

Board of Selectmen Minutes

03/26/2012

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, MARCH 26, 2012
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, Lincoln Hooper, Carolyn Carey, Leo Cakounes, Jack Brown, Joanne Brown, Bill Doherty, Mark McGowan, Judy Ford, Valerie Foster, Matt McCaffery, Pete Watson, and others.

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

WEEKLY BRIEFING - Route 137 & Red River Beach projects – *Lincoln Hooper*

Mr. Hooper reported that the Red River Beach culvert project began four weeks ago with his staff doing all the construction activities to install 2 culverts down there. He stated that they opened the flow last Friday and right now we are in the restoration process and should be done close of business this Wednesday. He thanked his staff for an outstanding job.

Mr. Hooper further reported that there has been a lot of progress on the Route 137 project. He noted that he walked the corridor with the Senior Engineer from MassDOT as well as a representative from Lawrence Lynch at which time a number of changes were made including saving 30-40 trees that were slated to come down.

Mr. Cakounes submitted a document of recommendations from the Special Commission on County Governance. Mr. Ballantine said he would put it on the Board's agenda for next week.

Mr. McGowan described his difficulty in obtaining a gas permit as the Water Department has been holding it up because of a rift they have with National Grid regarding road markouts. Mr. Merriam noted that he is meeting with the Water Commissioners, Water Superintendent and National Grid on Friday to try to work this out. Mr. Hughes stated that if we don't get a resolution on Friday we should ask the Water Commissioners to

come in and discuss this.

CONSENT AGENDA

- A. Approve Minutes –
 - 1. March 5, 2012 Regular Session
 - 2. March 12, 2012 Regular Session
- B. Vote to accept gift of a ping pong table from Friends of the Harwich Youth
- C. Vote to accept gift of \$2,500 from the Friends of Harwich Youth for concept design for Community Center expansion
- D. Vote to approve 2012 Seasonal Liquor License renewals
- E. Vote to approve 2012 Seasonal General License renewals

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

OLD BUSINESS

- Release of 2003 Executive Session minutes – *vote*

Ms. Cebula moved to release the 2003 Executive Session minutes. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

NEW BUSINESS

- A. Award of contract to Carole Ridley regarding Muddy Creek Grants – *vote*

Chairman Ballantine explained that we have been in the process for a couple of years of looking at widening the culvert at Muddy Creek to improve the water quality which will have great environmental benefits and will greatly reduce our cost of sewerage that part of Town. He noted that a study has shown that it must be widened to 24 feet and the next step is for Chatham and Harwich to work together to design a bridge and build it. He stated that there is a warrant article to do the design at \$225,000 as well as a capital budget item of \$1.4 million next year to build the bridge which is half the cost. He reported that they've met several times with representatives from various state and federal agencies on potential grants to fund the bridge and are optimistic that at least one of these will come through and would like to hire Carole Ridley to lead the charge on going after the grant funds and our share of that would be capped at \$8,000. He asked the Board to approve using part of the \$225,000 to hire Carole Ridley when that is approved. Mr. Merriam responded that he and Mr. Ryan believe they have found a funding source for this.

Mr. LaMantia said some of the tasks call for a project engineer and he questioned if we

have to put out an RFP. Mr. Merriam responded that he believes this is an extension of Carole Ridley's duties as Director of the Pleasant Bay Alliance at an hourly rate. Ms. Cebula questioned what our dollar limit is for not going to an RFP and Mr. Merriam responded that it is typically \$10,000. Mr. Hughes stated that he would like to see Ms. Ridley's proposal as this is just an outline and the rate is objectionable to him. He further stated that we need an agreement with Chatham that says this is going to happen. He said we should push back to Ms. Ridley and say it should be broken into two phases with one part for whatever is going to be done between now and June 30 which should be done with available funds and going forward after that it should be tied to the grant. Chairman Ballantine agreed and said he would bring it back next week for a vote. Ms. Cebula stressed the need to see a contract.

B. Review/vote of Annual Town Meeting articles:

1. #39 - Reserve for Future Appropriation Amounts from FY12 Community Preservation Fund Estimated Annual Revenues
2. #40 - Harwich Affordable Rental Housing Assistance Program
3. #41 - Brooks Free Library: Phase I Restoration/Preservation Historic Brooks Bldg.
4. #42 - Digitize 1949-1958 Microfilm of Central Cape Press Newspaper
5. #43 - Preserve and Digitize Historic Photos at the Harwich Historical Society
6. #44 - Fund Phase III Historic South Harwich Meeting House Preservation, Restoration, Building Code and ADA Compliance
7. #45 - Preservation, Restoration, Reassembly of Historic Elmer Crowell Barn/Workshop

Mr. Hughes moved to accept and adopt Articles 39, 40, 41, 42, 43, 44 and 45 as proposed as written and the funding source where needed is CPA funds. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

C. Vote to sign Special Town Meeting Warrant

After extensive discussion of the cost, Ms. Cebula moved to include Article 1 – School Building Project at the \$68 million as written. Mr. Hughes seconded the motion and the motion carried by a unanimous vote. Mr. Hughes moved that we accept and adopt Article 1 – School Building Project in the amount of \$60 million as a borrowing. Ms. Cebula seconded the motion. Mr. McManus stated that they don't know if the \$60 million they are supporting will allow for an adequate educational facility and he opposes taking that position. Ms. Cebula stated that they are trying to put across that there is no blank check here. Mr. Brown stated that to set an arbitrary stake in the ground at \$60 million is premature and could be harmful to the entire effort. He stated that it would be better to

say that we expect that cost containment and smart project management will drive this number down to a more acceptable number in the area of \$60 million. Mr. Loftus stressed that the Board needs to back the Building Committee. Mr. McManus pointed out that we will have a much firmer estimate as we get closer to Town Meeting. Mr. Watson stated that we have to tell them that this is unacceptable or they will spend right up to the \$68 million. The motion carried by a 4-1-0 vote with Mr. McManus in opposition.

Mr. Hughes moved to include Article 2 – Supplement Annual Allocation of Mass Cultural Council for Local Cultural Council Grants in the Special Town Meeting Warrant. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes moved to include Article 3 – General By-Law – Parking for People with Disabilities in the Special Town Meeting Warrant. Mr. McManus seconded the motion. The motion carried by a 4-1-0 vote with Mr. LaMantia in opposition.

Mr. Hughes moved to include Article 4 – Council on Aging Membership Reduction in the Special Town Meeting Warrant. Ms. Cebula seconded the motion. The Board agreed to recognize the Planning Board in the explanation. The motion carried by a unanimous vote.

Mr. Hughes moved to include Article 5 – Various Zoning By-Law Amendments in the Special Town Meeting Warrant. Ms. Cebula seconded the motion. Mr. McManus took exception to changes to temporary signs on municipal properties because they have deleted putting signs in Doane Park and in Harwich Center. Ms. Cebula and Chairman Ballantine agreed. Mr. Hughes suggested amending this on Town Meeting floor. The motion carried by a unanimous vote.

Mr. Hughes moved to include Article 6 – Authorize Intergovernmental Agreements Related to Renewable Energy Projects in the Special Town Meeting Warrant. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes moved to include Article 7 – Solar Energy Project – Westgate Road in the Special Town Meeting Warrant. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to include Article 8 – Solar Energy Project – Orleans Road in the Special Town Meeting Warrant. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes moved not to include Article 9 – Create Sewer and Water District in the Special Town Meeting Warrant. Mr. Hughes seconded the motion and the motion carried

by a unanimous vote.

Mr. McManus moved to include Article 10 – Water Treatment Facility and Solar Energy System at Well Site #10 in the Special Town Meeting Warrant. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes moved to add Article 11 – Land for Affordable Housing to the Special Town Meeting Warrant. Ms. Cebula seconded the motion. Mr. LaMantia suggested including maps in the Warrant. The Board discussed that the Real Estate and Open Space Committee and Conservation Commission should have a chance to look at this. The motion failed on a 2-3-0 vote with Mr. Hughes, Chairman Ballantine, and Ms. Cebula in opposition.

The Board discussed Article 12 – Little League Lease or License for use of Centeio/ Baldwin Field, with discussion centering on the field not being under the jurisdiction of the Board of Selectmen. The Board took no action on this article.

Mr. McManus moved to sign the Special Town Meeting Warrant as amended with the deletions we've specified. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

- Review of ballot questions

Mr. Hughes moved to include Question 1 (funding for the school building project). Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Mr. Brown pointed out that the agenda calls for a review of the ballot does not indicate that the Board would be voting tonight.

Chairman Ballantine agreed to hold off on voting and Ms. Cebula suggesting voiding the vote they had taken although no action was taken to do so.

Mr. LaMantia moved to shorten Question 4 (radiological response) by just putting in the top paragraph and deleting the full explanation. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes suggested ways to reorder the ballot.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam delivered the following report to the Board:

Muddy Creek Bridge

Dean Knight raised the idea of funding the Muddy Creek bridge design with CPA funds. Dean provided the justification, see attached “Rehabilitating Open Space Acquired with CPA Funds” which was written by the CPA Coalition in Sept. 2011.

I think an appropriation of CPA Open Space funds for the purpose of designing the new bridge is an appropriate use of CPA funds, based on the explanation provided.

John Giorgio opinion

As you know, the Town may expend CPA funds for “the acquisition, creation, and preservation of open space.”~ In addition, CPA funds may be used “for rehabilitation or restoration of open space that is acquired using CPA funds.”

Because CPA funds were used in part to acquire the open space land that would benefit from the bridge project, CPA funds may be used to restore the wetlands.~ Furthermore, even if CPA funds had not been used to acquire the land, a sound argument could be made that~because the bridge project will have the beneficial effect of protecting the wetlands from severe water quality degradation, the project will, in fact, protect the wetlands from harm or possible destruction, which as you know is part of the definition of “preservation” under the Act. Please let me know if you have any further questions.

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

Draft article not needed

FUND DESIGN OF MUDDY CREEK CULVERT/BRIDGE

STM ARTICLE ?~ ~ To see if the Town will vote to raise and appropriate, transfer from available funds or borrow a sufficient sum of money to fund design and permitting costs of a Muddy Creek culvert/bridge on Route 28 to increase the flow of Muddy Creek to improve water quality, optimal tidal flushing, wildlife restoration and save significant sewerage costs; and further to authorize the Board of Selectmen to accept any State, Federal or private grant monies available for this purpose, and to meet this appropriation \$225,000 be transferred from the Community Preservation Act funds – Open Space Reserve; and to act fully thereon.~ By request of the Board of Selectmen.~ Estimated Cost: \$ 225,000.

Jim et al,

Assuming that the CPC votes to recommend funding of the article with CPA funds prior to the Town Meeting and reports that recommendation to the Town Meeting then I would accept the motion as within the scope of the article as CPA funds would then be

“available funds”.~ Without the CPC recommendation, the motion would obviously be out of order.

Mike Ford

County Dispatch update

Jim:

After review of the options available to us at this time we would be able to assume the Fire Dispatch for Harwich FD after Labor Day 2012.~ This will give us the necessary time to train new staff and arrange for the necessary technical changes to make the switch.~ This time frame also gets us through the busy summer season which is not the best of time for such a major change for all involved.

During this time we would also work with any towns that have an interest in the BCSO operating their police dispatch with the hope of obtaining enough customers to support the lease of the Harwich Dispatch Center.~

As an FYI we are planning to assume the Fire Dispatch for the town of Chatham after January 1, 2013.~ This is subject to approval of Town Meeting.

Sheriff Cummings

Labor Counsel advises that any vote to support the transfer of duties to the County Sheriff be subject to collective bargaining.

Update on Departmental collections/ turnovers/ On line payments from Treasurer Mary McIsaac

This may dovetail nicely with my review of processing payments at the departmental level in order to overhaul the process. My first priority is to secure the receipts of the town and deliver them into the Town's treasury as soon as possible. This week I interviewed the Fire, Police and Highway Department 's in order to document the process currently in place. Next week I will interview several others and send Amy out as well. There are numerous factors in play at the same time. Each community handles certain revenues differently and I would consider all of the factors in order to determine which "best practice" makes the most sense for Harwich. For instance, the Sandwich Town Collector's office processes all beach and dump stickers at their windows extremely successfully. And according to the Town Treasurer, they purchased and went live with a kiosk designed to accept all payments at the town landfill. The estimated cost of the implementation was \$11K and I am getting information on that as well. We cannot make an honest evaluation without considering all of the facts of the matter. We will report on all of our findings shortly.

SJC Decision

Fellow Assessors:

Please see the attached Decisions issued earlier today by the SJC. The SJC, in the Verizon v. Boston case, has ruled that poles, wires and construction work in progress (CWIP) are not taxable to corporations such as Verizon under c. 59, §18, cl First. It has, thus, vacated the ATB decision previously rendered in this matter and remanded the case to the ATB for further proceedings consistent with the opinion.

The Verizon v. Newton decision vacated a judgment of the Superior Court which upheld the viability of the Boston and Newton efforts to collect the disputed wire, pole and CWIP taxes as premature, given the pendency of the appeal in the "Boston" case.

Not a good development for the Assessors or the ATB!

-- Jason

Update on Brooks Library exterior lighting project

Lights have been ordered and determined to be outside the Historic District.

Charter Changes

John had forwarded this last week and asked me to respond. I thought I had, but couldn't find anything in my "sent" box, so am responding now.

There is nothing in state law or the constitution that requires a special act of the General Court to be accepted by the voters at an election. Occasionally, the General Court will insert such a provision even where it has not been approved by Town Meeting, particularly in cases affecting changes to elected positions. In this case, however, I think that is unlikely, particularly where one special act involves the Regional School District, and where the other is more technical in nature.

As you have indicated, it appears that the bills may be somewhat stalled in the Senate. I know that the General Court has lately been acting on some similarly stalled municipal-related bills, so it may make sense to check in with your State Representative and State Senator to see where things stand.

Lauren F. Goldberg, Esq.
Kopelman and Paige, P.C.

Water Mark outs

Attached is a letter dated March 16th from the Water Commission seeking your support of their policy to not allow National Grid and NSTAR to perform any more work in Harwich until they pay the Water Dept. for monies owed for Water Dept. mark outs. National Grid and NSTAR have uniform fees set for their large geographic territories and have been unwilling to create a new fee for one community. I have recommended that the property owner/ applicant pay the Water Dept. fee. The liability remains with the entity

which performs the mark-out, as the responsible party for accuracy or the contractor who digs in the wrong location. Assigning liability to the property owner is not reasonable. Craig Wiegand is attempting to resolve this matter so that applications can be processed in a timely manner.

Building Maintenance

I met with the volunteer group who will start evaluating buildings, starting with the Library, and provide advice regarding needed repairs. I appreciate the volunteer effort of this level of building expertise.

Expedited permitting Re:BOS goal

Geoff Larsen has provided specific examples to measure processing time between two fiscal years.

Red River

Highway completed installing the concrete blocks on the 20th, with backfill on the 21st. They hope to wrap this phase by week's end, then move to Uncle Venies. ConCom discussed the east end erosion and will support a temporary soft solution, using jute bags filled with sand similar to Paine's Creek, followed by an engineering study for a hard solution.

Chatham Treatment Plant

Dave Young has just informed me of prior discussions with Chatham and engineering questions posed. See attached scope and schedule. Also is the current balance of \$155,780 in CWMP funding.

Meals on Wheels

I accompanied Bruce and Cheryl, who volunteer to deliver meals on wheels to our residents through the Elder Services program. I enjoy meeting residents and discussing issues of concern. Attached is the stats sheet on this valuable program and an explanation of the Elderly Nutrition Program to promote independence.

Monomoy Regional School Budget

Our office has received the official document and assessment certification of \$20,342,081 as submitted by Transitional Treasurer Donald Mercure. David Ryan has also provided a spreadsheet of gross budgets for comparison between FY 12 and FY 13 as per your request.

Open Cape update

Now that fiber is rolling on the 350-mile fiber optic OpenCape Network, we're receiving many more inquiries concerning laterals, internet access, VoIP services, etc. ~ This would

be a great time to check out CapeNet's new website, www.capenet.com.~ It's a useful resource to get answers to initial questions, track our progress and learn more about the future of fiber on the Cape.

Tony DaSilva, CISSP

VP, Sales and Business Development

Harwich 5K Road Race Sponsor Update

When:

Saturday, June 23, 2012 at 9:30 AM

~

Registration/Bib pick up Days and Times:

Friday, June 22 at Harwich Chamber of Commerce 2:00-4:00 PM

Friday, June 22 at Harwich Mariner's Whitehouse Field 7:00 PM-9:00PM

~

Day of Registration and Bib Pick Up: At Race (Harwich Chamber) 7:30 AM -8:45 AM
Only

Opening Ceremony: 9:00 AM

~

Where:

One School House Road--Harwich Chamber of Commerce Parking Area
Harwich Port, MA 02646

Wastewater discussion

Public Informational Meeting – March 29th Community Center 7-9pm

~

The Selectmen and Councilor's ~Association has suggested that we have a joint meeting on April 13 to participate in a discussion on wastewater.~ The meeting will be in Bourne at~8:00 AM.~ I will~be getting more information about cost and we will need to give them a head count. If this is ok we would not have our~April meeting on the 12th but combine the meetings on the 13th.~ Let me know if~this is ok to cancel our April meeting.

Bob

Blitz Week

As some of you may be aware, next week is our annual 'Blitz Week' with AmeriCorps Cape Cod and the Harwich Conservation Trust.~ Monday-Thursday next week there are various opportunities for you to volunteer alongside us as well as children who are coming from all over the area to assist in management of our conservation lands.~ Monday, AmeriCorps Cod will be working with Ryan Man of HCT at White Cedar Woods.~ The task there is to remove a privet hedge, install split-rail fencing, and install an

HCT sign.~ Please contact Ryan if you are interested in participating on that day.~ Tuesday - Thursday will be spent at Thompson's Field on the Chatham Road side.~ AmeriCorps will be taking the kids on an educational tour of the property and then the students will be assisting us with controlling the invasive plants on the parcel.~ We will be there roughly 8am-4pm on Tuesday and Wednesday, and from 8-12 on Thursday. ~If you choose to come, please bring your own hand tools and water.~ Even if you just have time to stop by and say thank you to the kids on behalf of the town I think they would really appreciate it!~ If you have any questions please call me.

Amy Usowski
Conservation Administrator

ADJOURNMENT

Mr. Hughes moved to adjourn at 10:36 p.m. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary