

# **Board of Selectmen Minutes**

## **06/04/2012**

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, JUNE 4, 2012  
7:00 P.M.**

**SELECTMEN PRESENT:** Ballantine, Cebula, Hughes, LaMantia, McManus

**OTHERS PRESENT:** Town Administrator James Merriam, Atty. John Giorgio, Chief Mason, David Ryan, Valerie Foster, Bob Murray, Atty. Joseph Cavanaugh, Jack and Eileen Connell, Mary Albis, Sebastian Mudry, and others.

**MEETING CALLED TO ORDER** at 7:15 p.m. by Chairwoman Cebula.

### **CONSENT AGENDA**

- A. Approve Minutes –
  - 1. May 14, 2012 Regular Session
  - 2. May 21, 2012 Executive Session
- B. Vote to approve recommendation of Town Administrator to approve request by Verizon & Nstar to place one new pole on Queen Anne Road
- C. Vote to sign request by Verizon & Nstar to relocate pole on Quason Lane
- D. Request from Open Cape to allow Nstar/Verizon to replace two poles and perform related work through June 28<sup>th</sup>
- E. Vote to accept the resignation of Murray Johnson from the Board of Appeals and the Waterways Committee effective immediately

Mr. Hughes moved approval of the Consent Agenda noting that he was not present at the May 14, 2012 meeting. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

### **PUBLIC HEARINGS/PRESENTATIONS (7:15 P.M.)**

- Charter Interpretation – *discussion with Town Counsel John Giorgio*
- Mr. Giorgio outlined Kopelman & Paige's opinion on whether or not a current member of the Waterways Committee would be eligible to be appointed to the position of



Harbormaster. He noted that a member of any agency is not eligible to appointment to any paid Town position under the agency for a period of a year. He stated that in order to understand the way the Charter works, two questions need to be asked – is the Waterways Committee an agency of the Town and is the position of Harbormaster in the agency, meaning the Waterways Committee. He outlined the Charter provisions accordingly pertaining to the definitions of “committee” and “agency.” Mr. Giorgio stated that under the Charter, the Waterways Committee is a committee and an agency is defined as any Committee, Board or Commission of the Town, so therefore he concluded that the Waterways Committee is a Town agency and clearly the Harbormaster is an appointed paid position of the Town. He said that what the Charter was getting at was to have a one year cooling off period before a member of a Town agency, meaning a multi-member Board, would be eligible to be appointed to a position that is basically under the general policy and supervision of the former committee on which he served and therefore he concluded that a member of the Waterways Committee would have to wait one year before being appointed as Harbormaster. He stated that if the Board doesn’t agree with that interpretation, they can proceed to make the appointment but it is not without some risk of being challenged and he believes it is pretty clear.

Mr. Hughes pointed out that the Town Administrator’s supervisor is the Town Administrator and he is not under the Waterways Committee and that he is not a voting member of the Committee nor do they tell him what to do. Mr. Giorgio responded that it is clear to him that the Town Administrator appoints the Harbormaster subject to Board of Selectmen approval and the day to day supervision is the responsibility of the Town Administrator but he was focusing on the words “within the scope of the general policy and directives established by the Waterways Committee.”

Mr. LaMantia pointed out that the Waterways Committee makes recommendations that the Board either adopts or doesn’t adopt. He argued that in the definition the word “agency” was a replacement for Committee, Commission or Board and this was discussed at public hearings. Mr. Giorgio stated that the question is whether the Harbormaster position is a position in the Waterways Committee and depending on how you answer that you answer the overall question. He stated that the key is what does it mean to accept a paid position in that Committee and is the Harbormaster a position in the Waterways Committee.

Mr. McManus stated that after reviewing the Charter and definitions arguably the only employee any of the Committees, Boards or Commissions have is their clerk. He said if you look at the definition of Town agency clearly only Commissions and Committees are Town agencies, departments aren’t and the Harbormaster is hired into the Harbormaster Department, he is not an employee of the Waterways Committee. He noted that the Town hired a Cemetery Administrator from the Cemetery Commission and there was another position that he was unaware of about a year ago that may this have had some impact



on. He stated that he believes the interpretation should be the same as when the Cemetery Administrator was hired.

Mr. LaMantia moved that the Charter does not preclude any Committee or Commission member from applying for a job within the Town. Mr. McManus seconded the motion. Mr. Hughes clarified that if they were to be appointed they would have to resign from that Committee or Commission and Mr. LaMantia and Mr. McManus accepted this as an amendment to the motion. Mr. Giorgio recommended that it be consistent with the Conflict of Interest Law and the Board agreed. The motion carried by a unanimous vote.

Mr. Bill Marsh and Mr. Bill Reilly both spoke in support of reappointing Matt McCaffery to the Planning Board.

- American Dream Update – Valerie Foster

Valerie Foster of Falmouth Housing Corporation, representing HECH, read the attached letter to the Board. She noted that the Depot Road property is still sitting in land court. Chairwoman Cebula expressed appreciation to HECH for their efforts on this project.

Bob Murray requested release of the last payment in the amount of \$14,900 and Mr. Ryan said the check should be available Monday.

- Barnstable County update on Wastewater Management – Andrew Gottlieb

Andrew Gottlieb discussed the process they are taking at the County to look at the question of regionalization and outlined the attached presentation.

- Public Hearing – Amend Entertainment License for the Cape Cod Claddagh Inn & Irish Pub to include outside entertainment

Mr. Ballantine read the notice into record. Attorney Joe Cavanaugh stated that he expected someone here to describe the nature and scope of the request. He noted that he sent a letter requesting that the hearing be cancelled based on the failure to provide additional information or a substantive proposal for this ongoing problem. He asked that the Board not consider the request.

Mrs. Connell stated that they sent a plan outlining exactly what they are planning to do and that they don't need to reiterate what they have already done.

Mr. Cavanaugh commented that there is nothing new that advances the ball and he hasn't heard anything about their obligations to present to the Board. He stated that there is a



simple failure to grasp the scope of this problem and he again asked the Board to deny the request.

Mr. Hughes noted that the plan does not have anything new in it and there is no impetus to move forward with this. Mr. Connell reiterated what they did in the past with the decibel meter, fencing and sound system.

Mr. Ballantine stated that the Board hoped and expected a plan for the outside like they did with the inside and there is no detailed plan for them to move ahead.

Mr. Hughes stated that he expected a plot plan that would show where music would take place, where speakers would be located and maybe some shrubbery or fencing to help mitigate that.

Mr. McManus read the letter that the Board sent to the Claddagh and noted that there were details that the Board anticipated receiving that weren't specifically requested in the letter and it would be appropriate if they want additional items they should list them and continue the hearing to allow the Claddagh a chance to provide those materials.

Mr. Hughes stated that he wanted a plot plan noting where the stage and speakers are, the speakers capacity, location of shrubbery etc.

Mr. Ballantine noted that he is not happy with the 65 decibels limit.

Mr. Cavanaugh stated that they need to hire an engineer to truly look at this problem and it may not be an appropriate site for outside entertainment.

Sebastian Mudry of 54 Smith Street said his wife had called the police about excessive noise. He noted the noise takes over their space both inside and outside and it is intolerable. He recommended acoustic entertainment only.

Mary Albis of Smith Street said she would be willing to consider it but worries that acoustic music can carry into the neighborhood as well and they should be careful about accepting all acoustical music. She said they should limit the number of performers, days and hours and she suggested a trial period with one day a week with one performer.

Mr. Ballantine moved to have a trial, one or two nights to start and see if it works. The motion was not seconded.

Mr. McManus moved to set conditions of allowing only acoustic performers, limited to 2,



4:00 to 8:00, no drums, no horns or brass performers, limit days of performance to Friday, Saturday, and Sunday and a 45 day trial. Mr. Hughes seconded the motion. The motion carried by a 4-1-0 vote with Mr. LaMantia in opposition. Mr. Hughes moved to close the hearing. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

## **OLD BUSINESS**

- Crowell Barn site plan – *David Spitz, Town Planner*

Mr. Spitz noted that he has provided the Board with a clearer site plan and that the proposed location of the barn is unchanged and they have made sure the current zoning setbacks both to the street and the abutter are honored. He said it is still clearing brush, no grading, and cutting is limited numbers of small trees. Mr. McManus moved to accept the site plan as presented. Mr. Hughes seconded the motion and the motion carried by a unanimous vote. Mr. McManus moved, based on having an accepted site plan, to allow the interior of the site to be cleared of brush and downed trees. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote. Mr. McManus noted that the trailer should not be moved to the site as it is unlicensed and uninspected and it would not be appropriate to charge employees with moving it across public ways. He stated that it needs to be the owner that has it licensed and inspected. Mr. McManus also recommended moving ahead quickly to get an RFP together to hire a design professional to develop professional drawings that are going to be needed in order to have this done by Mr. Crowell's birthday in December. Chairwoman Cebula questioned if the trailer can be put on a bed and moved over. Mr. Merriam responded that it is problematic but we will find a way to get the material to the site. Chief Mason noted that the Highway Department does have temporary plates available and Mr. McManus responded that the owner should take care of that, not the Town. Mr. Spitz stated that this can be done without taking up anymore of the Board's time and Chairwoman Cebula indicated that he should move forward with this.

## **NEW BUSINESS**

- Recommendation by Chief Mason to create a "Public Safety Review Group" – *discuss/vote*

Chief Mason outlined his request (see attached). Mr. Ballantine moved to accept the change in the Public Safety Review Group as Chief Mason suggested. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

- Town Administrator's request for 292.5 hours of vacation carry over – *discuss/vote*

Mr. Merriam said he has no excuses for the large amount of vacation hours that he is



requesting to carry over. He noted that he is violating his own policy that allows carryover of 10 days vacation for employees and he apologized for that.

Mr. Hughes suggested that Mr. Merriam make a concerted effort to use up some of the vacation. Mr. Hughes moved to grant the Town Administrator's request to carry over the vacation time. Mr. LaMantia seconded the motion. Mr. McManus asked for a target for it to be reduced by for next year and Mr. Hughes said they should encourage the Town Administrator to take six weeks. The motion carried by a unanimous vote.

- Dispatch update (continued) – *Chief Mason*

Chief Mason outlined his memorandum regarding dispatching issues (see attached). Mr. McManus stated that given that there are a number of conversations ongoing we will thank Chief Mason and continue for the Board's consideration as those conversations continue.

D. Special Town Meeting/Election Timeline – *discussion*

The Board discussed the timeline and agreed to put a discussion of the article regarding health insurance for surviving spouses on the June 18<sup>th</sup> agenda. No action was taken.

- Policy on submission of an article for Town Meeting – *discussion*

The Board agreed that they would like a one page form for submission of articles which requires specific information such as source of funding, basis for cost estimates, who is proposing the article, and should it be on the capital plan.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

### Muddy Creek funding update from Carole Ridley

Attached to this email are notes from our 5/22 meeting regarding Muddy Creek. ~In addition,~

- I contacted Larry Oliver at USACE to indicate to him that we would not be submitting a letter under the section 206 program. ~
- I confirmed with Don Liptak our interest in Cape Cod Water Resource Restoration Project funding for the design work, and asked if any funds received would likely flow through the towns or the Conservation District. ~He indicated that it would depend on where the funds come from, but all of the prior design contracts have gone through towns. In such a case, he indicated the grant agreement could be either town or the Alliance. ~Again, all of this is contingent on



the funding source, but that is how things have worked before. ~I will keep in touch with Don regarding the status of the program.

- the DoT website has an extensive list of pre-qualified design firms. ~The list of firms qualified to design simple and intermediate bridges --which presumably Muddy Creek's would be--in much longer than those qualified for complex bridges.~
- Nils Wiberg at Fuss and O'Neill had been contacted by an engineering consultant for Eastward Ho. Nils was asked about the scour potential along the shoreline as a result of the bridge. ~Nils conveyed the results of the Applied Coastal modeling, which indicated that the increased velocity on the Bay side ~of the bridge would dissipate quickly, and would not be expected to alter the channel configuration or scour the shoreline. ~However he noted that additional modeling would be conducted as part of the design process. ~This question/concern is just something to be aware of as things move ahead.

I will discuss the proposed role of the Alliance going forward with the Alliance Steering Committee at their June meeting and will report back to you on how that goes.~

Carole

Chapter 90 Delay (see MMA alert)

#### Cape Light rates

Barry Worth has provided us with new electric rates. (see attached)

#### W: [MassClerks] Fwd: Open Meeting Law - Notice of Emergency Regulation

The Attorney General issued an emergency regulation today that clarifies the section of the Opening Meeting Law regulations regarding restrictions by adopting authorities on the use of remote participation by members of public bodies. The text of the emergency regulation, along with the hearing notice may be found on our website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting) <<http://www.mass.gov/ago/openmeeting>>.

Philip Mantyla

Paralegal

Office of the Massachusetts Attorney General

Division of Open Government

#### May 14, 2012 minutes

Ann researched the tape of the May 14<sup>th</sup> minutes and found no reference to Heinz Profit during that discussion. Ann believes the draft minutes are an accurate representation of the meeting.



FEMA reimbursement received

It's here \$ 67,993.74 FEMA, I will need to allocate to the departments. ~

( 010004-484099)

David

**SELECTMEN'S REPORT**

Mr. McManus stated that several years ago at the intersection of Great Western and Lothrop an oil tanker was speared by a pick up truck and some oil spilled on the bike path and wetlands but the bulk of the oil went to the south side of Great Western affecting a neighboring homeowner's property. He noted that the cleanup on the Town property was done fairly quickly and successfully however the cleanup on the neighbor's property has continued on and DEP has turned over the cleanup to a contractor. He stated that the oil company's insurance company and the contractor feel because the oil is on the homeowner's property the residual wastewater that is being pumped out needs to go off site to a disposal facility bearing the name of the homeowner as the responsible party as opposed to the oil company. He stated that Senator Wolf and Representative Peake have gotten involved in this with DEP and are attempting to get this issue reversed. He stated that the homeowners have invested \$30,000 in legal fees to defend themselves, a 21E lien has been placed on their property which means they can't sell and they haven't been able to refinance it. He recommended that the Board of Health, Town Engineer and/or legal counsel look into this and see what the Town can do to assist our homeowner in defending themselves from this incredible injustice that the oil company and their insurer are trying to push on them. Mr. Merriam responded that we will start addressing it tomorrow. Mr. McManus said Mr. Merriam should contact Seth Roblein in Senator Wolf's office to find out what is happening at the state.

Chairwoman Cebula suggested that they write a letter to formally thank HECH for their efforts on the American Dream project and the Board agreed.

**ADJOURNMENT**

Mr. McManus moved to adjourn at 10:10 p.m. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel

Recording Secretary