

*Approved for meeting
10/22/09
WFB*

**EMERGENCY EXECUTIVE SESSION
OCTOBER 22, 2009 AT 6:00 P.M.
TOWN OF SOUTHBOROUGH**

Proceedings On Complaint Of Interim Chief of Police Jane Moran

Meeting Commenced at 6:00 p.m.

Those in attendance are as follows: Salvatore M. Giorlandino, Bonnie Phaneuf, Bill Boland, Carla McAuliffe, Doreen Ferguson, Brian Ballentine, Jane Moran, Dawn Michanowicz, Jean Kitchen, Vanessa Hale, Vera Koliass, Karen Galligan, John Mauro, Barry Bachrach.

Motion Made by Mr. Giorlandino to go into emergency executive session pursuant to G.L. c. 39, § 23(b)(2), and not to return to public session. The purpose of this emergency executive session is fact finding regarding a complaint brought to the attention of at least two of the Selectmen regarding commentary that was made about Interim Police Chief Jane Moran at a gathering of Southborough Town employees after the September 29, 2009 Special Town Meeting at Pizzeria Uno as indicated in the e-mail sent by Town Administrator Jean Kitchen to the employees on Wednesday October 21, 2009 which stated that Special Southborough Town Counsel Barry Bacharach would be in attendance at the executive session and that attendance at the executive session was mandatory.

Roll Call Taken.

Mr. Giorlandino, Member and Chair of Board of Selectmen ("BOS"):

I hereby vote to call the Executive Session Meeting to order.

Bonnie Phaneuf, Member and Vice Chair of BOS:

I vote Aye.

Mr. Giorlandino, BOS Chair:

This is a fact finding meeting wherein no decisions will be made tonight. The decision will be made on Thursday, October 29, 2009 at 6:00 p.m. at another Executive Session meeting.

Mr. Boland, BOS member:

I have a couple of questions. First, does tonight's meeting involve me? Also, will any discipline of anyone at this meeting be considered as a result of the meeting or information presented because, if so, I don't believe that proper notice was given for this meeting because 48-hours notice wasn't given and people weren't notified that they had the right to counsel.

Mr. Giorlandino, BOS Chair:

Mr. Boland. On this past Monday evening, October 19, 2009, the Board received a complaint from interim Chief, Jane Moran that negative comments were made about her by town employees a public gathering of town employees on September 29, 2009 at Pizzeria Uno's in Westborough, Massachusetts following the conclusion of the Special Town during the evening of September 29th.

Tonight's meeting is a fact finding meeting to find out what happened that night, what actions should be taken, and whether discipline actions may be taken. As discussed, though, no disciplinary actions will be taken at tonight's meeting. We have Special Town Counsel, Barry Bachrach, and here to explain the notice issue

Mr. Bachrach, Special Town Counsel:

Tonight's Executive Session meeting is an emergency meeting, which means that the 48 hour requirement is not necessary, especially because:

This is an emergency fact finding session relating to the Interim Chief's complaints.

Mr. Boland, BOS member:

Well, I have done nothing wrong. I vote no to holding the Executive Session meeting because I still believe it violates the Open Meeting Law, G.L. c. 39, § 23A.

Mr. Bachrach, Special Southborough Town Counsel:

I disagree.

Mr. Boland, BOS member:

Well, I just want to state again that I believe the meeting violates the Open Meeting Law.

The Board entered Executive Session

Mr. Giorlandino, BOS Chair:

Let's move on.

A complaint has been made that town employees, after Special Town Meeting, met at Pizzeria Uno for dinner and two town employees made negative comments about the Interim Chief at that dinner in public. Mrs. Phaneuf and I spoke to Assistant Town Clerk, Dawn Michanowicz, on separate occasions who corroborated the event. I'd like to say that I find Dawn to be trustworthy, professional and I am sorry to see her go because she will be the Town Clerk for the Town of Sterling the week after next.

Ms. Michanowicz, Asst. Town Clerk:

I was surprised this happened especially because we had the meeting this past July 2009 about liability in the work place and workshop on sexual harassment and harassment. But this was the sequence of events:

After the Special Meeting of September 29th, we worked all day and we knew we had the meeting that night so me and Brian (Ballentine) car pooled. We learned after the meeting that people were going to Uno's. So Brian and I went together.

We sat at the table with Jean, Vanessa, Vera, and Karen. I then noticed that they were talking about Interim Chief Moran. Karen and Vera were making disparaging remarks and ridiculing her.

Three men then approached the table. I asked Vera "Who are they?" Vera said, "No worries, they're part of us." Neither Jean nor Vanessa said anything. We then moved to a larger table in the middle of the restaurant. I don't recall the rest of the banter that night. I was very uncomfortable. I asked Brian if we could leave and he said "After we eat."

Mr. Giorlandino, BOS Chair:

Was [REDACTED] there?

Ms. Michanowicz, Asst. Town Clerk:

Yes. There were [REDACTED] in attendance. I didn't know who they were, only recognized the face of one individual. It was [REDACTED]

Mr. Giorlandino, BOS Chair:

Can you please provide examples of the slurs made that night?

Ms. Michanowicz, Asst. Town Clerk:

I can't repeat them verbatim, but the gist of the conversation was a) why did she [Interim Chief] get a new car; b) whatever Jane wants, Jane gets. I don't

remember or recall specifically what was said, but they were mocking and inappropriate. Mr. Boland was not there at the time.

Mrs. Phaneuf, BOS Vice Chair:

Did you leave Uno's with another party?

Ms. Michanowicz, Asst. Town Clerk:

I left with Brian. Jean Kitchen left at the same time and Carla McAuliffe left at the same time.

Mr. Boland, BOS member:

I have no questions.

Mr. Giorlandino, BOS Chair:

Did Jean Kitchen do anything about this talk at the time?

Ms. Michanowicz, Asst. Town Clerk:

Jean was smiling. So was the Assistant Town Administrator, Vanessa Hale. The Town Administrator did nothing and neither did the Assistant Administrator. Mrs. Ferguson didn't say anything. Mr. Boland wasn't there.

Interim Police Chief Moran:

How long did this conversation take?

Ms. Michanowicz, Asst. Town Clerk:

About 20 minutes.

Interim Police Chief Moran:

I was the sole subject of the conversation?

Ms. Michanowicz, Asst. Town Clerk:

Yes.

Interim Police Chief Moran:

I prepared a statement that I would like to now read into the record. (Reads statement into the record)] (A true and accurate copy of the Statement of Interim Chief is attached hereto.)

Were [REDACTED] subpoenaed?

Mr. Giorlandino, BOS Chair:

No. Remember, this is just a fact-finding meeting.

1st Statement of Fact: [REDACTED] is [REDACTED] on the Southborough Police Department and is Interim Chief Moran's subordinate.

2nd Statement of Fact: [REDACTED] is a Southborough town resident and a member of the [REDACTED].

3rd Statement of Fact: At the time of the gathering at Pizzeria Uno's, [REDACTED] [REDACTED] was competing with Interim Chief Police Chief Moran for the Police's Chief position.

4th Statement of Fact: The night of the Pizzeria Uno gathering: 9/29/09, was the night before the Southborough Police Chief Search Committee was to meet on 9/30/09 to discuss a proposed list of finalists to the BOS for the Chief of Police position.

5th Statement of Fact: The Police Search Committee interviewed seven candidates, including [REDACTED]

Ms. Kitchen. I'd like to ask you some questions. Will you answer them?

Ms. Kitchen, Southborough Town Administrator:

No. I have not been given sufficient notice pursuant to the Open Meeting Law, G.L. c.39, § 23A. I won't be making any comments.

Mr. Giorlandino, BOS Chair:

Ms. Kitchen, you had a right to raise that objection prior to this meeting. I am notifying you now, this is a civil hearing. If you refuse to answer the Board's questions, then that will be construed against you.

Ms. Kitchen, Southborough Town Administrator:

Again, I am not making any comments because I would like to have an attorney present and this meeting was not called according to the Open Meeting Law, G.L. c. 39, § 23A.

Mr. Bachrach, Special Southborough Town Counsel:

An emergency meeting supersedes the notice requirement.

Ms. Kitchen, Southborough Town Administrator:

The Town's past practice has been that notices are sent certified mail, notifying parties of their right to counsel.

Mr. Giorlandino, BOS Chair:

Ms. Kitchen. Did you meet with Mr. Boland and Town Planner yesterday morning relating to these issues?

Mr. Giorlandino, BOS Chair:

Let the record reflect that Ms. Kitchen refuses to answer by adopting or making an erroneous citation of the law which Special Town Counsel has noted is erroneous. This is an Emergency Executive Session and only a fact finding meeting due to complaints made by Interim Police Chief.

Ms. Kitchen, Southborough Town Administrator:

My civil rights have been violated. However, I will be happy to answer with proper notice.

Mrs. Phaneuf, BOS Vice Chair:

Jean. I am very disappointed. I told you what tonight's meeting was about. I take exception to your saying you were not aware of what this meeting was about since I specifically told you it related to comments made about the Interim Police Chief at Uno's that certain town officials were making mocking and disparaging comments about her in public. I helped draft the October 21, 2009 e-mail sent to employees, (see attached).

Ms. Kitchen, Southborough Town Administrator:

No.

Mrs.: Phaneuf, BOS Vice Chair:

Yes.

Mr. Giorlandino, BOS Chair:

I am going to ask again. Are you refusing to answer my questions?

Ms. Kitchen, Southborough Town Administrator:

Yes.

Mr. Giorlandino, BOS Chair:

Ms. Hale?

Vanessa Hale, Southborough Assistant Town Administrator:

I agree with Jean. I'm just coming back to work today and didn't know anything about this. I want to meet with our own counsel.

Mr. Giorlandino, BOS Chair:

Did you meet with Mr. Boland about this yesterday? Are you still refusing to answer?

Ms. Kitchen, Southborough Town Administrator:

[Interrupts questioning with inaudible statement.]

Mr. Giorlandino, BOS Chair:

Let me explain the hierarchy here to you Ms. Kitchen. I am Chairman of the Board of Selectmen. You are just the Town Administrator. You were issued proper notice. You never brought these objections up before tonight's meeting.

I'm sorry for the death in your family [directed to Ms. Hale]. Let the record reflect that Ms. Hale refuses to answer based on erroneous citation of law that Special Town Counsel has advised is erroneous.

Ms. Galligan?

Karen Galligan, Southborough DPW Superintendent:

I don't believe proper notice was given.

Mr. Giorlandino, BOS Chair:

Let the record reflect that Ms. Galligan refuses to answer based on erroneous citation of law that Special Town Counsel has advised is erroneous.

Vera Kolias?

Vera Kolias, Southborough Town Planner:

I want personal counsel. I came here in good faith, but am completely unprepared for tonight's questioning. In fairness, I should have counsel and I should know what I am being accused of. Also, my own Chair of the Planning Board was not notified of this meeting. I won't answer because I didn't know I was going to be questioned.

Mr. Giorlandino, BOS Chair:

I find that difficult to believe Vera. I believe a number of you got together to formulate a strategy to delay tonight's meeting. Since you have all requested counsel, we will continue the meeting to October 29, 2009, to permit you all to have representation.

I will say I have a dim view of people having a strategy meeting to delay, especially if the Planning Board was involved as you have mentioned Ms. Kolias.

Mrs. Galligan, Southborough DPW Superintendent:

I would like a copy of the prepared statement by Interim Police Chief Moran.

Ms. Kolias, Southborough Town Planner:

I am not delaying. I didn't know the list of questions and accusations. I want representation.

Mr. Giorlandino, BOS Chair:

Ms. Kolias brought up no concerns before tonight. I do not take pleasure in meeting like this. However, the Interim Police Chiefs complaint must be handled. I am agitated, especially because I have talked for months about being careful about talking and specifically about what type of talk is not to be bantered about.

We will continue this matter until October 29, 2009 at 6:00 p.m. to accommodate your requests to be represented.

Mrs. Galligan, Southborough DPW Superintendent:

I would like a copy of the minutes.

Mr. Bachrach, Special Southborough Town Counsel:

The minutes cannot be sent to you because they are minutes relating to an Executive

Session Meeting. They will be available for viewing by all of you and kept with the documents relating to the Executive Session Meetings.

Mr. Giorlandino, BOS Chair:

Ms. McAuliffe?

Carla McAuliffe, Southborough Town Accountant:

After the meeting on September 29th, we all gathered at Uno's. Vanessa, Jean, Karen, Vera, Brian, Dawn and Ms. Ferguson were all present. Mr. Boland came later. I don't recall any conversation about the Interim Chief. I don't believe there was any conversation about the Interim Chief.

Brian Ballentine, Southborough Town Treasurer

I agree with Carla. I don't remember what went on. I went to the bathroom. There were lots of conversations going on. I don't recall allegations against the Interim Chief.

Mr. Giorlandino, BOS Chair:

So you can't say one way or another, just that you don't recall.

Mr. Ballentine, Southborough Town Treasurer:

Right. Don't recall.

Mr. Giorlandino, BOS Chair:

During the time that the Interim Chief has held the position, have you ever heard Town Hall people talking badly about her?

Ms. McAuliffe, Southborough Town Accountant:

No.

Mr. Ballentine, Southborough Town Treasurer:

No.

Doreen Ferguson, Executive Director, Southborough Recreation Commission:

I don't recall any comments against the Chief

Mr. Giorlandino, BOS Chair:

You don't know though, right?

Mrs. Ferguson, Executive Director, Southborough Recreation Commission:

No.

Mr. Giorlandino, BOS Chair:

Have you ever heard negative talk about Interim Chief?

Mrs. Ferguson, Executive Director, Southborough Recreation Commission:

No.

Mr. Giorlandino, BOS Chair:

Chief Mauro. You are not subject to inquiry.

Chief Mauro, Southborough Fire Department Chief:

As a town official, it is my understanding that you have to inform people of their right to counsel if there is a potential for discipline. Especially when I'm not sure if there are accusations against me. But I don't recall any conversations.

Mrs. Phaneuf, BOS Vice Chair:

The Board of Selectmen must bring the complaint to everyone's attention. If the Interim Chief was made aware of the comments she has the right to ask questions. I am disappointed if this did, in fact, take place because:

It took place in public; and

It took place with committee members on the [REDACTED] project, including 1 potential candidate for the chief of police position.

If the tables were turned, who would you go to for assistance? I am really disappointed. I had a conversation with Dawn Michanowicz. The matter needed to be immediately addressed. If I hear about this from a town citizen, it could create major problems. Let's adjourn to October 29, 2009 at 6:00 p.m.

Mr. Giorlandino, BOS Chair:

I, too, am disappointed. I have worked with all of you. I have always treated you with respect. But I have been treated disrespectfully tonight. None of you brought up these notice issues before tonight. The same goes for Mr. Boland, who:

- Has an obligation to raise concerns; and has**
- Minimized and marginalized these issues.**

Mr. Boland, BOS member:

How did I minimize the issues?

Mr. Giorlandino, BOS Chair:

Mr. Boland, I am not going to debate the issue.

Mr. Boland, BOS member:

I want to make a statement concerning the allegations you stated against me, but you won't let me.

Mr. Giorlandino, BOS Chair:

I am just very disappointed. I'm not going to debate this. I am very disappointed by the refusals to answer questions. Special Town Counsel has advised that we continue the meeting. Counsel can be there to represent individuals, but not cross-examine.

Mr. Bachrach, Special Southborough Town Counsel:

An individual has the right for someone (not necessarily an attorney) to represent them at the hearing. So in Vera's case, if she wanted her Chair of the Planning Board to be there, she can.

Ms. Michanowicz, Asst. Southborough Town Clerk:

Everything in this Executive Session is confidential, right?

Mr. Bachrach, Special Southborough Town Counsel:

Everything is confidential and should not be repeated.

Ms. Michanowicz, Asst. Southborough Town Clerk:

Until the issues are resolved.

Mr. Bachrach, Special Southborough Town Counsel:

Everything going on is confidential except to your attorney. Nothing else - no one outside of this room should know. That's with all executive sessions.

Mr. Giorlandino, BOS Chair:

Does anyone have any other questions?

Mr. Boland, BOS member:

I am concerned about accusations of me about making remarks against Interim Chief Moran in the Town Administrator's office. I explained what that situation was. I in no way made disparaging remarks against the Interim Chief. It was a discussion about a cruiser or something else. I believe the comment overheard was in a conversation that went like: "Jane is still learning her job and has to learn how it works with the Advisory Committee."

Mr. Giorlandino, BOS Chair:

You couldn't call her directly with your disparaging remarks?

Mr. Boland, BOS member:

I didn't make any disparaging remarks.

Mr. Bachrach, Special Southborough Town Counsel:

We want to keep control of this meeting. Let's stick to today's issues.

Mr. Boland, BOS member:

I talk to various people daily in the Town Hall I was at Uno's, but not sure what time. Most people here at the meeting were there. I have a good memory for happenings at meetings, but not social functions. I don't believe anyone made comments about the Interim Chief.

Mr. Giorlandino, BOS Chair:

You came in after these alleged statements were made. They were made before you arrived.

Mr. Boland, BOS member:

Was I definitely not there? [Directed to Dawn Michanowicz, Asst. Town Clerk.]

Ms. Michanowicz, Asst. Southborough Town Clerk:

You were not.

Mr. Boland, BOS member:

I was there at the time. Interim Chief Moran, if I have ever said something that offended you, I apologize. I have been accused tonight of conspiracy. For this meeting, I was told the executive session on October 22, 2009 was for fact finding. All of a sudden it came to me that I hope we're not going to discipline people based on what we're learning. If we're not going to discipline, then I have no problem with the meeting.

Mr. Bachrach, Special Southborough Town Counsel:

By request, we're giving those requesting counsel the opportunity to do so. I don't know what your point is.

Mr. Boland, BOS member:

My point is I don't know why you [Mr. Giorlandino] don't want my response.

Mr. Giorlandino, BOS Chair:

We'll have another executive session then on October 29, 2009. I want an oral confirmation from everyone that you have all been notified that you have the right to counsel at the executive session scheduled for October 29, 2009 at 6:00 p.m. We will make the minutes available to all of you.

Mr. Bachrach, Special Southborough Town Counsel:

We will get them typed up as soon as possible and put them with executive session papers.

Mr. Giorlandino, BOS Chair:

You have all agreed and acknowledged sufficient notice for the meeting of October 29, 2009 at 6:00 p.m., right?

Ms. Hale?

Ms. Hale, Assistant Southborough Town Administrator:

Yes

Ms. Kitchen., Southborough Town Administrator:

Yes.

Ms. Koliass, Southborough Town Planner:

Yes.

Mr. Giorlandino, BOS Chair:

All parties in the room acknowledge that they have been given sufficient notice of the upcoming executive session meeting. I hereby make motion to continue the Executive Session until 6:00 p.m. on October 29, 2009.

Mrs. Phaneuf, BOS Vice Chair:

I second the motion and vote aye.

Mr. Boland, BOS member:

I vote aye.

Mr. Giorlandino, BOS Chair:

I vote aye. By a 3-0 vote, this executive session is continued to October 29, 2009 at 6:00 p.m.

Meeting Ended at 7:00 p.m.