

APPROVED

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, DECEMBER 16, 2013
7:00 P.M.**

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

OTHERS PRESENT: Interim Town Administrator Robert C. Lawton, Jr., Real Estate Counsel Michael Ford.

MEETING CALLED TO ORDER by Chairman LaMantia at 6:01 p.m.

Mr. Hughes moved to go into executive session pursuant to MGL Ch. 30A, Sec. 21(3) to discuss strategy with respect to collective bargaining if an open meeting may have a detrimental effect on the bargaining position of the Board of Selectmen regarding the Firefighter's Union contract and Interim Assistant Town Administrator's contract and pursuant to MGL Ch. 30A, Sec. 21(6) to consider the purchase, exchange, lease or value of real estate, if the Chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body for litigation regarding the Powers' property, beach accretion, and title strategy and return to open session. Mr. McManus seconded the motion and the motion carried by a unanimous vote. Open meeting adjourned at 6:02 p.m.

SELECTMEN PRESENT ON RE-OPENING OF OPEN SESSION: Ballantine, Cebula, Hughes, LaMantia, McManus

OTHERS PRESENT ON RE-OPENING OF OPEN SESSION: Robert C. Lawton, Jr., Interim Town Administrator, Chief Clarke, Paula Champagne, Ginny Hewitt, Craig Wiegand, David Spitz, Joe McParland, Mary Warde, Bill Crowell, Dr. Kocot, Kathleen Remillard, Joann Brown, Joan McCarty, Danette Gonsalves, Richard Gunderson, Allin Thompson, Paul Lagg, and others.

WEEKLY BRIEFING

The Board thanked Mr. Lawton for his excellent work in the six months he has been here and his demonstrated great leadership. The Board commented that Mr. Lawton has given them excellent guidance and has made a real impact. Chairman LaMantia stated that Mr. Lawton will be here as we transition to the new Town Administrator. Mr. Lawton thanked the Board for the opportunity.

A. Board of Health's position on fertilizer regulations

Paula Champagne explained the Board of Health's position on fertilizer regulations (see attached).

CONSENT AGENDA

- A. Approve Minutes –
 - 1. November 4, 2013 Executive Session
 - 2. November 12, 2013 Regular Meeting
 - 3. November 12, 2013 Executive Session
 - 4. November 25, 2013 Regular Meeting
 - 5. November 25, 2013 Executive Session
 - 6. December 2, 2013 Executive Session
- B. Vote to approve 2014 Annual Liquor and General License Renewals as recommended
- C. Vote to declare Fire Department rescue boat as surplus and return to Department of Conservation and Recreation
- D. Vote to extend Joint Statement with Chatham regarding wastewater treatment to June 30, 2014

Mr. Hughes moved approval of the Consent Agenda with the exception of Items A4 and A5. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote. Mr. McManus moved approval of Items A4 and A5. Mr. Ballantine seconded the motion and the motion carried by a 4-0-1 vote with Mr. Hughes abstaining from the vote.

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

A. Annual Meetings:

- 1. Brooks Library Trustees

Mary Warde delivered the annual report of the Brooks Library Trustees.

- 2. Water Commissioners

Allin Thompson delivered the annual report of the Water Commissioners.

- 3. Cultural Council

Paul Lagg delivered the annual report of the Cultural Council.

OLD BUSINESS

A. Town Administrator Performance Evaluation – *second reading*

Mr. Hughes moved to adopt the Performance Evaluation. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

B. Town Administrator Goals – *discussion*

Mr. Hughes and Chairman LaMantia stated that the Town Administrator goals should be to hire an Assistant Town Administrator, finish the budget, and change the organizational structure.

Chairman LaMantia asked the Board to send their comments to the office. Mr. McManus said there should be input from the Town Administrator.

NEW BUSINESS

A. Middle School Draft RFP – *discussion*

Mr. McParland, Chairman of the Middle School Re-Purpose Committee asked the Board to declare the property available for sale and deem it as surplus property. Chairman McManus responded that it is not ours until the School Committee gives it to us. Mr. McParland suggested that the Board do so anyway and quote the provision of the Monomoy Regional agreement that states that the School Committee is required to turn over the Middle School to the Town.

Mr. Ballantine stated that he has difficulty with the section of the RFP dealing with traffic circulation. He said he would be more comfortable if it were changed from just one possibility which may prevent someone from submitting a bid. Mr. McParland responded that the Committee spent a lot of time on this and didn't see any other way of doing it. Chairman LaMantia agreed with Mr. Ballantine. He commented that it is confusing and should be clearer. Mr. Spitz agreed to loosen up the wording in this section. Mr. McManus stressed that the proposal should have a plan to provide for a suitable one way access for queuing for school buses and parents picking up and dropping off students. Mr. McManus added that we should make the RFP broad to look at both lease and sale of the property. Mr. Hughes disagreed and said that he doesn't think the Town wants to be in the business of maintaining property. The Board took comments from Richard Gunderson regarding making changes to the evaluation criteria. The consensus of the Board was that the RFP should allow for submissions of both lease and sale proposals. It was agreed that the Board would take up this matter again on January 13.

B. Personnel Advisory Committee draft charge – *discussion*

Ms. Cebula stated that the purpose of this is to try to put together a group of people in town who have backgrounds in human resources, negotiations and personnel policies and procedures writing so that the Town Administrator would have someone to talk to regarding job evaluations, job descriptions, re-evaluations of jobs and to provide a venue, possibly an ombudsman, for an employee to go talk to someone about a topic that is a problem if they can't speak to their boss. Mr. Ballantine stated that it would be good for the Town Administrator to look at this and see how it fits into his plans and also to make sure he is comfortable with it. Chairman LaMantia said that it should be a committee that works for the Town Administrator with the Board staying out of it. He added that there shouldn't be any department heads on it and the charge should be changed to provide for total control by the Town Administrator. Mr. McManus stated that if our Town Administrator needs help and wants to turn to the community, he doesn't need the Board's approval to do so. He added that the items in the document are limited term assignments and once they are completed we don't need a committee looking for more things to do. Mr. Hughes agreed with Mr. Ballantine that this should be brought to the Town Administrator to see how he feels.

C. Comprehensive Waste Water Management Plan Technical Review Committee
Charge – *discussion/possible vote*

Mr. Ballantine explained that the purpose of this new committee is to replace the Water Quality Task Force, CAC and WIAC committees with one committee which will carry on the work of the three existing committees plus focus efforts on the implementation of the draft CWMP which is now under review by regulatory agencies. He noted that a shift from drafting the CWMP to its implementation means now is the perfect time to consolidate and refocus a technical review committee. He proposed that if the Board agrees to the new committee then they should simultaneously vote to dissolve the Water Quality Task Force and CAC committees. He noted that the WIAC has already been dissolved. The Board discussed the proposal with regard to funding sources and the makeup of the committee. Mr. Hughes stressed the need for quarterly reports from the committee. Mr. Ballantine asked the Board to send him their suggestions for the charge.

TOWN ADMINISTRATOR'S REPORT

A. ATM Warrant Articles review of new articles #49-54

The Board very briefly discussed the articles and no action was taken.

SELECTMEN'S REPORT

Ms. Cebula stated that the Board needs to discuss what to do with the proceeds of the sale of the Middle School. She requested that the Board be provided with a list of options.

Mr. McManus distributed a proposal on moving the Milton Welt mural from the High School. He commented that it is an expensive 16-week project and stated that he would like to get a group together to see what sort of fundraising can be identified. He stressed they will be disassembling the school by June 1. The Board agreed that Mr. McManus should move ahead.

ADJOURNMENT

Mr. McManus moved to adjourn at 9:10 p.m. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary

2014 ANNUAL GENERAL LICENSE RENEWALS

Ember Pizza, Inc.

d/b/a Ember

600 Route 28, Harwich Port

Weekday Entertainment

Recorded or live music with amplification

5:00 p.m. – 10:00 p.m. on patio

5:00 p.m. – 12:00 a.m. inside

Noise level not to exceed licensed premises.

Harwich Port Seafarer, Inc.

d/b/a Harwich Port Seafarer

86 Sisson Road, Harwich Port

Innholders

Mooncussers Tavern

86 Sisson Road, Harwich Port

Weekday Entertainment

Dancing by patrons,

Live or recorded music with amplification

5:00 p.m. – 12:00 a.m.

Noise level not to exceed licensed premises.

Shogun, Inc.

d/b/a Noble House

21 Route 28, West Harwich

Common Victualler

2014 ANNUAL LIQUOR LICENSE RENEWALS

Harwich Port Seafarer, Inc.

d/b/a Harwich Port Seafarer

86 Sisson Rd.

Harwich Port, MA 02646

Damien Wiseman, Manager

Innholder – All Alcohol

Shogun Inc.

d/b/a Noble House

21 Route 28

West Harwich, MA 02671

Amy Liang, Manager

Common Victualler - All Alcohol

12/16/13

Greetings,

Just thought I would give the group an update on how the project was received by the Harwich Board of Health. Not knowing how each community is tackling the subject, I thought it would be helpful if we share our experiences as we all move forward on the common subject.

October 8, 2013

Harwich Board of Health held its first public review/open discussion of the model regulation at the October 8th work session. Staff presented background information, history of project, BMP material, DCPC information and a technical review of the regulation. Staff supported the concept of the need to reduce fertilizer amounts and misuse, particularly at the residential level, but could not support the model regulation proposed. The proposal creates regulatory oversight of the application of product to the individual lot level (10,800 developed residential lots in Harwich alone), requires a training and certification program, bans use of certain products, limits use by season, wetlands buffer prohibition and creates fines--all under the jurisdiction of the Health Dept.

In attendance and joining in the discussion was the Harwich member of the Assembly of Delegates- Leo Cakounes. Mr. Cakounes disputed the rationale and methodology used in the development of figures defining the scope of the problem thus disputing the need for such an encompassing regulation. He also suggested a computer based certification program as opposed to a substantial need to augment CCE extension personnel to oversee this program.

No one spoke in favor of the regulation. The BOH voted to take the matter under advisement for further study and to continue the discussion at the next mtg.

November 12, 2013

The Board of Health resumed the discussion. Additional material- final draft model regulation reviewed and discussed. No one spoke in favor of the proposal.

Members discussed the 'overkill' of this regulation and a potential misuse of BOH authority. This issue, while a serious concern, should not be in the same public health category as smoking, lead paint, immunization, and food/pool safety to name a few. Also discussed was the ramification of adopting regulations, literally unenforceable given the small amount of resources and the potential for complaints and investigation. Members discussed a more realistic approach of prioritizing the subject as an education program. This model was used with great success to institute voluntary recycling and meet DEP waste bans following the closure/capping of the landfill. At the time, there was much pressure to pass recycling regulations, PAYT-type programs and fines to meet rigorous solid waste measures. Instead the town prioritized the subject and appointed a recycling task force, obtained grants to revamp and promote recycling and made the consumer aware of the town costs for noncompliance. After several years of rigorous education and campaigning, Harwich achieved one of the best recycling rates in the Commonwealth.

After considerable discussion and review, the Harwich Board of Health voted unanimously to not pursue the adoption of the model regulation for fertilizer application. The Board agrees there is environmental benefit to the reduction of fertilizer use, particularly as it relates to our estuaries and water bodies, however the Board promotes a more cooperative management program through the use of effective education programs. This conclusion will be forwarded to the Water Quality Task Force so that public outreach and education on this topic will remain a priority.

Regards,
Paula J. Champagne
Health Director

Notes 11-14-2013

**Questions/comments regarding BOH Fertilizer Use Regulation
Cape Cod Commission Draft 9.17.13**

1. § 5.2-Non- certified applicators vs §5.3 Certified applicators—there are many prohibitions for non-cert. vs cert applicators for the who, what, how, when, why. How will BOH staff and/ or any interested party know in the field which is which?
2. Will placards/ visible permits be required when using fertilizers to illustrate compliance?
3. Will certifications be entered into any readily available database?
4. What is the rationale behind ban on phosphorous applications? Is this not a fresh water only issue? Also, has there been a change in the literature that phosphorous compounds bind to the soil after a relatively short movement in the soil (several hundred feet)
5. Who will be establishing lists of commercial products meeting this phosphorous requirement?
6. §5.2.6- rates and amounts of nitrogen compounds in products- Who will be establishing lists of commercial products meeting this nitrogen requirement?
7. §6.1.3 summaries –what does this mean?
8. §6.2 extensive misuse of BOH regulatory authority—BOH regulatory authority cannot be used to require another agency to establish programs. ie Extension Service and CCC for training and certification. Regulation should reference the Extension service as the ‘gold standard’ for training. There needs to be allowance for others to develop and implement recognizable training programs.
9. *Harwich has 10,800 developed residential properties*—how will the program meet the demand to certify operators? Implementation date?
10. §6.3.2 Non-Criminal Disposition- very poorly written and confusing—fine following 10 days after receipt of written notice??? Ex- homeowner applies fertilizer and then it rains- violation- They get written notice and then a ticket is issued 10 days hence??? Rework this section
11. The enforcement; non-criminal; and amendment sections are just poorly written and can be improved upon using examples from BOH regulations.

In general, the concept is admirable- reduce the amount of unnecessary nitrogen and phosphorous finding its ways into our waterways through lawn and garden use. The solution is a construction of bureaucracy guaranteed to incite the average homeowner into a state of anger and frenzy. This program is unenforceable- affecting every single piece of property in our jurisdiction- and places an unrealistic burden on local health departments. The goal of this program- reduction in use and correct application of fertilizers could be more effectively embraced by the public-hence a chance of being instituted via aggressive short and long term training and education programs. We have extensive history of success using that format in many of our public/private collaboratives over the years.

Local Boards of Health have a long history of recognizing and solving public and environmental health issues utilizing their vast regulatory powers. The solution to each issue must be carefully analyzed and crafted to avoid a misuse of that power. Regulations should be a last tool, not the first, if the goal is to institute behavioral change and should only be instituted based upon the imminent health hazard to be corrected.

Paula J. Champagne, RS, CHO
Health Director
Town of Harwich