TOWN OF EAST KINGSTON  
BOARD OF SELECTMEN MINUTES  
Thursday, January 16, 2020 2:30 PM Employee Meeting

Present: Richard Poelaert, Chairman and Robert Nigrello. Absent was Justin Lyons.

Others Present: Paul Deschaine, Community Partners, LLC; Becky Merrow, Town Administrator; John Rich of McLane Middleton Law Office; Scott Eagen of Plodzik and Sanderson Auditors.

Richard Poelaert called the meeting to order at 2:40 PM. Agenda attached.

**Short Term Disability Enrollment.** A brief discussion of the new short-term disability insurance benefit took place. The benefit will be offered to employees 100% free of charge to the employee. The Town will cover the premium 100%. Employees need to complete the paperwork as soon as possible so the policy can go into effect for February 1, 2020. Claims can be filed after 1 day for injury and 8 days for illness. Later in the year the Town hopes to have HealthTrust representatives here to explain all employee benefits.

**Employee Meeting.** Paul Deschaine provide a brief overview of “how we got here.” Paul started as a consultant in July. Becky was hired soon after that. Shortly after Paul was hired as a consultant, an employee brought to Paul’s attention an issue with his W-2 for 2018. The employee believed there was a problem with the coding on the W-2 as well as the amounts reported. Having not been involved in the preparation of those W-2’s, Paul approached the auditors. Initially, there were no concerns however, upon closer examination, it did appear there were irregularities. The auditors explained that the Town contracts with Plodzik for a “risk-based audit” which does not focus on payroll matters. Payroll is not an area that is of great risk for risk-based errors or in the worst case, malfeasance or misfeasance. Nothing in this case shows malfeasance or misfeasance or any of that. However, just to be overly cautious, Plodzik brought in Scott Egan, a forensic auditor who was not a part of the original audit team.

At this same time, there was an inquiry into the NH Retirement System and weather the Town was a pre-tax reporting entity or a post-tax reporting entity. Part of this was that the Town had recently outsourced payroll duties to All-N-One payroll company. It appears that the Town had always been a post-tax town but may have been reporting wages on a pre-tax basis. Pre-tax reporting is something a town can elect to do but no action had been taken to date in that regard by the Selectmen as the Governing Body. Pre-tax reporting would mean that part of your income was sheltered from IRS taxation if the Town had elected to participate in NHRS on a pre-tax basis.

Additionally on the NHRS IRS tax treatment, it was discovered in the case of police officers who had worked “details” and received payment for those special details that this income may not have been properly reported to the IRS. It may also be that this income was no longer eligible to be reported as income to the NH Retirement System.

With that said, this expanded what the auditors had to look into and what Scott had to deconstruct. Scott’s work spanned the July to October time period. As the 2020 budget was in production, the Town received the 2020 health insurance premiums and a third issue then
appeared. We discovered a discrepancy in that those who participated in the 2-person and family plan, their contributions were going down despite the fact there was an increase in the total premium over the cost of 2019. As we discovered, somehow in the calculation, there was an error. The policy said that the employee pays 20% of the difference in the cost between either the 2 person or family plan and the base single person plan. The policy was that after you do this calculation, then you do the 80-20 split. This was not how the calculation was being applied. It appears the 80-20 split was being applied to the full premium amount resulting in the employees on the 2-person and family plan paying too much. These re-calculations had to be performed based on the information available which went back to 2015. This information was then given to Scott at Plodzik.

After all this information was processed, it was unknown how to proceed with the IRS. The Town obtained special counsel at this time to deal with the IRS reporting. The firm of McLane Middleton was chosen because they have knowledge and experience dealing with the IRS and similar reporting errors.

Today's meeting is a culmination of all of that work. 2016, 2017 and 2018 corrected W-2's will be distributed by Scott at Plodzik today. 2019 W-2's will be distributed as soon as possible but require further discussion with Fran at All-N-1 Payroll. Checks have also been cut for the over withholding on health care if that applies to your particular situation. If you have had a single plan, you will not receive a check because the Town pays 100% of the premium and there could not be an error in withholding.

Bob Nigrello then stated that the Town brought in assistance and professionals to help correct the situation because we certainly could not do it ourselves. John Rich at McLane then said that their firm spends a lot of time helping employers, private or governmental, fix IRS reporting errors. The tax code, withholding rules and payroll systems are so complicated that when issues like this occur, companies often need help. Its something that shouldn't have happened but it did and the Town did the right thing in seeking out people to assist in correcting any errors. People often hear about amnesty programs that help people when there is an IRS issue. Unfortunately, due to the nature of the errors in East Kingston, there is nothing the Town can do to assist the employees with paying taxes due. This is not one of the types of errors that makes an employee eligible for amnesty. The Town has agreed to offer some financial assistance with re-filing your taxes.

Paul then stated that there were subsequent questions—Had the Town reported wages erroneously to the IRS? Oddly enough, form 941, which is a form the Town uses to report wages to the IRS, all of those forms were correct as filed. It appears that only the W-2’s were incorrect. Scott said, “I am the person who looked into the mechanics of why the software reported erroneously.” The police detail wages for IRS withholding were coded incorrectly in setup. There is an area where the person setting up the software indicates whether these earnings are subject to taxation. For these types of wages, it was not coded to going to your box 1 federal withholding. It was reported correctly on the Town’s expense report in the financial statements and it was properly reported on the Town’s quarterly tax reports on the 941. It appears that detail wages were not reported in your box 1 federal withholding.

Scott went on to say, the NHRS wages were reported on the W-2 in box 12 with code E. Quickbooks treated this income as pre-tax and not as a 403b plan, Quickbooks did not have a profile for a pension plan—this is too complex for Quickbooks payroll module to handle.
The effect of this is that employees may have underreported income earned to the IRS. When the corrected W-2’s are received by the IRS, computer generated notices will go out indicating the employee under reported wages and that additional taxes are due and owed. It is also possible, if not likely, that the IRS will want penalties and interest. The IRS may waive interest and penalties if the employee can prove that the documents were prepared on a “reasonable cause basis” and through no fault of the employee. This may cause the IRS to waive interest and penalties. John Rich assisted the Town in preparing the reasonable cause statement to help the employees in IRS reporting. What happens next? This is a bit of a gray area. We cannot predict what the IRS may want to do. What we recommend is that employees proactively amend their tax return, to account for that increase in income and to pay the additional income tax due. The Town cannot tell you what to do, but the Town did put together the reasonable cause statement for employees to include with any amended tax return. The statement just says the facts—It wasn’t my fault.

Paul then added that the Selectmen, in anticipating that many of the employees would choose to file an amended tax return, they would offer financial assistance to the employees up to $500 reimbursement. To receive this, please just contact Paul or Becky with a receipt from your tax preparer indicating it was the amended return 2016, 2017 or 2018 tax form.

Backing up a bit, Paul explained that the health insurance money, the over withholding, is part of the 2019 W-2 reporting. Even though it was withheld from you in prior years going back as far as 2015, you didn’t receive the benefit of that compensation until 2019. Also, in recognition that these funds were with held from you going back to 2015, there is an added 10% interest payment to the employees.

The primary focus and purpose of this meeting is to try to answer any questions employees may have. Chief LePage asked a question about the changes you would see in the corrected W-2 and Scott answered that the primary difference you will notice is a lower number in the original box 1 and a higher number in the corrected box 1 wage box.

Discussion of how wages were reported for the last half of 2019 for detail wages was posed. Were wages reported pre or post wages?

It is the boards belief that all wages and payments made to NHRS were correct. It was the wages reported to the IRS that were incorrect. This remains to be confirmed.

The employee’s questions about ramifications for employees who live in Massachusetts and pay Mass income tax. Employees also need to report this information to Mass as well.

The question and answer portion of the meeting commenced. One employee said, “I am potentially going to owe thousands of dollars to the IRS. Will there be any financial compensation from the Town to assist in us paying this to the IRS?” Selectman Nigrello stated, “We don’t have a system to take care of that. We are hopeful that the penalties and interest are abated. If they are not, we need you to let us know. We will take another look at things.”

Scott added that there are ways to help with the payment such as payment arrangements. Questions were again posed as to whether or not the Board would be able to assist with payment of individuals tax. Selectman Nigrello indicated “we have no mechanism for that.” Paul stated there were a lot of unknowns that prevent the board from making a blanket commitment. Do employees owe hundreds of dollars? Thousands of dollars? Without
knowing each employee individual tax situation, it would be difficult for the board to comment. If employees find themselves in a situation that is burdensome, contact Becky and the Board has agreed to revisit it.

With regard to the health insurance over withholding, one employee stated that she has been on the family plan for 10 years and is only receiving a check dating back to 2015. Why is that? Selectman Nigrello pointed out that the Town only had QuickBooks records back to 2015.

The former Town Office Manager said, “You realize you have Sage 2 Software that goes back more than 5 years on that computer.” Selectman Nigrello said that he was not aware.

Paul said that it appears that in 2014 the Town changed policy and started having employees make some contribution toward the cost of health insurance with the Town previously paying 100% for all employees. In 2014, there was a 90-10% split and whether that was for the full year or not, this was unclear. The 2015 data and policy were much more clear so that is where the Town went back to in calculating the over withheld funds.

Selectman Nigrello stated that the 2014 policy was unclear. It may not have matched the practice. When was the policy adopted? Revised? We would have to go back to that time period which is unclear. We can certainly go back and look. The employees bring up an important point. The former Office Manager stated that she could show the board where those records are. It was suggested that the Board would also need the passwords for the software. The question of whether or not the Town retained a license to Sage 2 to retrieve the data was posed. Selectman Nigrello said he would take that information and note it and “we would certainly make that effort.”

Attention turned to the pre-tax post-tax NH Retirement issue. Could the Town now vote to retroactively make all NH Retirement contributions pre-tax? The Town can vote to make contributions to NH Retirement pre-tax—but this change would not take effect retroactively.

Selectman Nigrello stated that Quickbooks has probably outlived its usefulness in East Kingston. The Town is moving to a move sophisticated software program called Accufund. We held off implementing it for the first of the year so we could get through our budget process. Question -Are we putting things into place to make sure this doesn’t happen moving forward? Yes. Are we asking our auditors to be sure they check other things moving forward? Yes.

A question was asked of John Rich—what if the employee did nothing? How long could that go on for? Five years? Attorney Rich stated we encourage the people we work with to be proactive and to pay the tax at the time they receive notice. The IRS generally has 3 years from the time the return if filed. You never really know how long that might go no. It might not happen at all but keep in mind that interest continues to occur from the date of the filing.

At this point in time, Selectman Poelaert mentioned that he has said nothing through the entire meeting because he has a conflict of interest in that a member of his family if affected. He would have left the meeting a while ago but without him, the Board has a quorum problem so he stayed.

An employee questioned when these payroll issues were raised? Selectman Nigrello said it appeared around June then July and August a second report. Former Office Manager said
she first reported the payroll issues in 2018. Selectman Nigrello pointed out he was not here in 2018. Paul stated regardless of the discovery period, the Town went back the statute-ably required 3 years. Selectman Nigrello said, "the three-year lookback did not apply to the health insurance. We went back five years." He went on to say, "the audit process this year was painfully slow. Like most small business, the auditors could not just drop everything to devote hundreds of hours to the Town of East Kingston. They had to get the matter on their calendars. Then when the first issue was being worked on came the unexpected issue, then the third issue. It was certainly more entangled than any of us Selectmen ever expected."

Town Administrator Merrow stated, "I just want to add that the Health Insurance issue was a human miscalculation. It was not anything to do with the software, to my knowledge."

Scott added that he was the first one brought in. The auditors had to find legal counsel, a firm with tax expertise on how to proceed. Scott continued, "Again, if this were one issue, could this have been wrapped up in the fall? Perhaps. As things progressed, we had to have consultation with the tax experts and then decisions had to be made by the Board." Scott continued," Our engagement is with the Town to review and audit their financial statements."

Question is if there is coverage for potential damages by any of the Town's insurances? Selectmen Nigrello answered," We are certainly exploring that issue. We are receiving a lot of push back from the town's carrier. We are looking to see if any of this might be covered by the Town's errors and omissions policy. What is their opinion? No, it is not covered. However, some of this push back was due to the early nature of the claim. As matters have developed and we continue to peel back the layers of the onion, things may need to be revisited.

The former Town Office Manager stated that the Town Selectmen decided to move away from the Sage software because it was so basic. "The Quickbooks program was actually more sophisticated and not so basic as Sage. Sage did not have good reporting. Per the TOM, "the Town had a CPA come and install it, so I would not know if it was set up properly."

Paul transitioned, "If there are no more questions, we will have Scott hand out the corrected W-2's."

At 3:45, a recess was taken to accomplish this.

At 4:00 PM the meeting was resumed to continue discussion on the 2020 budget.

2020 Budget

The Town Administrator expressed confusion about the breakout of the highway budget after the increase of $25,000 at the January 6 meeting. For clarity, the following breakout was agreed upon:

<table>
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<tr>
<th>HIGHWAY AND STREETS</th>
<th>2019 BUDGET</th>
<th>2019 ACTUAL</th>
<th>2020 REQUIRED</th>
<th>DECREASE</th>
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<tr>
<td>Highway &amp; Road Maintenance</td>
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<tr>
<td>Capital Improvement: Highway, Road Grant</td>
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Public Meeting Minutes January 16, 2020
The 2020 requested was approved. The 2019 actual was corrected. The 2020 default is to be worked on and entered into the portal.

The 200 Library budget does not appear correct in this version of the budget. It must have been changed when the 2019 budget was inserted. Bob will provide the figure to Becky for correction.

The warrant was reviewed. Article 1, the operating budget is to be revised with tonight's figures. This article will be superseded by any zoning articles.

Article 2. $15,000 for the Fire Hydrant Cistern account. Richard Poelaert made a motion to approve this article. Robert Nigrello seconded. Article approved unanimously by the members present.

Article 3. Modifications to the Elderly Exemption. Motion by Richard Poelaert to approve this article. Robert Nigrello seconded. Article approved unanimously by the members present.

Article 4. $10,000 for a feasibility study on the Old Town Hall building. Motion by Richard Poelaert and second by Robert Nigrello. Article approved unanimously by the members present.

Motion to adjourn at 5:01 pm by Mr. Poelaert and seconded by Mr. Nigrello. The motion passed unanimously.

Respectfully submitted,

Becky Merrow

[Signatures]

Richard S. Poelaert
Justin B. Lyons
Robert L. Nigrello