



Braintree Town Council Committee on Ordinance & Rules

One JFK Memorial Drive
Braintree, Massachusetts 02184

MEMBERS

David Ringius, Jr, Chairman
Steven Sciascia, Vice- Chairman
Julia Flaherty, Member
Lawrence Mackin, Jr, Member

March 30, 2021 MINUTES

A meeting of the Committee on Ordinance & Rules was held Remote via Zoom Webinar on Tuesday, March 30, 2021 beginning at 6:00pm.

Chairman Ringius was in the Chair.
Clerk of the Council, Susan Cimino conducted the roll call.
All votes were conducted by Roll Call Vote.

Present: David Ringius, Jr, Chairman
Steven Sciascia, Vice-Chairman
Julia Flaherty, Member
Lawrence Mackin, Jr, Member
Also Present: Crystal Huff, Assistant Town Solicitor

Approval of Minutes

- September 28, 2020
A Motion was made by Councilor Sciascia approve Minutes of September 28, 2020
Motion: by Councilor Sciascia approve Minutes of September 28, 2020
Second: by Councilor Flaherty
Roll Call Vote: For (4 – Flaherty, Mackin, Ringius, Sciascia), Against (0), Absent (0), Abstain (0)
- September 30, 2020
A Motion was made by Councilor Sciascia approve Minutes of September 30, 2020
Motion: by Councilor Sciascia approve Minutes of September 30, 2020
Second: by Councilor Flaherty
Roll Call Vote: For (4 – Flaherty, Mackin, Ringius, Sciascia), Against (0), Absent (0), Abstain (0)
- October 6, 2020
A Motion was made by Councilor Sciascia approve Minutes of October 6, 2020
Motion: by Councilor Sciascia approve Minutes of October 6, 2020
Second: by Councilor Flaherty
Roll Call Vote: For (4 – Flaherty, Mackin, Ringius, Sciascia), Against (0), Absent (0), Abstain (0)

Old Business

- None

New Business

- **054 20 Councilor Mackin: Motion to Establish an Independent Peterson Pool Oversight Authority/Committee or take up any action relative thereto**

Chairman Ringius stated Captain Petersen bequeathed money from his estate to build a pool for the residents of Braintree. A judgement in January 2012 that the construction of the pool was to be overseen by the Mayor.

Chairman Ringius stated we still do not have a pool. This brings up a lot of concerns from Town Council and residents of the Town. Councilor Mackin has taken this on to see if the Town Council can aid in moving this forward.

Councilor Mackin stated the big issue is we don't have a pool. In October 2014 the Mayor's office started their Request for Proposal. At this point over \$1 million has been spent and still no construction has been started. This is not an acceptable level of performance. This is the reason I think we need an Oversight Committee to help this move forward and get some answers. Councilor Mackin stated I submitted an Amended version of the Oversight Committee that incorporated the feedback I received from Town Solicitor Huff. What she stated could not be done was taken out. The Amended version has two Town Council representatives and 4 residents on this committee. This is to provide an assessment on things going forward and provide next steps. It is for oversight. This is also to review past action. Town Council has the right to investigate past action of town employees.

Councilor Mackin's Amended Version 3/30/2021:

Motion to Establish an Independent Peterson Pool Oversight Authority/Committee

1. *Establish/create an independent 5-member Peterson Pool Oversight Authority/Committee*
 - a. *Two (2) representatives from town council. One of the Council Representatives will be Councilor Flaherty as the project resides in District 1. The other Council Representative will be Councilor Mackin as the creator of this committee.*
 - b. *Three (3) Braintree residents. Residents shall be chosen by the council representatives on the committee.*
2. *Any individual who was a member of the Braintree Town Government or a town employee while the relationship with Developer, David Boucher was active, April of 2015 – August of 2019 is excluded from serving on this authority/committee. This is to avoid any potential conflict of interest (see #3).*
3. *Part of this authority/committee's responsibilities will be reviewing past actions to establish a baseline and accountability.*
4. *To fulfill its responsibilities and due-diligence this authority/committee holds the full authority to call before it any and all current and past parties it deems essential to the process; the Committee is authorized to view and obtain all documents it requests.*

5. *All meetings will be carried by BCAM for purposes of transparency and official and legal record (if BCAM agrees). Meeting minutes shall be taken for each meeting as well.*
6. *This authority/committee shall meet as often as needed to fulfill its duties.*
7. *Within 45 days of its first meeting this authority/committee shall provide a summary "Next Steps" plan with tentative milestones, including a tentative end dates to report progress.*

Included Responsibilities of the Committee

- *Providing an independent assessment of milestones.*
- *Providing an independent assessment of scheduling.*
- *Providing an independent assessment any payments made. This cover payments coming out of the Peterson Trust or from the Town of Braintree.*
- *Providing independent review of contractual changes.*

This authority/committee will have the authority to examine all activities, communications, etc. that transpired between the Town of Braintree, David Boucher, 5 Capital Management, and BSC Consultants. The objective here is to establish accountability for the mismanagement of \$1 million.

Also examining if any town officials exhibited negligence in their duties which allowed this to occur. This includes questions such as:

- *Why wasn't a proper background check done on BSC? Did we look to see if they had completed any projects like this before? (they had not)*
- *Why wasn't it verified that BSC could secure financing PRIOR to the contract being signed? (not 4 years afterwards, after we paid them \$1 million)*
- *Why was BSC Partners not required to create a Performance Bond for the project, as stated in the RFP?*
- *What was the business justification for a contract that was written to create a situation where for 3 years payments of \$1.5 million would be made but no construction had to be performed?*
 - *How did this decision benefit the project? (As opposed to a project like the Thayer sports complex which was finished less than two years after signing a contract).*
- *What was the justification for signing a release of liability for BSC and allowing them to walk away with \$1 million dollars and no consequences?*
 - *How were these actions in the best interests in the town of Braintree?*

Town Solicitor Huff stated she would like to have reasonable time to review the Amended version which was just received this afternoon.

Councilor Flaherty stated it is worth having answers to the questions about the pool.

Councilor Flaherty mentioned #4. Can we require people to come before us?

Town Solicitor Huff stated you as Town Council can request someone come before you but I would need to do more research whether you can compel someone to come before you.

Councilor Flaherty asked if BCAM was asked if they would record/carry these meetings live?

This has not been discussed with BCAM at this time.

Councilor Flaherty asked about responsibilities of the committee including milestones and scheduling. I feel the committee will need a very clear mandate.
Councilor Mackin stated I am open to amendments. This would be to project the future goals.
Councilor Flaherty stated we need to differentiate between past and present. The language needs to be cleaned up some.

Councilor Flaherty stated when an RFP is put out there is supposed to be an evaluation team. I have asked for documentation on this review process. I have not received it.

Councilor Flaherty read *“What was the justification for signing a release of liability for BSC and allowing them to walk away with \$1 million dollars and no consequences?”*

Is there any recourse in us laying claim on this money is something we should look into.
If the claim that is in the Attorney General’s office is founded then the Town may have to put money back into the Petersen pool fund. If that is the case we need to plan appropriately. I would also like to see an update to the report from our Town Auditor on the Petersen Trust.

Councilor Sciascia asked about how accurate wording needs to be in the rights of this committee.
Solicitor Huff stated Town Council has rights to request documentation though certain things may be privileged.

Councilor Sciascia stated what is unclear is that this is an independent committee not necessarily a Town Council committee.
Solicitor Huff stated this is an extension of the Town Council and for pursuant to the Town Council per Charter. I would say this would flow from your authority as the Town Council.

Councilor Sciascia stated I like the separate responsibilities of the committee. I also think re-wording of: *“The objective here is to establish accountability for the **mismanagement** of \$1 million...”*
*“Also examining if any town officials exhibited **negligence** in their duties which allowed this to occur. This includes questions such as:...”* These types of statements make it seem that this committee is not independent.

Chairman Ringius stated on your proposal what is the actual Motion?
I like very specific wording. A Motion should do a specific thing. It should not have opinions in it.

Councilor Mackin stated section 1 would be the “Motion” for an establishment of this committee with 5 members...

Motion to Establish an Independent Peterson Pool Oversight Authority/Committee

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 - b. *Three (3) Braintree residents. Residents shall be chosen by the council representatives on the committee.*

Chairman Ringius stated on your proposal the other language should be after the committee was formed and their decision on how they pursue this oversight committee.

Councilor Sciascia stated a concern with only 2 Council representatives who will have to choose the residents. There is no tie breaker.

Councilor Flaherty stated we could have the President of the Town Council add the residents.

Chairman Ringius stated I have concern that two Councilors are choosing which residents are serving on a committee with them. I think there should be another way - if this was my proposal. We do not approve something with a question mark. The Motion should be clean language.

Councilor Flaherty stated we should make a clear Motion and a clear understanding of how the 3 resident's will be selected.

A Motion was made by Councilor Mackin to TABLE item 054 20 to the next O&R meeting (April 13, 2021)

Motion: by Councilor Mackin to TABLE item 054 20 to the next O&R meeting

Second: by Councilor Flaherty

Roll Call Vote: For (4 – Flaherty, Mackin, Ringius, Sciascia), Against (0), Absent (0), Abstain (0)

It was unanimously voted by Roll Call to adjourn the meeting at 7:07 p.m.

Respectfully submitted,
Susan M. Cimino
Clerk of the Council

Documents provided for Meeting

- Minutes of September 28, 2020
- Minutes of September 30, 2020
- Minutes of October 6, 2020
- 054 20 Councilor Mackin: Motion to Establish an Independent Peterson Pool Oversight Authority/Committee or take up any action relative thereto
- 054 20 Councilor Mackin: Amended - Motion to Establish an Independent Peterson Pool Oversight Authority/Committee or take up any action relative thereto
- 054 20 Memo - Legal Opinion from Crystal Huff, Town Solicitor