

TOWN OF LAKEVILLE
Selectmen's Meeting Minutes
February 13, 2012

On February 13, 2012, the Board of Selectmen held a meeting at 6:00 PM at the Town Office Building in Lakeville. The meeting was called to order by Chairman Olivier at 6:01 PM. Selectmen present: Selectman Olivier, Selectman Maksy and Selectman Belliveau. Also present was Attorney Michele Randazzo of Kopelman & Paige, Rita Garbitt, Town Administrator and Tracie Craig, Executive Assistant. Also present: Daniel Hopkins, Fire Chief and Jack Collins, Esquire, representing Chief Hopkins.

Possible Executive Session

Chairman Olivier said that the Selectmen had convened the meeting under MGL Chapter 48, Section 73 to see if just cause exists to remove the Fire Chief from his position. This meeting is an open meeting. The Fire Chief has the option to have the meeting in Executive Session, but he chose Open Session. Chairman Olivier cautioned that there would be no audience participation other than the Fire Chief and his attorney.

Chairman Olivier said that the Fire Chief came to the Board of Selectmen (BOS) in March of 2011 and asked to renegotiate his contract, per the terms implied in the contract that expired June 30, 2011. Negotiations took place for six (6) months, but no terms were reached. On two (2) occasions, a five (5%) percent increase in the new contract was offered to Chief Hopkins, and on both occasions, he refused the contract. His reason was that he wanted a nine (9%) increase to be at the same pay level as the Police Chief. During the negotiation time frame, there were some events that came to light, such as an unwillingness to cooperate with the BOS. Those issues were an area of performance concern and the BOS does not take that lightly. Chairman Olivier gave an example: after a Wage and Personnel Meeting on September 1, 2011, Chief Hopkins approached him at the end of the meeting and said that the BOS will have to buy him new fire trucks now, and there is nothing that the BOS can do about that. Chairman Olivier said he was shocked and asked Chief Hopkins what he was talking about. Chief Hopkins indicated that Chairman Olivier would find out. Subsequent to that in October at a BOS meeting, Chief Hopkins notified the Selectmen that all three (3) pumpers had failed their pump tests. He had an invoice that needed to be paid to repair one (1) truck with a proposal to buy a used truck and a new truck later as part of the Capital Plan. We were talking about various solutions at that time, since we did not have enough money in the Overlay Account. During that meeting we discussed purchasing used trucks. Chief Hopkins was reluctant to go along with the idea, but he eventually did. Chairman Olivier said the issue was that all three (3) trucks failed at once. We were concerned about how that happened, since it takes time for all three (3) trucks to fail. We are now concerned about the trucks being maintained. There was a lack of notification from the Fire Chief, and this was sprung upon us and put our backs against the wall. We had to react without planning.

Chairman Olivier said the second issue was at the same meeting. There was another agenda item to discuss replacing a part-time clerk that had retired. Chief Hopkins wanted to replace the clerk with a 24-hour a week employee. Given the current economic times, we have to find ways to do more with less in the most efficient way possible. We suggested either hiring someone full

time, since once you go over 20 hours, you must pay benefits. The Selectmen suggested either splitting a 40-hour a week employee between the Fire Department and the Selectmen's Office or hire someone for less than 20 hours a week. Chief Hopkins was unwilling to listen to the Selectmen's ideas. He was a little bit combative on the 40 hours, asking in a not so nice way who would be responsible to pay for the extra 16 hours. We were not able to let him know that we would be working with him on this. He totally disagreed with the 20 hour option, and walked out of the meeting in a huff. That night he was scheduled to meet with us in Executive Session to review his contract, and he did not return for the meeting. Right now, the BOS have the feeling that there is an unwillingness to listen to whatever we suggest to Chief Hopkins. There are some events that happened prior. During his performance evaluation, it was mentioned that Chief Hopkins needed to control his temper and work on confrontations. He agreed that he had a problem with this and would work towards that, but we did not see that since the evaluation time frame.

Chairman Olivier said on December 19, 2011, the BOS made a second offer of five (5%) percent; Chief Hopkins came in and demanded a nine (9%) percent increase. The BOS refused it a second time. Because Chief Hopkins wanted the same pay as the Police Chief, a light bulb went off to compare both departments. There is a great distinction between the two (2) departments. The morale is much better in the Police Department than in the Fire Department. The Police Officers have volunteered to fix up the Police Station on their own time, and they like working with Frank Alvilhiera. It is night and day versus the Fire Department. We started thinking maybe there is something more to this, and we discussed bringing in a consultant to get to the bottom of the underlying issues. The BOS discussed this further and realized from an accountability standpoint, it starts at the top. We decided to re-offer a contract different than the five (5%) percent and ended up with a one (1) year contract with six (6) performance objectives attached to it, to be completed by the end of the fiscal year. The basic objectives are making sure there is a maintenance plan for the equipment and that he come to the BOS for coaching before acting on personnel issues. Chief Hopkins would need to create a report on what is going on in the Fire Department to help open up the lines of communications and move in a positive direction. There was a 0% increase at the end of the contract; if the objectives were met, there would be a two (2%) increase for three (3) years. Chairman Olivier said what the BOS is trying to do is correct the problem and move in a positive direction. Chief Hopkins refused that contract. Chairman Olivier said he met with the Fire Chief and Town Administrator that night and Chief Hopkins wanted to take the contract back to his attorney to review it. Chief Hopkins was involved in negotiating that contract; the only changes were zero (0%) percent for one (1) year and wording that was tied into the objectives for the two (2%) increase. Chairman Olivier said he went over the changes with Chief Hopkins, and he threw the paper down and said that is not negotiating. Chairman Olivier responded that this is not negotiation; this is the last and final contract being proposed. Chief Hopkins picked up the contract and walked out and stated he would get an attorney and sue the town and see what the taxpayers would think about that.

Jack Collins, Esquire, attorney for Chief Hopkins, stated that he was coming in late on this issue. They would like to work on putting things back together again. He did not feel it was so badly broken that we can't make it work. Attorney Collins said his job is to figure out how to make this work without going to war. There are different ways that Fire Chiefs have power in towns. The Strong Chief Law, under MGL Chapter 48, Section 42, states once you appoint a

Fire Chief, unless you have just cause, whether or not there is a contract; he is your Fire Chief. Attorney Collins thought that the BOS was being counseled that there is a bias due to not signing the contract or a bad attitude. You have to hold a just cause hearing and give the Fire Chief notice, whether there is a contract or not. Being a Fire Chief and having a contract are two (2) different things. You would probably be the first Town to act on that. If you look at the old contract, you recognize the Fire Chief as a one (1) person bargaining unit. Under Chapter 150, you have a good faith obligation to negotiate, and then go to an impasse procedure. You cannot fire the Fire Chief for failing to accept a contract. Attorney Collins said they have filed paperwork with the Joint Labor-Management Committee to request that they come in and arbitrate the dispute. He is hoping that we can show you that there is an alternative for all sides. If he were the BOS, would he be annoyed? Of course. If he was the Fire Chief and saw the Police Chief getting \$104,000 per year, yes he would be annoyed. Attorney Collins said he has viewed Chief Hopkins's performance evaluation and if half of the Fire Chiefs out there got as good as an evaluation as Chief Hopkins, we would have a lot of happy people. Once in a while, Chief Hopkins may have a short temper, and he is generally not a good speaker. His evaluation was certainly not a failing grade. Attorney Collins would like the BOS to say that they will make a good faith effort to figure out what really separates the two (2) sides. Has Chief Hopkins done everything right? He wouldn't say that. Attorney Collins thought Chairman Olivier did a good job recounting the facts. When faced with a take it or leave it, people get their Irish up, and that is not a good thing. Looking at other Fire Chiefs salaries, Chief Hopkins is low. He signed a contract before that said that Chief Hopkins was a one person bargaining unit. Rather than making threats, Attorney Collins said there is a way to make this work. They would be happy to go into Executive Session to negotiate or to give both sides marching orders. Does Chief Hopkins expect the same salary as the Police Chief, we are well beyond that. He did not blame the BOS for thinking about this or the Fire Chief for asking what he was signing. This does not do the taxpayers any good. Attorney Randazzo is giving you advice that you have to follow, but no one loves battle. Attorney Collins would like to be able to say that we don't need the Joint Labor-Management Committee involved here. That will be very expensive. If you take action to try to terminate the Fire Chief, that would take approximately three (3) to five (5) years, and there will probably be a new BOS by then.

Attorney Collins said that Chief Hopkins has the message that the BOS was not happy with how he conducted himself. Perhaps both sides can put this aside and call a truce and try again in good faith. If the BOS is willing to do that, we will meet you and do everything we can to make it work. However, we aren't going to roll over and play dead. You have some legitimate issues, but hitting them all at once with a March 6th deadline? If we are fighting about dates, we can find a common ground. If the performance evaluation was terrible, that is different. It sounds like there is enough common ground to think about putting this all on hold and try to come back in a month to see if you have a deal. We all say things and get out of control at some time. Attorney Collins was not accusing anyone of doing wrong, but he felt that everyone could have done better. Will we sign a contract essentially like before, with a raise not near the Police Chief's salary, yes we will, with reasonable objectives and times frames. The Fire Chief has full and absolute authority over the Fire Department. There is no legal requirement that he do what you are asking. However, it is good common sense that the BOS has a right to know what is going on in the Fire Department. Attorney Collins said he tells fire chiefs all the time not to surprise politicians; it is not good for their careers. He has not asked Chief Hopkins about the

pumps. The truth is that you did not know about the pumps. He didn't think it will happen again. Chief Hopkins will get the information to the BOS in advance. When all these things happened at the same time, the BOS got a little frustrated and said we will give him a few extra pounds to carry. Chief Hopkins walked out of the meeting. If we spend our time trying to figure out who is right or wrong, we won't get this together. Both sides can do better. You don't need me looking over everything you do the next few years. Chief Hopkins is listening; he is a team player and may not have always showed it, but maybe you have some things to do also.

Attorney Randazzo stated that she and Attorney Collins might disagree on a few things. She can dispute just cause, if it is required. The strong chief statute says "for cause". There is some formal action required by the BOS, regardless of whether the Fire Chief's contract expires. As for the language on a bargaining unit of one (1), the statute says he cannot be part of the bargaining unit. At this point, the question is where you are all in terms of contract negotiations. The BOS had voted a last and final offer, which was the same as the expired contract with the addition of the performance goals spelled out. She has advised the BOS on what the Strong Chief Statue says regarding this. The contract term would be one (1) year. Regarding the salary issue, it was her recollection of the old contract that the Fire Chief only gets the raise that other Department Heads get. She understood that Department Heads did not get a raise last year. Attorney Collins responded that the Fire Chief's salary is \$89,000 and the Police Chief is at \$104,000. The reality is that ¼ of the spread is the right number, approximately \$4,000. Attorney Randazzo said that the Police Chief has a higher degree that may account for the salary discrepancy. There was an education provision built in to the contract. It seems that there is a willingness to speak about performance goal issues and other concerns. Does the BOS feel that it is productive to resume negotiations or not?

Chairman Olivier said that is a good question. We have been working with the Fire Chief right along and thought we had a system in place. It remains to be seen if that can happen. There is clearly a behavior issue, and we are concerned about that. To offer a percentage that you suggested, we don't even know if he will get the objectives done. In Chairman Olivier's opinion, performance evaluations are getting rolled out to the public sector. When performance is not up to the point that a reasonable person would expect, we are supposed to reward that with money? The last proposal was a one (1) year contract with no increase. It would be tied to any increases the Town Employees might get, so he would get one (1%) percent automatically in FY13. We have to make sure those objectives will be met, and he is not sure that we are moving in a positive direction. The performance evaluation's low mark was in communication and being able to work with people with different points of view. Chairman Olivier looked up the definition of insubordination in Webster's Dictionary; the definition is unable to accept authority. Not that we are trying to opus ourselves down on the Fire Chief. There is a code of conduct by-law, and it mentions insubordination. This is what this is all about, to correct the direction we are going in.

Attorney Collins said he was here to understand. He has the message, but he can debate insubordination. The message is that the BOS is not happy. You can say this is our contract, and he won't get a pay raise unless he signs. More than half of the fire chiefs present tonight do not have a contract. You are saying that the recent stuff is annoying, and we aren't going to pay you unless you meet the performance objectives. We are running out of time for a June 30th deadline.

He suggested a one (1) year contract with some reasonable objectives by June 30, 2012. If the Fire Chief meets those, he gets an increase of \$4,000; if he meets three (3) objectives, he gets \$3,000; two (2) he gets \$2,000. Selectman Belliveau said if you read this contract, all these things are already there. A March 1st deadline was reasonable when he was originally offered the contract. This says a two (2%) percent increase built in as long as the objectives are met by July 1st, plus whatever the Town might offer any other employees. The Police Chief has a Masters Degree; the Fire Chief has an Associate's Degree. Education incentives are also built in there. His hope and the BOS's is to sign this contract and re-evaluate the situation in July and sit down and renegotiate another three (3) year deal. Attorney Collins said he would like to see that happen, since negotiating in public doesn't work. He did not think the contract will be dramatically different. Maybe we will be back in a month, but he needs to speak to Chief Hopkins about the performance objectives. He knows that he will not get a raise without meeting the performance objectives. Perhaps the two (2) attorneys can talk.

Selectman Maksy said he represented the BOS in the negotiations. It did become a money issue at the end. One of the things he does not like to do is compare one person to the other. It doesn't make sense. The money issue was it. Prior to that, things went fairly smoothly, and there was give and take both ways. Then the light went off, and we started thinking about some of the issues. This is the perfect opportunity to do this. He does not want to see this go to court. Selectman Maksy said he respects Chief Hopkins and what he does, but he has to respect the BOS, who represent the Town and the taxpayers. He would be in favor of giving this a shot, if it was done quickly and taken seriously. The BOS would be willing to go along with it, and he would consider a 30 day period. He suggested leaving it in the attorneys' hands so it would go faster. Chairman Olivier said he agreed to give it another try, but does not agree that the two (2) attorneys should be doing the negotiating. The initial discussion took place between the Fire Chief and the BOS. When the attorneys walk away, we will still be here. We need to see this through.

Selectman Maksy said 99% of this is done. He doesn't want to open the contract up. Attorney Collins said there are some small things that need to be fixed. We are down to two (2) or three (3) items that we don't agree on, but both sides must be able to move. He suggested that the two (2) attorneys negotiate to remove the personalities. Chairman Olivier said we don't want to rehash the whole thing regarding where the increase would be and when. Selectman Maksy said he didn't think we need Executive Session with Chief Hopkins to go back and forth. Attorney Randazzo said first off we need to make sure that Attorney Collins has the last version presented to Chief Hopkins so that we are on the same page. She has made some revisions, and there were some language changes. They could be an issue. If Attorney Collins has the version we are working on, he can come back to me with a proposal, and she can forward it to the BOS with feedback. Chairman Olivier said this year has gone by. Attorney Randazzo said they are willing to agree to some for the rest of this FY. Chairman Olivier said that doesn't mean because there isn't time that we won't address them. Attorney Randazzo said she heard Attorney Collins say they are willing to agree to performance objectives for the next four (4) months, but needs clear definition of what they are, and the time period that they will be measured. She would expect in any management situation that there would be dialogue if there were obstacles to achieve the goals so that you would understand. There are going to be things that come up, and she is hearing that the Board would like that dialogue.

Attorney Randazzo said she is taking what the BOS has put down on paper to be the starting point. If you want to put the performance objectives in priority order, it might help. Attorney Collins suggested tying partial completion to some bump in salary. Attorney Randazzo said that struck her as being contingent upon Chief Hopkins's employment past June 30, 2012. Attorney Collins said between now and June 30th on the one (1) year contract, if we meet the performance objectives prior to June 30th, we will expect the increase. If Chief Hopkins does not meet all the performance objectives and does not get the pay increase, this does not mean on July 1st that he does not have a job. Attorney Randazzo said her point was what good is a large salary increase if you are not working. If the performance objectives are met, the salary isn't the biggest concern. The BOS would reevaluate the relationship between the Fire Chief and the Town. It is appropriate to look at the performance objectives and determine the most critical. You might want to consider some sort of staggered increases. Selectmen Belliveau said the increases are built into the contract. As far as reasonableness, the Fire Chief could come back and say six (6) weeks isn't reasonable. Attorney Collins said if the dates aren't reasonable, we will have a dialogue with the BOS. He did not know if these goals are meetable or impossible. He assumed that most are achievable in some sort of time frame. Selectman Belliveau said we want some sort of maintenance log on the fire engines so that we can be prepared for equipment replacement. We aren't trying to be unreasonable. Chairman Olivier said two (2) months have passed and we might have to push the time out. We are not trying to set the Fire Chief up to fail. Attorney Collins said if both sides make a good faith effort, this will be the last time you will need to see me.

Chairman Olivier said the BOS need to discuss this and send it to Town Counsel. Selectman Maksy said the last contract must be given to Attorney Collins. Attorney Collins said the language changes might be problematic. He might have an issue, he can't dispute that because he doesn't have a copy of the contract. Attorney Randazzo suggested posting Executive Session at a later date to discuss contract negotiations. At this point, Chief Hopkins is employed. If you want to remove him, you need to file charges. Selectman Belliveau said we were hoping that Chief Hopkins would just sign the contract and renegotiate in July to go forward. Attorney Collins stated he did not get that message. Chairman Olivier asked that Attorney Collins get back to Attorney Randazzo quickly. Attorney Collins said he would contact her this week. Attorney Randazzo said that the issue can be held in abeyance.

Upon a motion made by Selectman Maksy, seconded by Selectman Belliveau, it was:

VOTED: To adjourn the Meeting at 6:58 PM.
Unanimous vote.