

**EAST LYME BOARD OF FINANCE
REGULAR MEETING MINUTES
Wednesday, MARCH 14th, 2018**

Members in Attendance: William Weber, Chairman
Lisa Picarazzi, Vice Chairperson
Camille Alberti
John Birmingham
Jason Pazzaglia
Anne Santoro

Also In Attendance: Mark Nickerson, First Selectman
Anna Johnson, Finance Director
Sgt. Mike Macek, ELPD
Steven Wargo, Niantic Fire Chief
Jeffrey Newton, Superintendent of Schools
Attorney Edward O'Connell, Town Counsel

Absent: No One

A. Call Meeting to Order

Chairman Weber called this Regular Meeting of the East Lyme Board of Finance to order at 7:00 PM.

B. Pledge of Allegiance

The Pledge was observed.

FILED

C. Delegations

Mr. Weber called for delegations.
There were no delegations.

March 20, 2018 AT 10:00 AM/PM

Lauren Galvin

EAST LYME TOWN CLERK

D. Approval of Minutes

▪ **Regular Meeting – February 14, 2018**

Mr. Weber called for a motion for approval or any changes to the Board of Finance Regular Meeting Minutes of February 14, 2018.

Ms. Santoro asked that on the very top of Page 2 that the word not be changed to read 'now'.

****MOTION (1)**

Mr. Birmingham moved to approve the Board of Finance Regular Meeting Minutes of February 14, 2018 as amended.

Ms. Santoro seconded the motion.

Vote: 5 – 0 – 0. Motion passed.

E. Presentation

▪ **Attorney O'Connell – Agenda Discussion & FOIA**

Mr. Weber said that for clarification he wanted it to be known that he did not request the letter that is about to be discussed. He had asked if there was previously any such information.

Attorney O'Connell thanked Mr. Weber for that and said that he was asked to address the specific item on the agenda of 'Board Comments' which is also in the Board of Finance By-Laws. This deals with the FOIA who have had occasion to review such items. The item needs a meaning of what it is. Board members do

have the right to add an item to the agenda by a two-thirds vote of the members present. The published agenda must alert the public of what will be addressed at the meeting.

(Note: 7:08 PM – Mr. Pazzaglia arrived and was seated)

Attorney O'Connell noted various cases and said that the understanding he has with regard to 'Board Comments' (for the BOF) is that it is intended to provide each member of the Board an opportunity to address comments and opinions made during Public Delegations and/or Public Comments and to exercise their First Amendment right, request an item be added to the agenda for the next meeting or simply make an announcement of general interest. He said that Commission members should not comment on matters raised during public delegations that are not on the published agenda as the public has no notice of any specific matters that are raised during delegations.

Mr. Weber said that for clarity that he probably would have asked for the opinion anyways so he appreciates having it. He asked Attorney O'Connell if they were emailing to find out if the Board members were available for a meeting if that would be okay.

Attorney O'Connell said that he thought if that was all that they were asking about that it might be okay, anything else would not be appropriate. He noted that the 'better practice' is to avoid emailing, text messaging, etc except for scheduling or procedural issues.

Mr. Weber asked if Board Comments could be used for items already on the agenda.

Attorney O'Connell said that agenda items should probably be discussed where they are on the agenda and at that time.

Ms. Picarazzi asked if Mr. Weber did not request this opinion, then who did.

Mr. Nickerson said that he did as there were a lot of issues going back and forth with respect to this issue.

Ms. Picarazzi submitted the email chain and asked that it be attached to the minutes as no one had requested the opinion (Submission attached). She said that she also checked other Board and Commission agendas as well as that of the BOE and they also have Board Comments; the Selectman's Agenda has Selectman's Response, so she said that she is unclear about spending this money on this for only this Board, especially when considering the budget crisis they are working under. She continued that she had also reviewed their By-Laws and it states that Board Comments is part of the agenda, so she is curious about the origin of all of this and feels that it is an effort to stifle Board Comments. Further, no action is taken by them under Board Comments.

Mr. Nickerson said that focus is being put on other Boards and Commissions in Town. Also, the Police recently received a 45 minute discussion on this topic so that they would understand the law on this. Mr. Newton has heard about this tonight and he can tighten up his agendas. He added that many comments over time that have been brought up under Board Comments are not reflective of items on the agenda.

Mr. Weber asked if there were other comments on this item.

Mr. Birmingham said that he thinks that Attorney O'Connell was asked here this evening to provide clarification on the Board Comments item. He said that he also went to other Town's websites and looked over their BOF agendas and found that none of them have Board Comments on them.

Ms. Santoro asked Attorney O'Connell his opinion on how to proceed as they could suspend or amend their By-Laws going forward.

Attorney O'Connell suggested that they put on their next agenda to amend their By-Laws so that Board members comments can be added by a two-thirds vote of the Board and not just an agenda item.

Ms. Santoro said that she appreciated the opinion and noted that Roberts Rules would support not digressing. She asked what would be appropriate if they wanted to vent.

Attorney O'Connell said that is a tough question and asked - venting about what?

Ms. Santoro said that she supposed that with agenda items that they do have that 'last bite' before the vote; however she wondered about other issues.

Attorney O'Connell said that if it is not under the jurisdiction of the BOF then they would not be talking about an item of Board business. The FOIA does not leave much room for 'venting'.

Ms. Alberti cited – as an example – sometimes during Public Discussion they do hear things that are totally false and they have used the Board Comments area to correct that incorrect information.

Mr. Nickerson noted that is how they utilize Selectman's Response for the Board of Selectmen – they only speak to items that come up during Public Discussion.

Ms. Santoro said that she thinks that Board Comments is very broad and would need to be reined in.

Ms. Alberti said to Attorney O'Connell that she found it interesting that this item and information did not exist before this request.

Attorney O'Connell said that he has given many verbal opinions over time on this very topic.

Ms. Alberti asked him the amount of time that he had spent researching and compiling this information – a ball park figure.

Attorney O'Connell said that he really did not know as that is compiled with the billing. When pressed further, he said perhaps between five to ten hours.

Ms. Alberti said that it is a substantial amount of money being spent on this when the members only spent five meetings out of the past twelve (during the past year) making comments under Board Comments.

Attorney O'Connell noted that Mr. Nickerson had requested it.

Ms. Alberti said that also of concern is that if Mr. Weber had asked for it (which he had not) that his legal authority was only up to \$300 and this exceeds that. She said that she had asked Mr. Weber to provide a copy of information if he had one which he did not.

Mr. Nickerson said that when he had been asked if there was information on this that he felt that they wanted it in writing. He had made that decision.

Mr. Pazzaglia said that he had come in late and missed the very first part on this however he thinks that things that have been brought up during that item on the agenda might get missed if it were not there.

Mr. Weber thanked Attorney O'Connell for providing the information.

F. New Business

a. Transfer Funds – Additional Dispatcher \$11,828

Mr. Nickerson explained that they are very busy at dispatch and that sometimes the calls get bounced to other Towns. They have 4.5 dispatchers and they want to make the .5 into a FT for 5 FT dispatchers. The call center is very busy during the 9 AM to 11 AM time frame and there is only one dispatcher manning it during that time. This also creates a major safety factor for the responders and the taxpayers. He noted that Sgt. Macek is present and can answer any questions.

Ms. Picarazzi said that they are looking to fund for a fifth FT dispatcher and that the 9AM to 11AM hours are exceptionally busy. She asked if they had considered adding another PT person so that they will not have to fund benefits.

Sgt. Macek said that they have PT's for the weekends and they have been covering this also.

Ms. Picarazzi said that she thinks that they have to consider what is going on with the upcoming budget season.

Mr. Nickerson said that there are also collective bargaining issues here.

Mr. Pazzaglia asked about how many calls they get.

Sgt. Macek said that he did not have that information with him however he could get it for them.

Mr. Pazzaglia asked if there was a piece of technology out there that perhaps could be used.

Sgt. Macek said that in looking at other Towns that Waterford has three FT people and a Police Lt. covering that same shift when we only have the one person.

Ms. Alberti asked what account they were taking this from.

Mr. Nickerson said the Fire Marshal as he has retired.

Ms. Alberti said that in reading the fire study that it states increased call volume and asked if they have some data to provide them with on this; and if it could wait until the new budget season as we are very close to it now and that would also help us save.

Sgt. Macek said that the person who is covering is really burdened and that this potentially adds to the liability of the Town with the bounced calls.

Ms. Alberti suggested that in the future when they come for this type of item that they have supporting data with them to present.

Mr. Weber asked if they know why the call volume has been going up.
Sgt. Macek said that they have more people in Town, increased traffic flow and an aging population.

Mr. Weber said that if the expectation is that this is a permanent growth - the grand list does not seem to be growing at the same rate.

Mr. Nickerson said that the State also no longer dispatches our Police – we dispatch them so there is more in that respect. He added that it would cost us \$1M to upgrade and regionalize and that is just not something that we can afford to do at this time.

Ms. Picarazzi said that the fire study had some 21 recommendations with one stating that emergency dispatch should be computer aided. She asked if we have followed any of these recommendations. Niantic Fire Chief Wargo explained the system and how it works and said that they do have computer aided dispatch. He reported that NFD has had over 1300 calls so far this year and that is a lot of work for one person. Things could easily get missed and that is not something they want to happen.

Mr. Pazzaglia asked if there is another way to streamline the process.

Sgt. Macek said that they have taken over the people and budget from the Fire Marshal however the equipment still falls under Chris Taylor who replaced Mr. Morris when he retired.

****MOTION (2)**

Ms. Alberti moved to approve a transfer in the amount of \$11,828 effective April 1, 2018 from account 01-25-224-100-211 (Director) to account 01-25-215-100-212(Dispatchers) to fund a fifth full time dispatcher in the best interest of the Town of East Lyme.

Ms. Santoro seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

b. Transfer Funds – Dispatcher OT \$20,000

Mr. Nickerson explained that this item was underfunded in the budget last year.

Sgt. Macek said that when they took over this area that they were not the people who had put the budget together. When they went over it they found that it was not adequate for the staffing.

Ms. Santoro asked how the \$20,000 was calculated as it seems that they had spent \$40,000 to date.

Sgt. Macek said that this should be in line and bring them current as previously they lost some people and others had to work overtime to cover.

Ms. Alberti said that her concern is with the timing of the request and asked if they could do it at the end of the budget season as she would prefer not to pull it from contingency. She asked if they could come back two months from now.

Ms. Johnson explained that what would happen is that this would not allow them to post payroll which could cause operating issues.

Ms. Alberti asked if the total amount that they are looking for is coming from contingency.

Ms. Johnson said that they have \$10,000 in the payroll contingency so it would bring that to almost zero.

Ms. Alberti said that she would be okay with payroll contingency and no further request for the remainder of the year.

Mr. Weber said that his concern is with the depletion of payroll contingency. If they could take it all from the Director's budget, that would leave some in payroll contingency.

Ms. Johnson said that the encumbrances in payroll are due to budget freezes. She added that she also thinks that the \$20,000 may be a challenge.

****MOTION (3)**

Ms. Picarazzi moved to approve a transfer in the amount of \$20,000 to account 01-25-215-100-214 (Dispatchers Overtime) as follows: \$10,000 from account 01-01-120-100-500 (contingency) and effective April 1, 2018 - \$10,000 from account 01-25-224-100-211 (Director).

Mr. Birmingham seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

c. Transfer funds – NFD Firefighter \$7,301

Mr. Nickerson recalled the discussion that they had last year regarding the Niantic Fire Department being underfunded by \$10,983. Ron Pringle served the Town for 41 years and is retiring April 1, 2018 so this would reduce the shortfall to \$7,301.

****MOTION (4)**

Mr. Birmingham moved to approve a transfer in the amount of \$7,301 from account 01-01-120-200-500 (Contingency) to account 01-25-217-100-611 (Firefighters NFD) due to incorrect funding amount for the fiscal year.

Ms. Santoro seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

d. Transfer Funds – NFD PT Firefighters \$10,000

Mr. Nickerson said that Chief Wargo was present to explain this.

Chief Wargo explained that they have two firehouses and that this is for paying the PT people to cover for the FT people when they are off.

Mr. Weber asked if any of this time was expected.

Chief Wargo said that they accrue time and can take it when they want.

Mr. Birmingham asked how many FT and PT they have for the two stations.

Chief Wargo said that they have seven FTE's and nine PTE's that cover both stations.

Mr. Birmingham noted that years ago they had a lot of volunteers.

Chief Wargo said that is not the case anymore. He added that it is typical of everywhere, not just here. He noted that the FTE's have five hours of overtime built into their shift.

Ms. Alberti asked how they arrived at the contingency figure.

Ms. Johnson said that they froze \$96,000 that came from a cut made by the State and how much the BOE and Town would have to come up with to cover. She added that of note, most of her items of concern regarding the budget are being taken care of this evening.

Ms. Santoro noted that it looks like it may have been able to be covered.

Chief Wargo said that he does not know the people who will have to take time before the end of the year.

Mr. Weber asked what they are trying to do to try to recruit.

Chief Wargo said that they hold regular events and that it is a national trend.

****MOTION (5)**

Ms. Alberti moved to approve a transfer in the amount of \$10,000 from account 01-01-120-200-500 (Contingency) to account 01-25-217-100-612 (PT Firefighters).

Mr. Birmingham seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

e. Review 2018/19 Proposed Budget

Mr. Nickerson noted that they had received their budget books this evening and that his letter is in the front of the book for their review.

Ms. Alberti asked if the revenue page addresses the shortfalls.

Mr. Nickerson said that he would discuss that during his report.

G. Reports

◆ **Board of Education**

Jaime Barr-Shelburn, from the Board of Ed said that the BOE had unanimously approved the hiring of the social workers and psychologist and she hoped that they would agree that they are needed.

Jeffrey Newton, Superintendent noted that they call dispatch a lot and use them regularly. Also, they have had nine weather days and so far graduation is set for June 22, 2018.

He reported that the High School had a student walkout this AM (re: the lives lost in Florida) and that it was well organized; a testament to all. They will be bringing their budget before them this coming Monday, March 19, 2018 so they will cover any questions they may have.

◆ **BOE Permanent Maintenance Account**

Mr. Newton said that they have the same template for this as Mr. Bragaw and the goal is to look at both and for them to get together on it.

◆ **Turf Field Fund Raising**

Mr. Newton said that this is a work in progress and that they have found that with Parks & Rec utilizing a lot of their facilities that it makes the actual rental space time available very limited.

Mr. Weber said that to move these items off the agenda that he would like to see a plan put forth for each. Mr. Newton said that there are a lot of different opinions on the turf field that they should not be the one funding it and that it should be the Town.

Ms. Picarazzi asked if they are working on the long range plan and if the plan is to work together with the Town.

Mr. Nickerson said that there is a genuine interest by Mr. Newton and Mr. Bragaw to get this done together and that he would work with them on it. He cautioned that this is a year long project.

Ms. Picarazzi said that if they take it off the agenda that she does not want it to fall into a black hole. She asked Mr. Newton how long before the turf field has to be replaced.

Mr. Newton said probably 12-15 years and it could cost \$500,000+.

Ms. Picarazzi said that she would like to have someone in charge of this as it is a big chunk of money.

Mr. Nickerson said that it may very well be a CNRE item.

Ms. Picarazzi said that whatever it is, they need a plan as it is not chump change and it is not education – its sports. They have been talking about it for two years now and something needs to be done.

Ms. Alberti said that the recollection of fund raising on the turf field did not come from this Board. It was presented to them during a presentation and was an assurance that was made during the original presentation in order to get the turf field. She also noted that when they brought them the information about the study on the enrollment trend that it was incorrect – it seems that you are down by 55 students at least. She also asked if there was consideration given to putting money aside for additional safety in the buildings and what the consideration was for hiring social workers instead.

Mr. Weber said that the social workers if necessary could come from Parks & Rec as it seems there may be a full year need.

Jaime Barr-Shelburn said that there is coverage during the summer by the Youth Coalition.

◆ **First Selectman**

Mr. Nickerson said that there are a good 20 items that he is working on; he reported on the following:

- The Volunteer Corps program has kicked off which will help with a number of different things
- The Fire Marshal's Office has gone through changes as Mr. Morris retired after 27 years in that position plus many years in other capacities. He recalled the Fire Study suggesting a Chief position however that would cost dollars that they just do not have. They have been making consolidations as possible. Chris Taylor moved up but his position was not replaced. The Emergency Mgmt. Director went to the Police Chief who is receiving a stipend for it.
 - They received a grant for the Main Street Park and the bathrooms will be done at Cini Park
 - The Flanders crosswalk has no light and they finally got through the State approvals to have a button operated crosswalk there.
 - The Board of Selectmen are having discussions on a sidewalk shovel ordinance as they are one of only a few Towns that do not require homeowners to clear the sidewalks in front of their homes.
 - He has been to COST, COG and countless meetings and they have used the Governor's numbers as they are today. Further cuts by the Governor have also been put into revenue and while they have held the budget to zero there is still a significant mil rate increase.
 - They are looking at a Police Station solution as the current one we do not own and it also needs a significant amount of work.

Mr. Weber asked if the volunteer system has a link on the Town website.

Mr. Nickerson said yes.

Ms. Picarazzi said that the fire study has an Appendix 13 with 21 recommendations and asked if they have taken any action to implement any of them.

Mr. Nickerson said that might be a topic for a committee.

Ms. Picarazzi said that she is interested in a joint committee to discuss this especially with the upcoming budget issues.

Mr. Nickerson noted that the fire departments came in requesting very little. He also suggested that as Vice-Chair perhaps she could keep a tickler file on such items and carry it forward.

Ms. Alberti asked about revenues and the shortfall in funding and what legal responsibility they have to maintain the prison and other State buildings in Town if the PILOT funding is being reduced by \$700,000. If the property were privately developed they would be getting money from it.

Mr. Nickerson said that it is State owned property.

Ms. Alberti asked what about if they have a fire or other emergency.

Mr. Nickerson said that while the State has the deed to the property that we respond for fires and for other emergency services just as we do for Rocky Neck and traffic issues. He said that the entire PILOT funding will probably all go away eventually as we are one of only a few states that receive it anyway.

Ms. Alberti said that even with a zero based budget that it will increase by \$3.5M anyway – so there will be an increase.

Mr. Nickerson said yes, adding that they cannot control revenues.

Ms. Picarazzi asked about the sidewalk ordinance – homeowners would have to shovel in front of their homes.

Mr. Nickerson said yes, that would shift to the homeowner. He stated that again, they are one of very few Towns that do not have the homeowner responsible for clearing the walkways in front of their homes.

◆ **Purchasing Policy**

Ms. Picarazzi asked about the Purchasing Policy. She said she brought comments forth.

Mr. Weber said that they had decided not to hold anymore meetings on it until after the budget process is done. (June – July time frame) He said that he would receive any information that they had regarding suggestions on changes.

◆ **Study Other Town Wages & Benefits**

Mr. Weber said that Mr. Nickerson had already said that he would have information for them on this for the July time frame.

◆ **Finance Director**

Ms. Johnson noted that she had provided them with the revenue sheet comparison in their budget books. She said that she had given them what was received from the State last year and what they are expecting for this year.

Mr. Weber asked if she saw some areas in the budget where they may do well

Ms. Johnson said that they may although they are not expecting to get the other half of the TAR funding.

She noted that she has worries about the health insurance fund and while the BOE side is on the HSA they still have many high deductible claims over the mark.

Mr. Birmingham asked if any of the high deductible claims would be reduced over time.

Ms. Johnson said perhaps a couple, they really do not know.

H. Old Business

There was none.

I. Public Discussion

Mr. Weber called for Public Discussion.

Pat Larkin, 14 Oakhill Drive said that with regard to the FT position for the dispatcher that they come in and throw numbers at them however according to the Police if you figured out the call volume it comes to about three calls per hour. He asked if they are utilizing their people in the right place – perhaps they could look for flexibility in the shifts. Also, he is hearing that the schools are adding 3.2 positions; as a taxpayer

he finds this outrageous. Lastly, he said that he thinks that someone from the Board of Finance should be in on the union negotiations so that they can bring up flexible shifts and new ways of doing things.

J. Board Comments

Mr. Weber asked that they stay within the confines of the items.

Ms. Picarazzi asked how they will handle this item in the future.

Mr. Weber said that when they are done with the budget season they will have an agenda discussion item for their By-Laws.

Ms. Alberti said that in response to the suggestion from the public that she feels that there should be a Board of Finance member present for contract negotiations. She recalled that she was present for the BOE negotiations and that it was well worth it.

K. Adjournment

Mr. Weber called for a motion to adjourn.

****MOTION (6)**

Mr. Birmingham moved to adjourn this Regular Meeting of the East Lyme Board of Finance at 9:27 PM.

Ms. Picarazzi seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary



**WALLER
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March 12, 2018

VIA U.S MAIL AND EMAIL TO: wweber2@aol.com

William Weber
Chair, East Lyme Board of Finance
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

OF COUNSEL:
ROBERT W. MARRION
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FREDERICK B. GAHAGAN

+ ALSO ADMITTED IN RI
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Re: Board of Finance Agenda

Dear Mr. Weber:

You have requested our advice regarding the content of the East Lyme Board of Finance ("Board") agenda. Specifically, you have asked for our opinion regarding the "Board Comments" agenda item, and whether it should be removed from future agendas. For the reasons set forth herein, it is our advice that "Board Comments" as currently used is not a proper agenda item.

Article VIII of the Board of Finance bylaws states that the agenda for each meeting "shall be approved by the Chair prior to publication." This implies that the agenda is prepared, at least initially, by someone other than the Chair, such as the Town Finance Director, and is thereafter approved by the Chair before it is sent out. The agenda sent to the Board is a suggested outline or framework for the meeting, and is not binding until the Board convenes. When the Board meets it becomes the Board's agenda, subject to a motion to revise it.

Article VII of the bylaws also provides that items can be added by a two-thirds vote of the members present at a meeting. This comports with the Freedom of Information Act ("FOIA" or "the Act") requirements for the agenda of a municipal public meeting. General Statutes 1-225(c) states in relevant part that items may be added to an agenda "[U]pon the affirmative vote of two-thirds of the members of a public agency present and voting..."

While the Act itself does not provide detailed guidance regarding the level of specificity required for an agenda, decisions of the Freedom of Information Commission ("FOIC") and the courts have consistently held that an agenda must fairly and sufficiently apprise the public of the business to be transacted at a meeting. In Fowler v. Branford Bd. of Selectmen, FIC #2006-452, the FOIC was asked to determine the propriety of the agenda item "To consider and if appropriate approve an addendum to a

Attachment

BOF

3/14/18

3pg.



lease." The FOIC held that this was not a proper agenda item, as it did not properly describe the business to be transacted and did not adequately identify either the specific lease or the property involved.

Connecticut courts also have addressed this issue. In Plainfield ZBA v. FOIC, Superior Court, Docket No. CV 99-0497917-S, Judicial District of New Britain, May 3, 2000 (Satter, J.) the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views," and that "[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing."

More recently, the Superior Court in Lowthert v. Freedom of Info. Comm'n, No. HHBCV156028902S, 2016 WL 571077, at *5 (Conn. Super. Ct. Jan. 15, 2016), held that "... an agency should provide an agenda and notice that, absent some overriding concern, has at least some significance to the public and that provides at least some level of meaningful disclosure about the subject matter of a public agency meeting ...". The Court held that an agenda item stating "Discussion of Confidential Attorney-Client privileged material proposed to be held in Executive Session" did not meet this standard.

Applying the foregoing principles to the "Board Comments" agenda item, it is likely that the FOIC or a court would find that an agenda item labelled simply "Board Comments" does not "fairly and sufficiently apprise the public" of the items proposed to be discussed during that portion of the meeting. Such a heading does not describe in any meaningful way the issue(s) to be addressed under this item.

It is our understanding that the Board currently uses the "Board Comments" portion of its meetings to, among other things, address issues raised during public delegations. This is presumably pursuant to Article VIII of the Board's bylaws, which states that the Board Comments agenda item "... is intended to provide each member of the Board an opportunity to address comments and opinions made during Public Delegations and Public Comments, to exercise his or her own 1st Amendment rights and make known his or her opinions, to request an item be added to the agenda for the next meeting, or simply make an announcement of general or community interest."

Commission members should not comment on matters raised during public delegations which are not on the published agenda; the public has no notice of any specific matters raised during delegations. Addressing those matters (or any others not listed on the agenda) during "Board Comments" would violate FOIA. Any matters to be discussed by members of a public agency at a public meeting should be noted on the agenda, and must comply with the requirements set forth above.

Similarly, a board member's opinion about a particular subject not on the agenda suffers from the same defect. Members of the public would not have any meaningful



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notice of the subject matter of a board member's opinion. Discussing an opinion about a matter not listed on the agenda during "Board Comments" would violate FOIA.

Finally, we note that the email chain regarding this matter was sent to all six Board members. The Act defines a meeting as "... any communication by or to a quorum of a ... public agency, whether in person or by means of electronic equipment ..." C.G.S. 1-200(2). An FOIC draft declaratory ruling held that "email and voicemail communications among a quorum of agency members may constitute a "meeting" of that agency, if the communications relate to a matter over which the agency has jurisdiction." FOIC Draft Declaratory Ruling #94. The current email chain would likely be regarded as procedural rather than a discussion of a substantive matter within the Board's jurisdiction. Regarding these types of communications, it is worthwhile to keep in mind that the better practice is to avoid email, text messaging, etc. among or between Board members, except for matters that are clearly limited to scheduling or procedural issues.

If you have any additional comments or questions, we would be pleased to respond.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. B. O'Connell", is written over a faint, larger version of the same signature.

Edward B. O'Connell, of
Waller, Smith & Palmer, P.C.

Lisa Picarazzi

From: Lisa Picarazzi <lisahpic@aol.com>
Sent: Sunday, February 18, 2018 1:29 PM
To: wweber2@aol.com
Cc: morganalberti@aol.com; jpazz17@gmail.com; arsantoro@atlanticbb.net; jtfirm9@sbcglobal.net
Subject: Re: Board of Finance Comments on Agendas

Bill,

What prompted the attorney to speak out on this?

Lisa

Sent from my iPhone

On Feb 18, 2018, at 1:21 PM, wweber2@aol.com wrote:

Please remember all copies of this email conversation must be retained for FOIA.

I have asked Mark what form the attorney's opinion came in (verbal or written).

I've asked Anna to put "review/revise bylaws" on the next agenda.

During the new business, if the board consensus is to remove the comment section from the bylaws we will.

If the consensus is to leave it and the attorneys position is not currently in the form of a formal legal opinion then we will need to spend the towns money to get one created and then take appropriate action.

-----Original Message-----

From: Camille Alberti <morganalberti@aol.com>
To: LisaHPic <LisaHPic@aol.com>; wweber2 <wweber2@aol.com>
Cc: jpazz17 <jpazz17@gmail.com>; arsantoro <arsantoro@atlanticbb.net>; jtfirm9 <jtfirm9@sbcglobal.net>
Sent: Sun, Feb 18, 2018 11:12 am
Subject: Re: Board of Finance Comments on Agendas

Lisa...thank you for your diligence in researching this issue. I am in agreement that "Board Comments" cannot be removed from the Agenda without a majority vote. A quick search on the legality of changes to municipal agendas produced the finding below. Time permitting, I will search further for specific opinions as they relate to Connecticut law.

Bill...please provide a copy of the opinion from the Town Attorney to all Board Members, and please ensure the document becomes part of the public record, as well as this email trail since all members have been copied on it.

Anne...in the meantime, perhaps you could draw on your experience as the former Assistant City Attorney of Milford, and the former Assistant Town Attorney of Greenwich to provide an opinion on this issue?

Best regards,
Camille

Who has the legal authority to dictate what goes on the agenda?

The answer to this question is very clear: It is up to the governing board to set the agenda. In legal and practical terms, it's the board's agenda, and it's up to them to decide on the matters it wishes to take up in the meeting. The decision is that of the body, not the chair or any individual member. Unless a law or board policy provides otherwise, decisions about what goes on the agenda (or comes off it), and what is actually addressed in the meeting are made by the board by majority vote.

<https://canons.sog.unc.edu/who-controls-the-agenda/>

-----Original Message-----

From: Lisa Picarazzi <LisaHPic@aol.com>

To: wweber2 <wweber2@aol.com>

Cc: morganalberti <morganalberti@aol.com>; jpazz17 <jpazz17@gmail.com>; arsantoro <arsantoro@atlanticbb.net>; jtbirm9 <jtbirm9@sbcglobal.net>

Sent: Sat, Feb 17, 2018 7:50 pm

Subject: Re: Board of Finance Comments on Agendas

Thanks, Bill. Not sure what prompted the Town Attorney to review our agenda, but I did a little digging and reviewed our recent issuance of bylaws. Article VIII States:

"The Board Comments agenda item is intended to provide each member of the Board an opportunity to address comments and opinions made during Public Delegations and Public Comments, to exercise his or her own 1st Amendment rights and make known his or her opinions, to request an item be added to the agenda for the next meeting, or simply to make an announcement of general or community interest."

I would've thought our Attorney would've reviewed these bylaws first, before giving an opinion. Further, Article IX States: "The board of finance may suspend any and all provisions within these bylaws when it deems necessary, except where required by law, by reaching a majority vote on the suspension.

These bylaws may be amended by a majority vote of the entire voting membership of the board, only after the proposed change has been read and discussed at a previous regular meeting."

So it looks like we'd actually have to vote on whether Board Comments would be suspended and I'm thinking if the bylaws allow, it is certainly in the Board's best interest to keep this on the agenda.

Bylaws are attached if you want to take a look at them.

Thanks again,

Lisa

Sent from my iPad

On Feb 17, 2018, at 7:18 PM, wweber2@aol.com wrote:

The constraint came from the town attorney Lisa, but I don't feel it has an impact on how our board operates. I think we have plenty of opportunities to speak freely on any agenda item. Additionally we can ask the BOE representative, 1st selectman, or finance director anything else not on the agenda during their agenda time. If you're thinking there's something else our board is responsible for but not covered in these areas let me know and I'll try to ensure it's addressed.

Bill

-----Original Message-----

From: Lisa Picarazzi <LisaHPic@aol.com>

To: Bill Weber <wweber2@aol.com>

Cc: Camille Alberti <morganalberti@aol.com>; Jason Pazzaglia <jpazz17@gmail.com>;

Anne Santoro <arsantoro@atlanticbb.net>; John Birmingham <jtirm9@sbcglobal.net>

Sent: Sat, Feb 17, 2018 11:43 am

Subject: Board of Finance Comments on Agendas

Bill,

At Wednesday's meeting we discussed removing the "Board Comments" section from our future agendas. I am uncomfortable with this and am asking you to reconsider this move.

The BOE has a place on their agenda for "Board Comments / Future Agenda Items". BOE minutes dated 1/8/18 noted that a member discussed school calendar adjustments and invited community members to join the Miracle League at their next meeting. Neither of these issues were on their agenda.

The BOS agenda also includes a place for "Selectman's Comments." We were told in the meeting that no other Board or Commission has a place for this, clearly not true.

I really don't understand the basis for removing the Board Comments for the BOF and I'd respectfully request that it not be removed. I see it as an important opportunity for the Board to freely speak.

Thanks.

Lisa

Sent from my iPad