

Tuesday, April 9, 2019
Board of Selectmen's Meeting Minutes
EXECUTIVE SESSION
Foxborough Town Hall
Andrew Gala Meeting Room
4:00pm

Members present: Chris Mitchell, Chair
Mark Elfman, Vice Chair
Leah Gibson, Clerk
James DeVellis
David Feldman

Others present: William Keegan, Jr., Town Manager
Michael Johns, Veterans Services Director
Jaime Kenney, Town Counsel
Amanda Smith, Community Information Specialist

Minutes generated by Amanda Smith

Chairman Mitchell called the meeting to order at 4:00 p.m. and read the agenda into the record. C. Mitchell opened the public session and stated the Board would enter into executive session to return to open at approximately 5:30 p.m.

Motion to go into Executive Session, to return to Open Session, to conduct strategy session in preparation for contract negotiations with non-union personnel, Finance Director, William R. Scollins; to conduct contract negotiations with non-union personnel Finance Director, William R. Scollins; to discuss strategy with respect to collective bargaining with Library Union where an open meeting may have a detrimental effect on the bargaining position of the public body; to discuss strategy with respect to collective bargaining with Foxborough Professional Firefighters Association, Local 2252 where an open meeting may have a detrimental effect on the bargaining position of the public body; and to Review/Approve Executive Session minutes 2/6/18, 6/5/18, 6/20/18, 10/2/18, 10/30/18, 11/27/18, 1/8/19 and 3/5/19 to return to open session made by L. Gibson, motion made second by M. Elfman

No further discussion

Final Resolution: Motion Carries 5-0-0

Roll Call: L. Gibson – Yes; J. DeVellis – Yes; C. Mitchell – Yes; M. Elfman – Yes; D. Feldman - Yes

- 1. Motion to conduct strategy session in preparation for contract negotiations and to conduct contract negotiations regarding an amendment to the Finance Director, Randy Scollins', employment contract made by L. Gibson, motion made second by M. Elfman**

No further discussion

Final Resolution: Motion Carries 5-0-0

Roll Call: L. Gibson – Yes; J. DeVellis – Yes; C. Mitchell – Yes; M. Elfman – Yes; D. Feldman - Yes

J. Kenney told the Board she received a call from R. Scollins' Attorney about separating from employment here and how to terminate his current contract. J. Kenney said his attorney is available by phone and can be reached at any time during discussion this evening; has a draft settlement agreement for the Board to review at this time.

J. Kenney explained the approach when preparing separation terms and what the outward bounds of the contract terms are. L. Gibson requested time for the Board to read through these documents; J. DeVellis said he requested documents prior to the meeting so the Board would not have to read at the same time. L. Gibson confirmed this is a voluntary separation agreement; J. Kenney confirmed. B. Keegan said the documents could

not be shared prior to the meeting as it is sensitive, personal documents; J. Kenney said these documents will be returned to her at the end of the meeting. J. DeVellis asked if this is public record law or a policy; J. Kenney said it is her practice to not hand out sensitive documents prior to a meeting and collects documents at the end of the meeting. J. Kenney said her legal opinion is to not release any of these documents prior to final agreement by all parties.

J. Kenney went through each piece of the separation agreement. J. Kenney said the resignation date would be as of April 11, 2019 and a resignation letter will remain in his personnel file. J. Kenney said paragraph two states that R. Scollins acknowledges that the Town is only liable for what is called out in this agreement; preventing potential future wage claims and other claims. J. Kenney said R. Scollins requested his final check be ready for pick up by next Friday, April 19, 2019. J. Kenney said there is language in the agreement that states the Town will not contest any unemployment filing after the completion of the severance terms of six months. J. Kenney said the Town said they will provide a “neutral” reference for R. Scollins that includes date of hire, position held and date of severance. L. Gibson asked if social media communications about rumors regarding R. Scollins puts the Town in a difficult position; J. Kenney said reference checks are all handled through HR and social media cannot be controlled. L. Gibson said the agreement does not read specifically that HR will be the point of contact; B. Keegan said “Town” typically refers to the Town Manager and the Assistant Town Manager. L. Gibson said there could be a policy in place to limit anyone with affiliations with the Town from speaking in a way that appears to be on behalf of the Town.

J. Kenney said there is an acknowledgement of no other benefits and called out his indemnification agreement and how it continues during the time he was employed by the Town. J. Kenney said this agreement does not affect his retirement rights. J. Kenney said there is language included that states this agreement applies only to the parties identified and should not be used for others in the future. J. Kenney said there is global release language in the agreement that releases the Town from any claims brought forth by Mr. Scollins from individual liability and as an official Town employee during and up to the end of his employment with the Town. J. Kenney said there are claims that include those tied to the Statute and common law claims; this language covers all of those claims. J. Kenney said there is a 21-day review period and a 7-day revocation period under the older workers protection act and R. Scollins has waived the 21-day review period as allowed by law. J. Kenney said the 7-day revocation period cannot be waived and is used to determine date of final check. J. Kenney said the completeness language states that this document contains all of the agreement and should not be modified by any other agreements; all-inclusive document. J. Kenney said the resignation letter is Exhibit A; L. Gibson asked if it is standard for the Town to prepare the letter; J. Kenney said she prepares these letters to ensure it is complete.

J. Kenney reviewed the analysis that led to this agreement. J. Kenney said there was language in R. Scollins’ contract that includes six months of severance if contract is not renewed and that he is owed his accrued vacation time. J. Kenney said there was a gap that led to negotiations and a request of \$90,000 for R. Scollins’ to agree. J. Kenney said if the contract termination did not occur until the end of his contract, the Town would still have to pay him \$70,000. J. Kenney further encouraged the Board accept the Global Release of claims language in the agreement. B. Keegan reiterated that the Town could move in a forward direction from here and put this matter behind the Town. M. Elfman said this would only cost the Town \$5,000 what would already be paid to R. Scollins. L. Gibson asked where all of the money spent to date has come from and what is being done different now; J. Kenney said the Town was obligated to do the investigation into harassment and was necessary for the Town in the event of future claims; good practice law. J. Kenney said having an outside investigator do the investigation is favorable for the Town as he/she cannot claim bias and the Town took the proper steps to address this claim and take the necessary corrective action. J. Kenney said employees have the right to take leave and the Town has to have a plan for this, in this case, spend the additional funds to fill the deficit. J. Kenney said the Town is obligated by law for every employee, absent of any Town policy. J. DeVellis asked if the Town took directive action; J. Kenney said the employee’s private rights and the employee’s rights under the control of the Board are competing interests. J. Kenney said the Town took action immediately and put in place a professional development plan based on findings within the investigation. L. Gibson asked where

the money is coming from to pay for all of this; B. Keegan said the Town has liability funds available for this matter that covers the settlement agreement only. B. Keegan said the investigation fees are paid out of the legal fees budget and said the Town Manager can transfer up to 3% of the budget annually to cover unanticipated expenses.

L. Gibson asked if the vacation time listed accounts for all of this accrued time; J. Kenney said the vacation number is provided by HR and is actually less due to what he agreed to. C. Mitchell asked if the 7-day revocation period is just for ADEA claims; J. Kenney said yes but there is not specific case law. L. Gibson said her concern is about people associated with the Town that may be speaking based on rumor and how to protect the Town; J. Kenney said public comments cannot be controlled. J. Kenney encouraged all Board members to not comment on any and all personnel matters.

J. DeVellis said this is the first time he has heard there were steps the Town took to address the findings of the investigation and asked if this is in writing; J. Kenney said this was all documented and that the final professional development plan was not made final because he went out on protected leave but all internal steps were well-documented. J. Kenney said there was not an irreparable behavior that required immediate termination so the Town was required to rehabilitate the employee to effectively fulfill the role as hired. J. DeVellis said the agreement does not say why the Town is paying out \$90,000. L. Gibson asked if the Board could say that this agreement was voluntary; J. Kenney said yes. C. Mitchell said R. Scollins was great as the Finance Director but this would be a clean break and fresh start for the Town.

L. Gibson asked if the Town can include language in the next Finance Director contract that does not provide a severance package. J. Kenney said municipal jobs at a certain level hire from a smaller labor pool and lead to added language that would not normally be included. L. Gibson asked if the Board could review contracts earlier in the process. J. Kenney encouraged the Board to talk process first and contract negotiation second to guard against political favoritism and bias; a standardized process for hiring. L. Gibson asked what this costs the Town moving forward; B. Keegan said a new hire would probably be July 1st and M. Johns said the process for hiring a Finance Director is now inclusive of best practices and will include subject matter experts as part of the hiring process. L. Gibson asked if the Town is looking to pay an interim stipend and a consultant in the meantime; B. Keegan confirmed. M. Johns said it is not really an interim stipend, it is a salary commensurate to the additional role.

D. Feldman asked if J. Kenney has any additional recommendations as an outcome of the investigation; J. Kenney said she encouraged trainings for the Board. M. Johns said there are other trainings available to the Board that the Town keeps track of to inform the Board when available. M. Johns and B. Keegan spoke about the Annual MMA Conference and that it is inclusive of all Towns in the State. D. Feldman suggested an orientation program with all board members, new and existing. J. DeVellis agreed with D. Feldman. J. DeVellis said the second investigation and second investigator said the problem went farther back and started small without proper acknowledgement at the time and said he could only review the executive summary of the report and did not include steps moving forward. C. Mitchell said the investigation ended and the Town was ready for closure and then R. Scollins went on leave so the process was on hold. J. Kenney said you can't protect against all liability and making all resources available to each employee and associated personnel is required. J. Kenney encouraged respectful communication amongst everyone.

No other comments or questions about the settlement agreement.

J. DeVellis asked about the social media policy and how to identify those people who are in violation of the policy. B. Keegan said he has reached out to both people identified to him and addressed the behavior/counseled them to stop. J. DeVellis said he believes there is a line that was crossed by a board member; J. Kenney said the Town is limited in addressing social media comments by those associated with the Town when not an employee. J. DeVellis said one person is appointed by the Board of Selectmen; B. Keegan said it is the Board's discretion to not reappoint this person. L. Gibson asked why the Town has different legal

counsel for policy development and enforcement; J. Kenney said that is how the Town set it up. J. Kenney said it is important to have separation and is encouraged.

2. Motion to discuss strategy with respect to collective bargaining with Library Union

No further discussion

Final Resolution: Motion Carries 5-0-0

Roll Call: L. Gibson – Yes; J. DeVellis – Yes; C. Mitchell – Yes; M. Elfman – Yes; D. Feldman - Yes

There were no questions from the BOS regarding the Library Union Contract following presentation at 4/2/19 meeting. M. Johns reiterated that evaluations lead to rehabilitation of an employee instead of immediate termination; more beneficial for the Town and for the employee.

3. Motion to discuss strategy with respect to collective bargaining with Foxborough Professional Firefighters Association, Local 2252

No further discussion

Final Resolution: Motion Carries 5-0-0

Roll Call: L. Gibson – Yes; J. DeVellis – Yes; C. Mitchell – Yes; M. Elfman – Yes; D. Feldman - Yes

There were no questions from the BOS regarding the Library Union Contract following presentation at 4/2/19 meeting. M. Johns reiterated that evaluation process in place currently works well at developing employees so it would be detrimental to them to change the terms.

4. Motion to Approve and Not Release Executive Session minutes from 2/6/18, 6/5/18, 6/20/18, 10/2/18, 10/30/18, 11/27/18, 1/8/19 and 3/5/19 made by L. Gibson, motion made second by M. Elfman

Discussion: J. DeVellis asked to clarify the point about threatened litigation to CSAAC members; B. Keegan said members of the CSAAC, not the committee as a whole, indicated they were told of potential litigation against the Town with regards to the existing policy. J. Kenney recommended holding RFP executive session minutes until after the selected bid had been chosen.

Final Resolution: Motion Carries 5-0-0

Roll Call: L. Gibson – Yes; J. DeVellis – Yes; C. Mitchell – Yes; M. Elfman – Yes; D. Feldman - Yes

5. Motion to close Executive Session at 5:37 p.m. and reconvene in Open Session made by L. Gibson, motion made second by M. Elfman

No further discussion

Final Resolution: Motion Carries 5-0-0

Roll Call: L. Gibson – Yes; J. DeVellis – Yes; C. Mitchell – Yes; M. Elfman – Yes; D. Feldman - Yes