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MINUTES
SELECTMEN'S MEETING
TOWN HALL

GRIFFIN ROOM
MONDAY, AUGUST 3, 2020
6:00 PM EXECUTIVE SESSION
6:30 PM REGULAR MEETING
REMOTE PARTICIPATION ONLY

APPROVED

RELEASED

SELECTMEN PARTICIPATING: Larry Ballantine, Michael MacAskill, Edward McManus, Steve Ford, Donald Howell

ALSO PARTICIPATING: Interim Town Administrator Joseph F. Powers

CALL TO ORDER:

Chairman Ballantine opened the Board of Selectmen's Meeting at 6:00 PM. Mr. MacAskill moved to enter into Executive Session, 2nd by Mr. Howell. Vote 5:0 in favor. Motion carried unanimously.

EXECUTIVE SESSION

- A. Pursuant to MGL c 30A, s21 (a) (6), to consider purchase, exchange, lease or value of real estate if the Chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
- B. Pursuant to MGL, c30A section 21 (a) paragraph 2 to conduct strategy sessions for contract negotiations for nonunion personnel - Finance Director and Police Chief
- C. Pursuant to MGL c30A section 21 (a) paragraph 3 with respect to collective bargaining for all town unions if an open session would have a detrimental effect on the towns bargaining position and the chair so declares
- D. Pursuant to MGL c30A s21 (a) paragraph 3 to discuss with respect to collective bargaining for Harwich Employees Association (HEA) and the Highways and Maintenance Employees Association (HMEA) if an open session would have a detrimental effect on the town's bargaining position and the chair so declares.

Mr. Ballantine reported that the Board of Selectmen discussed the 4 items listed in Executive Session. He reopened the Board of Selectmen Meeting and read the current process. He invited attendees to join him in the Pledge of Allegiance.

WEEKLY BRIEFING:

- A. COVID-19 Updates

Meggan Eldredge Health Director reported COVID statistics. Active and inactive in Harwich and statewide. Also the demographics of active cases, ages and towns. There is good feedback from business owners regarding the COVID Inspector. Clinic information was shared, where, when and who can be tested.

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B. Update on ongoing efforts by the Town in support of the business community

Cindy Williams Executive Director of the Chamber of Commerce noted that retailers are reporting an increase from last year's numbers. Restaurants are moving ahead, some have outdoor tents and they're following protocols. Hotels and rentals are being effected by the travel order.

OLD BUSINESS

A. Discussion and possible vote; ranking of Town Administrator candidates, possible offering of position and formation of a two person contract negotiation team.

Mr. Ballantine reviewed the interview process and scoring. He read the outcome of the Board's scoring for each of the four candidates.

Mr. McManus moved to nominate Cathy Ann Viveiros, 2nd by Mr. MacAskill. Vote 2:3. Motion not carried.

Mr. Ballantine noted that to offer the position they need of vote of 4 out of 5 affirmative.

Mr. Ford moved to nominate Joseph Powers, 2nd by Mr. Howell. Vote 3:2. Motion not carried.

Mr. Ballantine asked for suggestions on how to move forward.

Mr. McManus suggested offering a position of Interim Town Administrator for a year's appointment.

Mr. Ford commented that he feels it detracts from the process and the individual. The committee of 5 did as asked and someone should be appointed tonight.

Mr. Howell replied that the 5 were chosen by the Board. He noted that it's been ten months and agrees that they should make a decision tonight. That person can be removed later if necessary.

Mr. MacAskill replied that they all had a hand in the process and they would be able to review the interviews and that Mr. Howell had agreed.

Mr. Howell replied that he agreed if they used a company, not with a committee.

Mr. MacAskill noted that the disagreement at hand is not what they brought forward, it's his view vs Mr. Howell's view vs Mr. McManus' view etc. That's what they should be discussing, they are at a standstill. He feels they did the town a disservice by not hiring a search firm for finding the most important person that the Board is going to hire for this town.

Mr. Ballantine commented that he would consider Joseph Powers for a one year contract which removes the Interim from the title and allows him to do his job for one year.

Mr. McManus commented on past nominations and the outcomes. He prefers not to be cajoled into changing his vote. He noted that an appointment of Interim for a year would only take 3 votes to put into effect.

Mr. Ballantine asked, if they go forward with Interim, how they would address the issue that the office is short an Assistant Town Administrator.

Mr. Ford commented that the biggest problem is the Board of Selectmen, not the Town Administrator.

Mr. MacAskill agrees and adds, part of the problem is how long they have taken to get to this point. Also there are people in favor of both candidates.

Mr. Ford commented that he came to his decision from his own experiences and of his own volition, not from talking to other people.

Mr. MacAskill commented that this is not unique, other towns have had the same situation. He is not willing to compromise either. He suggested that they could hire a Town Administrator for a year and put Mr. Powers back in as Assistant Town Administrator and then go back out and do a search.

Mr. Ford moved to appoint Joseph Powers as Interim Town Administrator, 2nd by Mr. Howell.

Mr. Ford noted that they have to look into compensation to be sure he's compensated correctly.

Mr. MacAskill commented that they should negotiate a salary. He also asked what they'd do about valuation on the last evaluation they did on Mr. Powers.

Mr. Ballantine suggested that they have a two man committee to go through and talk about the contract and bring back to the Board how they will go forward on the salary and evaluation.

Vote 3:1:1 Motion carried.

Interim Town Administrator Powers re-entered the room.

Mr. Ballantine asked Mr. Powers if he'd accept that his contract continue as Interim Town Administrator. It is not a question he needs to answer right now.

Interim Town Administrator replied that he appreciated the update.

B. Vote to approve the Interim Town Administrator's recommendation on Ember Pizza, Inc. DBA Ember's Disciplinary Hearing held on February 27, 2020

Interim Town Administrator Powers noted that he had received, in addition to the packet, an afterhours email from the attorney of the licensee.

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Mr. MacAskill suggested that email that was written at 6:03PM completely inappropriate. Atty. Tomlinson refers to this as a public hearing which it is not. This is a public meeting. He votes against reading the email into the record.

Mr. Ballantine noted that they had turned it over to the Interim Town Administrator to handle and asked for his summary.

Interim Town Administrator Powers read portions of the email. The appeal process is through the Superior Court as the punishment is relative to the entertainment license. The packet contains all relative information. He found the allegations legitimate and warrant a penalty. He explained how he decided the penalty and read his decision which gives the Board leeway to make changes. If the Board accepts the recommendation the Licensee can appeal it to Superior Court.

Mr. McManus moved that the Board approve the recommended progressive discipline be approved by the licensing authority as outlined in the memo dated August 3, 2020, 2nd by Mr. Ford. Vote 5:0 in favor. Motion carried.

Interim Town Administrator will add the Attorney Tomlinson's email to the record.

C. Vote to approve the Interim Town Administrator's recommendation on Go Industries DBA Perks Disciplinary Hearing held on June 30, 2020

Interim Town Administrator Powers affirmed that Attorney MacDonald is representing Perks for the transfer. He also affirmed that Mr. Powell received a copy of the decision. The packet contains all relative information. He read his decision.

Mr. MacAskill moved to approve the Interim Town Administrator's recommendation on Go Industries DBA Perks Disciplinary Hearing held on June 30, 2020, 2nd by Mr. Ford.

Attorney MacDonald noted their disagreement.

Vote 5:0 in favor. Motion carried.

D. Discussion and possible vote on specific topics related to FY 2021 Annual Town Meeting including;
a. Appropriations from Stabilization Fund

Mr. Ford noted the Finance Committees request to be on the warrant to address the possible use of Stabilization funds to deal with the present budget crisis. He understands there is legislation relative to this situation that allows the Selectmen to utilize the Stabilization Funds without a vote.

Carol Coppola Finance Director explained what the legislation allows and read segments.

Mr. Howell commented that it takes time to build a stabilization Fund and is concerned that if it is used and next year is worse, they won't have a fallback plan.

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Dana DeCosta Finance Committee commented that they don't want to take out the money, they have to consider next year as well. The article is more transparent than the Board acting on its own. They only want that to be in the warrant so it can be used as a tool if needed.

Ms. Coppola feels they should bring a balanced budget to the Selectmen. She feels putting placeholder in the warrant is a good option.

Mr. McManus spoke about the services offered by the town and whether or not they want to use the Stabilization Fund to keep them going.

Mr. Ford commented that they all agree it should be transparent, the question is what the amount will be.

Mr. DeCosta asked that they vote to put it in the Draft Warrant and noted the dates getting closer.

Mr. McManus moved to insert into the Draft Warrant a placeholder article for the use of Stabilization Funds to fund items removed by 2021 O pertaining Budget as worded in the packet, 2nd by Mr. MacAskill. Vote 5:0 in favor. Motion carried unanimously.

b. Capital Outlay Plan

Mr. Howell commented that the problem is that they never discussed the implication of it. He explained the original plan and how it has evolved to a capital budget. They are now not obligated to implement a 7 year plan. It will take time to create 7 years of projects.

Mr. DeCosta commented on old language regarding the Board of Selectmen creating a 7 year plan and read from the Charter. He spoke of the Plan and the Board's obligation each year. The Board is required by the Charter to put forward a plan that includes 7 years.

Mr. Howell disagrees, the plan they had up until this year was malleable and did not take a two-thirds vote. He suggested that if they create 7 year plan now, they are locked in and will need a two-thirds vote from this point forward.

Interim Town Administrator Powers noted that it was never the intention of the Town Election to precede the Town Meeting. He looked to the Board for direction on how he should proceed under the new requirements for the Capital Outlay Plan.

Mr. McManus commented that under normal circumstances they would have passed the Capital Outlay Plan and then had the vote adopting the new regulations which would take effect next year. He suggested that is what they should do. He explained procedures they had followed in the past.

Mr. Ballantine asked if there is a consensus to have this come back in spring the spring of next year after Capital Outlay has looked at it and go back to normal business.

Mr. MacAskill noted that a tremendous amount of work and planning went into the Plan. With the past Administrator they picked and chose what they moved around. He questioned why they would want to throw away the work that has been done over 5 years. He commented that not knowing what's going to happen with the pandemic, they will be moving things around anyway.

Mr. McManus noted that if Town Meeting had not been moved, this would have been approved before the new charter Amendment took place. He suggested leaving the current Plan to be passed and leaving the Capital Outlay Committee to clean it up or not.

Mr. MacAskill would vote to leave the Plan as is. He agreed with Mr. DeCosta's suggestion to omit items.

Mr. Ballantine noted that they don't need a motion, just a consensus, which they have.

c. Draft Warrant

Interim Town Administrator Powers referred to the Draft Warrant and to the walkthrough that is scheduled for the next day to ensure that the Town Meeting can be held at the outdoor stadium. He described specific articles, some revisions, there are 45 articles.

Mr. Howell asked about discussing the Revolving Funds, expanding or trimming.

Mr. Ballantine commented, that should be brought back and discussed separately.

Interim Town Administrator stated that there will be a more refined Draft Warrant in two weeks. He asked the Board to review it and inform him if there are articles they would like to postpone.

Carol Coppola stated that a balanced budget should be completed by next Monday.

Mr. MacAskill commented that tonight they added a placeholder article which will be number five.

Mr. McManus moved that all previous votes approving articles for the Town Meeting Warrant for the Town Meeting of FY2020 be rescinded, 2nd by Mr. MacAskill. Vote 5:0 in favor Motion carried unanimously.

Mr. Ballantine will put the Balanced Budget on the Agenda in two weeks to give Ms. Coppola adequate time.

PUBLIC COMMENTS/ANNOUNCEMENTS

No comments or announcements

PUBLIC HEARINGS/PRESENTATIONS

Interim Town Administrator Powers noted that these were posted as Public Hearings.

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A. Discussion and possible vote to approve the transfer of all seasonal, all alcohol liquor license from Go industries, Inc. DBA Perks, Taylor Powell, manager to Lucky Labrador, Inc. DBA Taylor Powell, manager - 545 Route 28 Harwich

Mr. MacAskill moved to open a Public Hearing for discussion and possible vote to approve the transfer as presented, 2nd by Mr. Howell. Vote 5:0 in favor.

Interim Town Administrator referred to the related materials that are in the packet. He stated for the record that the Board is in receipt of an email and it includes the document that he handed to the Chairman. It is problematic if that document is read into the record as it may abridge upon an individual's rights.

Mr. MacAskill added that if the attorney for or if the owners of said restaurant are on line and wish to speak, that's different from the Board receiving an email at 3:00 at a 6:30 meeting time. The comments and the content of the email from the attorney are off base and nothing the Board should get involved in. If they have an appeal and want to challenge the staff, they are welcome to do that.

Interim Town Administrator Powers returned to the packet, there is no objection to the transfer.

Attorney Brent McDonald of Nutter, McClennen and Fish, LLP for the Lucky Labrador clarifies for the record, they are seeking to transfer this license to its existing license holder Go Industries in which Mr. Powell is a minority shareholder and the manager of record to a license in the Lucky Labrador in which Mr. Powell will be the sole shareholder.

Mr. MacAskill moved to close the public hearing and return to the Board Meeting, 2nd by Mr. McManus. Vote 5:0 in favor.

Mr. MacAskill moved to approve the transfer as presented, 2nd by Mr. Ford. Vote 5:0 in favor. Motion carried unanimously.

B. Discussion and possible vote to approve a new liquor license application for a section 15 annual wine and malt license - Pizza Shark Partners DBA Pizza Shark - 403 Pleasant Lake Avenue, Harwich

Mr. MacAskill moved to open a public hearing to approve a new liquor license as presented, 2nd by Mr. Ford.

Interim Town Administrator Powers referred to the related documents in the packet. There are no objections to this application.

Mr. MacAskill moved to close the Public hearing and return to Open Session, 2nd by Mr. Ford. Vote 5:0 in favor.

Mr. MacAskill moved to approve the new liquor license as presented, 2nd by Mr. Howell.

Mr. McManus commented that the building referred to is on the property owned by the property. Some is on the property of the State. He is unsure if they can issue a license on that property.

Vote 4:0:1 in favor. Motion carried.

CONSENT AGENDA

A. Minutes for Approval

1. May 18, 2020
2. May 26, 2020
3. May 27, 2020

B. Vote to approve the list of Harwich Republican Election Workers for one year beginning September 1, 2020 - as listed in the packet

C. Vote to approve the list of Harwich Democratic Election workers for one year beginning September 1, 2020 - assisted in the packet.

Mr. Howell noted that on May 18th, during the Selectmen's Report, it is confusing as to who he is representing. On May 26th the word onus was incorrectly translated.

Mr. MacAskill moved to approve the Consent Agenda with minutes for May 18, 2020 with changes proposed by Selectman Howell and May 26, 2020 with changes proposed by Selectman Howell, May 27, 2020 s written and the additional items as presented, 2nd by Mr. Howell.
Vote 5:0 in favor. Motion carried unanimously.

NEW BUSINESS

A. Discussion and possible vote - Caleb Chase Trustees revision to policy as a result of COVID-19 financial hardships

Paul Doane of the Caleb Chase Trustees gave a description of and reasons for their request. He noted that this would only in effect until the end of this final year.

Mr. MacAskill moved to approve the revision as presented, 2nd by Mr. Ford.

Mr. McManus asked if the Fund was in good shape.

Mr. Doane replied yes and gave figures.

Vote 5:0 in favor. Motion carried unanimously.

B. Vote to approve the change of manager from a seasonal all alcohol liquor license from Michael Jacek to Michael Strangfeld - 554 Street Bar DBA 3 Monkeys - 554 Route 28, Harwich Port

Mr. MacAskill moved to approve the change of manager as presented, 2nd by Mr. McManus.
Vote 5:0 in favor. Motion carried unanimously.

C. Discussion and possible vote to designate the interim Town Administrator as Hearing Officer for a hearing to be held relative to the alcohol Beverages and control Commission (ABCC) alleged violations regarding the Phase 2 Sector specific Safety standards at the Port Restaurant and Bar, Inc. 541 Route 28, Harwich Port during COVID -19 restrictions.

Mr. MacAskill moved to vote to approve to designate the Interim Town Administrator as Hearing Officer as presented, 2nd by Mr. Ford. Vote 5:0 in favor. Motion carried unanimously.

D. Discussion and possible vote to appoint a member of the Board of registrars with a three year term to begin on July 1, 2020.

Mr. Howell moved to appoint Deborah Sementa Registrar with a 3 year term to expire June 30, 2023, 2nd by Mr. Ford.

Mr. MacAskill requested some background.

Mr. Howell explained the procedure to appoint a member to the Board of Registrars.

The Vote 5:0 in favor. Motion carried unanimously.

E. Vote to approve - 2020 Annual Committee Re-Appointments - As listed in the packet.

This contains an error and will be brought back.

F. Vote to approve W. Paul White to the Golf Committee as a full member - term to expire 06/30/2023

Mr. McManus moved to approve W. Paul White as presented, 2nd by Mr. Howell. Vote 5:0 Motion carried unanimously.

G. Vote to approve Bernadette Waystack to the Cultural Council as a full member - Term to expire 06/30/2022

Mr. McManus moved to approve Bernadette Waystack as presented, 2nd by Mr. Howell. Vote 5:0 in favor. Motion carried unanimously.

H. Discussion and possible vote to approve Boundary Line Agreement between town of Harwich and William J. Viggiano (owner) of 70 Willow Street, Harwich

Mr. MacAskill moved to approve the Boundary Line Agreement as presented, 2nd by Mr. Howell.
Vote 5:0 in favor. Motion carried unanimously.

TOWN ADMINISTRATOR'S REPORT

- A. Appointment of Custodian
- B. Departmental Reports

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Interim Town Administrator Powers referred to the packet, he hired Robin Smith.

Mr. MacAskill asked for clarification on the custodian.

Interim Town Administrator Powers replied that there was a vacancy, this is a custodian they have had and this is a critical need.

Mr. MacAskill has in the past requested the cost of overtime verses the cost of hiring a dispatcher.

SELECTMEN'S REPORT

Mr. Howell (inaudible for a shot time) he referred to regulations that need to be unanimous. They are ready to start looking at projects.

Mr. Ballantine commented on the school's plan to open in September. There are guidelines and suggestions on the school website.

No other reports.

Mr. MacAskill moved to adjourn, 2nd by Mr. Ford. Vote 5:0 in favor. Motion carried unanimously.

Respectfully submitted,

Judith R. Moldstad
Recording Secretary

August 3, 2020