# MINUTES OF THE SELECTMEN'S MEETING OCTOBER 29, 2019

**PRESENT**: Willard J. Boulter, Jr. (Chairman), Arthur P. Boyle, Jr. (Vice-Chairman), John G. Brown, Jr. (Clerk), Jessica M. Rushing (Selectman), Daniel W. Trabucco (Selectman), Edwin J. Thorne (Town Manager), Catherine Salmon (Chief Assessor), Mary Quill, Elaine Boidi, J. Michael Hill (Fire Chief), Lisa Cullity (PEMA/Health Agent), Brandon Gulnick, Thomas Driscoll, Gary Fine, Matthew Newman, Kaitlyn Bergin, Tim Landy, Donna Wentzel, Sheila Landy, Jody Kearney, Brooke Young, Sabrina Chilcott (Assistant Town Manager), and others.

At 7:30 pm Mr. Boulter opened the meeting.

## 7:30 PUBLIC HEARING: TAX ASSESSOR'S FY20 TAX CLASSIFICATION HEARING

Mr. Boulter opened the Public Hearing at 7:30 pm. Chief Assessor Cathy Salmon and members of the Board of Assessors appeared before the Board to request they vote on whether to keep a uniform tax rate or split the rate between residential property and commercial/industrial/personal property. Ms. Salmon also requested the Board vote on a small commercial property exemption. Ms. Salmon provided the current finalized value of the Town at \$2,956,350,289. The estimated levy based on the votes from Town Meeting will be \$42,833,943 resulting in a uniform tax rate of \$14.49 per thousand dollars of assessed value. This is an average of \$5,979 per residential taxpayer on an average single family assessment of \$412,650; \$14,663 per commercial tax payer on an average assessment of \$1,012,000. Pembroke has 87.5% in the residential class, 8.06% in commercial class, 3.0% in industrial class and 1.41% in personal property class. Ms. Salmon stated that, in order for the residential taxpayers to save \$85.16 per year, the shifting burden to commercial taxpayers would result in an increase of \$1,466.27. The Board of Assessors recommends staying with the single rate. Ms. Salmon introduced the small commercial exemption; only ten towns in the state have adopted it. This shifts the tax burden from small commercial to large commercial. To qualify the business must have less than ten employees in a property worth less than \$1 million. The problem is, the owner of the property then gets the exemption, not the qualifying business owner. The Board of Assessors does not recommend this exemption. Discussion ensued. Mr. Boyle moved to accept a uniform tax rate for the Town of Pembroke for FY20 for the Town of Pembroke; Mr. Brown seconded the motion. The vote was unanimously in favor. Mr. Boyle moved that the Town of Pembroke not adopt the small commercial exemption; Mr. Brown seconded the motion. The vote was unanimously in favor. Mr. Trabucco moved to keep the public hearing open until further information is received from the Assessors. Mr. Boyle seconded the motion and the vote was unanimously in favor. Mr. Boulter declared this Tax Classification Hearing in recess, remaining open and that it remains open until the call of the chairman, and further to authorize the Chief Assessor to attest to the details of this hearing.

7:45 FIRE CHIEF REQUEST FOR TO AUTHORIZE THE LEASE OF ONE (1) AMBULANCE Chief Hill was present before the Board to advise that a vote is required to lease an ambulance for three years; the down payment plus two years. Mr. Trabucco moved the Chief's recommendation. Mr. Boyle seconded the motion. The vote was unanimously in favor.

# 7:50 REQUEST OF EMERGENCY MANAGEMENT DIRECTORS: VOTE TO RATIFY EXISTING MUTUAL AID AGREEMENT

Ms. Cullity and Chief Hill advised the Board that a formal vote to opt in to statewide mutual aid agreement; Pembroke has actively participated but requires the vote of the Board for compliance. Ms. Cullity requested that the Board vote to authorize the participation of the Town of Pembroke by opting in, in accordance with MGL c.40 §4J, to the Statewide Public Safety Mutual Aid Agreement; and further to authorize the participation of the Town of Pembroke by opting in, in accordance with MGL c.40 §4K to the Statewide Public Works Municipal Mutual Aid Agreement. Mr. Boyle moved the Health Agent's recommendation; Mr. Brown seconded the motion. The vote was unanimously in favor.

# 7:55 CONSIDER REQUEST FOR BOARD VOTE OF SUPPORT FOR MUNICIPAL VULNERABILITY PREPAREDNESS (MVP) PLANNING PROGRAM GRANT APPLICATION

Brandon Gulnick was present to introduce an update and request for a vote of support for Pembroke's plan under the Municipal Vulnerability Preparedness Grant Program. The MVP provides support for cities and

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towns in Massachusetts to begin the process of planning for climate change resiliency and implementing priority projects. The state awards communities with funding to complete vulnerability assessments and develop action-oriented resiliency plans. Communities who complete the MVP program become certified as an MVP community and are eligible for MVP Action grant funding and other opportunities. The program began in FY18 and since that time 249 communities in the commonwealth have MVP designations. 17M+ in planning and action grants have been delegated to cities/towns to date. The RFR is open and will roll until mid-January with the EEA providing 15k-100k per plan, which must be complete by 6/30/2020. Once the town has a MVP plan, Pembroke will then be eligible for the MVP Action Grant which offers financial resources to municipalities that are seeking to advance priority climate adaptation actions to address climate change impacts resulting from extreme weather, sea level rise, inland and coastal flooding, severe heat, and other climate impacts. Project types include Detailed Vulnerability and Risk Assessment, Public Education and Communication, Local Bylaws, Ordinances, Plans, and other Management Measures, Redesigns and Retrofits and more. Mr. Gulnick concluded requested Board approval and signature on the attached Letter of Support to move forward with the Planning Grant Opportunity to achieve MVP designation. Mr. Boyle moved to support Pembroke's Municipal Vulnerability Preparedness Program; Mr. Brown seconded the motion. The vote was unanimously in favor.

# 8:00 PUBLIC HEARING: GRIEVANCE UNDER TOWN BYLAWS ARTICLE XXIII §25(5) RIGHT TO FARM "RESOLUTION OF DISPUTES" OF BOARD OF HEALTH PUBLIC NUISANCE DESIGNATION AND VIOLATION ORDER ISSUED 10/11/2019 UNDER MGL C.111 §31 "LIVESTOCK REGULATIONS", PART III SECTION A (4) – ROOSTERS BY KAITLYN BERGIN AT 94 MATTAKEESETT STREET

At 8:00 pm, Mr. Boulter opened this public hearing being held at the request of resident Kaitlyn Bergin of 94 Mattakeesett Street. She has a livestock permit with the Board of Health and has had five complaints investigated since July of 2017. The Board of Health has deemed her roosters a public nuisance and has ordered them to be rehomed/removed by November 1st or she will face a fine of \$50 per occurrence in accordance with Livestock Regulations, Part III, Section A(4). The inspectional finding of this violation is a "public nuisance", "crowing of male birds that can be heard for a distance of one hundred (100) feet" before 7:00 am on weekdays and before 8:00 am on weekends. The vote to order the removal of the four roosters was made by the Board of Health under the authority they alone have under MGL c.111 s.31 which is an irrevocable statute; only the Board of Health can reverse, overturn or amend the decision. Mr. Boulter established protocol ground rules for public input into this deliberation. He stated that business must be conducted through the Chair; speakers must be recognized by the Chair; speakers must approach the podium and provide their name and address for the record; and repetitive statements or remarks will not be allowed in an effort to allow everyone a chance to speak. Board of Health Chairman Thomas Driscoll advised that these complaints date back three years and are unresolved. Complainants are abutters and neighbors who document and report chronic violations at early hours of the morning. The Health Agent has conducted many hours of investigative research and has observed the violations. The Board of Health held multiple meetings and at the most recent, voted to order that the roosters be removed. Mr. Driscoll summarized by stating that all Livestock Permit holders sign their applications with specific wording acknowledging the terms and conditions set forth in the Pembroke Livestock Regulations, and he confirmed that Ms. Bergin has signed the application annually since 2017. Kaitlyn Bergin stated that she has owned roosters since 2015 but didn't receive Livestock Regulations until 2017 when complaints were lodged. Ms. Bergin stated that she feels some of the regulations are inhumane and that her roosters are housed 150 feet from the neighbor's house; she stated she is not appealing the vote but is grieving the decision to the Board of Selectmen with a request to hold the vote in abeyance as the members of the Board do not have livestock and have no business enforcing livestock regulations. Discussion ensued on how complaints were submitted, access of board members to the public and the manner of travel of the board member hearing the roosters. Ms. Bergin advised that the animals are her pets, not just livestock. Ms. Bergin stated she feels noise is not a public health concern in a Right to Farm community, and she lives in a commercial district surrounded by businesses who make more noise that the roosters. Mr. Bergin provided a handout to the Board. Mr. Boyle advised that this is a hobby farm on a residential parcel. Mr. Boulter asked if Ms. Bergin signed the Livestock Permit each year acknowledging the terms and conditions of the Livestock Regulations; Ms.

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Bergin stated she has, but didn't receive a copy of it until 2017. Mr. Boulter stated that the file indicates that the issue has been ongoing and unresolved since 2017 and the nuisance to the neighbors is unabated. Ms. Bergin stated the noise is now muffled with the changes she has implemented. Mr. Boulter requested that Ms. Cullity present the complaints and investigations undertaken. Ms. Cullity stated that the owner of the property contacted her in 2017 stating tenant had animals on the property, at which point Ms. Cullity contacted Ms. Bergin who then came in to apply for a Livestock Permit. Ms. Cullity stated that the complaints received date back to 2017 and Ms. Bergin has not yet been incompliance with Livestock Regulations, Part III, Section A(4). Ms. Cullity stated that the Board of Health has consistently enforced regulations regarding roosters in the same way, but this situation has grown unpleasant. Ms. Cullity stated that Ms. Bergin keeps the living conditions of the animals in exemplary fashion but the noise complaints are unending. Discussion ensued on methods of how to house and keep roosters in a way that respects neighbor's rights. Mr. Boyle stated that the vote of the Board of Health indicates that the roosters must be removed by November 1<sup>st</sup> and Ms. Rushing concurred, stating that the Selectmen lack the jurisdiction to overturn a decision made by the Board of Health and attempting to do so would set a poor precedent. Donna Restucci, the neighbor complainant, stated that she bought her home in 2001 with no intention of living next to a farm; Ms. Bergin moved in 2015 with the intent to purchase the home and neighborhood relations were friendly at that time. Ms. Restucci stated that over the course of two years she had no choice left but complain to the proper authority about the violations. Ms. Restucci stated that there are over 50 animals on a .75 acre parcel and the other noises blend in but the roosters are loud, competitive and relentless and crow at 5:00 am. Indirect abutter Jodie Kearney stated that she lives at least 500 feet from Ms. Bergin and, while not complaining, the roosters can absolutely be heard plainly during the day. Mr. Boyle moved to take no action, and further, to support he vote of the Board of Health. Ms. Rushing seconded the motion. The vote was unanimously in favor. Ms. Cullity recommended bringing an article to town meeting supporting the creation of an Agricultural Commission and the Board of Selectmen concurred.

At 9:00 pm, Mr. Boulter declared the hearing closed. All parties participating exited the meeting.

## ACCEPT RESIGNATION: LINDA MACDONALD FROM ZBA ALTERNATE

Mr. Boyle moved to accept the resignation of Linda MacDonald from the ZBA with regret; Ms. Rushing seconded the motion. The vote was unanimously in favor.

**VOTE RECOMMENDATION OF CCTF: APPOINT STEPHEN CURLEY** Mr. Boyle moved to appoint Stephen Curley to the Community Center Task Force; Mr. Brown seconded the motion. The vote was unanimously in favor.

## **VOTE TO APPROVE THE MINUTES OF OCTOBER 15, 2019**

Mr. Boyle moved to approve the minutes of October 15, 2019 as written; Mr. Brown seconded the motion. The vote was unanimously in favor.

#### TOWN MANAGER'S REPORT

Mr. Thorne advised that Pembroke has received a Mass DEP grant in the amount of \$13,200 for improvements to the Recycling Center.

At 9:05 pm, Mr. Boulter read the upcoming issues. Mr. Trabucco moved to adjourn; Mr. Boyle seconded the motion. The vote was unanimously in favor.

#### **MATERIALS & EXHIBITS**

Assessor's FY20 Tax Hearing Slideshow (BoA/BOS/TM Office)

MGL c.40 §4J-K

EEA MVP Plan PowerPoint printout (BOS/TM Office)

Email, L. MacDonald RE: ZBA Alternate resignation (BOS/TM Office)

Vacancy Application, S. Curley w/ email, A. Sullivan re: CCTF appointment (CCTF/BOS/TM Office) Complaints, investigations, logs from BoH file, statutes (c.111 s.31), bylaws (Art. XXIII s.25) Com of MA Agricultural Commission & Pioneer Valley Planning Comm. authorities & best practice, (BOS/TM Office)

Materials or other exhibits used by the public body in an open meeting are available to the public within 10 days upon request. Prepared by S. Chilcott

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