

# **Board of Selectmen Minutes**

## **03/12/2012**

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, MARCH 12, 2012  
7:00 P.M.**

**SELECTMEN PRESENT:** Ballantine, Cebula, Hughes (via remote participation),  
LaMantia,  
McManus

**OTHERS PRESENT:** Town Administrator James Merriam, David Agnew, and others.

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

### **CONSENT AGENDA**

- Approve Minutes
  1. February 21, 2012 Regular Meeting
  2. February 27, 2012 Regular Session
    3. February 27, 2012 Executive Session
    4. March 5, 2012 Executive Session
- B. Vote to reappoint Larry Ballantine as Town's representative to Cape Cod Water Protection Collaborative effective March 1, 2012 to February 28, 2014
- C. Vote to approve request for assistance from the Caleb Chase Fund in the amount of \$583.61 for Nstar bill

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

### **NEW BUSINESS**

- A. Open and close Special Town Meeting warrant – *vote*

Mr. McManus moved to open the Special Town Meeting warrant on March 21 and close it on March 22 at close of business. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

B. Proposed ballot referendum on Radiological Emergency Planning – *discussion and possible vote*

Mr. Agnew outlined the outstanding points in the proposed referendum (see attached). Mr. Merriam recommended simply sending a letter to the Nuclear Regulatory Commission and the Governor rather than having a ballot question and Mr. McManus responded that you get the intent of the citizens by having a ballot question. It was suggested that Mr. Agnew could gather signatures for a petition article and Mr. Agnew stressed that he had no interest in pursuing a petition article. Mr. Merriam stated that in order to go on the ballot it should be concise and the current document is too long and Chairman Ballantine and Mr. Hughes agreed. Mr. Merriam offered to assist Mr. Agnew in editing down the document and the Board agreed to bring back the item next week.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

### DOR

See Proposition 2.5 Ballot Questions, regarding draft motions and ballot options for financing a General Override or Contingent Appropriation.

### STM warrant

Selectman McManus believes we should amend the schedule to open on March 21<sup>st</sup> and close on March 22<sup>nd</sup> in order to provide the High School Architect as much time as possible to develop project costs and insert into the warrant.

### Cape Tech Assessment

The Harwich assessment for FY13 is 1,160,735.00. The official letters were sent out yesterday.

### Legal Opinion re: CPA application of funds toward debt service

This is in response to the questions raised by the Finance Committee concerning the Land Bank, the Community Preservation Act, and the payment of debt service.~ You wish to know what procedure would apply in order for the Town to rescind the CPA.~ I will also answer the specific questions posed by Mr. Patterson below, including his question concerning the procedure for reducing the amount of the CPA surcharge.

I understand that ~the Town accepted the provisions of c. 149, section 298 of the Acts of 2004 (the so-called "Modified CPA), which had the effect of terminating the Town's

participation in the Cape Cod Land Bank program and replacing it with the acceptance of the Community Preservation Act. As required by the Modified CPA, the Town currently collects a 3% surcharge on property taxes and receives the state matching funds under the CPA. The Town has substantial outstanding Land Bank debt service in the amount of approximately \$800,000 a year.~ The Town has not incurred any debt under the Modified CPA. Under the Modified CPA program, each year the first \$800,000 in Community Preservation Fund estimated annual revenues (which includes the surcharge and the state match) is used to pay Land Bank debt service, with the remainder used for CPA projects, including the 10% spending or set aside requirement for historic preservation and community housing. The Modified CPA provides that appropriation of CPA funds for payment of Land Bank-related debt service meets the requirement that the Town spend or set aside at least 10% of estimated annual revenues for open space purposes.~ Note further that pursuant to DOR's guidelines, if the funds needed to cover the annual Land Bank debt service were to exceed 80% of the Community Preservation Fund's annual revenues, the Town will meet its minimum spending requirements for historic resources and affordable housing by appropriating or reserving half of the revenues remaining after any appropriation is made for the operation of the CPC (if any funds remain), for each of those two purposes.

The Modified CPA program contains special provisions relating to revocation of the Town's adoption of the program and modification of the surcharge amount. The Modified CPA provides that a Town may not revoke its acceptance until after FY 2020, which is the date on which the Land Bank program is scheduled to terminate. ~Moreover, the statute provides further that even if a town were to revoke its acceptance of the Modified CPA after FY 2020, the town would still be required to collect the 3% surcharge until all Land Bank and CPA debt was paid off. ~Finally, pursuant to the Modified CPA, the Town may not reduce the 3% surcharge or modify any of the approved exemptions until after FY 2020. ~Please note that the prohibition on rescinding the Modified CPA or reducing the surcharge only applies to the Barnstable County municipalities that adopted the Modified CPA.~ In other Towns, the CPA can be revoked at any time after 5 years, and the surcharge and exemptions can be adjusted at any time by following the same procedure used by the Town to accept the CPA originally – ~town meeting vote followed by a ballot question.

Mr. Paterson has also asked whether the Town has the option of paying the outstanding Land Bank debt service from the general tax levy rather than the Modified CPA surcharge. ~Because the bonds issued by the Town under either the Land Bank program or the Modified CPA program (assuming the Town incurs such debt in the future) are considered general obligations of the Town, in my opinion the Town could, as part of its annual operating budget or pursuant to a special appropriation, provide for the payment of debt service on Land Bank and Modified CPA bonds from the Town's general tax levy, rather than the CPA surcharge.~ Of course, in order to do that, there would either have to

be sufficient general levy capacity to accommodate the required debt service payment and the other annual expenses of the Town, or the Town could, in my opinion, approve a Proposition 2 and ½ ballot question for that purpose.

Finally, Mr. Paterson has asked whether the Town could reserve the entire amount of the ~3% surcharge to pay down the outstanding Land Bank debt service.~ In my opinion, the Town could decide to spend or set aside in each fiscal year up to 80% of Community Preservation Fund estimated annual revenues for the payment of debt service (assuming that more than 80% of such amounts is not needed to pay Land Bank debt service, in which case more than 80% could be spent for the payment of debt service, as described in more detail above).~ Such amounts could be paid directly for debt service, or sums could be set aside for future appropriation for the payment of debt service.~ It is important to emphasize, however, that the appropriation of CPA funds to make additional Land Bank debt service payments, whether in the current or a future fiscal year, would require the positive recommendation of the Community Preservation Committee.~ As you know Town Meeting cannot appropriate any CPA funds without such a recommendation.

John W. Giorgio, Esq.  
Kopelman and Paige, P.C.

#### Cranberry Valley Golf

Chairman Clem Smith has provided us with 2012 Policy Changes- see attached.

#### Red River Culvert Project

See attached summary. Staff met on March 8<sup>th</sup> with Horsley and Witten, State and Federal officials on site to review level of support for installing the culverts.

#### Red River east end parking lot erosion

Amy Usowski has received this status report (see attached).

I am forwarding you this and another email from Greg Berman, the Coastal Processes Specialist that we have looking at the erosion at the end of RR Beach. Looks like the report is not ready yet based on the next email he sent. When I saw that a 'report' was attached I thought it was the final, but it is not. I am following up with Greg today, but you can update the selectmen with these emails on where we stand.

Amy Usowski

#### Chapter 90

See MMA bulletin re: Governor Patrick filing \$200m bond bill

Allen Harbor Dredging- Final lab report by Aquatec Biological Sciences, Inc.  
See attached final report.

Mr. Merriam,

We submitted the data package to the Corps of Engineers on Monday via email. ~Mr. John Williams is preparing CD's with these large reports for distribution.

I asked Mr. Phillip Nimeskern, Corps of Engineers, what the~possible~time-frame might be and I copied the response below for you:

I got all 4 emails, downloaded all the files and forwarded all to Richard Kristoff, the Permits project manager for this project. ~I have started my review and hope to have a written draft Suitability Determination (SD) within 2 weeks. ~One possible hitch is that I am dependent upon the EPA to first produce a Risk Assessment from the bioaccumulation data spreadsheet and I have no control over when they do it. When I have a completed Draft SD, I will send it to the federal agencies for their review and comments. They have a 2 week period in which to respond. ~My role ends when I give a final SD to the project manager, who will then continue the review process for the permit. ~You will have to talk to him about how long it will take.

I didn't see anything that jumped out at me as a project stopper but the Corps does not give any hard and fast criteria for judging acceptability (I've asked that question many times before and have been told that can't determine acceptability until its run through the risk model).

I have also attached the final invoice for you.

We enjoyed working for you and Coastal Engineering on this project and look forward to the opportunity to with you again.

Philip C. Downey, Ph.D.  
Director  
Aquatec Biological Sciences, Inc.  
273 Commerce Street  
Williston, VT 05495

Building Advisory Committee

Dick Hoyer offered to provide technical support to us by forming a small advisory committee to evaluate our buildings, rate them and prioritize projects. He has recruited

Dave Bernstein and Bill Stoltz to join him. Obviously, I'm ecstatic to have local volunteers with these skills step forward to assist in identifying our building maintenance needs. These priorities can then be incorporated into our annual capital budgeting.

#### Youth Summit

The annual Barnstable County Commission for Children, Youth & Families YOUTH SUMMIT is happening Friday March 16th from 7:30 a.m.-1:00 p.m. at Cape Cod Community College in Barnstable. This is one of the best events I attend regularly for Cape Cod youth ages 12-18 years. This year's theme is *"Building Your Life on Cape Cod"* and will feature workshops for kids who want to stay on the Cape or return after college, and how to create sustainability in all areas of their lives. The workshops for youth are really informative and hands-on. I invite you to check out this link and consider attending for all or part of the day. It is free if you pre-register and only \$5 if you walk-in the day of the event.

Sheila House

Harwich Youth Counselor

#### Water Mark outs

As you are aware, the Harwich Water Department has received a legal opinion from Town Counsel stating that the Water Department is within its rights to charge for a service provided. To date, National Grid owes our Department \$6,360.00. Town Counsel has sent National Grid a letter stating that our Department will not do any further mark outs until payment is received. It is the view of the Board of Water Commissioners that if National Grid does not make payment, the rate payer will be left paying this bill. The Commissioners feel that because our Department rendered a service to National Grid they should be held responsible. When we request a service from National Grid they charge us, and we pay. The day that we receive payment we will mark out all of their requests. We have been trying to resolve these issues for several months. That is why National Grids bill is as high as we continued to provide this service hoping they would pay their bill. Do date they have not made any attempt to pay their bill. They continue to give us the run around sending us here and there, to no avail. We are more than willing to resolve this issue as soon as possible.

Respectfully,

Craig

#### Request to expand BOS meeting broadcasts to weekends

Good Morning Larry,

As per request from last night's meeting, I have added several time slots to our program schedule to show the BOS meeting on the weekends. This weekend it will air again at noon and 9pm. Sat. & Sun. I will try to maintain this additional schedule as much as possible (depends on the meeting length). Jamie and I will continue to research the best and cheapest way to have the meeting "on demand".

Jill Mason  
Director  
Channel 18

Mount Pleasant Cemetery expansion

See attached letter from Robbin which describes Commissioners position.

I spoke to Dave Luxemburg this morning he just wanted to be in the loop.~ He is concerned about drainage or possible run off into his yard.~ I gave him the name of the company who is doing the design, BSC Group.~ He would like to attend the meeting when we discuss the plans. David Crispin from BSC group has been to the site with me and had no concerns about the run off.~

Robbin Kelley Cemetery Administrator

Brooks Library lighting update

You've been waiting for information from us on the CFL replacement project which we had agreed would be combined with the emergency light project under one RFP. Thank you for your patience while we continued working on the CFL portion of the project over the past few weeks. We learned Friday afternoon that the Cape Light Compact has agreed to replace all 226 of our problem CFL fixtures. After conferring with JoAnne and Jeannie over the weekend, I signed the agreement yesterday and returned it to Rise Engineering. This means we do not have to combine the emergency light project with the CFL replacement, so you can proceed with the RFP and the project for the emergency light inverter system.

Ginny

HECH –American Dream update from Mike Bowes National Grid

I will apply for the permits for 109 Sisson Rd and 13 Haramar Heath today. The job for 7 Campground requires a main extension and was just sent to the field yesterday so they can do site visits and plot out the main and service. I will send that application once I receive the work package back from the field.

Brooks Library parking lot schedule update

The Library Trustees will discuss which scenario is preferred at their March 14th meeting.~ The level of review and difficulty of construction is different for each option.~ Bidding is not required if improvements are less than \$10,000.~ Will also discuss this at tomorrow's meeting.

Bob

Update on permit processing –TA goals

Jim,

As you requested last Thursday 3.1.12, I am providing some background information in

support of the Community Development Department's memo dated 2.13.12 ~that:  
"... under the current Community Development Team's organization the review process by all relevant permitting departments has, in our estimation, substantially met the FY12 BOS goal of streamlining"...regulatory procedures and shorten time of regulatory reviews by 15% from last fiscal year."

~

This assessment is based upon the current effort by all the relevant permitting departments to adhere to the commonwealth's building code requirement (see 780 CMR 105.3.1) for the building official to take action on a building permit application within 30 days of filing. This means that the Town of Harwich has endeavored to have all relevant permitting departments review a building permit application under 30 days in contrast to towns that have a building permit applicant seek approvals from each relevant permitting department ~prior to submittal of a building permit application to the building department. Understanding this difference is critical when assessing streamlining the permitting process because by statute the health dept has 45 days to review a permit application. It would be hard to overstate the commitment by the individual departments to facilitate this type of permitting track, especially in light of current staffing. ~

~

Finally, regarding National Grid applications I would reference my 4.11.11 memo to the BOS that modified for the sake of efficiency and precision not to require the part-time gas inspector to sign off on National Grid road opening requests because the gas code (248 CMR 4.0) does not require it.

~

Geoffrey S. Larsen, CBO  
Building Commissioner

## **SELECTMEN'S REPORT**

- Selectman McManus – Crowell Barn

Mr. McManus described the history of the proposed project noting that he has consistently pushed for a vision statement to address what would be achieved, its cultural and educational purpose and who would run it before we commit to a location and specific plan. He read a letter from the Historical Society dated February 24, 2012 as follows:

On behalf of the Harwich Historical Society, we are writing to let you know that the Society voted at its February board meeting to serve as the umbrella organization for coordinating the interpretation of the Crowell barn and exhibits once it has been reconstructed.

We are eager to get to work with the Harwich Town government on this important project. At your convenience, please let us know with whom the Society should work to



coordinate maintenance activities and administration of the barn. Specific areas of interest to us include budget, facility maintenance, grounds keeping, utilities, and ongoing oversight.

We look forward to hearing from you.

Mr. McManus stated that a display and program would be preferred over just a barn and there is no detail on what sort of display space or staff the Historical Society is going to commit to this. He stressed that we are investing \$140,000 in reconstruction and we need to have a plan and a sense of what we are going to get.

Ms. Cebula expressed concern over the letter from the Historical Society noting that she thought this had all been worked out. She stressed the need for both a long and short term vision. Mr. LaMantia recommended taking the time to make this a destination point.

Chairman Ballantine asked Mr. Bradley to return next week with a vision statement and site plan.

The Board heard further comments from Peg Rose, Jeremy Gingras and Patti Smith.