

Board of Selectmen Minutes

09/18/2012

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
TUESDAY, SEPTEMBER 18, 2012
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, David Ryan, Chief Mason, Chief Clarke, David Henry, Atty. William Crowell, Atty. Kelly Jason, and others as noted herein.

MEETING CALLED TO ORDER at 7:11 p.m. by Chairwoman Linda Cebula.

Chairwoman Cebula reported that the Board had just come out of Executive Session pursuant to M.G.L. c. 30A, § 21(a)(3), to discuss strategy with respect to collective bargaining or litigation.

CONSENT AGENDA

- Vote to approve the recommendation of the Town Administrator and the request from
Verizon to place one new pole on Grey Neck Road to remove aerial trespass over #109 Grey Neck Road
- B. Vote to approve request by Director of Channel 18 for a transfer from the Cable Fund in the amount of \$8,200 for the purchase of SDI equipment for the Town Hall set-up for fiber cable
- C. Vote to approve the schedule for Annual Meetings with committees, boards and commissions
- D. Vote to refer petition for the Skiniquit Road private road betterment to Assessor's Office for verification of signatures and verification of 50% of abutters
- E. Vote to approve request for Caleb Chase Fund expenditure in the amount of \$328.10
- F. Vote to approve County Grant for Bells Neck Parking in the amount of \$2,500

Mr. Hughes moved to approve the Consent Agenda. Mr. McManus seconded the motion

and the motion carried by a unanimous vote.

PUBLIC HEARINGS/PRESENTATIONS *(Not earlier than 7:00 P.M.)*

- **Public Hearing** – Application for Change of Location and Transfer of Annual, Package Store, All Alcoholic Beverages License held by D.J. Henry, Inc. d/b/a Pleasant Lake General Store to Packaging Center, Inc. d/b/a Super Stop & Shop. Mr. Ballantine read the hearing notice into record. Mr. McManus recused himself as Mr. Henry is a client of his and he departed the meeting.

Attorney William Crowell, representing Packaging Center Inc., which he noted is owned by Stop & Shop, submitted the abutter affidavit, outlined the application and noted that this will be the fourth license to be held by Stop & Shop in Massachusetts. He noted that the 4 corners was designed to be the new commercial center in Town and affords access to 3 other towns so in addressing the issue of convenience, Stop & Shop is already there. He stated that this creates one stop shopping and would not cause any significant increase in traffic as we are only talking about the customers that are already frequenting the Stop & Shop. He said that in reviewing Chief Norman Clarke's letter he does not see public safety issues. He reviewed the locations of the other licenses in Town with 4 in Harwich Port, 2 in West Harwich, 2 in Pleasant Lake, 2 in Harwich Center, but only 1 in East Harwich which is the fastest growing precinct in the Town so there is a definite need for a liquor license in this location. He submitted a petition of over 2,000 signatures that were collected at the Stop & Shop location in support of granting this license and he stated that the Board needs to make a determination as to public need at this location. He stated that he feels the opposition knows there is a need at that location and are trying to control competition. With regard to security, he stated that Stop & Shop will not be selling nips, pints, half pints or kegs, the floor plan area is well defined and there will be display areas at different areas in the store. He explained that Stop & Shop has state-of-the-art security measures that will be designed and implemented including a sales area that will be caged and locked down every day, cameras in place with security specialists including a public view monitor, fixed cameras, tv monitors and recorders and they will be doubling their security hours. He further noted that everybody will be carded regardless of age and there will be locks for bottle caps that will only be removed after approval. Mr. Crowell noted that Stop & Shop has had no citations at any of their 3 locations. He submitted the petition to the Board.

Mr. Hughes asked what the proposed hours are and Mr. Crowell responded they are 8:00 to 11:00 Monday to Saturday and 12:00 to 10:00 on Sunday with a gated area under padlock when not in operation. Chairwoman Cebula questioned how they would secure wine in other parts of the store and if it would be locked down. Mr. Crowell responded it would not be but they are not married to the idea of that not being under lock and key.

Ben Feller, Manager of Customer Service for the region for Stop & Shop, described training for employees in this regard in response to an inquiry by Mr. Ballantine. He noted that the employees will be required to have TIPS training, every ID will have to be scanned at point of sale and the registers lock up until the ID is cleared. Chairwoman Cebula asked how they would handle the issue of underage cashiers ringing up alcohol. Mr. Feller said that person will not be able to touch the alcohol but rather they call for help and there is always a supervisor on the front end that will handle the process. Mr. Hughes questioned the employment impact and Mr. Feller said there will be additional hours for a liquor store manager, assistant manager and a part-timer. Mr. Crowell noted that there are 16 minors at the store out of 257 employees with 12 of them at the registers.

Taylor Mills of Gorham Road questioned if the scanners accept out of state licenses and would a call be generated to police for a false license. Mr. Feller stated that the scanner recognizes all Massachusetts, United States and Canada ID's including military ID's and passports. He noted that it will recognize a false ID.

Richard Abraham of the Stop Loss Prevention department said they would confiscate a false ID and contact the Police Department.

Noreen Kennedy questioned how they are going to prevent kids from scanning someone else's ID's. Mr. Feller said the ID has to be presented to the person at the register and they would verify it just as any other business would do that sells alcohol. He said the scanner is an additional fail safe step. Ms. Kennedy pointed out that the person at the register can be a friend of the purchaser and Mr. Feller said everyone would be carded.

Joe DellaMorte, owner of Cranberry Liquors, questioned if six packs will have the security locks on them and Mr. Crowell responded that the locks will be on the liquor bottles and not the beer bottles.

Glen Albrick representing the owners of Harwich East Liquors, noted that he sent a letter dated September 14 indicating that there is substantial legal authority to deny the application. He said there are many cases on this subject that show that this isn't just about public need but it is about public welfare as well. He commented that public need must protect the common good.

Don Howell opposed the application particularly the purchase of it for \$170,000 and minors working there. He said it is illegal to sell a liquor license. He stated that he would not take a child into a liquor store and if Stop & Shop has liquor there, he won't go there either with a child. He stated that "one dirty little secret that they are not addressing is that

they paid people to have them sign the petitions as you were going in and out of the supermarket.~ That wasn't a passing thought.~ There were people standing outside with clipboards and asking you to sign.~ I'm not even sure that everybody knew what they were signing but it was done with people requesting signatures, it wasn't just sitting on the counter, at least a portion of it."

Taylor Perault said he is in favor of the license, minors are already getting liquor from other stores and Stop & Shop has electronic safeguards to prevent underage sales as well as a track record of no problems. He stated that you can't hold them to a standard that you don't hold other stores to.

Karen Fenton read a statement of support from another resident, Gerald Smith.

Sarah Parmenter said she was speaking on behalf of her aunt who she said was in support of this and favors the one stop shopping.

John Litman spoke in support of the transfer noting that they are going to far greater measures than other stores. He read letters of support from Rebecca Smith and Bob Lawton.

Joy Caparello spoke in support noting the convenience to shoppers.

Dave Otis said he supports free enterprise and doesn't believe it would hurt competition.

Jon Kenney of Harwich East Liquors submitted a petition of 1,349 signatures in opposition. He urged the Board to deny the application based on public need and public safety and he read a letter as such.

Josh Norris, owner of Shop Ahoy Liquors, said there is no public need, the market is saturated in the area, and he provided a petition of 1,100 signatures from Chatham in opposition.

John Dickson, Brewster Selectman, noted that the Brewster Board of Selectmen voted on September 17th to voice their concerns regarding this application including the effect this will have on small businesses in the community and the ability of Stop & Shop to properly maintain and monitor the sale of alcohol. He stated that he personally opposes the license as well.

Dauberry Sherlock, employee of Luke's Liquors, was opposed due to safety and employment issues. She noted that there is no fail safe security and that it is illegal to

confiscate ID's.

Brian Mannel stated we have ample places to buy liquor and asked the Board to oppose this.

Chief Mason stated that it is illegal to confiscate fake ID's. He stated that they have numerous kids taken to the hospital with alcohol poisoning and that is his main concern. He said he would hate to see another distribution point with what he sees as easier access.

Barry Sauder said he is in support because of free enterprise and convenience.

Val Peter said Stop & Shop should stay out of the booze business.

Taylor Mills, retired Hingham Police Chief, said no liquor license like this has ever been granted that didn't increase the demands on public safety.

Todd Marcus, owner of Cape Cod Beer, said he opposes the license and supports local business.

Roy Mannel said its unfair competition from a large corporation and he supports local business.

Chief Clarke said it is inappropriate for a large supermarket to sell beer and wine and noted that we have people with drinking problems here. He said we have control with the smaller businesses and the problems don't happen in the store, they happen in the parking lot.

Mr. LaMantia moved to close the public hearing. Mr. Hughes seconded the motion. Chairwoman Cebula granted Mr. Crowell permission to speak. Mr. Crowell stated that case law provides that you can sell a liquor license. He noted that Stop & Shop did not pay people to sign the petition as Mr. Howell alleged. He said they are not looking to increase the number of licenses as this is a transfer. He noted that Stop & Shop is willing to forgo the display sales and just have everything in a lockdown cage. He added that healthy competition is good and we should not try to control competition. The motion carried by a unanimous vote.

The Board discussed the application and testimony in relation to the Ballarin factors. Mr. LaMantia questioned what we are starting here and whether we should require licenses to be turned in or do we start selling licenses for \$170,000. Mr. Crowell noted that the

ABCC General Counsel was contacted by the Administrative Secretary who indicated that this is common practice throughout the state. Mr. Hughes said it is a much bigger operation, he believed there to be more negative than positive testimony. He said the fundamental question is that we have two major supermarkets in Town and do we want them to sell alcohol. Mr. Ballantine argued we have more than the public need for the locality. He was also concerned with the process of selling the license. He noted that the Chiefs have raised an interesting point about control issues and the control of the parking lots, entrances and exits even with the security measures. He said he was reluctant to accept that the training will be there with the large employee turnover.

Mr. Hughes said he was most concerned with the size of the operation, going from a tiny operation to a big operation, and Mr. Ballantine agreed. Mr. Ballantine said the “sort of operation” gets us into the control issues they talked about with a large store of this nature. The Board indicated they were most concerned with this type and size of operation and being able to control both inside and outside. Mr. Hughes said those are their 2 purposes to deny the license. The Board indicated that they should review the process for the future with regard to selling licenses versus turning them in. Mr. Crowell requested on behalf of the petitioner that the Board allow them to withdraw the application without prejudice. Mr. Ballantine moved to accept the withdrawal without prejudice for the Stop and Shop license application. Mr. LaMantia seconded the motion and the motion carried by a 3-1-0 vote with Mr. Hughes in opposition.

Note: All documents submitted at this hearing are on file in the Board of Selectmen's Office.

- **Public Hearing** – Application for a Seasonal, Package Store, All Alcoholic Beverages License by D.J. Henry, Inc. d/b/a Pleasant Lake General Store

Mr. Ballantine read the hearing notice into record. Atty. Kelly Jason representing D.J. Henry Inc., stated that given what has happened with the prior application, she was asking to withdraw the application without prejudice. She presented the abutter form. Mr. Hughes moved to allow the withdrawal of the application without prejudice. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

OLD BUSINESS

- **Surviving Spouse** – *discussion*

Mr. Hughes pointed out that this is the third time this has come before the voters and they have spoken. Chairwoman Cebula questioned if it is possible for us to consider grandparenting those half dozen people who are at the 75% and have been impacted. She said those people as of June 30, 2012 and the new people would be at the 50%. Mr.

LaMantia moved Chairwoman Cebula's suggestion. There was no second to the motion. Mr. Merriam stated that Town Counsel's opinion of acceptance of the statute was that it could be accepted either way, by Town Meeting vote or by ballot and if the Board concurs with the legal opinion then the Town of Harwich accepted the statute. Chairwoman Cebula stated that the statute allows us the ability to pay more, it does not require it and Mr. Merriam confirmed that the statute allows the Town to set a reimbursement rate greater than 50% but he does not believe the statute gives the Board the ability to differentiate on the percentages based on when someone retires. He said he thinks we should research the grandfathering question before we proceed. Chairwoman Cebula asked Mr. Merriam to research the question.

NEW BUSINESS

A. Request for Public Hearing regarding Beach Road – *discussion*

The Board decided that a public hearing was not warranted but this should be scheduled on an agenda to provide details on how the Town plans to move ahead. Mr. Merriam was instructed to write a memo outlining what has happened to date including the outstanding legal suit and permits to nourish below the mean high water mark.

B. Lighthouse Charter School request for traffic signage – *discussion/possible vote*

The Board referred this item to the Public Safety Committee for review and recommendation.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam read the following report to the Board:

911 Dispatch

See flier - Sept. 24th I'll be serving on panel

Allen Harbor update (attached is revised Schedule and estimated volume)

From John Bologna

As a follow up to our meeting this morning, ~please find revised spread sheet showing recalculation of dredging volume, assuming an additional discount of 0.5 feet of the loose upper strata (fluff)~materials. I was mistaken this morning in stating that this volume of material was taken out of the calculations that was shown in~the spreadsheet that was distributed. ~After the meeting, I spoke with Roy E Okurowski (REO), who confirmed that the~reduction in dredge volume for the fluff factor~was not included in the

calculations shown in the first spreadsheet. He sent a revised spreadsheet showing a total dredge volume at -7 feet, with both adjustments that shows less than the 40,000 cu yd contract amount. ~Bottom line, by recalculating the dredge volume of material to be removed, based on the most recent~REO pre-dredge survey, adjusted for both 0.5 feet for the bench mark discrepancy and an additional discount of 0.5 for the loose upper strata fluff materials comes to approximately 35,700 cu yd over the entire contract footprint volume, when calculated at the full 7 ft~pay~limit. At this point, as discussed this morning, CEC~will re-survey of the area using the low-frequency~RTK, calibrated~to account for the~upper fluff layer using a standard ACOE lead line sound disk measuring devise to determine the pre-dredge contour and volume estimate.~ To corroborate this,~we suggest a site meeting with Burnham surveyor representative and REO/CEC~to establish the contract base line~pre-dredge bottom contours to be used as the basis for payment. In the interim, CEC will provide Burnham the coordinate for the dredge extents~to the mooring basin and~will coordinate the site meeting with the surveyors. Sorry of the confusion. Please let me know if you have any questions. ~ John Bologna, PE, President/CEO

From JRM after 9/12 meeting

As per your request, I am advising you of the meeting which just concluded re: Allen Harbor dredging. Present were Angelo, Coastal reps John Bologna and Don Munroe, Craig Burnham and his associate Nick Mucci, staff John R., Amy, Bob C. , Wayne Jaedke from the County Dredge, Craig LeBlanc from AH Marine and myself. Coastal Engineering revised their volume based on pre dredge survey to 52,573 C.Y. and Burnham's ~pre surveyor Eric calculated 55,000 c.y. John Bologna recommended deleting 11,042 c.y. by not dredging the mooring field in the S/W corner. (Three abutters would be adversely impacted, so betterments must be adjusted.) This would keep volume at 41,531 and cost within \$2.9m authorized borrowing. Wayne will complete channel dredging this afternoon. Burnham expects to start dredging by this weekend. He will complete all areas except for mooring field, Coastal will re-survey and determine if any more money/ volume~is available for this last section. ~If a Change Order is contemplated, we will present to the Board. Craig Burnham will continue to pursue disposal at Cape Cod disposal site- ACOE has requested more sampling. I conveyed that lab cost must be justified in savings to the Town.

Lighthouse Charter School signage request

I wrote the email below to~Chief Mason who forwarded it to~Representative Peake.~ Her Chief of Staff called me~and after a short conversation I recommended that Rep. Peake contact District 5~Director Perry directly to gauge how amenable MassDOT would be to utilizing some of the contingency money for the school zone lights.~~There is also an estimate for construction~and engineering costs~from VHB below.~ I have not heard back from anyone since last~Friday.~ You may want to check with Bill to see if he~has or contact Rep. Peake yourself.~ Thanks, Link~~~~~

As you know, we currently have a TIP project (Project File Number 604918) under construction on Route 137, which was engineered long before the Charter School purchased the theater property.~ As a consequence, school zone lights were not incorporated into the project.~ However, there may be an opportunity to get them installed as part of the project and paid for with~contingency funds (approximately \$400k) if MassDOT is amenable to it.~ My recommendation would be to have Rep. Sarah Peake make a formal request to Mary Joe Perry, District 5 Highway Director, 1000 County Street, Taunton, MA 02780.~ Below is an estimate from VHB, the engineering firm who designed the project, for~design and construction costs.~ Please contact me if I can be of any further assistance.~ Thank you,

Lincoln Hooper, Director

Lighthouse Charter School's Building permit cost \$10,355, of which \$5,000 was waived)

Chief Mason's view of Charter School request

I have no objections to a school speed zone in this area; however, I

- >also realize the factual information regarding school zone speed limit
- >reductions and cross walks. As a point of information, there are
- >school zone speed limits in front of Harwich Middle School on Sisson
- >Road and Harwich Elementary School on South Street that do not have
- >crosswalks where children are required to cross yet they are there,
- >functional, and serve a school safety value not only for pedestrian
- >students/parents, but traffic/busses entering/exiting school property.
- >I think this would apply to the Charter School on Route 137 as well.
- >The only school in Harwich that has a required cross walk where the
- >children must cross the street is Holy Trinity School on Route 28 in
- >West Harwich. At that location they have a crossing light but no
- >school zone speed reduction. Again, thanks for your input and concern, it is appreciated.

>William A. Mason, Chief

>Harwich Police Department

MIIA WEBINAR

Department Heads were offered a rewards training webinar on tapping talent in your team: Strength Based management. The second half will be offered next week.

Capital Outlay Committee

COC toured the Chatham Treatment plant and other town assets on Sept. 10th and met on Sept. 11th with the Community Center expansion group, the Cranberry Valley Golf Committee Chair and Director and Library Director. They conveyed their support for a Facility Manager/Dept., and recommended repairing rather than replacing Recreation

restrooms. They also questioned the value of the Rt 124 reconstruction project (Link and Joe Magni are scheduled to present additional information to your Board on Sept. 24th).

Lincoln Hooper's chronology of Rt 124 project approvals

Given your request to have me present the Route 124 TIP project to the Board of Selectmen~at their~September 24th meeting,~I thought I should provide you the~following documentation for your records:~

- 8/8/2009 letter from me to MassDOT requesting consideration~of~two potential projects
- 12/15/2009 letter from MassDOT acknowledging receipt of the my letter and the Project Need Forms
- 4/6/2010 memo from me to the Board of Selectmen outlining the project and requesting their~formal support of the project
- 4/16/2010 memo from you to me serving as proper notice that the~Board supported the project
- 7/13/2010 letter from VHB to MassDot submitting the Project Initiation Form on behalf of the Town of Harwich
- 11/29/2010 letter from MassDOT approving the project for Federal funding and outlining TIP requirements
- 4/26/2012 Cape Cod Chronicle article regarding Route 124
- 8/6/12 PowerPoint presentation I made to the Board

Although this does not represent all the documentation surrounding this TIP project, it should provide an outline of the steps I have taken to advance it thus far.~ As you know, I engaged VHB to provided the Town with the PNF and PIF~while they~were~under contract working on the~Route 124 intersection project.~ Since they are acutely familiar with both the roadway and MassDOT's requirements, I have asked Joe Magni, VHB senior engineer, to assist Chris and~I with the presentation on September 24th. Please contact me with any questions or concerns you may have.~ Thank you,~Link~~~~

Solar Panel Project

County Administrator Mark Zielinski , CVEC Counsel and I will be meeting with NSTAR representatives re: Energy credits and interconnect approvals for all 9 phase 1 projects.

Pete Watson

Pete has tendered his resignation from the Finance Committee, Capital Outlay Committee (as Chairman) and Wastewater Implementation Committee effective September 30th. Pete has contributed greatly to Harwich's future and we wish to thank him for his service.

Brooks Library maintenance update

Good morning Greg,

The Trustees had their monthly board meeting last night and were pleased to hear that Gaskell will be funding the installation of the venting system for the inverter.~ They do have some concerns that need to be addressed by you/Gaskell.~ The Trustees would like from you, in writing, certification of the following:

- The proposed fan/venting is sufficient to keep the ambient temperature below 77 to prevent damage to the batteries and preventing the inverter from shutting down because of heat, leaving the library without emergency lighting.
- The venting will be sufficient for proper ventilation of the room and will meet safety and health standards.~ (I refer to Alan Stone's – engineer at Crucial Power, the manufacturer of this inverter) comment - [Thanks, Alan Stone]~Batteries "off gas" but~are "VRLA"~valve regulated lead acid. The amount of gas escaping is minute and is considered to be safe under all standards. That being said, you do need properly ventilate the room~as deemed appropriate by you and your engineers.
- The fire rating of the room(1 hr. 2 hr) meets code requirements for battery-charging rooms(OR certify that this does not apply)

Provide data-loggers to monitor temperature through August 2013. (I believe Dave Mitchell will be installing this this week)

- Pay all costs related to the installation of the exhaust fan and a separate air conditioning unit IF the temperature logs show temperatures above 77 degrees as well as replacements of the batteries at no cost to the library.

We are fast approaching our deadline time for start up of the inverter before the batteries will need to be replaced. I hope that you will be able to address these issues and that we will hear back from you~ by Monday, Sept 17 and that we can start working on the venting next week.

Should you have any questions please do not hesitate to contact me.~ Thanks Greg.

Jeannie S. Wheeler

Trustee, Brooks Free Library

Beach 22

I have requested staff to re-nourish Beach 22 ROW above MHW. Amy Usowski will advise the ConCom on Sept. 18th. Re-nourishing will be from truck deliveries off Shore Rd.

Whitehouse Field reconstruction starting

Just wanted to let everyone know that I just heard from Ben Layton, General Manager of the Mariners, and the work on the new Whitehouse Field infield will begin next

Thursday, Sept 20.~

Eric

ADJOURNMENT

The Board adjourned at 10:36 p.m.

Respectfully submitted,

Ann Steidel
Recording Secretary