

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, SEPTEMBER 8, 2014
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator Christopher Clark, Assistant Town Administrator Julie Quintero-Schulz, Chief Clarke, Leo Cakounes, and others.

MEETING CALLED TO ORDER at 7:00 p.m. by Chairman Ballantine.

WEEKLY BRIEFING

Chief Clarke invited the public to the annual September 11th Remembrance Ceremony at the Public Safety Facility.

Chairman Ballantine called for a moment a silence on the passing of longtime volunteer Bob Larson.

CONSENT AGENDA

- A. Approve Minutes – August 11, 2014 Regular Session
- B. Vote to confirm the appointment of Eileen Brady as an Alternate Member of the Historic District/Historical Commission from full member
- C. Vote to approve and sign the Massachusetts Clean Water Trust Interim Loan documents
- D. Accept resignation of Nadia Schussler from the Youth Services Committee
- E. Vote to approve application for One Day Entertainment License by Harwich Conservation Trust for Wildlands Music and Art Stroll for Saturday, September 13, 2014

Mr. McManus moved approval of the Consent Agenda and the recommended actions thereon. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

OLD BUSINESS

- A. Request to install a streetlight at Lakeside Terrace and Vacation Lane – discussion on moratorium and costs; recommendation from Police Chief/possible vote

Mr. Clark outlined the letter from Chief Mason on this issue (attached) in which he indicates there is not a public safety need for a streetlight at this location. He stated that the Town adopted a policy as to where streetlights should be located in 1982 and he doesn't feel this request meets the criteria set in 1982. He further noted that the moratorium on streetlights was not only due to cost restraints but was also to limit light pollution. He noted that the Nstar fee to activate a Town-owned streetlight is \$172 and the monthly cost is approximately \$40 depending on the type of light, and there is an installation cost as well. Chairman Ballantine stressed that Chief Mason did

not see a public safety issue. Mr. McManus said if we put up a light it should be an LED. Mr. Cakounes questioned if the neighborhood can pay for the light themselves. Mr. Clark said it is his understanding that it can be done directly through Nstar. Mr. Hughes and Mr. LaMantia said there should be consistency and this may bring more requests for streetlights. Ms. Cebula asked for clarification on the pricing including cost of installation. Mr. Clark said we should respond by denying their request but tell them how they can pursue it. Mr. Hughes said we need to get clarification on who owns the light. Chairman Ballantine asked Mr. Clark to pull together some information and respond.

NEW BUSINESS

A. Letter of Request from Leo Cakounes re: Cape Light Compact and the Cape and Vineyard Electric Cooperative – discussion/possible vote

Mr. Cakounes outlined his correspondence to the Board (attached). Mr. McManus said he would like to hear from Cape Light Compact and get their side of the story and Mr. Hughes agreed. Chairman Ballantine said he would like clarification as to why the Town is cited in the letter from the Compact and questioned if it is because we are a member or are they indicating we are supporting their response. The Board agreed to invite representatives from the Cape Light Compact in to discuss this.

B. Department of Revenue “User Fees” – discussion/possible vote

The Board discussed the Department of Revenue User Fee document (attached) which was submitted by Mr. LaMantia. Mr. LaMantia noted that the document will be helpful in understanding costs before we set fees. Ms. Cebula stated that it is important to look at all the fees and Mr. Hughes added that it doesn't mean that all fees should be raised. Chairman Ballantine asked for a matrix of costs by department and Ms. Cebula added that we should not lose sight of the cost of specific services. Mr. Cakounes commented that the Department of Revenue provides technical assistance services for accounting exercises such as this. Mr. Clark stated that he has discussed this with Mr. Ryan and we will bring someone in who specializes in this but noted that we are already far along with some departments. He pointed out that there are certain things we want to do in a larger public interest such as Youth Counselor services. Ms. Cebula stated that this is not difficult and she is not sure we need someone from the outside. Mr. Clark responded that there is interpretation that goes into this, the consultant interviews departments and hiring someone with 25 years of experience has some value. Chairman Ballantine asked Mr. Clark to get back to the Board with a plan to determine indirect costs and a timeline for moving forward. Ms. Cebula reiterated her concerns about hiring a consultant until we know what we can do in house.

TOWN ADMINISTRATOR'S REPORT

1. New Hire for Council on Aging

Mr. Clark reported that Richard Anderson has been hired to fill two grant funded positions at the Council on Aging.

2. Ribbon Cutting for Solar projects

Mr. Clark reported that he is working on arranging a small ribbon cutting ceremony at the solar panel project site and has sent out some suggested dates.

3. Update on House Bill H4220

Mr. Clark noted that House Bill H4220 has been released from the third reading and Representative Peake will write a letter attempting to see if it can be progressed.

4. Employee Handbook Update

Mr. Clark reported that we are in process of putting together an employee handbook and will be submitting a Table of Contents to give the Board a sense of the scope of what we are doing.

5. Budget / Warrant Timeline

The Board requested to include the Monomoy Regional School District and Cape Cod Regional Tech budget deadlines to the timeline.

6. Update on Dog Hearing Appeal

Mr. Clark reported that the Orleans Clerk Magistrate altered the Board's dog hearing ruling to Lori Nickerson and the dog was returned to her. He noted that the Clerk's ruling includes the condition that we can immediately seize the dog if it is not restrained at all times.

SELECTMEN'S REPORT

Mr. McManus gave an update on the former high school building demolition. The Board discussed the need for consistency of signage at Red River Beach regarding dogs at the beach.

ADJOURNMENT

Mr. LaMantia moved to adjourn at 8:59 p.m. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary

Sandy Robinson

From: Chief William Mason
Sent: Tuesday, September 02, 2014 4:18 PM
To: Christopher Clark
Cc: Sandy Robinson; Ann Stedtel; jbellis@comcast.net; Robert Cafarelli; Julie Quintero-Schulz; Link Hooper; Sgt. Kevin Considine; Sgt. John Sullivan
Subject: Streetlight Request - Lakeside Terrace and Vacallon Lane; Great Sand Lakes Association

Good Afternoon Chris:

On Monday September 1, 2014 I received the written information regarding the streetlight request at Lakeside Terrace and Vacation Lane intersection from the Great Sand Lakes Association (GSLA). After reviewing their documentation, I drove to the area to observe the scene. Today, I had the Harwich Police Records Section complete a check for any crime and/or traffic reports in the area of which there were none. I have always taken the position that the Police Department would only recommend/request streetlight installation when there is a demonstrated public safety need, traffic and/or criminal, that the installation of a light would at least partially address. This is a very low traffic area with little reported incidents, none of which would have been effected by the presence of a streetlight; therefore, I do not have a public safety justification (i.e. traffic collisions, rise in street crimes, drug sales, juvenile loitering, etc.) to base a recommendation on this request.

I was advised with the potential "savings" from the new LED regular and solar type street lights (equipment, installation, and maintenance costs still remain), there may be more opportunities to install additional or take existing lights and move them (a whole new issue regarding the sure to follow public complaints of removing someone's streetlight). My concern is that if one is approved, absent a clear public safety need, that a flood of requests will follow creating the dilemma of which ones are allowed (funded) and why over any other request. I do not think first-come, first-served, a specific number allowed each fiscal year, or other like rational are good strategic selection models for the Town. Please remember that just a few years ago, this Town voted for reduction in outside light pollution and there was a further discussion that existing lights should be removed unless there is a direct public safety need. I think if we move from the existing BOS policy of no new lights, except when needed for clearly demonstrated public safety needs (very rare), the Town should be extremely careful and craft a clear replacement prior to approving any requests.

If you have any questions or need further information, feel free to contact me at your earliest convenience.

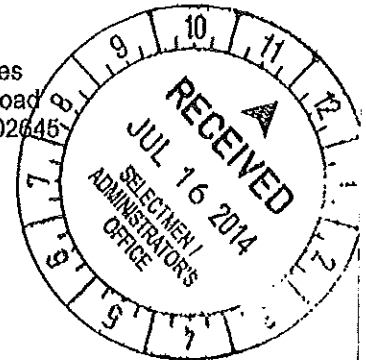
William A. Mason, Chief
Harwich Police Department
183 Sisson Road
Harwich, MA 02645
508-430-7541

Board of Selectmen
Town of Harwich
725 Main Street
Harwich Mass 02645



July 14, 2014

Leo G. Cakounes
1601 Factory Road
Harwich Mass 02645



Dear Selectmen:

I appear before you this evening with a list of questions and requests for information. First permit me to give some background to the matter at hand;

In August 2011 the Assembly of Delegates of Barnstable County voted to establish a Sub-Committee to conduct an Inquiry into the relationship between County Government, Cape Light Compact and Cape and Vineyard Electric Cooperative.

In May 2012 that committee submitted a report to the full Assembly of Delegates. The report has been made public and is available on the Assembly web site, also I delivered said report to your offices. In that report one recommendation to the Assembly was to refer the matter to the Attorney General and Inspector General's Offices. I believe mainly due to the lack of response to record requests of these organizations by the sub-committee.

Dec 2013, the full Assembly voted to send a formal request to the Office of the Attorney General and the Office of the Inspector General asking them for aide in the Inquiry of the relationship between the above mentioned organizations. It should be noted that the County Commissioners did not support this action.

Beginning in the spring of 2014, the Cape Light Compact began its filing for revisions to its Municipal Aggregation Plan with the Department of Public Utilities. Through this process the Office of the Attorney General began a series of filing requests. For reference please access these filing at <http://web1.enr.state.ma.us/DPU/FileRoom/dockets/bynumber/>. DOCKET # 14-69

In brief summary, the Office of the Attorney General asked for 24+- documents and evidence. The Cape Light Compact only answered 4 of the items and refused to comply with the other requests. This began a series of "RESPONCES" and "MOTION TO COMPEL"

This brings us to today and why I am appearing before you this evening.

It has come to my attention that on July 8 2014, the law firm of BCK LAW P.C. sent a letter by hand and electronically to the Department of Public Utilities c/o Secretary Mark D. Marini. (see attached letter) In said correspondence the Attorney states his strong opposition to the Office of the Attorney General "Motion Seeking Leave to File Reply Comments".

My concerns are that in the first paragraph of this correspondence:

"On behalf of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"), please accept this letter as the Compact's response in opposition to the Office of the Attorney General's ("Attorney General") Motion Seeking Leave to File Reply Comments ("Motion") filed on July 3, 2014 with the Department of Public Utilities' (the "Department") in the above referenced proceeding."

Please also refer to the "Certificate of Service" here in attached which also list the Town of Harwich as a Petitioner

It appears that the Town Of Harwich has taken the position of the Cape Light Compact in that they need not comply with the requests of the Office of the Attorney General.

As to my formal questions and request;

1. Has the Board of Selectmen taken a formal position on the above mentioned matter?
2. If "YES", please provide me with the date of the meeting that this matter was discussed and voted, also all minutes and documents relating to your decision.
3. If "NO" then I respectfully request that you agenda this at your next schedule meeting for discussion and vote.

As the elected representative to the Assembly of Delegates for the Town of Harwich, and a member of the Sub-Committee that conducted the Inquiry to these organizations, I find it shocking that the Town of Harwich would stand in the way of the Office of the Attorney General in the performance of their duties seeking truth and full disclosure from another governmental organization.

I intend to bring this matter to the full Assembly as they also are mentioned in the first paragraph as a "Petitioner". I will update you as to any action taken.

I look forward to your response to this matter

Respectfully yours,

Leo G. Cakounes





ATTORNEYS AT LAW

The firm has attorneys also admitted
to practice in District of Columbia,
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July 8, 2014

***VIA ELECTRONIC MAIL
ORIGINAL BY HAND DELIVERY***

Secretary Mark D. Marini
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Re: D.P.U. 14-69 – Cape Light Compact

Dear Secretary Marini:

On behalf of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"), please accept this letter as the Compact's response in opposition to the Office of the Attorney General's ("Attorney General") Motion Seeking Leave to File Reply Comments ("Motion") filed on July 3, 2014 with the Department of Public Utilities' (the "Department") in the above referenced proceeding.

On June 13, 2014 the Compact filed objections to the Attorney General's first set of information requests asserting her request for historical information related to the Compact's rate structure and operational information was, among other things, outside the Department's scope of review, pursuant to G.L. c. 164, §134(a) ("Section 134"). On June 20, 2014 the Attorney General moved to compel responses to these inquiries. As discussed below, the Compact filed a brief in opposition on June 27, 2014 ("Opposition"). The Attorney General now seeks further opportunity to file reply comments.

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The Attorney General, absent any supporting Department or other authority, states that she requires the opportunity to file reply comments since the Compact's Opposition "raises issues for the first time that could not have been reasonably anticipated and thus were not addressed in the Attorney General's Office's Motion to Compel." Despite this stated purpose, the Attorney General submits Reply Comments that are nothing more than a rebuttal of the Compact's Opposition, which had effectively revealed the legal deficiencies in the Attorney General's Motion to Compel. While the Attorney General may not agree with the Compact's legal arguments, her claim that she could not reasonably anticipate them is baseless, particularly since she is the party that introduced each of the issues into this proceeding. Quite obviously, the Attorney General is simply attempting to re-argue her case.

Contrary to the Attorney General's Motion, the Compact's Opposition did not raise any issue that was not anticipated or raised by the Attorney General. The Compact advanced the following arguments in its Opposition:

1. The Attorney General seeks information outside the Department's scope of review pursuant to G.L. c. 164, §134(a) ("Section 134);
2. The Attorney General is estopped from seeking expansion of the Department's scope of review under Section 134;
3. Inquiry under *Emerson College* is not appropriate in this proceeding; and
4. The remaining discovery seeking historical information is not required for a review of the Compact's Revised Aggregation Plan.

Nowhere in the Reply Comment does the Attorney General state that any of these arguments caught her by surprise or that she was unable to reasonably anticipate the Compact's legal analysis. After the Department's decision in D.P.U. 12-124 (*City of Lowell*), the Attorney General cannot claim ignorance or surprise with respect to her tenuous legal positions regarding an expanded Department review of municipal aggregation plans. See D.P.U. 12-124 (2013), Order at 24-29. Similarly, the Attorney General certainly cannot expect the Department to believe that she could not reasonably anticipate the defensive assertion of estoppel since she already litigated her strained construction of Section 134 and lost twice. See D.P.U. 12-124; D.P.U. 14-10 (2014), Ruling on Attorney General Motion to Compel (appeal pending). To the extent she attempts to claim "surprise" by the Compact's estoppel argument with respect to the issues raised by *Emerson College v. City of Boston*, 391 Mass. 415 (1984), the Attorney General coyly attempted to deflect such an argument in her moving brief when she offered her reasoning for not raising the *Emerson College* argument in D.T.E. 00-47. See Attorney General Brief at 11.

Finally, contrary to the Attorney General's characterization of the Compact's legal analysis, the Compact's Opposition is neither irrelevant to the issues before the Department nor has it applied an incorrect legal standard. In short, as demonstrated by the Compact in its Opposition, discovery designed to elucidate issues that are squarely outside the scope of the proceeding is objectionable and requires no response.

Secretary Mark D. Marini
July 8, 2014
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Based upon the foregoing, the Compact respectfully urges the Department to deny the Attorney General's Motion in its entirety and to remove from the docket her proposed Reply Comments.

Sincerely,



Jo Ann Bodemer

JAB/drb

cc: Jonathan A. Goldberg, Esq., Hearing Officer, DPU (w/enc.)(via email and hand delivery)
Nathan Forster, Esq., MA AG (w/enc.)(via email only)
James Stetson, Esq., MA AG (w/enc.)(via email only)
John Habib, Esq., NSTAR (w/enc.)(via email only)
Nicholas Horan, Esq., NSTAR (w/enc.)(via email only)
Steven Venezia, Esq., DOER (w/enc.)(via email only)
Kathleen Raymer, Esq., Reliance (w/enc.)(via email only)
Margaret T. Downey, Cape Light Compact (w/enc.)(via email and first class mail)

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

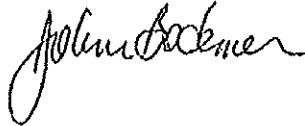
Petition of the Towns of Aquinnah, Barnstable, Bourne,)
Brewster, Chatham, Chilmark, Dennis, Edgartown,)
Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs,)
Orleans, Provincetown, Sandwich, Tisbury, Truro, West)
Tisbury, Wellfleet, and Yarmouth, and the Counties of)
Barnstable and Dukes, acting together as the Cape Light)
Compact, to the Department of Public Utilities, for)
approval of a revised municipal aggregation plan)
pursuant to G.L. c. 164, § 134.)

D.P.U. 14-69

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Cape Light Compact's response in opposition to the Attorney General's Motion Seeking Leave to File Reply Comments upon Secretary Mark D. Marini and Hearing Officer Jonathan Goldberg via electronic mail and hand delivery and upon the remaining Service List by electronic mail delivery in this matter.

Dated this 8th day of July, 2014.



Jo Ann Bodemer, Esq.
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DEPARTMENT OF REVENUE

DIVISION OF LOCAL SERVICES

TECHNICAL ASSISTANCE SECTION

User Fees

Municipalities Since the passage of Proposition 2½ in 1980, municipal budgeting in Massachusetts has been revenue driven. This means that the ability to maintain or increase a community's level and/or quality of services is dependent on its revenues and careful planning. Therefore, at the start of the annual budget process, a community should review its four major revenue sources — tax levy, state aid, local estimated receipts and available funds — before entertaining departmental spending requests. However, because of the constraints of Proposition 2½, recent fluctuations in state aid, and the depletion of local reserves, communities have become more aware of local receipts as a source of needed funds.

Local receipts include a variety of excises, user fees, charges, and other revenues. Some are dictated by statute (i.e., motor vehicle excise, hunting license and firearms permits) while others may be negotiated (i.e., investment income and in-lieu-of-tax payments). Still other local receipts are established through the adoption of an ordinance or bylaw. However, among all categories, user fees typically offer communities the greatest potential for revenue gain.

A fee is an amount charged for a service to individuals who use or benefit from it. A fee may be imposed when a local government provides a particular service (i.e., police detail) issues a permit or license (i.e., building permit, dog license), or offers a benefit (i.e., recreational programs).

Much of the legal authority for specific municipal fees is found in MGL Ch. 140. However, absent statutory authority, municipalities can still establish fees and charges as long as the three-prong test set out in *Emerson College v. Boston*, 391 Mass. 415 (1984) is met.

1. A fee must be charged for a particular service which benefits the party paying the fee in a manner not shared by other members of society. In other words, a fee may not be charged for general services that are mandatory or supplied to the public at large, such as core education and police protection.
2. A fee must be paid by choice, that is, the person paying the fee must have the option of not utilizing the service, thereby avoiding the charge. It follows that a service can be withheld from individuals who refuse to pay.
3. A fee must be collected not to raise revenues, per se, but to compensate the governmental entity for its expenses in providing the services. This has been interpreted to mean that a fee cannot exceed the cost to provide the service that is provided.

As a practical matter, local officials are faced with many considerations when deciding whether or not to implement or increase fees. These include, but are not limited to, the legal authority (e.g., general laws, special legislation and home rule powers) to charge a fee, the attitudes of citizens and political leaders towards fees, and the cost. To start, before proposing new local charges or increases, a community should review its current user fees in accordance with formal guidelines.

DEPARTMENT OF REVENUE

DIVISION OF LOCAL SERVICES

TECHNICAL ASSISTANCE SECTION

As a recommended practice, communities should adopt written policies for setting charges and fees. A policy should identify what factors are to be taken into account when pricing services or benefit. It should also state whether the community intends to recover the full cost of providing the service or benefit and under what circumstances a charge or fee is set at less than full recovery (e.g., debt exclusion or other subsidy). A policy, as well as an existing fee structure, should be reviewed periodically to ensure it is current and both should be communicated with the public clearly and openly. For guidance, see the Government Finance Officers Association (GFOA) recommended practices at <http://www.gfoa.org/services/rp/budget.shtml>.

When pricing a service or benefit, it is highly recommended that a community conduct a costing study. A costing study identifies and measures the direct, indirect, capital and debt service costs of providing a service or benefit over a given period. If a team of municipal officials is involved, all possible aspects of costing data will be accounted for and different perspectives will be entertained. The process and results should be documented for public disclosure and organized for easy replication when annually reviewed. With the costing information, a community can analyze the efficiency of a service, make budgetary decisions, set fees or charges, and/or consider alternative methods of providing a service (e.g., smaller scale, out source and privatization). For more information on costing services, see the Division of Local Services' workbook, *Costing Municipal Services: Workbook and Case Study*, at <http://www.mass.gov/dls> under Publications and Forms.

Finally, it is a good idea to maintain a log of all municipal fees. In addition to a name and description, useful information might include the amount of the fee, when it was last reviewed and which department collects it. This data might also be incorporated into a more encompassing revenue manual. (For more information on a revenue manual, see to www.gfoa.org)