

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, DECEMBER 2, 2013
7:00 P.M.**

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

OTHERS PRESENT: Robert C. Lawton, Jr., Interim Town Administrator

MEETING CALLED TO ORDER at 6:15 p.m. by Chairman LaMantia.

It was moved by Mr. Hughes to go into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21, Subsection 3, to discuss strategy with respect to litigation when an open meeting may have a detrimental effect on the bargaining litigating position of the public body regarding the Powers property, beach accretion, and title of property and return to open session. Ms. Cebula seconded the motion and the motion was carried by a unanimous vote. Open session adjourned at 6:16 p.m.

SELECTMEN PRESENT ON REOPENING OF PUBLIC SESSION: Ballantine, Cebula, Hughes, LaMantia, McManus

OTHERS PRESENT ON REOPENING OF PUBLIC SESSION: Robert C. Lawton, Jr., Interim Town Administrator, John Rendon, Joe McParland, and others.

CONSENT AGENDA

A. Approve Minutes:

1. November 1, 2013 Regular Meeting
2. November 1, 2013 Executive Session
3. November 4, 2013 Regular Meeting
4. November 18, 2013 Regular Meeting

B. Approve application for Road Race by Cape Cod Athletic Club for January 19, 2014

Mr. Hughes moved approval of the Consent Agenda. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

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

A. Annual Meetings:

1. Cultural Council

No one appeared before the Board from the Cultural Council.

2. Middle School Repurpose Committee

Mr. McParland delivered the report of the Middle School Repurpose Committee.

3. Bikeways Committee

No one appeared before the Board from the Bikeways Committee.

B. Show Cause Hearing for Annual, All Alcohol, Package Store Liquor License held by Harvest Fine Wines and Spirits – *continued from October 28, 2013*

Mr. Hughes moved to open the hearing. Ms. Cebula seconded the motion and the motion carried by a unanimous vote. Mr. Lawton noted that this is a continuation of a process that started on July 16 and is being continued from November 12. He stated that the person who was interested in a transfer of the license is moving in another direction and is no longer interested. There was no one present representing the current license holder. Mr. Lawton recommended that the Board revoke the license based on the advertisement which states that the license is unused and has not been used for at least 6 months. Mr. LaMantia called for public comment and no one appeared before the Board. Mr. McManus noted that our quota is three and we currently have six so if we revoke this one it doesn't get reissued and it just goes away. Mr. Hughes moved to close the hearing. Ms. Cebula seconded the motion and the motion carried by a unanimous vote. Mr. Hughes moved that based on the recommendation of the Town Administrator and all the verbiage that has gone back and forth and attempted correspondence since July on this topic, that we revoke the All Alcohol, Package Store Liquor License held by Harvest Fine Wines and Spirits. Ms. Cebula seconded the motion. Mr. McManus asked to amend the motion to include the reason for the revocation is that the holder of the license has ceased operating the license as was intended for the public good. Mr. Hughes and Ms. Cebula agreed to amend the motion as such. The motion carried by a unanimous vote.

NEW BUSINESS

A. Saquatucket Harbor parking – *discussion*

Mr. Lawton outlined his memo regarding Saquatucket Harbor parking (see attached). It was agreed that Mr. Lawton would proceed by getting the Waterways Committee involved and getting more information.

B. Release of 2011 Executive Session minutes as recommended – *vote to release*

Mr. Ballantine moved to release the 2011 Executive Session minutes as recommended. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

C. Town Meeting warrant articles – *discussion*

The Board briefly reviewed the draft articles. No action was taken. Mr. McManus stated that we need articles for acquisition of the Downey Property and for funding for the Cultural Council.

D. Town Administrator's Performance Evaluation policy – *first reading*

Mr. Hughes submitted changes to the Chair which he outlined. The Board agreed to bring this item back with the changes.

ADJOURNMENT

Mr. Ballantine moved to adjourn at 8:14 p.m. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

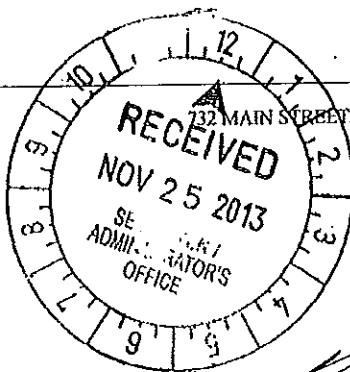
Ann Steidel
Recording Secretary

OFFICE OF THE TOWN ADMINISTRATOR

Robert C. Lawton, Jr. *Interim Town Administrator*

Phone (508) 430-7513

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MEMO

TO: Board of Selectmen

FROM: Robert C. Lawton, Jr., Interim Town Administrator

RE: Saquatucket Harbor Parking Lot

DATE: November 25, 2013

This past summer the Town had a number of issues with parking problems at the two Saquatucket Harbor lots. The East lot is the lot used for boat trailer parking and for slip holders. A number of times slip holders were not able to find spaces to get to their boats. This lot is partially controlled by the State Public Access Board as they funded improvements to the parking lot and the boat launch ramp. The westerly parking area is currently open to the public and is used by slip holders, people going to businesses in the area and the general public. This lot is controlled solely by the Board of Selectmen as it was acquired for general recreation purposes.

I believe the Town should have positive control both of these parking lots and charge for parking in both sections. In preparation for my recommendation to the Board of Selectmen, I asked for and received an opinion from Town Counsel regarding the scope of the authority of the Board of Selectmen to impose such parking fees. Counsel's opinion states in part that the Board of Selectmen may impose such fees. I would propose that in the East lot, the Town continue the daily parking fee for those who wish to launch their boats on a daily basis and a sticker for those who wish to launch their boats on a more regular basis. The fees for both of these activities could be adjusted after a review of what surrounding Towns charge for such usage. I would also suggest that slip holders be issued a placard which would be placed in the front windshield to allow slip holders to park with no additional charge other than their boat slip rental fee. In the westerly lot I would suggest that the Town charge for daily parking at a rate to be determined by the Board of Selectmen. This fee could be within \$5 to \$10. The Town would hire a person to staff the gate and check for stickers or placards for the easterly parking area and collect funds or allow for parking at the Harbormaster's office at no charge to conduct business at the Harbormaster's office in the west lot. I also recommend that funds generated from the parking lot be placed in a separate reserve for appropriation account to fund staffing in the parking lot, expenses and salaries in the Harbormaster's account, and other expenses and capital items.

I believe the Board of Selectmen should start this discussion during the winter months to be prepared for the next summer season in 2014. I will also talk with businesses in the area of the harbor to explain this proposal and understand the impact of this action on area businesses.

CC: John Rendon, Harbormaster

Robert Lawton

From: Brian Riley (BRiley@k-plaw.com)
Sent: Thursday, October 24, 2013 3:35 PM
To: Robert Lawton
Cc: John Giorgio
Subject: Requiring a Fee or Slicker for Parking Lot at Saquatucket Harbor
Attachments: Letter from Bob Lawton re Municipal Parking Lot.pdf

Bob: I am responding to the question you raise in the attached letter. In my opinion, the Board of Selectmen may establish a fee for parking in the Town-owned west lot at Saquatucket Harbor as part of the Board's Traffic Rules.

Generally, where a municipality has the power to regulate or license an activity, it may impose fees to cover reasonable expenses incident to the licensing or regulating. See Southview Coop. Hous. Corp. v. Rent Control Bd. Of Cambridge, 396 Mass. 395, 400 (1985). In my opinion, the Town may regulate parking on Town property at this location, and it is therefore my further opinion that the Town may impose parking fees, whether through paying onsite or by sticker. As with any municipal fee, however, the amount of a fee must be based upon the costs of providing the service. It cannot be used to raise revenues, but rather it is to compensate the Town for the service of providing parking. See Emerson College v. Boston, 391 Mass. 415, 425-426 (1984). The fee must be "based on fair recompense for the public moneys expended for . . . adequate maintenance" of the service or facility. See Id., at n.16, quoting Opinion of the Justices, 250 Mass. 591, 597 (1924).

In addition, however, it is my opinion that the provisions of G.L. c.40, §22C would apply to such a fee and/or sticker program. This statute concerns municipally owned off-street parking lots, and states that a town may install parking meters or other fee collecting devices. The receipts are to be used for "the purpose of purchase or lease of additional parking lots, the care and maintenance of the same, and in general for any traffic control or traffic safety purposes, including payment for public liability coverage in connection with the use of said municipally owned or leased parking lots." Therefore, a parking fee in a municipal lot does not have to be tied strictly to the costs of maintaining that lot, but rather the costs of all parking lots, traffic control devices, or even liability coverage. The funds cannot, however, go into the general fund to be used for something else, as per the Emerson College test.

If you have further questions in this regard, please feel free to contact me.

Very truly yours,

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