

# **Board of Selectmen Minutes**

## **01/28/2013**

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, JANUARY 28, 2013  
7:00 P.M.**

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

**OTHERS PRESENT:** Town Administrator James Merriam, Chief Norman Clarke, Chief William Mason, Lt. Tom Gagnon, Mary McIsaac, Margaret Mantos, Keith Kannally, Bill Doherty, Peter DeBakker, Leo Cakounes, and others.

**MEETING CALLED TO ORDER** at 7:05 p.m. by Chairwoman Linda Cebula.

Chairwoman Cebula reported that the Board just came out of Executive Session where they discussed real estate matters. She further noted that the Board would not be discussing the sale of land on Queen Anne Road as the agenda indicates.

### **PUBLIC COMMENT/ANNOUNCEMENTS**

Mr. Doherty said he would like to initiate more regular updates from the County Commissioners and suggested that the Board put it on their agenda more often. He noted that there have been improvements to the Transportation Improvement Plan. Chairwoman Cebula said they would put it on the agenda on a two to three month basis.

Award presentation to Ava Packett and letters of acknowledgment to Public Safety Dispatcher Margaret Mantos, Sgt Adam Hutton, Officer Keith Kannally, and Officer John Warren relative to response to emergency

Chief Clarke commended seven-year old Miss Ava Packett for her actions on December 9, 2013, relative to a family member's medical emergency, and he made particular note of her outstanding bravery, ability to stay calm, as well as dialing 911. He commented that Miss Packett did an extraordinary job. Chief Clarke further commended dispatcher Margaret Mantos for her handling of this sensitive situation. Chief Mason commended Officers Keith Kannally, Adam Hutton and John Warren for their compassion and

assistance with this medical emergency. Lt. Gagnon presented Miss Packett with an award of commendation and gift and Miss Packett received a standing ovation in recognition of her actions.

Leo Cakounes distributed the attached list of questions to the Board on the changes to the Intergovernmental Agreement between the Town of Harwich, Cape Light Compact and Barnstable County. Chairwoman Cebula said they will look at it, get the questions answered and will have it on a future agenda.

## **CONSENT AGENDA**

### **A. Minutes**

1. January 7, 2013 Regular Session
2. January 14, 2013 Regular Session

B. Vote to approve Petition by Nstar Electric to locate underground cable and fixtures at 37 Wyndemere Bluffs Road (formerly 28 Sea Breeze Avenue)

C. Vote to assign the Town Administrator to be the authorized signatory for the Student Awareness of Fire Education Grant (S.A.F.E.)

D. Vote to accept gift of \$2500 from the Friends of the Harwich Youth – proceeds from the Annual 5K road race

E. Vote to approve the recommendation of the Recreation and Youth Commission to award the contract for Brooks Park Improvements to Waterfield Crowe Associates in the amount of \$9000

F. Vote to approve the recommendation of the Recreation and Youth Commission to award the contract to replace the Potter's Field fencing to L & C Fencing Co. in the amount of 35,600

Mr. Hughes moved approval of the Consent Agenda. Mr. McManus seconded the motion. Mr. Ballantine asked to hold item A1 as he was not present at that meeting. The motion carried by a unanimous vote. Mr. McManus moved to approve item A1. Mr. LaMantia seconded the motion and the motion carried by a 4-0-1 with Mr. Ballantine abstaining from the vote.

## **NEW BUSINESS**

### **A. Comprehensive Wastewater Management Plan – *discussion and possible vote***

Mr. DeBakker asked for the Board's permission to submit the draft CWMP to the regulatory agencies. He noted that he will elaborate more in the Plan on the topics of energy strategy and fertilizer management as was discussed at the January 19, 2013

public forum. He noted that submitting the Plan will allow the one-year process to begin so that in a year we will have a final plan and can move to the next step.

Mr. McManus referred to a document which addressed all the issues of concern that were discussed at the public forum and asked that Mr. DeBakker track the changes.

Mr. Ballantine moved to approve the draft CWMP as presented with the condition that points that were raised in the letter that Ed referred to be brought to us for review before the document is submitted. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

#### B. Search for new Real Estate Counsel – *discussion*

Mr. Merriam reported that we received a letter from Attorney Michael Ford informing us that he has made a decision to end his representation of the Town as Special Real Estate Counsel and won't be taking on any new matters after April 1.

Mr. McManus stated that Mr. Ford's service to the Town has been exemplary. He moved to inform him that we would wish to have him continue on as Counsel over those matters currently in process and include a letter of thanks for his service. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote. Chairwoman Cebula stated that Mr. Merriam needs to start looking for a new Counsel in this area and Mr. Merriam responded that he would put together a proposal.

- Multi-Purpose Field Complex  
Naming - *discussion and possible vote*

Mr. McManus pointed out that the Facilities Naming Policy indicates that they would need permission of the family to do this and it needs to be clarified whether that was done. With no one present from Recreation & Youth, the Board tabled this item until next week.

#### **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

#### Ethics Commission Advisory

Our office has distributed an advisory from the Ethics Commission Office on Public Employees making and receiving Job Recommendations.

#### An appreciative boater

Dear Mr. Merriam,  
Having just received and paid my 2013 mooring permit plus the new Waterway Use Fee, I just want to quickly write you and the Selectmen to voice my support of the fee. Thank you for your dedication to the Cape's most precious resource.  
Jamie Schwartz

#### Community Center update from Jan. 16th

Attached are Meeting Notes from Jan. 16 and a suggested bullet point/narrative layout Word Document for your review/comment/use. When we get the green light we will set up a graphic layout and forward you a draft for review, to be ultimately printed on single 11 x 17 sheets for distribution.  
Vcevy

#### ADA Grievances

Paul Erickson filed two grievances: 1) multi-purpose walkway- non accessible; 2) curbcuts at Town Hall- Brooks Library.

Response by Jeff Dougan:

The "accessible routes" to the fields must be maintained (Maintenance of Accessible Features) both under the ADA and the MAAB.~ The ADA requires additional obligations that there be accessible routes to the player seating areas and that those areas be accessible as well.

Obviously, the ADA does not require the

*actual* field to provide an accessible surface, but the routes to the fields must be accessible.

Typically, gravel is not considered an accessible route due to the size of the gravel and depth of the surface makes it difficult for people to traverse (although I am not sure of the exact surface that is used).~

To answer your specific questions:

- Do State Requirements differ from the Federal Requirements on this subject?~
- The MAAB is the same as the ADA with respect of the need for an accessible route to the playfields.~ The ADA (under the 2010 ADA Standards for Accessible Design) requires more than the MAAB as it requires an accessible route to the player areas.
- Is it correct to assume that the Town is not legally responsible to maintain this pathway to strict ADA requirements?
- The Town *has* an obligation under the ADA and MAAB to “maintain” that route.~ Typically this is done 2 times a year.~
- Is it also correct to assume that we may allow the path to grass over as it will still provide a firm surface for an accessible route, but may not conform to strict ADA surface interpretations?
- I would caution allowing grass to overgrow the accessible route.~ Grass is *not* considered accessible... ~ I understand that the undersurface would still be somewhat firm, but

the MAAB has a long case history with grassy trails.~ My suggestion would be to, when the routes are "maintained", to try to address the grass issue.

Let me know if you need more information.

Jeffrey L. Dougan  
Assistant Director for Community Service  
Massachusetts Office on Disability

The first step in re-locating the crosswalk in front of Brooks Library to the corner of Oak St. is to move the grinding stone. I spoke to Bob Bradley more than a year ago, but will file an application with the Historic District Commission.

E-mail message to Dennis Hoye re:  
Expenditures from Golf Revolving Account  
Dennis, the Board asked me to convey to you that you must bring all future expenditures from this 53D account to the Selectmen for their approval. Jim

Route 137 update  
Attached please find a proposed schedule from Lynch for substantial completion of Route 137 by Memorial Day 2013.~ However, it is completely contingent upon N-Star, Verizon and Comcast following through with commitments they have made for utility relocations during the next few months.~ It should be noted that MassDot has been holding bi-weekly utility coordination meetings for well over a year and, in my opinion, done everything within their power to get the utility companies moving.~ At today's meeting, the utilities were told to focus their efforts first on the two pole relocations around the Route 6 interchange so~we can get the signals

operational for summer.~~

Link~~

#### Conservation Clerk resigned

Pam McDonald, the clerk for the Conservation Commission, will be resigning effective the end of February.~ Her full-time job has just become much more of a commitment than when she started with us last year.~ I will bring down a personnel action form.~ I would like to advertise ASAP so I can hopefully get someone in by the end of February.~ It is only a 20 hr/month position, so do I need to advertise internally first or can I just put an ad in the paper?

Amy Usowski

#### **SELECTMEN'S REPORT**

- Review draft Town Meeting Articles

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1. Article 51 – Appropriate Fund for Certain Land Taking
2. Article 52 – Transfer Land in North Harwich for Affordable Housing Development *discuss issues concerning real estate taxes*

Ms. McIsaac said that the first article proposes to clear title by taking the land by eminent domain. She stated that the next article's mission is to transfer title of the property through a series of transfers for construction of affordable housing. She noted that Attorney Ford had spent numerous hours on this and on August 20, 2012 the Land Court handed a decision to the Town of Harwich which forever foreclosed the rights of redemption to the

owners of record and at that time that decision was recorded at the Registry of Deeds. She stated that in consideration of the date of recording, the actual parcel of property becomes a tax possession of the Town and the value assigned to it is dollar for dollar the amount that is owed to the Town for outstanding taxes and interest and all other costs applicable to the tax title. She stated that as of today, we have an asset of over \$107,000. She noted that after numerous discussions with Counsel and the Legal Division of the Department of Revenue she can report that there is no authority to transfer the title without some satisfaction of what is owed on the town's books; we cannot transfer the land and hold the Town harmless without compensation.

Mr. Ryan stated that we can use available funds to pay ourselves and then the transaction will be that we relieve the foreclosure account for \$109,000 from available funds and put into our fixed assets land account. He noted that we are really just borrowing money for a very short time, in this case a year, and it would probably be from free cash. He noted that the DOR auditors are coming tomorrow and this will be discussed.

Mr. McManus asked if we can transfer it next year out of free cash into the affordable housing fund to make it whole and Mr. Ryan responded that it would require a Town Meeting vote.

Mr. Merriam noted that the 2 articles could be consolidated.

The Board took comments from Gerry Loftus and Brooke Williams.



Mr. Hughes recommended that the Town Administrator get all the parties together on this topic to see how we should proceed with this and the Board agreed.

- Review Budget – *discuss FY 13 vs. FY 14*

Mr. Ryan outlined the document. Mr. Hughes requested that Mr. Ryan show a net amount at the end of each departmental section. The Board had a general discussion of the budget with conversation centering on budget and revenues matching expenses and the school budget. Chairwoman Cebula said they need to get the Monomoy Regional School Committee in to discuss the financial situation and their budget.

## **ADJOURNMENT**

Mr. McManus moved to adjourn at 9:16 p.m. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary