

Board of Selectmen Minutes

02/11/2013

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, FEBRUARY 11, 2013
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, Chief Clarke, Deputy Chief Kent Farrenkopf, Lee Culver, John Rendon, Carolyn Carey, Barbara-Anne Foley, Dennis Hoye, Ted Nelson, Peter DeBakker, Clem Smith, and others.

MEETING CALLED TO ORDER at 7:07 p.m. by Chairwoman Linda Cebula.

Chairwoman Cebula reported that the Board just came out of Executive Session for the purpose of considering real estate matters.

WEEKLY BRIEFING

Mr. Culver reported that during this weekend's blizzard the Public Safety Facility lost power and was on generator during the storm as well as losing phone lines which resulted in them reverting back to their old lines for emergency. He thanked The Royal, Epoch in Harwich and Brewster, and Rosewood Manor who took in some of our seniors during the storm. He noted that the Community Center was opened briefly as a warming center. He thanked the Council on Aging van drivers and Fire Department for transporting people. Mr. Culver said he was pleasantly surprised by communications by Nstar. Chief Clarke reported that they had 105 emergency calls during the storm and that both Nstar and National Grid were very responsive to our needs. He thanked everyone who participated particularly Lt. Michael Mason, and Firefighter/ Paramedics Matt Eldredge, Justin White and Brenda Schofield as well as the Highway Department for an outstanding job.

CONSENT AGENDA

- Minutes
- January 28, 2013 Regular Meeting

- February 4, 2013 Executive Session,
- Vote to accept various donations to the Council on Aging totaling 45.00 to be deposited in the Council on Aging Gift Account
- Vote to approve request by Nstar Electric for permission to install underground cable on Julien Road to provide service to lots on Cornelia Way

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

OLD BUSINESS

- East Harwich Issues – *discussion on February 4th presentation and next steps*

Mr. Ballantine stressed the need to build a Town-wide consensus. He suggested repurposing the East Harwich Collaborative with the direct purpose of a broader Town-wide discussion and ask that the committee be chaired by David Spitz and members include a couple from the Planning Board, a couple from the Collaborative, a representative from East Harwich businesses as well as Harwich Center, the Water Quality Task Force, the Chamber of Commerce and possibly the Taxpayers Association, in an effort to get a broad perspective beyond the two current groups. He said they could report monthly to the Board and make recommendations at the end.

Chairwoman Cebula stated that this is not a repurpose of a committee but rather it is really a different committee. She commented that there has not been enough give and take and we need a plan that balances environmental and commercial issues.

Mr. McManus stated that many of the reports that have been done have discounted the conclusions of the wastewater plan and we need clarity to determine how the vision for East Harwich fits in with that. He noted that Mr. Lach has called into question the accuracy of some of the drawings we developed off of our GIS system that indicate open space areas, and we need to make sure we are moving forward on accurate information. He commented that he likes a lot of material the East Harwich Collaborative has presented but there are problems with sequencing and phasing of the plan, and what sort of system can be put into place to provide recompense for shifting of values. Mr. LaMantia agreed that these issues need to be clarified.

Mr. McManus stated that in essence two visions were presented and one of the first things that needs to be done is we need to get some clarity as to what the vision is and it is not necessarily the halfway point between the two plans. He noted that since the Board of Selectmen will be presenting the article, then they need to give direction and there are a number of issues that have to be worked out. He suggested that he and Mr. Ballantine figure out what those issues are and how to break them down for discussion purposes. The Board agreed and Mr. McManus and Mr. Ballantine said they would have

it ready for the Board's agenda in 2 weeks. Chairwoman Cebula said the Board members should also submit what they believe should be included in the vision statement.

Mr. LaMantia said they should come up with a preliminary charge for the committee and Mr. McManus responded that he is not convinced that the ultimate conclusion will be forming a new committee. Mr. LaMantia agreed and said they should hold off on the committee.

NEW BUSINESS

A. Human Services Agreement between the Town and Barnstable County – *discussion and possible vote*

The Board discussed including "Project in from the Cold" for potential human services funding in the future. Mr. McManus said he would discuss it with Jan Barton, the Barnstable Councilor who is involved with this project. Mr. McManus moved to approve the agreement. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

B. Public Hearing v. Public Meeting – *discussion and possible vote*

Mr. Merriam outlined the revised draft policy (see attached). Mr. McManus was concerned about putting the burden on the committees to hold hearings, which would require recording testimony in the minutes and that was not the intent. Mr. Hart pointed out that the draft policy states that the Board can adopt, reject or amend the changes at a public meeting but amending would require a public hearing. Mr. McManus commented that he didn't grasp the language regarding making changes to State regulations as only the State can make changes to their regulations. He noted that by adopting the Harbor Management Plan they have placed the Board of Selectmen as amending authority. Mr. LaMantia suggested dropping the paragraph about State regulations with regard to Mr. Hart's comment, and stated that if the Board wants

to make amendments then it would require a public hearing. He stated that the Harbor Management Plan gives authority to the Harbormaster. Mr. Rendon stressed that the statute is clear that the Board has no option to give power to another body and it is inefficient. Chairwoman Cebula questioned if a public hearing is needed for Harbor Management Plan changes. Mr. McManus stated that he would probably be satisfied with the Waterways Committee holding the hearing but the changes that were presented had not gone to a hearing. Mr. LaMantia said that hearings should be with the committees. Mr. McManus said it should be one way or the other but amendments by the Board of Selectmen would have to go to a public hearing. Mr. Ballantine stated that the paragraph pertaining to State regulations should read “proposed changes related to State regulations.” Mr. Rendon stated that the first line of the first paragraph should also read “not otherwise governed by General Law.” Mr. McManus said it should read “for adoption or change in local rules, regulations and fees where there is clear statutory authority from State law or regulations.” It was agreed that the Board would bring forward all changes to Mr. Merriam and this would be brought back next week.

C. Regional negotiations for solid waste contract – *discussion and possible vote*

Mr. McManus moved that we stay affiliated with this group (see attached). Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

SELECTMEN’S REPORT

- Review of draft Town Meeting articles

43 - Departmental Revolving Funds Authorization

Mr. Smith said the Golf Department's fund should include pro-shop sales and license. Mr. Ballantine noted that the article should include an explanation of why we are changing from 53D to 53E1/2. The Board discussed the article which included annual authorization of the revolving funds for Golf (\$150K), Council on Aging (\$55K), Cemetery (\$50K), Community Center (\$20K), and Recreation (\$70K). Chairwoman Cebula noted that some of the departments exceeded the spending limits and that this should have been caught. Mr. McManus suggested increasing the spending limits on these accounts. After discussion, Chairwoman Cebula requested that Mr. Merriam email the department heads for these 5 revolving accounts and ask them if they would like a different spending limit and they can make their decision based on what they think is going to happen next year in their programs.

Mr. Hughes departed the meeting at 9:32 p.m.

44 - Golf Capital Improvement Fund

Mr. Smith requested increasing the amount in the article to \$30,000. Mr. McManus said the articles were to be in final form in January. Mr. Merriam said the dollar amount should be left blank until the bids are in.

45 - Expand Use of the Waterways Capital

Improvement Receipts Reserve Fund
46 - Expand Golf Capital Improvement
Receipts Reserve Fund

Mr. Merriam said the purpose of these articles is to expand the scope of the funds. Chairwoman Cebula said it clarifies that principal and interest are included in the uses of these receipts reserve funds.

**TOWN ADMINISTRATOR'S
REPORT**

Mr. Merriam delivered the following report to the Board:

Allen Harbor dredging update

As of 2/5, Burnham Associates has removed 47 scows for an estimated 28,200c.y. Ted is projecting 3 more scows for cuts 7/8 at the Marina, then 13 more scows for cuts 4/5 which run parallel with the channel. The County Dredge completed their pumping on 2/2 and will remove their equipment by 2/5. Robert Our has completed 75% of AHYC dock replacement. DEP visited the site on 2/1 and found everything in order. AH temperature is 33 degrees. Video of the harbor will be performed again on 2/6. No flounder found to date. I've asked Don Munroe to work on bulkhead and drainage design. We will attempt to schedule town dock replacement after bulkheads installed in early May. We will ask County Dredge to return in early June to remove sand from the channel and renourish. Treasurer Mary McIsaac plans to submit a 2.9m BAAN for your approval on 2/19, with plans to bond in late June. Attached is a spreadsheet in which I've reduced the Burnham volume from 40,000c.y. to a new estimate of 37,800c.y.

based on 63 scow loads.

Cape Cod Solid Waste

As you know, the Cape's contracts with Semass mostly expire on 12/31/14. We've worked collaboratively through the CCC for a renewal contract. Since Semass is basing their proposal on cumulative tonnages, we need to tally which communities are committed to stay with regional negotiations. Attached is Covanta (Semass' latest proposal. As a group, we wish to offer a counter proposal, but need a BOS vote to stay in the Group.

Historic District

In researching the 1970 approved plan, it excluded the Town owned right of ways. Therefore, the ADA crosswalks will not require Historic Commission approval. (Bob Cafarelli's research)

I was unaware that crosswalks needed Historic Commission approval.~ After I received Elaine's email requesting detailed plans, including possible brick replacement, for a Historic Commission public hearing, ~I looked at the Historic District map outside my office to determine the extent of the district.~ I noticed this map designates the lots only, and not the road right of ways.~ I brought this to Dave's attention, and he emailed Chris Skelly, Director of Local Government Programs, Massachusetts Historic Commission.~ Chris's opinion is:

"Based on the official LHD map passed at town meeting, is the sidewalk within the boundary of the LHD?~ If it is, then a project in the right of way would be reviewable.~ However, if your bylaw excludes structures at grade level (as many

bylaws do), then there wouldn't be any review of a sidewalk.~ So, it really comes down to wording of your bylaw and the boundary line of the official map.~ Chris."

The Historic District was created by Article 78 of the March 9, 1970 Town Meeting.~ (Article was approved 253 to 1) "There is hereby established an Historic District under the provisions of The Historic District Acts, General Laws, Chapter 40C, entitled, "Proposed Historic District of the Town of Harwich, dated November, 1969, scale 1"=100', Chester F. Langtry, Town Engineer," said plan being on record with the Town Clerk."...

The plan referred to in the Article clearly shows the district as the property parcels, and not the road right of ways running through the properties.

Properties on Parallel Street were added to the district in 1972, and the current Harwich Code (Section 131-2) specifies that the current district:

"is shown on a plan titled "Town of Harwich Existing and Proposed Addition to the Historic District", dated November, 1972, scale 1 inch equals 100 feet, Martin E. Moran, Town Engineer, a copy of which is on file at the Town Clerk's office."

This plan too shows the district as the property parcels only, and not the road right of ways running through the properties.

The answer to Chris Skelly's question "Based on the official LHD map passed at town meeting, is the sidewalk within the

boundary of the LHD?" is "No", if the boundary is defined as the shaded area of the map.~ Judging from the official Town Meeting approved plans and the opinion from the State, one can assume that anything within the road right of ways are not within the jurisdiction of the Historic Commission (unless there is a ruling somewhere that roadways abutting historic designated properties are within the jurisdiction of the Historic Commission.)

One source of confusion may be that Attachment 7 of the Zoning By Laws shows a map displaying the entire area, including roadways, as the Historic District.~ This does not reflect the official approved maps and should be changed.

My interpretation of the law and State opinion is that since the By-Law does not exclude review of sidewalks, then sidewalk review is within the jurisdiction of the Historic Commission.~ However, this review is limited to the areas designated as being in the historic district by the official maps.~ Unless there is a ruling somewhere that states roadways abutting historic designated properties are within the jurisdiction of the Historic Commission, the proposed crosswalks and sidewalk ramps are inside the road right of ways, and are not subject to Historic Commission review. Obviously, the Commission may have a different opinion.~ If the Commission would like to extend their jurisdiction to roadway improvements, which may be a good idea if the Town anticipates future street scape improvements, they may want to revise the official map to include the roadways, and obtain a two thirds town meeting approval.

Jim, let me know how you wish me to proceed in this matter.~ I did not create detailed plans and profiles, as I assume the Highway Department has done many ADA crosswalks before, and did not need detailed plans.~ Also attached are sidewalk ramp excerpts from 28 CFR Part 36: ADA Standards for Accessible Design.~ As long as Highway complies with this as close as practicable, we should be in compliance.

Robert Cafarelli, P.E.

Golf Revolving Account -53D

In May, 2008, Town Meeting approved a new Golf Revolving Account for the pro shop and golf lessons. The motions required BOS approval of all expenditures. This has not occurred but was recently discovered. Effective immediately, the Director of Golf will batch his orders for your approval, which we'll place under Consent. The ATM warrant calls for a new 53E& ½ to be created and rescinding the 53D account. We will draft the 53E&1/2 requiring the Golf Director and Golf Committee's approval to expedite the purchasing, especially special orders not in stock.

Muddy Creek construction match

(increasing TM article request by \$100k)

I have placed two calls to Brad Chace but have not spoken with him about fisheries resources as they might enhance our chances for the NMFS grant. ~I understand we are under a deadline (at least in Harwich) for including additional money in the FY14 budget for grant match beyond the \$187,500 per town that we planned for the Coastal Wetlands grant. ~My request is that we plan for an additional \$100,000 of match per

town for the NMFS grant. This would give us a "downpayment" of \$200,000 toward the \$1 million match we would need if successful with a \$1million request.

~However, upon gathering further information we may not pursue the NMFS grant, and the funds would not be needed for that purpose.~

I don't know if this scenario is possible, but it is my suggestion based on available information.

Carole

LED Streetlights

CLC installed approximately 10 LED streetlights at the corner of Main and Banks Streets as a trial within this past week. Please check it out. Initial feedback has been positive.

Potential displays

The USS Cape Cod AD 43 has been sent to a Texas salvage yard to be scrapped.~ TSGT Dave Eastman, a Harwich resident, has contacted me about the possibility of saving some of the items from the ship for display in Cape Cod towns.~ Some of the items are bronze plaques from the ship, anchors, bells and alike.~ There would be a cost~ to purchase the items from the salvage yard which could be paid for by town historic committees or funding from the your community preservation committees.~ I will bring this up next Thursday at our meeting to see if there is any interest.

Bob

Thankful Chase 2

Thanks for your email.~ You are right in

stating that the 107,357.33 must be accounted for.~ Attached below is an email from DOR, providing a link to a UMAS manual, showing what is to be done in terms of account if tax title property is transferred to the Town for other public use.~ If, after the transfer, the Town retains ownership of the property, or the Selectmen sell the property for less than the taxes outstanding, there is a mechanism to account for the “loss” or shortfall in free cash.

To sum up, if the property continues to be held as tax title property, the Collector’s objective is to sell it for all outstanding taxes and charges.~ However, the Town is not required (but may choose) to repay itself back if property is transferred from the Collector (for tax title purposes) to the Board of Selectmen (or other board for whatever purpose).~ If the Selectmen later decide to sell the property, they can sell it for whatever consideration they want, but all proceeds must first be applied to outstanding taxes.~ In all events, the tax title account must be dealt with, one way or the other. Please let me know if you have any questions.

Shirin Everett, Esq.

Kopelman and Paige update re: medical marijuana

As significant questions concerning implementation of the medical marijuana law continue to be raised, the Department of Public Health is seeking public input on various issues under the law.~ Attached find an eUpdate outlining the details of the Department’s latest efforts at public outreach with respect to the draft regulations.

Compost

Reading this article and issue town has in getting rid of finished compost made me think the town should develop a program to spread/ topdress all of their recreation fields and town lawns with a thin layer of compost every year. This will provide nutrients and water holding capacity which in turn will reduce fertilizer requirements.....consistent with recommendations in the CWMP.

Dave Young

Screened compost can be an excellent soil amendment~which adds valuable nutrients~to fields.~ However, it also introduces tons of weeds, which would~then escalate~costs associated with weed~control.~ On~a personal note, I used to use compost to~top dress my lawn, but have since stopped due to the weed issue.~ I do however use a~lot of compost in~my garden.~~

~

Link~~~

Controlling TH room temperatures (last Monday, the heat was set to go off at 8pm which has been extended)

Dan,~

It appears that the problem occurs when we try to access the HVAC system interface with IE9.~ We are still able to access the system from older systems with Windows XP and IE8, but systems with Windows 7 and IE9 fail.~ They are able to see the logon screen and then supply their logon credentials, but it then presents an all white screen and stops responding.

Does the system support IE9?

Thanks. Foster.

Special Senate Election from K&P

Last week the Governor issued precepts for the holding of a special state primary and election to fill the vacant U.S. Senate seat.~ In light of the timing of these state election events on April 30 and June 25, respectively, emergency legislation was enacted authorizing municipalities to reschedule certain local elections to coincide with the date of the special state primary or election.~ Read on for more information...

ADJOURNMENT

Mr. McManus moved to adjourn at 10:03 p.m. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary