

**BOARD OF SELECTMEN
TOWN OF MADISON
MARCH 26, 2013
MINUTES**

Selectmen Present: Chairman Michael Brooks, Josh Shackford, and John Arruda.

Others Present: Town Administrator Melissa Arias; Deputy Fire Chief Richard Clark; and Madison TV Videographer Emilie Riss.

Absent: Fire Commissioners Alan Gilman and Joyce Elliott.

Where and When Posted: Town Hall upper & lower bulletin boards and Madison & Silver Lake Post Offices on June 30, 2010.

Meeting Called to Order: At 5:45 p.m. by the Chairman who apologized for getting out of work late this evening.

APPROVAL OF MINUTES – There were no minutes to approve at this time.

APPROVAL OF MANIFEST – There was no manifest to approve at this time.

2013 WARRANT ARTICLE #3 – Brooks said the Fire Commissioners won't be joining the Board of Selectmen tonight as requested in the Selectmen's Memo to the Commissioners dated March 20, 2013. Brooks said mid-afternoon today the Town Administrator received a letter electronically from Attorney Chris Meier stating that Cooper Cargill Chant has been retained by the Fire Commissioners for the purpose of reviewing the Selectmen's 3/20/13 Memo, which was read aloud later in the meeting by Brooks. Brooks read the letter from Attorney Meier which contained the Commissioner's decline of the Selectmen's invite to tonight's meeting. Brooks pointed out that Attorney Meier had been the Selectmen's Counsel up until the spring of 2012 and Cooper Cargill Chant had represented the Selectmen since at least the early 1970's. Arruda said this is an exercise in futility. Arruda said Meier's letter doesn't specify the chapter of the NH State Law (RSA) that backs up his statement that "the Selectboard cannot direct or preclude any expenditure which has been appropriately appropriated for fire department use by the legislative body, as any such direction would invade the purview, authority and responsibility of the Commissioners under statute". The Selectmen are familiar with the two RSA's referenced in Meier's letter but would like to know the RSA pertaining to the warrant article expenditure. Arruda said he spent the afternoon researching state law and town archives to try and determine when the Commissioners came to be. Arruda said he found an approved warrant article vote from March 13, 1934 that said, "the Selectmen take charge of fire department until that organization be organized". Arruda said NH State Archives has been asked to research for a vote of the legislative body approving the specific organizational style of the Madison Fire Department. Arruda said that search has come up empty. Shackford said he is really disappointed with the letter received today from Attorney Meier. Shackford pointed out that a good part of the letter was taken straight from the 1982 Memo from the Selectmen to the Fire Commissioners. Shackford said it's unfortunate that the Selectmen now have to talk through attorneys in order to communicate with the Madison Fire Commissioners. Shackford said it all boils down to communication and asked Deputy Clark what was going on but Clark didn't have an answer. Shackford said he thought all the issues within the Fire Department had been resolved internally last

Friday. Clark said he thought so too after meeting with the Fire Chief prior to reviewing the same with Commissioner Elliott. Clark thought everyone was on board with moving forward with the purchase of the used RI fire truck. Arruda said the used fire truck will likely be gone later this week and lost to us. Arruda said the arguments at Town Meeting were the fear of a major malfunction with Engine 1 and the risk of harm to the vehicles operators along with statements that \$50,000 wouldn't fix the various issues with Engine 1. Arruda said the used truck from RI seemed like a suitable and economical alternative. Arruda pointed out page 22 of the March/April 2013 Town and City magazine with a full page advertisement by HME via Lakes Region Fire Apparatus for front line Class A compliant attack vehicles starting at \$268,575. Arruda said he even called and talked with the company about this being an option for Madison in the future.

Brooks asked Arias what the Town received in the way of previous legal case files from Cooper Cargill Chant less than a year ago when we changed Town Counsel to Diane Gorrow of Soule Leslie Kidder Sayward & Loughman. Arias said paper files were sent for any active cases and a flash drive was provided with the same plus other case files they had in electronic format. Arias was told that all older legal files in paper form are housed in the archives of Cooper Cargill Chant and the Town would be notified and have an opportunity to retrieve the files should Cooper Cargill Chant schedule the destruction of the same. Brooks said there could be a conflict if the Selectmen find that past records pertaining to the Fire Department are still housed at Cooper Cargill Chant and need to be brought forth for the Selectmen to review since an attorney within the firm is now representing the Fire Commissioners.

Shackford said enabling legislation cannot be located on the organization of the Fire Department and that's the bottom line. Shackford said he attempted to resolve the matter through Article 12 at the 2013 Town Meeting which would have also solved the transparency and communication issues but the voters decided otherwise. At this point Shackford said it doesn't matter which direction the Town goes in with respect to Fire Commissioners but something clearly needs to be done. Shackford said he doesn't plan on going to the Fire Commissioners meeting in April. Arruda said the 1982 document Commissioner Gilman read from at Town Meeting specified that the Commissioners are expected to meet with the Selectmen quarterly, not the other way around. This meeting would have accomplished that objective for the 1st quarter of 2013. The Selectmen asked Arias if we could fit the Commissioners in on the Selectmen's Meeting agenda for the first meeting in April which can be the 2013 2nd quarter meeting. Arias was pretty sure there was space available.

IRS RULING - Brooks said there was another item of business the Selectmen intended to discuss with the Commissioners tonight about the ongoing matter with the Internal Revenue Service (IRS). Brooks said the Selectmen received a letter from the IRS on March 20, 2013 informing the Town that they would be closing their SS-8 investigation into the work relationship between the unnamed individual and the Town of Madison because the request for determination would have no effect on federal employment tax matters. The letter states the IRS is declining to issue a determination at this time. Brooks said the letter is a result of the complaint from a firefighter over whether firefighters should continue to receive an annual 1099 instead of a W-2 or be considered an employee instead of a volunteer. Brooks said the letter indicates that the Town isn't doing anything wrong so there's no need to change procedures at this time.

Arruda asked if anyone knew where the money is coming from to pay for the Fire Commissioner's attorney. Arruda said it certainly isn't coming from the operating budget Legal line. Arruda said he can only assume it will come from a line within the Fire Department's operating budget. Shackford said unfortunately it's coming from the taxpayers of Madison either way. Brooks said for any Town board or

committee to bring litigation against another board or committee without having conversations and making attempts to work things out in advance is utterly ridiculous.

Brooks said he assumes the decision of the Fire Commissioner to engage an attorney would have been made during a properly posted meeting and recorded in the minutes. Arias said she could check the bulletin board upstairs or at the Post Offices for such a posting. Arias was asked to send a copy of the draft minutes of this meeting to Attorney Meier to share with his clients and will inquire about receiving a copy of the minutes.

THERE WERE NO PUBLIC COMMENTS.

6:30 PM – Shackford made a **motion** to adjourn, seconded by Arruda, and so voted **3-0**.

NEXT SELECTMEN’S MEETING – The next regular Selectmen’s meeting will be April 2, 2013 at 5:30 p.m. in the Town Hall Meeting Room.

Respectfully submitted,

Melissa S. Arias, Town Administrator
Recording Secretary