

Brooks Free Library Board of Trustees

Wednesday, June 11, 2014 7:00 pm

Thornton Room, Brooks Free Library

739 Main St., Harwich MA 02645

Agenda

1. Call to Order/Attendance
2. Approval of Minutes of April 9, 2014
3. Public Comment
4. Reports:
 - A. Chairman
 - B. Library Director
 - C. Building Maintenance Committee
 - D. Liaison from Board of Selectman
 - E. Friends of Brooks Free Library
5. Correspondence:
6. Old Business:
7. New Business:
 - A. Trustee Authority for Administration and Operation of the Library
 - B. Potential Inclusion of Library in Community Services Division
 - C. Acceptance of Donations
 - D. Performance Evaluation of Library Director
 - E. Reorganization of the Board of Trustees
 - F. Signing Schedule for July-August-September
8. Trustees' Report
9. Upcoming Meeting(s)
 - A. Next Trustees meeting – Wed. July 9, 2014 at the Library, 7 pm
10. Adjournment

Authorized posting officer

Virginia Hewitt
Brooks Free Library

Posted by

Town Clerk's Office

Agenda submitted electronically to Town of Harwich for posting June 5 2014

If you are deaf or hard of hearing or are a person with a disability who requires an accommodation, contact the Library at 508-430-7562 or brooksfreelibrary@clamsnet.org.

Minutes
Brooks Free Library Board of Trustees

Wednesday April 9, 2014
Thornton Room, Brooks Free Library
739 Main Street, Harwich, MA 02645

Draft

Call to Order: The meeting was called to order by Chair Mary Warde at 7:05 P.M. Present were Mary Warde, Jeanne Wheeler, Ann Emerson, William Crowell, Kathleen Remillard, and Joan McCarty (7:15 P.M.). Also Present Virginia Hewitt, Library Director, Linda Cebula, Liaison from Board of Selectmen, and Town Administrator Christopher Clark.

Approval of Minutes: William Crowell made a motion to accept the March 12, 2014 minutes. Ann Emerson seconded and it carried by unanimous vote.

Mary Warde introduced Town Administrator, Christopher Clark to the Trustees. Mr. Clark announced that the newly hired Assistant Town Administrator, Julie E. Quintero-Schultz will start work on April 28th. There was a brief discussion of the Trustees' personnel authority, the Town Administrator's plan to reorganize Town departments, and the importance of the Library in the community. Jeanne Wheeler mentioned how important it has been to have Sean Libby facilitate maintenance issues for the Library.

Public Comment: None

Reports:

Chair: No specific report.

Library Director: Suzanne Martell has been selected for the Assistant Director and Phil Inman for the Shift Supervisor positions. Ginny shared pictures of the Little Hands Art and Science Programs. She also handed out a sheet comparing consumer and library prices for print and e-books. Jeremy Gingras has asked Ginny to be on an Branding Committee for the Chamber of Commerce.

Building and Maintenance: See Ginny's report. Jennie Wheeler reported we are still working on inverter issues and will check on doors and balcony repairs. Sean Libby will oversee Cape Light Compact. Jeannie is confident that Sean Libby has a handle on the library's maintenance issues.

Liaison from Board of Selectmen: Linda Cebula appreciates how the Trustees have worked with Sean Libby to address library maintenance issues.

Friends of Brooks Free Library: No Report.

Correspondence: Ginny reported the Estate of Thad Fial left a residual share of his estate to the library. The final account must be reviewed and a consent form signed. Joan McCarty made a

motion to authorize the Chair of the Board of Trustees to review the Final Accounting and upon satisfaction sign and return the consent form. Ann Emerson seconded the motion and it carried with one abstention (William Crowell).

Old Business: Mary Warde will e-mail the Town Moderator and cc the Town Administrator to confirm the Trustees will give a report at Town Meeting. The report will confirm that the Board of Trustees will pursue restoring Monday hours to the library.

Donations: Joan McCarty made a motion to accept \$1225.00 in donations to the library. Jeanne Wheeler seconded and it carried by unanimous vote.

Upcoming Meetings: Annual Town Meeting/Special Town Meeting, Monday, May 5, 2014 and next Trustees meeting, Wednesday May 14, 2014 at the Library, 7:00 P.M.

Adjournment: Jeanne Wheeler made a motion to adjourn. Joan McCarty seconded. The meeting adjourned at 8:55 P.M.

Respectfully submitted,
Kathleen Remillard
Secretary

**Brooks Free Library
Library Director's Report
April 7, 2014**

Administrative/Operations:

Personnel :

Lynne Grzaidei and Sarah Idman were selected for the Senior Library Technician hours in April. Both have Masters degrees in Library Science and years of professional experience and have been working here as Circulation Assistants. Lynne's scheduled 15-hours/week in Youth Services will be on Tuesday, Wednesday and Thursday afternoon/evenings, assisting the Youth Services Librarian and giving us much needed consistency. Sarah's 6-hour schedule will include alternating Fridays/ Saturdays.

We've interviewed several candidates for the 18-hour per week Admin/Reference Assistant but have not been able to move forward with the selection until the Trustees' appointment authority is confirmed by Town Counsel. The 2007 opinion from Town Counsel regarding the Trustees' personnel authority is included in your packets. Also attached is a Sept. 2013 opinion from Town Counsel that discusses issues related to the Town Administrator's appointment authority. The Town Administrator interprets the Sept. 2013 opinion as requiring appointments of the Library Trustees to be approved by the Town Administrator and confirmed by the Board of Selectmen. A clarifying opinion has been requested from Town Counsel and we are waiting for his reply. Trustee Chair Mary Warde has placed this subject on your agenda for discussion.

State Advisory Council on Libraries

In May I reviewed grant applications for the Mass. Board of Library Commissioners in the areas of Services to People with Disabilities and STEM/STEAM projects for children and youth. SACL sub-committees met on May 20 for review sessions, followed by a full SACL meeting to make funding recommendations for all grant categories. This year I complete my second 3-year term and am not eligible for re-appointment. I've really enjoyed serving on SACL, which has been invaluable for professional development because of the opportunity to work with MBLC staff and librarians from across Mass. and to learn about great projects at other libraries.

Chamber of Commerce Branding Committee

Last year the Chamber of Commerce received Town funding to begin an economic development initiative to "brand" the town. More than simply coming up with a logo and tag line, this project seeks to assess where we are now and help us (residents and businesses) decide where do we want to be in the future. What kinds of businesses and activities do we want and how can we attract them? Who visits Harwich now and why did they choose Harwich vs. neighboring towns or other off-Cape locations? What distinguishes us from our competitors? Based on where we want to be, this project will help us refine our message so that it's consistent and attracts people who are interested what Harwich has to offer. It will also help us identify and reach target audiences.

The Chamber contracted with a company called North Star for this project because of their successful community branding efforts. The Chamber established a Branding Committee in April with a mix of Chamber Board members and others from the community. I was happy to be included since participating in this effort is consistent with goals and objectives in our Long Range Plan regarding outreach to the business community and supporting economic development. Peggy Garrahan, owner of Cape Destinations and a Chamber Board member, and I are co-chairing the committee.

The project is now in the information gathering stage. The North Star team conducted a site visit from April 26 – May 1st. They received tours of the town, met with numerous stakeholders, conducted multiple focus groups and held a community information session. An online survey seeking opinions and feedback from full-time residents, seasonal residents, people who work in Harwich and visitors will be conducted over the next few weeks. Residents and visitors without computer access or who need assistance will be able to complete the survey at the Library and the Chamber Visitors Center.

COSTEP/ “Protecting Our Cultural Heritage”

In partnership with COSTEP Mass. and Harwich Emergency Management Director Lee Culver, we hosted a full-day risk assessment and hazard mitigation training “Preserving Our Cultural Heritage” for MEMA Region 2 on May 15. Attendees included a good mix of first responders, emergency managers and representatives of the cultural heritage community from Cape Cod and southeastern Mass. The workshop focused on assessing buildings and evaluating risks as the initial step in preparing for disasters and creating a disaster plan. It included site visits to Brooks Free Library and the Albro House.

Preservation Massachusetts/Historic District site visit

On May 19th, Trustee Building & Grounds Co-chair JoAnne Brown and I participated in the Historic District Historical Commission’s initial meeting and site visit for the Albro House, Brooks Academy Museum and the Historic District as a whole. The HDHC plans to obtain quotes for historic preservation assessments and other work and coordinate submission of funding requests to the Community Preservation Committee and other sources of funding.

Book Theft Update:

The County’s Victims Assistance Office informed us the parole hearing for the man convicted of stealing historic books from Brooks and other libraries two years ago was cancelled. He’s eligible for release at the completion of his sentence, possibly in July. Probation is expected to prohibit him from visiting libraries, museums and places with historic collections.

Summer Preparations

Asst. Director Suzanne Martell is recruiting volunteers to shelve books, issue new library cards and make phone calls for the busy summer season. She’s holding a Volunteer Orientation session on Monday June 23.

Youth Services Librarian Ann Carpenter has finalized the summer programs for children and youth. In addition to regular bi-weekly visits by 3rd grade classes, the end-of-the-year field trips by each class at the Elementary School have begun. Ann provides a tour, library instruction and book talks, and promotes the Summer Reading Program.

The Friends of Brooks Free Library are funding a large number of special programs and activities for the Summer Reading Program again this year and are also paying for the prizes for the reading portion of the program. The Summer Reading Program kicks off on June 26th with the movie "Finding Nemo" in Brooks Park. We'll have 2 other outdoor movies this summer – "Despicable Me 2" on July 17, and "The Lego Movie" on Aug. 7. The Friends of the Town Band will sell candy and snacks to raise funds needed to support their performances.

Staff Librarian Emily Milan is preparing a Summer Newsletter for the Library with information on children's activities, the Summer Reading program calendar and general information for all ages on Library services.

For several months we've been discussing options on ways to accommodate large summer crowds for our story-time on Friday mornings. We've been offering "Mother Goose on the Loose" for babies and toddlers for several years. It's a specific program that focuses on developing pre-literacy skills through rhymes, music, movement and repetition, and the benefit to youngsters' brain development builds over consistent weeks of attending the program. This year an especially large number of babies, toddlers and caregivers have been regularly attending and the MGOL sessions can be quite crowded. Adding to the 35-40+ children and an almost equal number of caregivers in the room would not result in a quality program for the youngsters. After evaluating options, we've decided Ann will continue to offer Mother Goose on the Loose to our year-round attendees, holding it in the meeting room. Another staff member will offer a traditional story-time in the Children's Room at the same time. That way we can continue the MGOL program that local babies and toddlers are benefit from without denying anyone else the opportunity to come to story-time.

Vision Impaired Technology Assistance at the Library (VITAL)

Assistive Technology Coordinator Carla Burke and I attended the May 21st meeting of the Chatham-Nauset Lions Club. Carla provided an update on the VITAL program and thanked the Club members who serve as volunteers. The Club continued their generous financial support, presenting us with a check for \$1500 to used for the VITAL program. This month Carla also provided technical advice and assistance to the Wellfleet Audubon Center who will be using a Victor Steam Reader to provide narration to make exhibits and or trails accessible and enjoyable to people with vision loss.

Evacuation Plan

Asst Director Suzanne Martell met with Deputy Fire Chief Kent Farrenkopf on May 22 to review the draft evacuation plan. He provided great advice and gave practical suggestions on improving it. Suzanne will work on finalizing the plan after her vacation.

Building Maintenance:

Lighting:

Periodic dimming/brightening and flickering of lights continues to occur, most recently on June 5. The electrician has not returned to replace contactor units in the main light panel, so Town Facilities Manager Sean Libby will locate another commercial electrician. In addition to replacing those components, some troubleshooting is needed to determine what additional problems exist since the problem only occurs in damp, wet weather. NStar replaced the neutral on the pole outside several months ago, so that was ruled out as a cause of the problem. The electrician was also supposed to replace the ballasts on a number of light fixtures of various kinds and add several wall sconces to two interior aisles where lighting is too dim. That work is still outstanding and unlikely to be completed this fiscal year.

Sean is working with Rise Engineering to find a CFL fixture that will fit and replace six fixtures Rise was unable to replace in Dec. 2012 when they replaced 220 older-model CFL fixtures. This work has already been paid for by Cape Light Compact.

Leak on the Mezzanine:

The leak between the Mezzanine and 2nd floor reoccurred June 5th. Hwy & Maint. was notified and tarps and trash cans were placed on the stairs to protect the carpet from the dripping water and peeling plaster.

Security alarm problems:

Seaside Alarms returned last week to troubleshoot and repair intermittent trouble signals that have been occurring since March. Last week the Seaside technician met with Facilities Manager Sean Libby. Several panic alarm lanyards have been replaced. If the problem isn't resolved, the next step will be to replace the second floor receiver.

Fire Alarm and Sprinkler System:

Following trouble signals last month, batteries were replaced in various system components. Simplex returned last week to replace the batteries for the main panel. We're still waiting for Simplex to schedule replacement of the fire alarm strobe light.

Main St. crosswalk

The move of the crosswalk is not finished. The crosswalk lines and curb cuts in front of the Library were removed in Dec., but the sign still indicates that crosswalk is there. New curb cuts and handicapped ramps were installed at the corner of Oak St and Main St at the same time, but the lines across the street have not yet been painted. I've been told the new cement ramps are going to be removed and replaced with brick. If true, the new crosswalk won't be completed for quite some time, creating a dangerous situation during the busy summer season when many people cross from Brooks Park to the Library. The crosswalk was being moved from a dangerous mid-block location to

the corner, but the situation is even more dangerous now with confusion on the part of pedestrians and motorists as to where the crosswalk is now.

Other pending repairs:

Facilities Manager Sean Libby is seeking additional quotes for work to repair the automated handicapped doors on the parking lot side. The initial quote received last fall was extremely expensive (\$7000).

I've contacted Jack Sullivan to schedule the annual painting project. It's been difficult to keep up with this preventive maintenance program with the amount budgeted, so we're fortunate Jack does the work at cost as a community service, enabling more of the building to be painted each year.

Financial:

FY15 Budget Request and Town Meeting Articles

The Library budget and the articles for carpet replacement and a CPC-funded assessment of the Brooks Block and Bank Building passed at Town Meeting.

FY14 Spending Through May 31st

AREA OF EXPENDITURE	Appropriated Amt	Spent	Remaining Balance	Percent Spent
Advertising	\$160.00	\$68.00	\$92.00	43%
Dues, Subs & Travel	\$2,100.00	\$2,091.18	\$8.82	100%
Electric	\$30,848.00	\$24,170.80	\$6,677.20	78%
Maintenance & Repair	\$40,000.00	\$36,321.36	\$3,678.64	91%
Library Supplies	\$11,270.00	\$9,758.11	\$1,511.89	87%
Educational Supplies	\$100,000.00	\$97,754.99	\$2,245.01	98%
Gas	\$13,000.00	\$13,111.83	-\$111.83	101%
Office Supplies	\$4,050.00	\$4,010.67	\$39.33	99%
Professional & Tech	\$40,147.00	\$40,147.00	\$0.00	100%
Water	\$957.00	\$631.44	\$325.56	66%
Total Library Expenses	\$242,532.00	\$228,065.38	\$14,466.62	94%
Wages & Salaries	\$449,663.96	\$391,110.20	\$58,553.76	87%
TOTAL	\$692,195.96	\$619,175.58	\$73,020.38	89%

Respectfully submitted,

Virginia A. Hewitt

Reference Librarian's Report
June 2014

The evening bookgroup had it's final meeting of this fiscal year last night and I am happy to say we had 135 people at the group this year (last year we had a total of 133). An average of 11 people show up at each meeting which seems to be a very good size for discussion. Many new members came this year and the members don't seem to mind that the group is now led by myself, Emily Milan, Lee Kelley and/or Joanne Clingan. I carefully prepare a list of possible titles each year and in December we vote on titles for the entire next year. Many of our 'members' have been attending this group for more than 10 years but not all of them come every month so it's nice that new people have been showing up almost every month as well.

As of June 2, 2014 all of our Inter-Library Loan requests (requests for any item not in the CLAMS system) are now going through the MLS system and are not being handled by the folks at the Thomas Crane Library in Quincy anymore. We knew this change was coming but it came a month earlier than expected with only about two weeks notice given. This means that myself along with Gordon Benoit, Pam Paine, Joanne Clingan and Lee Kelley all have to learn a totally new system for requesting and updating our ILL items. The new system is much more complex than the old system but has more functionality. I had a brief training in this new system at the last Cape-wide Reference Roundtable meeting (I volunteered to contact the person in charge of the new system and I was able to set up a live webinar training) but for the most part we are going to have to learn the details as we go. Our volume of ILL requests are still up significantly since the loss of the Virtual Catalog so we are all very busy at the reference desk right now learning the new system and processing requests.

Respectfully submitted,

Jennifer Pickett

June 2014 Technology Report

The Book-a-Librarian program continues to grow. In the last 45 days, we have assisted 10 individuals covering a variety of topics. The process of in-take and booking appointments has been streamlined using the library website and our access to Google drive. In some cases, we have been able to assist the patrons over the phone or via email. In May, we held a Kindle 101 workshop which was well attended (16). Feedback after the program was very positive and only one attendee noted the continued need for one-on-one training after the workshop. For future workshops, we will require pre-registration and limit the number of attendees in order to provide more individualized attention. We plan on hosting another Kindle 101 workshop the last Saturday in May and an iPad workshop in June.

In April and May, we continued implementing the technology replacement plan when we updated the two catalog computers on the first floor, as well as two staff computers. The catalogs were updated by repurposing older staff computers, previously used at the Circulation desk. Because Windows is no longer supporting their XP operating system, staff computers have been replaced by newer Windows 7 machines. The next step in the technology replacement plan will include updating the Research computer in Reference and several of the computers in the Homework Center.

On June 11th I will be meeting with Paula Hersey of Cape Cod Community Media Center to finalize a Public Service Announcement we have been working on together. The PSA will highlight access to technology as one of Brooks Free Library's primary directives. It is my hope that this type of collaboration with Cape Cod Community Media will continue as we are slotted to make a new PSA each quarter. The PSA will air on Channel 99 and we will be given a digital file that can be used in our social media and internet based outreach campaigns.

Respectfully submitted,
Emily Milan
Staff Librarian

From: James Merriam [Add to Address Book](#)
To: 'Virginia Hewitt'
Date: Wednesday, October 31, 2007 6:24:08 PM
Subject: FW: Brook Free Library

Ginny, here's Town Counsel's opinion.

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

From: John Giorgio [<mailto:JGiorgio@k-plaw.com>]
Sent: Wednesday, October 31, 2007 5:44 PM
To: jmerriam@town.harwich.ma.us
Cc: Anne C. Rosenberg; Michele Randazzo
Subject: Brook Free Library

Dear Jim;

At the request of the Trustees of the Brooks Free Library, you have asked for an opinion regarding the scope of the authority of the Board of Trustees. Specifically, you have asked me to delineate the extent of authority of the Trustees regarding library personnel, including hiring, termination, discipline, and promotion.

In my opinion the Library Trustees have authority for the hiring of all professional staff at the Brooks Free Library by virtue of Section 6-7-2 of the Town Charter which provides that the Board of Library Trustees "shall be responsible for the administration and operation of the Brooks Free Library, including appointment of professional library staff, . . . and the promulgation of library rules and regulations." Furthermore, Section 11 of G.L. c. 78 provides that the Board of Trustees of a town's public library "shall have the custody and management of the library . . ." As such, it is my opinion that the Board of Library Trustees is the appointing authority for the professional staff of the library and may make all decisions pertaining to hiring, termination, discipline and promotion. It is my further opinion that the hiring authority of the Trustees would not extend to non-professional staff, such as custodial personnel, assigned to maintenance of the library building.

With that said, however, to the extent that any of the library personnel are covered by the Town's Personnel By-laws, any employment terms or conditions and any procedural safeguards outlined in those By-laws will apply to library personnel and must be followed by the Board of Trustees. You have advised me that the Town Administrator is currently in the process of centralizing personnel information and creating consistent personnel action forms for Town-wide use and that you have undertaken such tasks pursuant to Section 4-3-2 of the Town Charter, which grants responsibility for the day-to-day administration of the personnel system and by-law to the Town Administrator in the absence of a personnel director. Under these provisions, in my opinion, the Library Trustees are subject to any town-wide personnel policies adopted by the Town Administrator pursuant to the Charter.

Additionally, to the extent that any library personnel are members of the Harwich Employees' Association or any other local union, the contractual provisions of any collective bargaining agreement will apply. In this regard, Section 4-3-2(m) of the Charter provides that the Town Administrator shall "[n]egotiate collective bargaining contracts on behalf of the board of selectmen, unless the board shall have designated another negotiator." As such, the Town Administrator is responsible for negotiating on behalf of the Library Trustees when it is time to renegotiate with the Harwich Employees' Association or any other pertinent union.

If you have any questions with regards to these issues, please do not hesitate to contact me. Furthermore, if you would like me to formalize this opinion, please let me know.

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Brooks Free Library
Board of Trustees
739 Main St., Harwich, MA 02645
Phone: (508) 430-7562

James Merriam,
Town Administrator
Town of Harwich
732 Main St.
Harwich MA 02645

October 17, 2007

Dear Mr. Merriam:

At our meeting on October, 10, 2007, the Board voted that the following question be asked of Town Counsel:

“Do the Trustees of the Brooks Free Library have all authority regarding all library personnel, including hiring, termination, discipline, promotion, etc.?”

A determination from Town Counsel of exactly what the Board’s personnel authority is will eliminate any confusion or misunderstandings as the Town formalizes personnel policies and centralizes the personnel function. As required by the Town’s policy on access to Town Counsel, we are forwarding this request to you for your approval and submission to Town Counsel.

Sincerely,

Robert Prew
Vice Chairman



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September 18, 2013

John W. Giorgio
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BY FACSIMILE - (508)432-5039

Mr. Robert C. Lawton, Jr.
Acting Town Administrator
Harwich Town Hall
732 Main Street
Harwich, MA 02645

Re: Town Charter – Appointment Authority

Dear Mr. Lawton:

You have requested an opinion as to the application of the Town Charter to the scope of authority of the Board of Selectmen and Town Administrator to make certain appointments. In particular, you note apparent inconsistencies or “gaps” in the Charter, such as the absence of definitions for certain terms that can render the proper appointing authority unclear. I address in detail, below, the issues you have raised.

1. Division Directors and Department Heads

A. Board of Selectmen and Town Administrator - Generally

Your first question concerns the appointing authority for the Town officers listed in Section 3-6-1. Chapter 3 of the Town Charter is entitled, “Board of Selectmen”. Section 3-6, entitled “Powers of Appointment” includes two sections, the first dealing with appointment of certain Town officers, and the second dealing with the appointment of Town committees. Section 3-6-1 provides, in its entirety:

Except as may otherwise be provided by General Laws, this charter, or the personnel by-law, the board of selectmen shall have the power to appoint and remove: a) a town administrator as provided in chapter 4; b) a town counsel; c) a town accountant; d) a police chief; e) a fire chief; f) 3 assessors for overlapping 3-year terms; g) 3 members of a board of registrars of voters for overlapping 3-year terms; h) election officers; and i) 1 or more constables. [emphasis supplied]

Thus, the Charter specifically authorizes the Board of Selectmen to appoint the named officers. However, the underlined text, above, suggests that there may be other provisions applicable to appointment of such officers in either the General Laws, Charter or Personnel By-laws.

KOPELMAN AND PAIGE, P.C.

Mr. Robert C. Lawton, Jr.
Acting Town Administrator
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Chapter 4 of the Charter addresses the authority of the Town Administrator and in Section 4-4-1 provides that the Town Administrator appoints "division directors" and "department heads". Section 5-1-1 of the Charter provides that the Town government shall consist of "2 or more divisions and several departments", and Section 5-1-2 states that the "divisions shall include: a division of finance, a division of highways and maintenance, and any other divisions established under clause 4-5-1."

Chapter 5 of the Charter addresses the Town's administrative organization. Section 5-4-1 establishes a Police Department, while Section 5-5-1 establishes a Fire Department. Thus, there appears to be an inconsistency, in that while the Police and Fire Chiefs are department heads, which, arguably, would be appointed by the Town Administrator under Section 4-4-1 of the Charter, Section 3-6-1 provides that the Board of Selectmen shall make such appointments.

Resolution of this apparent inconsistency is found in the rules of statutory construction. One such rule provides that a single piece of legislation, whether adopted at the state or local level, must be interpreted so as to give meaning to all provisions as a holistic whole, and to give meaning to all of its words. See Com. v. Woods Hole, Martha's Vineyard & Nantucket S. S. Auth., 352 Mass. 617, 618 (1967) (stating, "(n)one of the words of a statute is to be regarded as superfluous, but each is to be given its ordinary meaning without overemphasizing its effect upon the other terms appearing in the statute, so that the enactment considered as a whole shall constitute a consistent and harmonious statutory provision capable of effectuating the presumed intention of the Legislature.") (Internal citations omitted). Another rule stands for the proposition that a legislative provision should not be interpreted so as to create an "absurd result". Green v. Board of Appeal of Norwood, 358 Mass. 253, 258 (1970). Yet another rule provides that a specific legislative provision supersedes a more general provision in the same legislation. Jaworski v. Earth Removal Bd of Millville, 35 Mass.App.Ct. 795, 799 (1994).

Applying these concepts to the current matter, two conclusions result. First, read as a holistic whole, the Charter transfers from the Board of Selectmen to the Town Administrator a portion of the Board's far reaching authority under state law, including default appointment authority for a significant number of Town officers and employees; however, the Charter reserves to the Board of Selectmen appointment authority for certain key officers and for multiple member bodies. Second, if one were to interpret Section 4-4-1 as taking precedence over Section 3-6-1, Section 3-6-1 would have no meaning, creating an absurd result. Therefore, in order to give meaning to the Charter's division of appointment authority, and recognizing that Section 3-6-1 is more specific than the default provisions of Section 4-4-1, in my opinion, the Board of Selectmen is responsible for appointing those specific officers listed in Section 3-6-1, regardless of whether such persons are characterized as "department heads" or "division directors".

KOPELMAN AND PAIGE, P.C.

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Acting Town Administrator
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B. Other Division Directors and Department Heads

As discussed above, aside from the specific officers appointed by the Board of Selectmen pursuant to the provisions of Section 3-6-1, the Town Administrator appoints division directors and department heads. For example, the Division of Highways and Maintenance is created by Section 5-3-1 of the Town Charter and the position of Director of Highways and Maintenance is not included in Section 3-6-1. Where Section 4-4-1 provides that the Town Administrator appoints "division directors", in my opinion, the Town Administrator is the appointing authority for the Director of the Division of Highways and Maintenance, subject to the approval of at least three votes of the Board of Selectmen (see further discussion of this topic below). Similarly, although the Board of Selectmen appoints the members of the Planning Board under the provisions of Section 3-6-2, the Town Planner is properly characterized as a department head and would therefore be appointed by the Town Administrator under the provisions of Section 4-4-1, subject to the Board of Selectmen's approval authority. In fact, Section 5-6-1 specifically provides that the Planning Department shall be established under the Town Planner, and that the Town Planner shall be appointed by the Town Administrator under the provisions of Section 4-4-1.

C. Finance Director and Town Accountant

It is my understanding that the positions of Finance Director and Town Accountant have been combined, although no change has been made to the Charter with respect to the combined position. This creates a question under the Charter, whereas the Board of Selectmen appoints the Town Accountant pursuant to the provisions of Section 3-6-1, and the Town Administrator appoints the Finance Director as a "division director" under Section 4-4-1. This inconsistency must be resolved based upon the practical realities of such appointments. For that reason, while the Finance Director/Town Accountant appointment requires a "joint appointment", where the Town Administrator's appointment of the Finance Director is subject to the approval of the Board of Selectmen, the practical effect is that the Board of Selectmen has final authority over the appointment for this combined position.

2. Board of Selectmen Approval of Town Administrator Appointments

You have also requested guidance concerning the authority of the Board of Selectmen with respect to appointments and removals made by the Town Administrator under Sections 4-4-1 and 4-4-2. Section 4-4-1 provides that appointments or removals of "division directors, department heads and an assistant town administrator" require the approval of at least three votes of the Board of Selectmen.

In contrast, however, all other appointments made by the Town Administrator, including full, part-time and seasonal employees, employees of appointed town agencies and inspectors, as well as

KOPELMAN AND PAIGE, P.C.

Mr. Robert C. Lawton, Jr.
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September 18, 2013
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removal of such employees, are treated differently. The relevant portion of Section 4-4-2 of the Charter provides:

Any such appointments or removals may be overturned only by the affirmative vote of at least 4 selectmen taken within 14 days of the town administrator's action in initiating such appointment or removal.

Thus, the language concerning the higher quantum of vote and deadline for action is found only in Section 4-4-2. Again, one must look to rules of statutory construction to determine the applicability of this provision.

In particular, the policy reason for the different treatment of the authority of the Town Administrator with respect to appointment of non-management level appointees must be examined. See, e.g. Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp., 418 Mass. 737, 744-745 (1994) (stating, "The general and familiar rule is that a statute must be . . . considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated."). As noted above, the Town Charter transferred certain administrative/operational authority from the Board of Selectmen to the Town Administrator. Imposition of a higher standard for overturning appointments and removals of employees below management level reinforces that the Administrator is entrusted with managing day to day operations, and that the Board can interfere with such authority only if it acts quickly, and by a significant majority. Further, "[W]hen the Legislature has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present . . ." Commonwealth v. Galvin, 388 Mass. 326, 330 (1983). In other words, "The expression of one thing is an implied exclusion of other things omitted from the statute." Glorioso v. Retirement Board of Wellesley, 401 Mass. 648, 650 (1988). Where the language imposing higher standards for overturning appointments made by the Town Administrator is found only in Section 4-4-2, it cannot, in my opinion, be implied in Section 4-4-1.

For these reasons, in my opinion, the Board is not restricted to a 14-day period to review appointments or removals made by the Town Administrator under Section 4-4-1, and must approve the same by the affirmative vote of no less than three Selectmen. While there may be strong policy reasons to support acting on such appointments within a relatively brief time frame, such action is not mandated. In contrast, Section 4-4-2 establishes a presumption that action taken thereunder to appoint or remove is effective unless the Board acts within 14 days of the action, by a vote of no less than four Selectman to disapprove the same.

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3. Police Department

Questions have also been raised as to the appointing authority for the Police Chief and police officers. I understand that prior to the adoption of the Charter, the Town had accepted G.L. c.41, §97 (the so-called "strong chief" law), which states that Police Chief and Police Officers are appointed by the Board of Selectmen. As discussed above, the provisions of Section 3-6-1 provides that the Board of Selectmen appoints the Police Chief. In addition, Section 5-4-1 of the Charter states, "the board of selectmen shall appoint the chief of police and other officers that they consider necessary, as provided by section 97A of chapter 41 of the General Laws." [Emphasis added].

As discussed above, in my opinion, rules of statutory construction require the conclusion that the Board of Selectmen is the appointing authority for both the Police Chief and police officers. Section 5-4-1 of the Charter specifically establishes the Board of Selectmen as the appointing authority for police officers, and, as discussed above, would supersede the more general provisions of Section 4-4-2. In fact, if the Charter were interpreted differently, the above-quoted line of Section 5-4-1 would have no meaning, a result disfavored by the courts.

Be aware that while the Board's authority to make such appointments arises from the Charter rather than from the so-called "strong chief" provision of the General Laws, the end result is the same. In Atkinson v. Town of Ipswich, 34 Mass. App. Ct. 663 (1993), the Massachusetts Appeals Court ruled that where the town had adopted a special act charter, the charter provisions prevailed over previously accepted General Laws, including the so-called "strong" Fire Chief statute at G.L. c.48, §42. This case supports the conclusion reached herein, and would be controlling, in my opinion.

4. Fire Department

Similar questions have been raised with respect to appointment of the Fire Chief and fire fighters. As noted above, Section 3-6-1 provides that the Board of Selectmen appoints the Fire Chief. Section 5-5-1 establishes the Fire Department, but does not specify that appointments of fire fighters shall be made by the Board of Selectmen. In the absence of such language, in my opinion, while the Board of Selectmen is the appointing authority for the Fire Chief, fire fighters, which are, as applicable, full or part-time employees of the Town, are appointed by the Town Administrator under the provisions of Section 4-4-2 of the Charter.

In summary, it is my opinion that under the current Charter: (1) the officers listed in Section 3-6-1 are appointed by the Board of Selectmen; (2) as long as the Town Accountant/Finance Director remains a joint position, the position is filled by a joint appointment of the Board and the Town Administrator in accordance with the provisions of Section 3-6-1 and 4-4-1; (3) the Director of Public Works and Town Planner are appointed by the Town Administrator subject to the approval

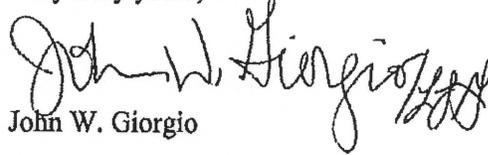
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of the Board of Selectmen under the provisions of Section 4-4-1; (4) the Police Chief and all police officers are appointed by the Board of Selectmen under the provisions of Sections 3-6-1 and 5-4-1; and (5) the Fire Chief is appointed by the Board of Selectmen but fire fighters are appointed by the Town Administrator in accordance with the provisions of Sections 3-6-1 and 4-4-2.

If you have further questions in this regard, please feel free to contact me.

Very truly yours,


John W. Giorgio