then stated gradients and when established, categories, waterfront changes and how they pertain to the neighborhoods, and why there was a conversion from tidal to deep water on a number of property cards. Municipal Officer Andresen expressed concern that changes made have not been substantiated.

Robin Johnson asked that the numbered classifications have be defined, to which Municipal Officer Hennessey agreed should be forthcoming.

Mr. Hennessey asked that neighborhoods and grades be defined as well, noting the crucial nature of waterfront information and the location of the low tide mark. He then expressed concern that Mr. Sullivan may not have extensive experience working with TRIO software.

Municipal Officer Andresen reiterated the importance of ensuring that the proper questions are asked, noting that this is the reason she would like to be in attendance.

Mr. Hennessey noted that Mr. Sullivan may not provide certain information without a member of the Select Board present, further stating that this is not an ex parte communication. Municipal Officer Hennessey clarified that according to the Town Attorney, it is. Mr. Hennessey asked that Atty Bower's statement be reread.

Municipal Officer Andresen asked Ms. Poland to read Atty Bower's email regarding Select Board participation.

Ms. Poland read her email to Atty Bower as follows:

> *Please see the following email exchange concerning this Friday's consultation with Maine Revenue Services.*
>
> *Suzanne is insisting that she be able to attend the meeting with Steve Sullivan. My view is that the consultation is an administrative matter, similar to an audit, and that individual Select Board members should not be present unless the Select Board votes to appoint one member to attend. Is there any legal reason why I must allow Suzanne (or any other member of the Select Board) to attend?*

She then read Atty Bower's response to her email as follows:

> *I would be concerned about her having information that the other two Selectpersons/Assessors don't - so my advice is that you either post it as a meeting and at least two Selectpersons/Assessors attend, or none attend.*

Municipal Officer Andresen suggested that two Select Board members attend the meeting, Municipal Officer Lavallee reminded her that this would constitute a public meeting. Municipal Officer Andresen asked Ms. Poland when the email was from Atty Bower was received, to which she stated that it was received on Monday. Municipal Officer Andresen expressed concern that Ms. Poland withheld the information and that the Board was not properly notified that Parker Appraisal would be at the meeting. Ms. Poland explained that sharing information among Board members outside of a meeting would constitute an illegal meeting. Municipal Officer Andresen then began to express concern with Ms. Poland's behavior, at which point Ms. Poland stated that this was a personnel issue and asked that the Board focus on the matter at hand.

Municipal Officer Hennessey moved, seconded by Municipal Officer Lavallee, that the meeting Friday morning at 9am be held with the Town Administrator and staff, Steve Sullivan representing Maine Revenue Services, and Jessica Westhaver representing Parker Appraisal. That they review the data and issue a written and verbal report to the Select Board, and that insofar as possible all questions raised this evening and in the past be answered to the best of the abilities of the persons in attendance. Municipal Officer Lavallee asked that the timeframe for a follow up meeting be determined. Municipal Officer Andresen asked if it would be appropriate to sit down prior to Friday's meeting to ask questions. Ms. Poland stated this was not part of the scope of the meeting

requested with Mr. Sullivan and would constitute a public meeting. **Select Board approved with two in favor and one opposed (Andresen)**

Municipal Officer Lavalee announced that she will be out of Town, February 19-26.

VII. SELECT BOARD COMMENTS/ANNOUNCEMENTS
None

VIII. PUBLIC COMMENT
Mr. Hennessey asked for clarification on ex parte communications and whether members of the public are allowed to ask a question of one of the Assessors. He then stated that many questions are for clarification purposes and are not ex parte communication. He asked where the line is drawn on receiving an explanation from an Assessor. Municipal Officer Lavallee stated that all Assessors need to be able to give the same answer in order to avoid controversy. Mr. Hennessey agreed but stated it is not an ex parte communication to have a conversation with an Assessor.

Municipal Officer Andresen stated that Assessors should not provide specific values without the information, to which Municipal Officer Lavallee agreed.

Municipal Officer Hennessey clarified that ex parte communication begins when there is an application for an abatement pending. Municipal Officer Lavallee noted that the Board is not always aware of when an application is pending. Municipal Officer Andresen suggested that Board members ask if an application is pending, then stated her belief that no member of the Board is intentionally violating the rules of ex parte communication.

Mr. Hennessey referenced a FOAA statute regarding requests to view information, which can be handled in several ways. The Town may adhere to a formal request, but if a member of the public wishes to see a public record, this is not a FOAA request and must be produced in the moment if it is readily available without interrupting workflow. Municipal Officer Hennessey stated that what she is suggesting is that for future reference a notation be made. Mr. Hennessey stated that if he wishes to stop workflow that is a FOAA request, however if a request is made for a public record it should be immediately provided.

IX. ADJOURNMENT
Municipal Officer Andresen moved, seconded by Municipal Officer Lavallee, to adjourn. Select Board adjourned by unanimous acclamation at 7:41 pm.

A true attested copy,

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Karly A. Perry, Town Clerk