



APPROVED

RELEASED

**MINUTES
SELECTMEN'S MEETING
MONDAY, OCTOBER 4, 2021
5:30 P.M. - EXECUTIVE SESSION
6:30 P.M. - REGULAR MEETING**

SELECTMEN PARTICIPATING: Michael MacAskill, Larry Ballantine, Donald Howell, Mary Anderson & Julie Kavanagh

ALSO PARTICIPATING: Town Administrator Joseph Powers

CALL TO ORDER

Chairman MacAskill called the meeting to order at 5:30 p.m. beginning with Executive Session.

Ms. Anderson moved that the Board of Selectmen enter into Executive Session to discuss the items as listed below, 2nd by Mr. Howell. The vote was 5-0-0 with Mr. MacAskill, Mr. Ballantine, Mr. Howell, Ms. Anderson & Ms. Kavanagh voting aye by roll call.

EXECUTIVE SESSION

- A. Executive Session pursuant to G.L. c. 30A, sec. 21(a)(2) to conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel
- B. To Review Status of Litigation Involving the Town and strategy with respect thereto, The Chair has determined that discussion of litigation matters in open session may have a detrimental effect on the litigation position of the Town. The following cases will be discussed; Collins, et al. v. Orsini & Town of Harwich Zoning Board of Appeals, et al.; Cuddy, Trustee v. Harwich Planning Board; Cuddy, Trustee v. Town of Harwich, et al.; Ember Pizza, Inc., and Port Restaurant; 3137, LLC, et al. v. Town of Harwich, et al.; Ember Pizza, Inc., et al. v. Town of Harwich, et al.; Ember Pizza, Inc., et al. v. Town of Harwich and ABCC; Hall's Path Enforcement; Gomes v. Chief of the Harwich Police Department; Jones v. Harwich Board of Health and Town of Harwich; King and James M. Kelly v. Harwich Conservation Commission; King and Kelly v. Walter Diggs et al. and the Harwich Conservation Commission; McCourt, et al. v. Town of Harwich Zoning Board of Appeals, et al.; Novak v. Town of Harwich Conservation Commission; Rego, et al. v. Harwich Zoning Board of Appeals; Stevens Wequasset Trust v. Harwich Conservation Commission; Walsh Brothers Building Company, Inc. et al. v. Harwich Conservation Commission, and Town of Harwich; Watkins, et al. v. Town of Harwich, et al.; Winston and Plunkett v. The Planning Board and the Royal Apartments LLC, et al.; Wise v. Harwich Planning Board; Eldredge, et al. v. Town of Harwich, et al.; Donald V. Holt, III v. David J. Guillemette, Harwich Police Chief; Fratus, Jr. v. Harwich Board of Selectmen; Viprino v. Chief of Police; Viprino v. Town of Harwich

Mr. MacAskill called the Board back to order. During Executive Session the Board was given an update from Town Counsel regarding ongoing litigation. The Board did not discuss strategy sessions due to lack of time.

PUBLIC COMMENTS/ANNOUNCEMENTS

Mr. Powers stated that the Cape Cod Regional Technical High School will be having a ribbon cutting ceremony on October 8, 2021 for the new school.

APPROVED

The Health Department will be hosting drive thru residential flu clinics on October 13 & October 18, 2021 from 1:00-3:00 at the Harwich Community Center. More information can be found on the Town website.

A. Veterans Day Ceremony November 11th at Island Pond Cemetery

An in-person Veterans Day Ceremony will be held at 11:00 a.m. on November 11, 2021 at Island Pond Cemetery.

Mr. Howell stated that there will be a joint meeting with the Selectmen and Community Preservation Commission to walk the Marceline property. This is an off-site meeting for the boards and no deliberation will be had.

CONSENT AGENDA

A. Vote to approve a Caleb Chase request in the amount of \$565.21

Ms. Anderson moved to approve a Caleb Chase request in the amount of \$565.21, 2nd by Mr. Howell and approved 5-0-0.

OLD BUSINESS

A. Presentation by Attorney Amy Kwesell, KP Law, on M.G.L Chapter 40B on the Local Initiative Program (LIP) as they are relative to Board of Selectmen

Attorney Amy Kwesell from KP Law was present to provide the Board with a presentation on 40b's Local Initiative Program. The applicant of Chloe's Path is asking for the town to go in on an application for 40b with the developer. The benefit of a LIP to the town is that there can be a memorandum of understanding (MOU) between the town and developer where the town can have certain factors, which is an added layer of protection for the town. The other aspect of a LIP is that the Department of Housing and Community Development (DHCD) will provide technical support to the town and developer. Before the town makes any movement towards entering into the agreement, Attorney Kwesell recommended that the town ask for background information, qualifications, past projects done by the developer, any past or present litigation that the developer is involved in regarding 40b's and a list of references. The town will also want to have the address of the project, project description including the number of units and bedrooms. Other good information to have would be conceptual design drawings, knowledge of the percentage of land that is being occupied by buildings and paved areas and a list of waivers. In her opinion, with a LIP, there should be clear benefits to the community and show the ability to meet other housing needs. The buildings should be energy efficient. The process for a LIP is that the developer starts with the Selectmen with their proposal. If the town agrees to sign on, the LIP would be signed by the municipality and developer and then submitted to DHCD.

Mr. Ballantine asked if there are any limitations of what can be in the MOU. Attorney Kwesell responded that it is a private contract between the Selectmen and the developer and with any private contract, anything can be negotiated.

Ms. Kavanagh asked if the town could push back and ask for a certain number of affordable and work force housing units. Attorney Kwesell again responded that it is a private contract and that anything can be requested. Ms. Kavanagh asked if we have leeway with screening and height. Attorney Kwesell confirmed that we do.

Ms. Anderson wondered if preference for Harwich residents could be put in the MOU. Attorney Kwesell responded that in her opinion, local preference is something that DHCD flip flops on and we would have to check in with them before moving forward. She does have a condition that she puts in her 40b decisions that says there shall be a preference for local residents provided that it does not impact developers financing or fair housing.

B. Discussion and possible vote to support the Local Initiative Program (LIP) for Chloe's Path Affordable Housing Development

Attorney Andrew Singer was present along with Peter Donovan & Garry Terry. Also present were Brian Bush, Jeffrey Bush, Kurt Rayber and Randy Hart.

Attorney Singer noted that this is their second session with the Board. They have submitted a significant amount of information at the first meeting and have provided supplemental information for this meeting. They feel that they have submitted everything that Town Counsel referenced in her presentation to the Board. With this project, they will be asking for 2 waivers. For any 40b, you will always need a waiver for density. Attorney Singer commented on the number of units, number of bedrooms, and layout of the affordable units and disbursement of the units around the property. Attorney Singer stated that the project as presented, complies with all Harwich dimensional setbacks as well as all building and site coverage requirements. The existing deed restriction will be honored and complied with as well. A preliminary traffic analysis has been submitted to the Selectmen and a full traffic study will be done as part of the Zoning Board of Appeals process. The project will also be complying with the MESA and NHESP restrictions that are on the property. As was discussed at the last meeting, a couple of the corners of the buildings cross the MESA boundary lines, so the applicant will be discussing an amendment to rearrange where the open space can be moved to. If MESA does not approve the amendment request, the project can be shifted in its design. According to Attorney Singer, there is no requirement under local law for any treatment of nitrogen. They are proposing an advanced treatment system to address the nitrogen.

Mr. MacAskill asked for clarification on the number of cars in the traffic analysis. Mr. Hart responded that the numbers provided are for peak day projections and comes from real data that has been collected in the field. The numbers provide in the analysis look at one hour of data in the morning and one in the evening during peak hours.

Mr. Ballantine feels that context is missing from the report. He asked what the traffic is now and what percent increase there would be from this project. Mr. Hart responded that the report is preliminary and that they would be completing a full traffic study. They will be looking at volumes on the street today versus what they are proposing to find out what the impacts of the project will be.

Ms. Kavanagh stated that summer traffic and the location of the property behind the Public Safety Building needs to be considered as well.

Mr. Ballantine asked to see on the map where the deed restricted property is located. Attorney Singer reviewed the map and added that there is an agreement that an old pump house on the property will be removed and plantings would be installed. He has met with the Conservation Administrator on site. All local permits have been granted to remove the pump house.

Mr. Howell asked if the road entering the complex would remain private. Attorney Singer clarified that the road would be considered a driveway and not a legal road. Mr. Howell wanted to confirm that maintenance of the road would rest with the private developer. Attorney Singer responded that it would be part of the management of the property.

Attorney Singer stated that the only 2 waivers that have been identified are for density and height and that even though the density is greater than what could be there, it will be better environmentally and will comply with town requirements for open space, building coverage and site coverage. As far as height, the project is a 3 story building with parking at grade under the building.

Attorney Singer briefly reviewed the plans that show the view of the complex from Sisson Road, one from the driveway and one from the Public Safety Building.

At the last meeting, team talked about their experience, the project description, site drawings, floor plans, coverage, waivers and public safety needs. They have met with Department Heads including Public Safety. At the end of the first session, there was a lot of discussion in the room about whether or not there is a need for this type of development in Harwich. The applicant feels that this is the right property for this project. In addition to the affordable and work force housing, there is a need for market rate rentals. The market rate units have been designed for income levels of \$69,000 through \$100,000. Attorney Singer did stated that they can't speak to what the rents will be because the project is still 2-3 years away. The applicant feels that this project will help move the momentum to address the housing needs.

Attorney Singer closed out by thanking the Board of Selectmen for their time and hopes that the town will partner with the applicant to move the project forward.

Mr. Powers had questions about the market rate analysis materials that were provided. Mr. Bush talked about the benchmark rents noting that there is a pretty broad range.

Mr. Powers stated that the town is working on a project of sidewalks from center to center and commented that there are not sidewalks on either side of Sisson Road from the Cultural Center to Route 28. He wondered if a mitigation proposal could be that the applicant provide sidewalks in the area. Attorney Kwesell responded that in her opinion, sidewalks would be good mitigation.

Mr. Howell commented that work force housing is ill-defined by the state, adding that work force housing would be at the lower end of the market rate rentals. Under state law, affordable housing units are dictated by the area median income. The town has made it clear that there is an interest for affordable housing.

Mr. Bush commented that the range for affordable housing based on unit sizes can be different. In their analysis, there may be people who are attracted to a larger one bedroom unit versus a unit on the upper level.

Mr. Powers stated that the Board is going to have to base their decision solely on the materials that have been provided. If the Board is going to endorse this, they will then need to be able to sell it to the public. He feels that there needs to be more substance that the town can rely upon to show that this project will have more work force housing available.

The Board, Attorney Singer and the development team had a discussion on affordable units versus work force housing units.

Ms. Kavanagh commented that the documents provided talk about doing an expanded market analysis to include Plymouth and surrounding areas and thinks that we can all agree that the Plymouth area is not the Cape and that the analysis cannot be accurate using that information. Ms. Kavanagh agreed that the need for housing units is there and would like to see more of a local analysis of rents, true salaries and what is more affordable, before the Board can weigh in further. Mr. Bush responded that they expanded to Plymouth because there is no comparable product on the Cape to look at.

Mr. Howell stated that the step above affordable units are the work force units. He asked what the mechanism would be to say what number of units should be for work force. Attorney Singer responded that there is a need for housing for even the market rate units. Mr. Howell added that the public needs to understand the scenario of what people can afford in the market.

Mr. MacAskill referred to a LIP project in Brewster and asked where they got their rent information from. Mr. Bush responded that he is not sure where their data came from.

Ms. Kavanagh would like to see the applicant take a look at the collective survey of rents that has been done by the Cape Cod Commission. She went on to ask if the applicant would still be able to meet the site

coverage requirements if the parking was not under the building. Attorney Singer responded that they would likely exceed the site coverage.

Ms. Anderson stated that she assumes that the applicant will come back with clarity on what the rates are. She does believe that we need density. Ms. Anderson would like to make sure that all environmental concerns that were brought up at the last meeting are addressed. Attorney Singer responded that there will not be an impact to the wetlands. Creating a turtle habitat is on the deed restricted parcel to the South East. No town permits are required for the habitat and will be coordinated with NHESP. All other environmental regulations will be complied with.

Ms. Anderson also noted concerns that were brought up from neighbors regarding lights shining in their windows and how they would be addressed. Mr. Bush responded that he met with the neighbor who had concerns and informed them that their concerns would be addressed. As far as the neighbors' concerns about the impacts of cars on medical conditions, Mr. Bush stated that he would need someone with more of a science background.

Ms. Anderson asked if the applicant is under any current litigation for projects. Mr. Bush responded that they are not. Ms. Anderson added that she would be interested in talking about the MOU and the possibility of bumping up the number of affordable units.

Ms. Anderson has heard that the most successful housing developments have a property manager who lives on site. Mr. Bush responded that they won't necessarily have a property manager live on site, but that they will have someone on site 40 hours a week as well as 24/7 on call maintenance.

Mr. Howell wanted to confirm that the plan proposes one parking space per unit under the building. Mr. Bush responded that is correct and that there will be a total of 165 parking spaces on site. Mr. Howell thinks that it is unrealistic to think that residents here can rely on mass transit. Mr. Bush responded that parking is often something that is mandated by a town or city and that he understands that this is a car dependent community. If people can't park, they won't rent there and added that they are confident with the number of proposed parking spaces.

Mr. MacAskill stated that the Board is going to have another meeting for discussion and will allow the public to weigh in. They will then have a follow up meeting with Attorney Singer and the development team. Mr. MacAskill went on to say that he has talked to a lot of housing advocates and noted that housing is not just about density. He is not sure about the 96 units and would not vote to support this tonight.

Clara McLardy was present and stated that she recognizes that there are far more minimum wage jobs open than there are people to fill them. She thanked the Board in advance for representing the people of Harwich, noting that there is no simple one size fits all solution.

Kathy Klobridge was present and commented that she has been watching this project for years and went on to review the approvals that have already been given. She feels that it is a sad prospect for the property that has a lot of species on it. She is not sure why the town should trust and partner with someone who already hasn't done what they said they were going to.

Jay Coburn was present and reviewed the properties that the Community Development Partnership has worked on. He went on to make the point that this is a unique opportunity for the town to work with the developer and leverage private sector development at no cost to the tax payer. While some have expressed concern over the size of the project, he noted that small scattered developments are just not financially viable. Mr. Coburn encouraged the Board to work with the developer and take advantage of this opportunity.

Jay Walpole was present and lives right across the street from the development entrance. He provided a document regarding airway obstructive disorders and COPD, which his wife suffers from. Mr. Walpole

questioned the calculations regarding density. He also questioned the fact that the buildings would have electric heat and wondered why they aren't using the existing gas line on Sisson Road. In addition, he would like to see the applicant plan for electric charging stations. Mr. Walpole noted his concerns about the traffic coming and going from the complex.

Sandy McLardy was present and feels that the applicant's comments that the project will have no environmental impact are false and that we need to get into the numbers a little bit. Mr. MacAskill commented that we cannot have a discussion about science without scientists sitting at the table. Mr. McLardy responded that we are in a nitrogen crisis. Mr. MacAskill asked Mr. McLardy to forward his comments to the Board.

Karen Beatty was present and commented that there has been no further public community outreach from the development team. She feels that the proposed rental rates are out of touch with the community. Ms. Beatty thanked the Board for seeing the flaws in the numbers.

Elizabeth Harder was present and stated that in the MOU, she would like to see a requirement that the apartments be used year round. Another suggestion for the MOU would be that these units never be allowed to be converted into condominiums.

Peter Gorey was present and feels that this project is grossly oversized for this location. He would like to see the Conservation Commission and Planning Board hear this proposal as soon as possible as they were part of the original 7 home proposal. Mr. Gorey commented that we are sitting here because the applicant knows that this project will be an unfriendly 40b if they don't get the support for the LIP. This is the chance for the town to draw the line in the sand.

Attorney Michael Ford was present and represented Bob and Andrea Doane. The Doane's live on Forest Street and own one of the parcels that has been the subject of some of the back and forth tonight. Attorney Ford did confirm that there is a deed restriction on parcel b2 and that there was supposed to be a turtle program which was to be implemented by Mr. Donovan over the last 5 years. As of today, that has not been done. Attorney Ford provided the Board with a plan showing the building envelopes for the property. His argument again tonight is that the developer does not have the property rights to build where they are proposing. Until they have the proper rights, they should not be asking the Board for anything. He respectfully suggested that rather than wasting everyone's time and getting the neighborhood worked up, that the Board should tell the applicant that they need to have the property rights to do their project before continuing discussions.

Attorney Singer commented that when the meetings are scheduled, if there is going to be dialogue with the public, that the applicant be allowed to be part of it and vice versa.

C. Update on 2021 Harwich Special Town Meeting Warrant articles

Mr. Powers reminded the Board that we are 14 days away from the Special Town Meeting. This update is to inform the Board as it relates to Article 3, which has the headline regarding funding wastewater on Whidah and Continental Drive. There is an expectation that the motion will be to indefinitely postpone the article based on information received from the wastewater superintendent that CDM Smith has confirmed that they have the design documents available.

Ms. Anderson asked to make sure that this is communicated to the affected neighborhoods.

NEW BUSINESS

A. Discussion and possible vote to approve Board of Selectmen Minutes for May 3, 2021

Ms. Anderson moved to approve the Board of Selectmen minutes for May 3, 2021, 2nd by Mr. Howell and approved 5-0-0.

Board of Selectmen
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B. Vote to approve Committee Appointments recommended by the Interview Committee:

1. Lynne Ellen Zalesak – Brooks Academy Museum Commission - Full Position - Term expires June 30, 2023
2. Francis Salewski – Bikeways Committee - Full Position - Term expires June 30, 2022
3. Jeff Brown – Agricultural Commission - Full Position - Term expires June 30, 2022
4. Noella Morrison - Treasure Chest Committee - Alternate Position - Term expires June 30, 2022
5. Eleanor Gerson – Treasure Chest Committee – Full Position – Term expires June 30, 2022
6. Marueen Davis – Treasure Chest Committee – Full Position – Term expires June 30, 2023
7. Cindy Beaulieu – Treasure Chest Committee – Full Position – Term expires June 30, 2024

Mr. MacAskill confirmed that these are all Harwich residents. The Board had a discussion about the person on the Treasure Chest Committee. Mr. Howell stated that the charter doesn't say that they must reside in Harwich, it says that there should be a preference to Harwich residents. Mr. Ballantine commented that he would reach out to the committee member.

Ms. Anderson moved to approve the Committee Appointments as recommended by the Interview Committee, 2nd by Mr. Howell and approved 5-0-0.

Mr. Powers stated that his staff will update the vacancy list and bring a copy back to the Board.

C. Discussion to rename the Harwich Energy Committee to the Harwich Energy and Climate Committee, along with amend the committee charge to reflect the realignment of the committee

A sample document from Chatham was included in the packet along with documents that Ed McManus had submitted.

Ms. Anderson commented that we are not going to solve the climate crisis in Harwich and that we might want to start more simply. Mr. Howell agreed.

Mr. Ballantine stated that he would not vote for this right now. When he sees terms like climate crisis, he feels that it becomes more of a political statement rather than an action statement. We need to have a rational discussion, with Mr. Ballantine added that he would go along with a more defined charge.

Ms. Kavanagh said that she was the liaison to the Energy Committee and would like to look at how we can incorporate them together.

The Board agreed that they would bring this back for future discussions.

D. Discussion and possible vote on the Harwich Affordable Housing Trust Housing Coordinator

A memo was provided to the Board in their packet. We have relied upon existing position descriptions in other towns and have modified them to be Harwich specific.

Ms. Kavanagh stated that she has no problem with this and that her only question would be, even with a full time person, could the budget handle it. A full time person would be more involved with the housing trust. Mr. Powers responded that this effort is a first start with the position that was funded. We have \$50,000 to fund the part time position. The Board could contemplate changing the position from part-time to full-time.

Mr. Ballantine is not sure how any one person could do all of the work. He suggested maybe reviewing it and pulling out the top priorities to make it more doable. He asked for clarification on the basis of the salary, which Mr. Powers answered.

If the Board endorses this tonight, then Mr. Powers will have the ability to make arrangements to get it moving, while working with the Board.

Mr. Howell commented that there is nothing here that hasn't already been going on with the housing trust. Over the last year, they were relying on a trust member to complete the deal with the Marceline property. The person will not be on their own, but will be the glue that holds everything together.

Elizabeth Harder was present and requested that the title of the position be changed. It implies that the responsibility is only to the affordable housing trust, while in the description it says that they are supposed to work with other committees included the community preservation committee.

Ms. Anderson moved to create the Harwich Housing Coordinator position, 2nd by Mr. Howell and approved 5-0-0.

- E. Discussion and possible vote to amend the personal bylaws to reflect the position of Affordable Housing Coordinator

Ms. Anderson moved to amend the personal bylaws to reflect the position of Affordable Housing Coordinator, 2nd by Mr. Howell and approved 5-0-0.

- F. Discussion and possible vote on the Request for Proposal for a Title Examiner

Mr. Powers reported that he has nothing specific to report. Mr. MacAskill stated that we will bring this back next week. The goal on this is to go out to bid to get a title examiner for Harwich to clean up owners unknown properties and miscellaneous parcels.

Ms. Anderson stated that she is all for this request but would like to see the Brooks Park lighting project be finished before any other RFP's go out.

- G. Discussion and possible vote to establish Town Administrator goals and objectives for Fiscal Year 2022 and complete evaluation form

Mr. MacAskill stated that rather than doing broad goals, he thinks that one of the most important goals is to finish everything that we have started. Mr. MacAskill reviewed the goals.

Mr. Powers commented that both the Selectmen and he have agreed to extend the existing contract. For him, he likes the simplicity of the goals themselves and the ability to bring other parties into it. He would be overseeing the goals and relying on his direct reports and their direct reports to assist in completion.

Mr. Howell stated that this finally gets us to the point of seeing the goals and objectives that need to be aligned to the job description and how well you do your job. He is supportive of the approach as presented.

Ms. Anderson agreed that she likes what is being presented however she would like to see personnel management under objectives.

Ms. Kavanagh commented that she has always been in favor of having a separate person allotted to personnel. She is happy to see a streamlined form.

Mr. Ballantine agreed. He added that he would like to see a comprehensive wastewater update.

Mr. Howells concern is that if all things are equal worth in point values. He is more in favor of certain things being weighted factors.

Mr. Powers stated that for him, this form works for him in both the short term and in the future.

Ms. Anderson moved to approve the goals and evaluation form as presented, 2nd by Ms. Kavanagh and approved 5-0-0.

H. Discussion and possible vote to approve the Green Communities Competitive Grant Program

Mr. Ballantine moved to approve the Green Communities Competitive Grant Program, 2nd by Mr. Howell and approved 5-0-0.

I. Discussion and possible vote approve Special Counsel to Harwich Affordable Housing Trust

Mr. Howell stated that the trust did ask the Selectmen to appoint special counsel for all matters pertaining to the acquisition of the Marceline property. Robinson and Cole was used and the trust is urging the Board to continue that relationship.

Mr. MacAskill wants to make sure that we are not hiring special counsel to fight with town counsel on land documents.

Mr. Ballantine moved to approve special counsel to Harwich Affordable Housing Trust, 2nd by Ms. Kavanagh and approved 5-0-0.

TOWN ADMINISTRATOR'S REPORT

No town administrators report was discussed.

SELECTMEN'S REPORT

Ms. Kavanagh reported that the Witches on the Water event raised over \$18,000 for The Family Pantry.

Ms. Anderson stated that she met with the Affordable Housing Committee last week. They feel in order to really get going, that a joint meeting is needed with the Affordable Housing Trust, Selectmen and Affordable Housing Committee.

On Friday, Ms. Anderson, Ms. Kavanagh and Mr. Powers attended the Fire Chief's ceremony. They did a great job of recognizing the fire staff individuals. She asked that a letter of recognition be sent from the Selectmen.

ADJOURNMENT

Ms. Anderson moved to adjourn the meeting at 9:45 p.m., 2nd by Mr. Howell and approved 5-0-0.

Respectfully submitted,
Jennifer Clarke
Recording Secretary

Board of Selectmen
October 4, 2021

