

**SPECIAL BOARD MEETING
December 28, 2015**

**TOWN HALL
6:00 P.M.**

Present: Supervisor Martin A. Ballowe, Jay P. Boardway, Councilmen Jeffrey A. Genzel, and Lawrence A. Murtha.

Absent: Councilman Gary E. Vara.

Also Present: Town Attorney Kobiolka

A motion was made by Supervisor Ballowe and was seconded by Councilman Genzel to open the Public Hearing to hear comments regarding the new contract for the current fire protection contracts.

Supervisor Ballowe	Yes	Councilman
Boardway	Yes	
Councilman Genzel	Yes	Councilman
Murtha	Yes	

four (4) Yes

Carried

Councilman Genzel read the legal notice.

The following persons were heard:

Rodney Carr, North Boston Fire Company asked the Town Board why they were not recognizing their President, Ron Sprehe so that he may sign the contract.

Councilman Genzel noted that Ron Sprehe is not a resident of this town. Do you object to that?

Rodney Carr: I do not disagree he is not a resident. However, what laws states that he has to be a resident of the town to belong to the fire company.

Town Attorney Kobiolka: I think that there is a requirement that he has to be within the fire district.

Rodney Carr: A Fire District, that is correct. Where do you get that?

Town Attorney Kobiolka: I would have to check it. I do not know.

**PUBLIC NOTICE
TOWN OF BOSTON
NOTICE OF SPECIAL
TOWN BOARD MEETING
PUBLIC HEARING**

NOTICE IS HEREBY GIVEN the Boston Town Board, Erie County, New York, will hold a Special Town Board Meeting to extend the current Fire Protection Contracts and to hold a public hearing for the renewal of said contracts at the Boston Town Hall, 8500 Boston State Road, Boston, New York, on Monday, December 28, 2015, at 6:00 p.m.

North Boston Volunteer Fire Company will be paid \$164,903 for the years 2016, 2017 and 2018 for the furnishing of Fire Protection.

Patchin Volunteer Fire Company will be paid \$164,903 for the years 2016, 2017 and 2018 for the furnishing of Fire Protection.

Boston Volunteer Fire Company, Inc. will be paid will be paid \$164,903 for the years 2016, 2017 and 2018 for the furnishing of Fire Protection.

All persons interested in the matter shall be heard for or against at such time and place.

DATED: December 10, 2015
PUBLISHED: December 17, 2015

**BY ORDER OF THE TOWN
BOARD
JENNIFER A. MULÉ, TOWN
CLERK**

An Equal Opportunity
Provider & Employer

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Councilman Genzel: The town law does state that you must be a resident of the town and you must, live in, work, or reside in the town or you must live within five miles of the district.

Rodney Carr: That is for a fire district. We are a Fire Protection District.

Councilman Genzel: Ok, Fire Protection district.

Rodney Carr: what you are saying though is for a Fire District. A fire district is a "quasi-government" that has commissioners. There are no commissioners in the Town of Boston. There is a Fire protection district in the NYS law.

Councilman Genzel: We do not recognize him as a firefighter. He cannot pass a physical. He does not live in town.

Rodney Carr: Are you looking at recognizing him as a "fireman" who fights fires and everything?

Councilman Genzel: A Fireman fights fires.

Rodney Carr: We do have in our Bylaws a social membership, similar to an exempt membership. He is not an active member of our fire department. He is a social member. I have the bylaws.

Councilman Genzel: I have read your by-laws. You can call whoever you want firemen under your bylaws. We are not here to argue this. He is not a resident of the town. He cannot pass a physical. He does not get the benefit from the service award. We ask that Mr. Pollinger sign to bind the contract, and if Ron would like to sign for ceremonial purposes, that is fine.

Rodney Carr: I believe the two other fire company presidents are also here, if you could stand.

Discussion ensued between the councilmen and the firemen about other members living within and/or living just outside of the town or within five miles.

Councilman Genzel asked Dan Rychlik if he lived within five miles of the district.

Daniel Rychlik stated he believed it was really close to five miles. He lives within the Langford Fire district.

Councilman Genzel asked if this was going to hold up signing the contract.

Rodney Carr: I do not sign the contract. I am just asking questions.

Councilman Genzel: this is my opinion of the law, so if you would like us to research it further and give you our attorney's interpretation, if you would like our attorney to meet with your attorney, then we can certainly hold this up.

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Rodney Carr: Would the State Comptroller's opinion matter at all?

Councilman Genzel: I am not an attorney Rodney.

Town Attorney Kobiolka: Yes, it depends on what the opinion is.

Rodney Carr read the following opinion from the State Comptroller, 1985: "A non-resident of a fire district may be allowed membership in a fire company of a fire district fire department if such membership is authorized by the fire company. Where such membership is permitted, a non-resident member shall have all powers, duties, immunities and privileges of a resident member including the right to hold fire company office unless a non-resident is also a non-resident of the state. Volunteer firemen may belong to only one Fire Company at a time or such firemen join a second company may be removed from membership from the original company".

Town Attorney Kobiolka: Mr. Carr, I think you are referring to a fire district as opposed to a fire protection district.

Rodney Carr: But that is what Councilman Genzel was saying.

Councilman Genzel: I forgot to say the "protection district", I am sorry.

Peter Walter: I was just going to state that the thing that he read from the state says "if such membership is permitted."

Rodney Carr: It is permitted in our by-laws.

Peter Walter: It is not permitted here.

Tom Ricotta: you are bouncing back and forth between fire protection and fire district. You are not following the by-laws of either. What we are is a fire protection district, not a fire district. Therefore, you cannot choose the law that you want to state what works best for you. No, we are not going to hold up signing the contract today because it has been held up long enough. Your attorney never gave me clarification of this before this time. I do not agree with your interpretations. You are totally off base. I think you do need to research this further because down the road we are going to have further issues with this. We have a member who is not a member of this district.

Councilman Genzel: Fire Protection district.

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Tom Ricotta: He is not a member of our fire protection district. He is not a resident of this town. Yet he is the representative of the fire company that he belongs to and that is perfectly legitimate under the law. There are some interpretations in Fire district law that does state that if a person moves out of the district, he needs to be approved by the board of commissioners in order to maintain membership. We do not have a board of commissioners because we are not a fire district. Pick the law that you are going to go by. But you cannot go by both, because we are not a district.

Councilman Genzel: I do believe that I emailed you the town law and the state law.

Tom Ricotta, North Boston Fire Company: The State law you emailed me was Fire District, not fire protection district. There is a difference and they do not blend. Nowhere in fire protection district does it say see fire district laws for interpretation”.

Town Attorney Kobiolka: Councilman Genzel sent me a copy of an email from your attorney Brian Attea. He said that he met with members and he said he was comfortable with that and it was ok. So, the Town Board and I just assumed that it would be signed by Mr. Pollinger, who has the contractual authority from the fire company to sign it and now we are raising it at the public hearing.

Tom Ricotta: We are just disagreeing with your conclusions.

Town Attorney Kobiolka: Did you tell that to your attorney?

Tom Ricotta: I did not get a chance to speak to him, but I will refer that to him. It is the eleventh hour; we are not going to hold up signing. But, you do need to do a little more research on the difference between fire district and fire protection district.

Councilman Genzel: That is your opinion.

Tom Ricotta: It is my opinion, but that is law.

Councilman Genzel: I am not an attorney; I do not think you are an attorney either. I do not want to have to hire attorneys to cost the taxpayers more money. I feel it is the right thing to do. That we would have a member bind the contract when we are talking about a large sum of money and when it is somebody that pays taxes in this town. I think you can agree as a taxpayer that you would like someone to sign a contract that actually pays taxes in the town and that pays for this fee, pays for your benefit program and can actually respond to a fire call. You can have lots of social members who like to come down and play cards, drink beer.

Tom Ricotta: We have many members that attend to our legal functions, do our business and take care of a lot of the paperwork of the company. Those are sometimes people, such as the treasurer and secretary that cannot always be active members and firefighters. They are no longer able to do that. They did at one point in time. However, they do maintain a status in the company by taking part in vital roles within that company.

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Tom Ricotta Cont'd: Although they cannot fight a fire anymore, they can maintain our laws. They can take care of our books. I have one more question. All of the contracts you sign with other organizations throughout this town for sanitation, garbage pickup and such, are they all taxpaying, property owners of the town?

Councilman Genzel: No, but I think you are asking for something that is a little different than a fireperson.

Bob Pollinger, North Boston Fire Company: It is not really about tonight, it is about going forward. Ron is our President and will be our president for the next year. I am listening to what you are saying Councilman Genzel and it scares me a little bit when you say things like "they actually need to fight fires". We have many people in our organization who are no longer able to fight fires. They are no longer able to respond, but their hearts are in the right place. They are very dedicated and they hold positions. Most of them live in town.

Councilman Genzel: I understand that.

Bob Pollinger: But, that is not what you said. You said; they need to be able to fight fires.

Councilman Genzel: Respond to a call. Fire Police, EMS.

Bob Pollinger: Ok, There are people that cannot and do not respond anymore.

Councilman Genzel: But they live in town.

Bob Pollinger: They do live in town, and that is why I want to make sure that we are clear on that. They belong to our fire company and they have for many years, but they no longer train and they no longer get points for the service awards program, but they are vitally important to our fire company. We do not want to separate or segregate those people from us.

Councilman Genzel: My intentions are not to separate anyone. I have talked with Ron directly about this.

Bob Pollinger: I just want to be careful going forward that we are on the same page here in a time when it is very difficult to get new blood and we have guys responding to calls that may be borderline shouldn't be. We just want to be careful in how we look forward at a member in good standing or how the town views a fireman.

Rodney Carr: Asked if the attorney can look up if a member needs to live within five miles and if it is really in the law and get back to them.

Town Attorney Kobiolka: Sure.

Councilman Genzel: I believe it is in our Town Code.

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Rodney Carr: I am talking about state law.

Town Attorney Kobiolka: I do not think the Town Board is saying that Ron cannot perform the functions of president within the fire company. We know there is a shortage of volunteers. We know that some are getting elderly and you have to maintain the personnel, the administrative function. I think the board understands that. I think the board is not comfortable having another resident sign a half a million-dollar contract when he does not live there.

Councilman Genzel: Questions, concerns, any other problems that we have. Now is the time to air them.

Donald O'Bryant, North Boston: Is the section of town code you are quoting on the website.

Councilman Genzel: I believe the town code is under, if you google, Town of Boston Code.

Donald O'Bryant: Since I am vice president elect and we are not recognizing Ron, as far as you mentioned, Ron being the President lead of our corporation, we voted him in, he represents our body, do we go forward? Is he never going to be accepted as our authority that the body has enabled and voted in to speak for us?

Town Attorney Kobiolka: No, he can speak for you. Nobody is saying he cannot perform the functions of the President of the company.

Donald O'Bryant: Except now.

Town Attorney Kobiolka: He is not even here. And, he is not speaking; he is signing a half a million-dollar contract.

Donald O'Bryant: Throwing this statement in there is kind of throwing him under the bus. I think I would be a little embarrassed to walk in the room too. The proposal was to have the President's and the chief's sign off when we met with our lawyer. Then it was turned around to the vice president.

Councilman Genzel; We cannot bind a contract with the Chief. It has always been the president.

Donald O'Bryant: So, it takes the president, which is the head of the corporation to represent the company.

Councilman Genzel: That is fine. He can represent your company in all ways, shapes and forms, but we are asking for someone who lives in town and pays taxes to sign the contract.

Donald O'Bryant: Which comes back to the town code where it says that.

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Councilman Boardway asked the representatives of the Fire Companies to come forward and execute the contracts.

Councilman Genzel read the legal notice.

A motion was made by Councilman Genzel and was seconded by Supervisor Ballowe to open the public hearing at 6:32 p.m.

Supervisor Ballowe	Aye
Councilman Boardway	Yes
Councilman Genzel	Yes
Councilman Murtha	Aye

two (2) Yes two (2) Ayes Carried

Councilman Genzel: The Boston Emergency Squad makes a large number of calls per year as well as our fire companies. Excellent staff. We are very blessed to have well-trained people on that squad. I believe we have representatives here from the squad. You folks are invaluable to this community as well as the fire companies.

The following persons were heard:

Lorinda Koczur noted there have been 489 calls as of today.

All persons desiring to be heard, having been heard a motion was made by Supervisor Ballowe and seconded by Councilman Boardway to close the public hearing at 6:335 p.m.

Supervisor Ballowe	Aye	Councilman Boardway	Yes
Councilman Genzel	Yes	Councilman Murtha	Aye

two (2) Yes two (2) Aye Carried

A motion was made by Councilman Boardway and was seconded by Councilman Murtha that the board approve the contract as written with the Boston Emergency Squad.

Supervisor Ballowe	Aye	Councilman Boardway	Yes
Councilman Genzel	Yes	Councilman Murtha	Aye

two (2) Yes two (2) Aye Carried

RESOLUTION 2015-12 ESTABLISH THE AMBULANCE CAPITAL RESERVE FUND

Supervisor Ballowe presented the following resolution and moved for its adoption:

BE IT RESOLVED, by the Boston Town Board of the Town of Boston as follows:

SECTION 1. That under Section 6-c of the General Municipal Law there be and hereby is established capital reserve fund in the amount of Eight Thousand Dollars and 00/100 (\$8,000) for a future ambulance purchase designated within the Ambulance Fund.

SECTION 2. This reserve is funded through the General Fund Unappropriated Fund Balance, and transferred to the Ambulance Fund as of 12/31/15.

SECTION 3. The Supervisor, in his discretion, may invest the monies in the Fund pursuant to Sections 10 and/or 11 of the General Municipal Law of the State of New York and the Investment Policy of the Town of Boston. Any interest earned or capital gains realized on the monies so deposited or invested shall accrue to and become part of the Fund.

SECTION 4. No expenditure shall be made from the Fund except by authorization of the Town Board and the Town of Boston pursuant to the provisions of Section 6-e of the General Municipal Law of the State of New York.

SECTION 5. Except as otherwise provided in Section 6-c of the General Municipal Law expenditures from the Fund shall be made only for the purpose for which the Fund is established. No expenditure shall be made from the Fund without approval of the Town Board of the Town of Boston without such additional actions or proceedings as may be required by Section 6-c of the General Municipal Law.

This Resolution is subject to a permissive referendum pursuant to Subdivision 4 of Section 6-C of the General Municipal law.

Seconded by Councilman Boardway and put to vote this resulted as follows:

Supervisor Ballowe	Aye	Councilman Boardway	Yes
Councilman Genzel	Yes	Councilman Murtha	Aye
two (2) Yes	two (2) Aye		Carried

