

Board of Selectmen Minutes

07/23/2012

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, JULY 23, 2012
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, Supt. Cragin, John Rendon, Noreen Donahue, Matt Hart, Skip Patterson, Dana DeCosta, Pam Groswald, Bill Greenwood, Pete Watson, Geoff Wiegman, Jeffrey Dykens, and others.

MEETING CALLED TO ORDER at 7:00 p.m. by Chairwoman Cebula.

Chairwoman Cebula reported that the Board had just come out of executive session for the purpose of conducting strategy sessions in preparation for negotiations with non union personnel.

PUBLIC COMMENT/ANNOUNCEMENTS

Chairwoman Cebula announced there would be an informational meeting with MSBA Executive Director John McCarthy on August 1, 2012 at the Chatham Town Hall Annex hosted by the MRSD School Building Committee at 4:00 p.m.

Carl Shoote provided documents related to the Len Grenier issue of June 25th and asked for them to be included in those minutes.

Mr. McManus called for a moment of silence for Christine Wood who he noted served on numerous committees including the Cemetery Commission, Brooks Academy Museum Commission, Historical Commission, and Harwich Center Initiative as well as being Secretary to the Superintendent of Schools.

CONSENT AGENDA

A. Approve Minutes

- June 11, 2012 Regular Session
 - June 18, 2012 Regular Session
- B. Vote to sign Order for Joint or Identical Pole Locations for Verizon for Route 137 project
- C. Vote to sign the State Primary Election Warrant
- D. Vote to sign Ballot for Special Election Ballot
- E. Vote to accept the resignation of Ron Nordstrom from the Planning Board
- F. Vote to approve recommendation of Fire Chief Norman Clarke to award sale of Surplus Vehicle to Boyne Construction in the amount of \$2,550
- G. Vote to authorize Chair to sign Local Action Unit Application for DHCD approval to establish two affordable housing units at the property located at 114 and 116 Oak Street per request of HECH
- H. Vote to send letter to Carl Shoote relative to Charter Boat and D-Class slips and permits
- I. Vote to approve 3-day Special License application for wine and malt for Lower Cape Communications, d/b/a WOMR 92.1FM, for event to be held on September 14, 2012 from 5:00 p.m. to 9:30 p.m., September 15, 2012 from 12:00 p.m. to 7:00 p.m., and September 16, 2012 from 12:00 p.m. to 6:00 p.m. at Brooks Park

Mr. Hughes moved approval of the Consent Agenda. Mr. Ballantine seconded the motion. The motion carried by a unanimous vote with the exception of Item I which Mr. McManus abstained from voting on.

PUBLIC HEARINGS/PRESENTATIONS (7:00 P.M.)

- Public Hearing – Proposed Harbor Management Plan amendments – *continued from June 25, 2012*

Mr. Hart, Waterways Committee Chair, outlined the document entitled “Recommendations of Changes to Harbor Management of Current Practices of the Harwich Harbor Management Plan” (see attached document listing of 4 items).

Mr. McManus said the word “conductive” in item 3 should be “conducive.” Mr. Hughes noted that “a tasteful a seasonal motif” should be “a tasteful or seasonal motif” in the same item.

Mr. McManus said that the words “and subject to towing” should be added to item 4 after “subject to parking fines”.

With regard to item 4 – Round Cove Boat Ramp, Glen Fernandes, a mooring holder in Round Cove said he takes his boats in and out at Round Cove and it doesn’t make sense to try to figure out how to get his boat in somewhere else when he is going to keep it in

Round Cove.

Mr. Rendon said this issue is really surrounding the bass season which is a short time and suggested implementing this for a seasonal period. He noted that the condition of the ramp is a consideration as well as it cannot handle large boats.

Mr. Fenandes suggested allowing residents only to launch there.

Mr. LaMantia suggested giving people in Round Cove with mooring permits an exemption and limiting this to the bass season. Mr. Rendon stated that the mooring holders in Round Cove know when to haul their boats in as they pay attention to the tides. Mr. Hart agreed and said the problem lies with people coming just for the day during bass season. He added that Chatham closed their ramp so we are the next one in line. He agreed with the restriction as suggested but added that anyone over 25' cannot be in there.

Mr. Hughes recommended continuing this for 2 weeks and having the Harbormaster check out the area and come back with a proposal as to where he would put signs and what they might say. He suggested that there be a plot plan for parking as well.

Mr. Ballantine moved to close the public hearing. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Mr. Ballantine moved to accept item 4 of the recommendations with the 2 changes of the trailer only, in other words to delete the restriction to the tandem trailer, and we increase the length from 20 feet to 25 feet. Mr. McManus seconded the motion if we add in the phrase "subject to parking fines and towing" and if we include approving items 1, 2 and 3.

Mr. Ballantine rescinded his motion and moved to accept items 1 through 4, 1 through 3 as stated, item 4 that we delete the phrase "tandem trailer," we extend the length from 20 feet to 25 feet, after the phrase "where we can fine the cars up to \$200" add "and/or tow cars that are blocking the roadway" and have the Harbormaster provide a sign and plan in 2 weeks. Mr.

McManus seconded the motion with the proviso that the minor grammatical change in item 3 is included. Mr. McManus said that they need to speak to Chief Mason about putting signage along Route 28. The motion carried by a unanimous vote.

OLD BUSINESS

- Monomoy High School Building project – Board of Selectmen/
Finance Committee – *discussion, public comment and possible vote*

Mr. Patterson stated that the Finance Committee has elected not to vote on this matter until after they have met with the MSBA on August 1 so they have not taken a position on the latest number and have not taken a position on the article as they wanted to gather as much information as they could.

Mr. Wiegman of the Harwich Taxpayers Association distributed a presentation to the Board and asked that Mr. McManus recuse himself on this issue. Chairwoman Cebula said that we have spoken with Town Counsel and the State Ethics Commission and there has been no indication that Mr. McManus needs to recuse himself from voting on this issue.

Mr. Watson commented that it is not the time to talk about reassessing other possibilities and to throw numbers out that have no substance. He stressed that we need to move ahead with this as it is the right thing to do.

The Board discussed various topics related to the proposed high school project including building capacity, class size,

history of the project, and cost. In response to a comment by Mr. Wiegman, Mr. McManus noted that the MSBA rejected the plan of using the 2 existing facilities for the high school in favor of a plan of building a new high school. He agreed with Mr. Watson that moving ahead is the right thing to do.

Supt. Cragin outlined the report of the Building Use Committee which offered both a plan A and B, with regionalization as the preferred option or a middle/senior high school as the back up option. She explained the rationale on why the students were not just shuffled within the existing facilities which she noted did not offer a reasonable model to the MSBA as the facilities don't fit, in an appropriate way, the student needs and programs for a regional district. She noted that the MSBA has found the regional high school to be the appropriate solution to the problem we brought to them. She added that we don't have the option of bringing forward to them another option.

Jeff Dykens stressed the amount of study that went into this as well as the support of the MSBA and Chatham. He asked for support of both the Finance Committee and the Board of Selectmen.

Dan Tavares, OPM for the district, discussed the project budget and construction costs and noted that there have been significant efforts to pay attention to the cost of the project by the Building Committee, School Administration, the architect, OPM and MSBA. He stressed that the costs have been scrutinized by all those directly involved in the development of the project to ensure that there is nothing

in there that was frivolous. He commented that it is in line with the other model schools being built at this time.

No votes were taken.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam delivered the following report to the Board:

United States Nuclear Regulatory Commission

In response to the May 2012 Ballot Question pertaining to the expansion of the emergency zone and radiological response plan as part of the re-licensing of the Pilgrim Nuclear Plant, the US NRC has written a letter dated July 6, 2012 addressed to Chairman Larry Ballantine. The letter is from Brian Holian, Director of the Division of License Renewal, Office of Nuclear Reactor Regulation. The letter states that the license was renewed on May 29, 2012 and will expire on June 8, 2032. They indicate that emergency planning is in their regulations and apply to all operating licenses, including those of renewed licenses. "the agency can take appropriate actions as part of its ongoing safety oversight."

D permits

Waterways Chairman Matt Hart has provided documentation regarding the history of this issue (on file in office). He provided this information to us for your review and for a permanent office record. John Rendon and I met with Carl Shoote and Alan McMullen to review the

information provided.

At this point in the meeting, Mr. McManus referred back to the Public Comments section of the agenda and noted that the documents that Mr. Shoote entered tonight will not be included as part of the June 25th meeting minutes and the Board agreed.

Route 124 Engineering

Attached is a letter from me to Lincoln Hooper informing him of the Board's support for the project dated April 16, 2010.

Harwich: Czarnecki v. ZBA and
O'Sullivan, Land Court 2012 MISC.
464566

Dear Ms. O'Sullivan,

Thank you for your recent telephone message, regarding the above-referenced litigation.~ I attempted to reach you this morning and left you a voice mail message.

I understand from your recent telephone message that you and Mr. O'Sullivan do not intend to hire counsel to represent you in the above-referenced litigation, which concerns an appeal taken from a special permit issued to you and Mr. O'Sullivan that would allow you to construct an addition at your property at 79 Strandway.~ I also understand from your message that you and Mr. O'Sullivan are uncertain as to whether you will attend the upcoming Case Management Conference scheduled by the Land Court.~ As a result, I am uncertain as to whether you and Mr. O'Sullivan intend to file appearances in the litigation and to then actively defend the special permit on a *pro se* basis (i.e., you would represent yourselves without legal

counsel); or, whether you intend to surrender your rights under the special permit that was issued for your property.

Please be advised that, since the litigation concerns an appeal from the grant of a special permit to a private third party, it is the Town's usual practice to require the special permit holder to appear in the litigation and actively defend the special permit as the real party in interest.~ Town Counsel will represent the Zoning Board of Appeals during the case management conference, but, thereafter, unless expressly directed to the contrary by the Board and the Town or by the Land Court, Town Counsel would cease to actively participate in the litigation and leave the active defense of the special permit to you and Mr. O'Sullivan.

I request that you and Mr. O'Sullivan please review this matter and then let me know, at your earliest convenience, whether you and Mr. O'Sullivan intend to actively defend the special permit or whether you wish to surrender your rights under the special permit.

Thank you very much for your attention to this matter.

Ilana M. Quirk, Esq.
Kopelman and Paige, P.C.

Connelly's Oil Spill update

Hi Jim,

Wanting to keep you in the loop, and with the permission of the Connollys, here's their latest from them to our office.

Seth Rolbein, Senior Adviser
Office of Cape and Islands Senator Dan

Wolf
cell: 508-367-6044



From: Kevin Driscoll
[kdriscoll@senatordanwolf.com]
Sent: Saturday, July 14, 2012 9:52 PM
To: Rolbein, Seth (SEN)
Subject: Fwd: Oil Spill Cleanup
FYI-- Latest update from the Connollys.
Kevin

----- Forwarded message -----

From: J or C Connolly
<cathncon@att.net>
Date: Sat, Jul 14, 2012 at 3:29 PM
Subject: Oil Spill Cleanup
To: Kevin Driscoll
<kdriscoll@senatordanwolf.com>

Dear Mr. Driscoll

Thanks for your ongoing support to
accelerate the cleanup of our property.

~

We feel you should know about recent
activities related to Cape Cod Oil's effort to
ask the DEP to let our property go to
natural attenuation if we do not sign their
Access Agreement (which we and our
lawyer feels does not protect us fully).~
Natural attenuation could take years, perhaps
decades, to allow mother nature takes its
course in reducing the contamination levels
in the ground water.~ As you are probably
know, Cape Cod's ground water is
considered a single source aquifer, and that
the levels of contamination in ground water
at our property are above the allowable
levels for drinking water.~ We think it
would be travesty if natural attenuation was
allowed, both from the stand point of the
drinking water and also, it would likely
render our property totally devalued/
unsalable for some very long period of time.

~

We had an Agreement in place that gave us adequate protections and that both parties could have just signed a simple extension.~ Cape Cod Oil has since gone on the offensive, withdrawing a number of protections we had in place, and will only sign an agreement that could open us to law suits from them once again, as well as, CCO is not willing to state in writing~ they will restore our property back to its original condition and remove monitoring wells and other intrusions onto our property that resulted from the spill.~

~

We are hoping DEP will not allow CCO to go to the natural attenuation approach, and arbitrate a workable solution to this problem.~ A meeting date has not yet been set.

~

Thanks again for your on going support,~
Cathy and Joe Connolly

~

Capital Outlay Committee /FinCom tour
Rich Larios has organized a bus tour for interested members to see various sites involved in proposed projects –see schedule.

Golf Adjustment

I have informed the chair of the Golf Committee that I made a yearend adjusting journal entry on 6/28/2012 in the amount of \$27,800.00 per our Golf Superintendent Dennis Hoyer. If you have any questions please feel free to contact me 508-430-7514 x3335.

David L. Ryan

Allen Harbor dredging

Regarding channel dredging by County, we will accept bids for surplus sand deposits.

~

Bells Neck Parking lot

At Trails Committee urging, the Conservation Commission has approved a new 6 car parking lot on the north side of Great Western Road to access Town and HCT land abutting the Herring River.

Christine Wood Obituary

Christine (Smith) Wood, 91, a long time resident of Harwich passed away Friday, July 13 at Cape Cod Hospital. Christine was well known and appreciated for being an active volunteer in Harwich. In 2010, she was the recipient of the Community Service Award of the Year in appreciation for being a Past Chair and member of the Harwich Council on Aging, serving on the town's 300th Anniversary Committee, the Brooks Academy Commission, Harwich Housing Committee, Harwich Center Initiative Group, Historic Commission, Harwich Family Pantry and a long standing member of the Cemetery Committee. She was employed by the Robert E. Joy Company of West Harwich for 35 years. She leaves her daughter Lynne Casale and husband Ralph of Plymouth, a granddaughter Christine Casale of Somerville, and her step grandchildren Ralph Casale III of Westford, Linda Frascarella of Maryland, and Joseph Casale of Framingham. She is also survived by her nieces Anne Nevin of Martha's Vineyard, Nancy Nevin of Florida and Mary Jane Nevin of Boston and many grand nieces & nephews. She also leaves her "Gal Friday" Brenda Weeks of Harwich. She was predeceased by her sisters Eileen Kraus of Dennis, Mary Jane Nevin of Martha's Vineyard and her nephew Jack Nevin of Martha's Vineyard. Christine was known by many to be outgoing, steadfast and willing

to help others. She accepted her daughter's new large family and attended many of their Holiday functions and other gatherings. She was known for her strong opinions on politics, religion, and certainly women's rights and loved sharing her thoughts on these topics and many others. She was always receiving guests at her home greeting them with a hot cup of tea, cake and occasional stronger beverage, when required. She loved being with her friends and entertaining. She will be missed by her friends, family, pets and the squirrels and birds she kept fat and happy in her back yard. Visiting hours will be held on Thursday, July 19 from 4-7 pm at Morris, O'Connor & Blute Funeral Home, 678 Main Street Harwich Center. A Funeral Mass will be held on Friday, July 20 at 10 am at Holy Trinity Church, Route 28 West Harwich. Burial will be private. Robbin Kelley Cemetery Administrator

Legal Opinion re: Selectman Conflict of Interest

In my opinion there is no conflict of interest issue if Selectman McManus is serving as a member of the Board of Selectmen simultaneously with his service as a member of the Regional School Building Committee, since he does not have a personal financial interest in either position.

A member of a Regional School Committee (and by extension a member of a Regional School Building Committee) is considered a municipal employee of Harwich for purposes of the Conflict of Interest law. As you know, there is nothing that prohibits an elected municipal official from holding a second appointed position with the municipality.

The reason why I asked whether either or both positions are compensated is the prohibition (with some exemptions) against a municipal official from having a contract with the Town.~ The Ethics Commission states, however, that compensation for an elected position is not considered a "contract" for Chapter 268A purposes, so in effect Selectman McManus has no contract here.~ If the second position was compensated, he would need to qualify for an exemption, but the Building Committee is not compensated so there is no issue.~ Please let me know if you need anything further.

John W. Giorgio, Esq.

Legal opinion re: Obligation to build a new high school

In my opinion, there is nothing in the regional agreement that compels the Towns or the Regional Committee to build a new high school or other buildings.

Section V.B states that: "It is the intention of the Towns to seek to build a new high school and to renovate a middle school with all due alacrity."

Furthermore, Section IX.4 of the agreement states: "If the construction of a new high school is undertaken after creation of the district, the capital costs and debt service attributed to said construction, and the planning for same, will be assessed under subsection B and D above, despite the fact that the completion of the new high school will occur prior to there being one regional middle school."

Neither of these sections requires the construction of new buildings, and, in fact, the agreement provides the method for the assessment of capital costs if a new high school or the renovation of the middle school does not take place.

Furthermore, section XV of the agreement provides that the district may incur debt in accordance with either of the methods set forth in G.L. c. 71, sec. 16 (town meeting vote or a ballot question). G.L. c. 71, Sec. 16(d), which is the method I understand the region is pursuing, provides that town meeting in both towns must approve the issuance of the debt by the regional school committee for a new school, and if either town meeting expresses disapproval, the regional school district cannot proceed with issuing the bonds.

While the regional agreement clearly contemplates that a new high school may be constructed, there is nothing in the agreement that requires the district or the towns to do so. Furthermore, the region is precluded from incurring debt if either town disapproves a proposal by the region to incur debt for the purposes of proceeding with the construction or renovation of any new school buildings. Please let me know if you have any further questions.

John W. Giorgio, Esq.

ADJOURNMENT

Mr. McManus moved to adjourn at 10:40 p.m. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel

Recording Secretary