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HARWICH, MA

2022 MAY 11 P 2:10

**MINUTES  
SELECTMEN'S MEETING  
TOWN HALL  
GRIFFIN ROOM  
MONDAY, DECEMBER 13, 2021  
6:20 PM EXECUTIVE SESSION  
6:30 PM REGULAR MEETING  
REMOTE PARTICIPATION OPTIONAL**

RELEASED

APPROVED

**SELECTMEN PARTICIPATING:** Michael MacAskill, Julie Kavanagh, Larry Ballantine, Donald Howell and Mary Anderson

**ALSO PARTICIPATING:** Town Administrator Joseph F. Powers

**CALL TO ORDER:**

Chairman MacAskill opened the Board of Selectmen's meeting for December 13, 2021 at 6:20 PM. Ms. Anderson moved to enter into Executive Session, 2nd by Mr. Howell. Vote 5:0 in favor. Motion carried unanimously.

**EXECUTIVE SESSION:**

A. Pursuant to MGL c. 30A s21(a) paragraph 3 to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigation position of the Town and the Chair so declares: Christopher D. Wise vs Town of Harwich Planning board, and Halls Path.

Mr. MacAskill reopened the Board of Selectmen's meeting after Executive Session where they discussed strategy with respect to litigation if an open meeting may have a detrimental effect on the litigation position of the town and the chair so declares and that's related to Christopher D. Wise versus Town of Harwich Planning Board related to Hall's path in East Harwich. Some decision were made but the will not be announcing that as it's open litigation. He invited attendees to join his in the Pledge of Allegiance.

**PUBLIC COMMENTS/ANNOUNCEMENTS**

Virginia Hewitt Director Brooks Free Library announced that the Friends of Brooks Free Library have resumed their book sale operations and the book sale room in the basement is now open and she noted the hours of operation. She also announced a holiday program called Send a Story and she described what that entails.

**CONSENT AGENDA**

- A. Vote to approve Board of Selectmen Meeting Minutes for March 2, 2020
- B. Vote to accept gift of a memorial bench to be placed at Wychmere Harbor

December 13, 2021

C. Vote to approve the annual permit renewal for Mooring Servicing Agents for calendar year 2022

Ms. Anderson moved to approve the Consent Agenda as presented, 2nd by Mr. Howell.

Mr. MacAskill thanks John Rendon for his work on the memorial bench and the communication for Wychmere Harbor, he was glad to have been able to place that memorial bench.

Vote 5:0 in favor. Motion carried unanimously.

## **NEW BUSINESS**

### **A. Annual Committee Meeting**

#### **1. Brooks Free Library Board of Trustees**

Joanne Brown Chair of the Brooks Free Library Board of Trustees reported that new members have been sworn and all Board members have completed ethics training. She noted the impact of COVID on library operations and the services they provided while the library was closed to the public. As of July 1st the library is returning to pre-COVID hours. She commended the staff for their compassion and flexibility through difficult times. A list of the groups and programs offered was reported with plans to expand offerings the new calendar year. Regarding the Shared Streets grant, recent improvements and increased police presence have helped address their concerns regarding patron safety. There is a podcast called "Know Your Town" with 16 episodes available on the library website. The Rogers Group Statue renovations is complete. She extended their appreciation to the Friends of the Brooks Free Library for all they do to support the library.

Mr. Howell commented that they do more than other libraries and he expressed his appreciation.

Ms. Anderson also commented on their dedication throughout the pandemic and especially appreciated their creativity.

Ms. Kavanagh applauded them for their use of technology.

Mr. Ballantine noted her comment on the Shared Streets Program and "dittoed" the other's comments as did Mr. MacAskill.

#### **2. Voter Information Committee**

Unidentified representative (Emily Milan is Chair) from Voter Information Committee was present. She noted that the report is in the packet and they are looking for more members.

Ms. Anderson noted that she is the liaison but they were on hiatus when she was elected. She will be at their next meeting.

Ms. Kavanagh commented that she appreciates their work and the report.



Mr. Howell encouraged people to submit applications to serve on this committee.

### 3. Golf Committee

Clement Smith Chairman of the Golf Committee referred to the report previously submitted which includes a committee overview and a vision for their long range plan. He mentioned that 60 of the 80 electric golf carts have been delivered and are spectacular.

Ms. Anderson questioned, on the long range plans what a nursery/putting complex designed for super senior access after-hours is.

Mr. Smith replied that the golf channel has a variety of films they air between tournaments. He explained the origins of the putting complex which is 18 holes but on a putting course. Their vision is to replicate something similar where super seniors could come to the golf course after hours and engage in less than regulation golf. Golf courses are challenged by having additional turf available in case of insects etc. Having extra turf gives them the opportunity if needed to replace patches on active greens.

### 4. Planning Board

Duncan Berry Chair of the Planning Board noted a few items in the report. #1. There is a new Town Planner Jonathan Idman which they are enthusiastic about. #2. They have openings for 2 alternates #3. They had the passing of Al Atkinson who had served on the Board for almost 11 years.

### 5. Cemetery Commission

Steve Conner Chair of the Cemetery Commission reported that their committee is full, they've all been sworn in and have their ethics are up to date. Their report has been submitted.

Ms. Anderson thanked him for the Veteran's Day Memorial Service.

Robbin Kelley Cemetery Administrator commented that they should thank our Veteran's Agent for that, she did most of the leg work.

### 6. Community Preservation Committee

Town Administrator Powers commented that he received word from the chairman, he is unable to attend this evening.

### B. Preliminary discussion on the Cultural Center: Gym use, schedule and fees

Town Administrator Powers commented that as the Board has in the packet, the latest information on the Rec Department's use of the gymnasium at the Cultural Center. The request has been made to expand pickle ball hours.

Mr. MacAskill asked for this to be put on for an initial discussion. The chair of the Finance Committee has questioned them on this building and they'll be more discussion on the next agenda item. He's been told the gym is always full and it's usually full with pickle ball people. Bob Brackett of the Youth Soccer program has been told there's no space. He asks the Board to consider through the Administrator looking at the schedule and seeing to it that they can open the gym up to other organizations.

Ms. Anderson asked if there's any reason why Mr. Brackett couldn't use the times that haven't been taken.

Town Administrator Powers commented that he believes Mr. Brackett started last week so there is some availability.

Mr. Howell commented that things changed especially with the Monomoy School District, promises were made. A lot of people have programs spilling out beyond the Community Center. Our town's people can't use the Community Center because there are too many things going on. The Cultural Center is a great place that can be utilized.

Ms. Kavanagh commented that there's pickle ball during the day but there should be some availability in the evenings.

Mr. Ballantine questioned the 20 participants in each of the after school programs if those are actual numbers or how many can use it.

Town Administrator Powers commented that his understanding from the report is that is the actual number based on the program aid availability.

Mr. MacAskill noted that the intent is to get the conversation going and looking at what they are charge. He commended Carolyn Carey for what she has done to get that place to where it is now. Now that there's someone else running that building they need to have a broader conversation about fees and take this to the next level if they want to keep the building.

Ralph Smith from Harwich Port and is an avid pickle ball player. He sent an email to the Town Administrator. They would like to have Tuesdays and Thursdays even if they had to cut the hours back. They put 30 people or so in that gym every morning that they are allowed.

Mr. MacAskill is not aware of that email. He thinks it's time to bring Eric Beebe the Rec Director in and start discussing some of the other requests to use the gymnasium, who's been told no and why. They have to discuss a fee schedule for al of it.

Mr. Smith distributed copies of his email to the Board members.

#### C. Discussion and possible vote to draft a warrant article for Cultural Center

Town Administrator Powers recognized Carolyn Carey and the work she has done to get that established and thriving. Knowing there has been discussion generally about what is going to



happen with the Cultural Center, he wanted to take the initiative of having this item tonight to alert the Board that he is planning on developing a specific position now as Director of Cultural Affairs. That person would have primary responsibility over the Cultural Center building as well as the 2 Cultural Center districts as well as other tasks that will be described in the job application. He feels the building is working, they can tweak dollar amounts on the rents or participant fees. Tomorrow he will be talking to Capital Outlay to be sure that building is maintained. He feels this article is necessary because this will be a new position to town and the charter requires that a new full time position if endorsed by the Board of Selectmen must go before Town Meeting.

Mr. Howell need that the building had been decaying and there's a financial component on this that is a positive one. There are people willing to pay to use the gym and there's a cafeteria that can get rectified. There is a need and the question is how to sow some pro forma that makes sense financially and get this going forward. It also has an historic component, the back portion was the old high school. He is in on the article.

Ms. Anderson commented that she is in as well. She noted a survey that asked why people came to Harwich and second after the beaches was the art community. It clearly is a draw. She also mentioned a potential grant for capital money and although we missed the deadline, it's something they do every year.

Ms. Kavanagh also agrees. The building has come a long way, people enjoy it, it's a jewel, we have the Cultural District and we should keep going.

Mr. Ballantine supports the warrant article moving forward. It's an opportune time for discussion of the building. He'd like a review of the Cultural Center District. He is always interested in a plan with revenue and expenses. The town should be apprised of that and then there can be a series discussion of what the fees should be. He feels there's a lot more they can do with that building and they haven't fully utilized the resource.

Town Administrator Powers noted that what they are talking about is for that Cultural Center to succeed. We need to ensure that we have the primary director and the primary advocate. It can support a full time position and the Cultural Center in that building will not succeed without a position dedicated to advocating for it.

Bernadette Waystack spoke tonight as a renter of the Harwich Cultural Center. She noted the amazing job that Ms. Carey has done there. One important thing about the Center is that it's for everyone. When there isn't a person in charge to keep a center open, you can't get the public in. Her concern is for people to know that there's a lot going on in there, they want more people using the place than just the renters. She spoke about what is going on and the potential for more. It's a special place and to have someone who has a feeling for what the Cultural Center's vision is perfect. As Cultural Counsel chair she explained a few things. She is still in contact with the MCC liaison for cultural districts and they hope to have the deal with the two districts sealed in the spring. She referenced the grant and explained why they were unable to get it this year but that it is an annual grant. They will be looking for potential and a plan and she offered to help.

D. Discussion and possible vote to authorize three members of the Finance Committee to participate remotely

John Chorey Finance Committee Chair was present and the Board is aware of his request.

Mr. MacAskill explained that because of where they are with members, he doesn't think it's possible for them to approve to allow 3 to participate remotely. One member has been out ill for quite some time and he asked if the request has been made to that member to resign.

Mr. Chorey replied that yes it has and he is working on that right now. There is also one vacant slot.

Mr. MacAskill noted that you have to have 3 present when you open a meeting to have a quorum if you do remote participation.

Town Administrator Powers noted that the Town of Harwich has procedures for remote participation which lays out the criteria and #7 says remote participation shall be limited to 2 members at any meeting. Also because we are operating under pre-pandemic remote participation not post-pandemic remote participation as Governor Baker has allowed. The town has announced that we are back to in person meetings. He explained the towns and state's procedures and provision in regards to the open meeting law.

Ms. Anderson commented that although there's 3 that'll be away, only 2 overlap at any given time. She doesn't think we have trouble with 3.

Mr. Chorey replied, that's correct. There are 3 members requesting remote participation, 1 would start December 17th to January 3rd. No one else would be out at that time. Another one leaves January 14th and comes back March 4th. The third person leaves January 30th and comes back March 19th. At one point 2 people will be out together. He is hoping they will have a full Board of 9 members very shortly and doesn't anticipate a problem getting a quorum for the requirement of in-person meetings.

Ms. Anderson noted that Mr. Chorey has been trying to get this replacement since August and she understands the Moderator is busy but asked if they can change things to delegate the interviewing and recommending to the Board of Selectmen or the Interview Committee and then have him do the actual appointment. She feels 4 months is too long to wait.

Mr. Howell commented that there needs to be more involvement and maybe they can work something out with the Moderator. He is elected to appoint people so the Board has little authority other than what Ms. Anderson suggested.

Ms. Kavanagh confirmed with Mr. Chorey in terms of the remote participation if he has only 2 members out, he can make a quorum.

Mr. Chorey replied yes, he can make a quorum.



Mr. Ballantine understands the overlap of the schedule and commented that they've been frustrated for years on how long it takes to appoint people. He noted that FinCom is in control of that and they can't interfere, its checks and balances.

Town Administrator Powers stated that the Charter clearly states that the Moderator appoints the Finance Committee.

Mr. MacAskill asked Mr. Chorey if he talked to the Moderator about the member that has been out ill and if he is waiting for a resignation that he may never get. He has the power to remove him.

Mr. Chorey stated that he has tried to contact this individual numerous times over months of times and not gotten a response. He referred this to the Moderator and he said he would work on it.

Ms. Anderson moved to vote to authorize three members of the Finance Committee to participate remotely, 2nd by Ms. Kavanagh.

Mr. Howell asked if a vote is necessary. It's within the confines the Board of Selectmen has already established.

Mr. Chorey asked if there is a new video program.

Town Administrator Powers replied that they are still relying on Go to Meeting.

Vote 5:0 in favor. Motion carried unanimously.

#### F. Discussion and possible vote to approve the 2022 Golf Department Rate and Fee Recommendation

Ms. Anderson moved to vote to approve the 2022 Golf Department Rate and Fee Recommendation, 2nd by Mr. Howell.

Mr. Ballantine commented that they have different categories, they listed different fees and the increases. He asked how many participants are in each category, resident, non-resident etc.

Shawn Fernandez Golf Superintendent for Cranberry Valley replied that he will get those numbers. Roughly 12-13 hundred members and roughly 900 are residents.

Mr. Smith stated that the figures are absolutely available. They use those numbers in their projections and go through a 4 to 5 year analysis as far as comparative data.

Mr. Ballantine asked what the CHIN Handicap service is.

Mr. Smith replied that it is through the United States Golf Association and they provide a wonderful service to track people's handicaps. There is a service fee associated with that and it has been standardized across the industry.

Mr. Anderson commented that other towns seem to have a bigger difference between resident and non-resident. Harwich's is only \$200.00 difference and some towns are \$500.00 difference.

Mr. Fernandez replied that the other towns have 2 golf courses and Harwich has 1.

Vote 5:0 in favor Motion carried unanimously.

E. Discussion and possible vote - Board input on the Harwich Affordable Housing Trust documents including membership

Mr. MacAskill noted that this is an initial discussion. We have one member who is a Selectman and a Trustee, The Town Administrator is also a Trustee and then there's 3 at large. The next meeting will be a joint meeting if any member of the Trust wants to attend they have to post it as an open meeting. He believes the Trust has already started the conversation on this. It would be helpful to have more updates from the Trust as it relates to building and property purchases.

Town Administrator Powers commented that this is an effort to get this topic in front of the Board for discussion. He as Administrator will be advising the Board, he is seeking a direction, guidance, and input or at least to tell his thoughts before it's presented to the Trust. He noted that the Trust is a confusing document and he feels it's appropriate that the chair position language would support any member of the Trust or anything other than the Administrator solely serving in the chair capacity for the Trust document. To amend the Trust it must be all members of the Trust agreeing and then it goes to the Board of Selectmen and all members of the Board must agree.

Mr. Howell noted that members of the Trust were not aware of the document and feels it should be on the website. This is a policy issue that everyone's to agree to. The relevant section in MGL is Chapter 44 Section 55C and there's language that includes "musts" and he listed some. The document that passed Town Meeting mirrored that and then it was inserted that the Town Administrator had to be the chair regardless of who was on the Trust on perpetuity. It is difficult to effectuate. One concern is that if the Chair always has to be the Town Administrator, the question arises, who is talking and who does that person actually respond to or part of. The Town Administrator works for all of us and when he is sitting in the Trust, they have certain votes the Trust. If they decide they want to amend it, the next step would be to take a vote on it in an open meeting and then to bring it to the Board because it absolutely has to have both entities agreeing to any kind of a revision.

Ms. Anderson doesn't see the problem having the Town Administrator on the Trust and or as the chair.

Mr. MacAskill is going to wait for some direction from the Trust. Their task is to read the document and suggest the changes they would want.



Ms. Anderson commented that she has read the document. She noted that the Trust had to know this document because you (Mr. Howell) signed it.

Mr. Howell stated that it was the first and only he saw it, it was never available publicly to anybody on the Trust. He couldn't find it in the Registry of Deeds.

Ms. Kavanagh read the documents and both say the Board of Selectmen should appoint 5 Trustees, one of whom should be the Town Administrator or designee and one should be a member of the Board. That's exactly what the Trust Declaration says.

Mr. Howell will send the MGL to all because paragraph B does not say "or designee"

Mr. Ballantine commented that the difficulty is if designee applies to the chairman or not. That should be clarified.

Ms. Kavanagh read "One Trustee shall be the Town Administrator or his or her designee who shall act as chairperson and shall have a vote. One Trustee shall be a Selectman as designated by the Board of Selectmen and the remaining 3 are appointed.

Mr. MacAskill looks forward to the Trusts vote and conversation so he can see where they land on what changes they'll make. He also does not understand the confusion on the Trust Declaration but the Board will rely on the Trust to move forward. He struggles with the Board Designee because if the Town Administrator takes 3 meetings off a year because of conflicting things and he's the chair, he doesn't think a designee of the Town Administrator should be chair, it should fall to whomever the vice chair was voted in to run the meeting, not somebody that wasn't up to speed. He believes the change starts with the Trust, not the Board of Selectmen. Also the Cultural Council has term limits. The Board should look at term limits, it shouldn't be part of the automatic reappointments, as well as the Board's appointees. We wouldn't want a career Selectman to say someone would have the next 15 years once they're on. Clarification on who runs the meeting in the absence of the Town Administrator and the intent of the whole Trust are important conversations to have. The Board was told that they were going to mirror the Yarmouth Trust which reads the same way.

Mr. Howell commented that in practice, the prior Town Administrator used this as a band and we were the supporting musicians and he was the front man. They did not know 2 instances he had promised people money to support projects that hadn't even come in front of the Trust and in 2 instances they were able to document that he did not tell them that they had rights of first refusal on property that finally wound up getting developed by somebody else so it did not function as an organization where everybody had a say in things.

Mr. MacAskill stated that moving forward, the Board will wait for some direction from the Trust.

G. Discussion and possible vote to approve 2022 Annual Auto License Renewals;

1. A & G Accident Repair, Inc. d/b/a Cranberry Collision - 161 Queen Anne Road - Class IV
2. All Out Performance - 266 Queen Anne Road - Class IV
3. BB's Automotive - 805 Route 28 - Class II
4. Carlos Tapia, Inc. d/b/a/ JC Auto Sales - 195 Queen Anne Road - Class II
5. Dave's Garage - 910n Route 28 - Class IV
6. Harwich Port Boat Yard - 4 Harbor Road - Class I
7. Peter S. Stagg - 182 Route 137 - Class II and Class I
8. Reflection's Auto Restorations and Collision - 4 Evergreen Way - Class IV
9. Sam's Auto Repair and Sales, Inc. d/b/a Sam's Automotive Center - 413 Route 28 - Class II and Class IV
10. Scott D. Hardy d/b/a Scott's Cycle - 210 Queen Anne Road Unit 1 - Class IV
11. Steven's Auto Repair - 216 Main Street Unit 748 - Class IV
12. Wayne's Auto Service - 643 Main Street - Class IV

Ms. Anderson moved to vote to approve the 2022 Annual Auto License Renewals as presented, 2nd by Mr. Howell.

Ms. Kavanagh commented that Peter Stagg on 137 has been vacant for ages and asked in terms of when voting for this we are saying we're going to renew the Auto License but technically, what is there?

Mr. Ballantine commented that he assumes Peter Stagg is renewing this so it will help the resale value at some point. He asked if there is any policy that says it has to be a going business.

Mr. MacAskill asked if the Board is comfortable and wants to remove this one from the motion and ask the Town Administrator to look in to it.

Town Administrator Powers replied that he has looked into it and it is exactly as members have said. He is complying with the law that allows these licensure. He has a vehicle on the property and has repaired portions of a vehicle throughout the license year. He has renewed so he retains the right to potentially sell the business. If it was not renewed or be denied, the business would go dormant and calls into question any number of issues. If the Board is curious about if they do not renew tonight and what steps you could take, they would have to work with council to figure out what rights the licensee has versus what rights the town has of those as the licensing authority.

Ms. Anderson asked if there is any harm in renewing the license.

Town Administrator Powers replied that the harm would be in denying it and the potential litigation that could result. It is a grandfathered use.

Vote 5:0 in favor. Motion carried unanimously.

H. Discussion and possible vote to approve the 2022 Annual Common Victuallers License renewals;



1. Alexander theGreat, Inc. d/b/a Alecxie's House of Pizza - 181 Route 137
2. Blue Stripe LLP d/b/a Cape Sea Grille - 31 Sea Street
3. Brax Restaurant Management, Inc. d/b/a Brax Landing - 705 Route 28
4. BLM Restaurant Group d/b/a The Lanyard Bar and Grill - 429 Route 28
5. Ember Pizza, Inc. d/b/a Ember - 600 Route 28
6. Epiros Holdings LLC d/b/a George's Pizza House - 564 Route 28
7. 400 East, Inc. d/b/a 400 East - 1421 Orleans Road
8. Harwichport House of Pizza, Inc. d/b/a 300 Route 28
9. Hot Stove, Inc. d/b/a Hot Stove Saloon - 551 Route 28
10. Morin-Froughton, Inc. d/b/a Lighthouse Cafe - 216 Route 28
11. Ruggies, Inc. d/b/a Ruggie's Breakfast and Lunch - 707 Main Street
12. Shogun, Inc. d/b/a Noble House - 21 Route 28
13. Shooting Star Realty LLC d/b/a Buca's Tuscan Roadhouse - 4 Depot Road
14. Subfleet, Inc. d/b/a Buca's Tuscan Roadhouse - 4 Depot Road
15. Morningstar Restaurant, Inc. d/b/a Villa Roma - 278 Route 28
16. W.F.S. Restaurant Group, Inc. d/b/a Lalouette Restaurant - 787 Route 28
17. Zack, Inc. d/b/a Szechuan Delight - 1421 Orleans Road
18. Zou Garden, Inc. d/b/a Szechuan Delight - 1421 Orleans Road

Ms. Anderson moved to vote to approve the 2022 Annual Common Victuallers License renewals as presented, 2nd by Mr. Ballantine.

Mr. Howell commented that W.F.S Restaurant Group is not operating as Lalouette Restaurant anymore. The sign in front of it says Christian's Chicken and Pulled Pork Barbecue.

Mr. MacAskill suggested they vote it and ask staff to contact them and change it.

Town Administrator Powers commented that the smart play would be to do exactly what he is doing because the licensure for the ABCC would take more time.

Mr. Howell commented that he had closed for an excessive period of time and did not use that liquor license. He asked that looking forward he be told he cannot do that again.

Town Administrator Powers noted that item H. 8 Harwichport House of Pizza Inc. has no d/b/a, they are operating under their corporate name.

Vote 5:0 in favor. Motion carried unanimously.

I. Discussion and possible vote to approve the 2022 Annual Lodging House/Innholders License renewals;

1. Barnaby Inn - 36 Route 28
2. Braddock, Inc. d/b/a Winstead Inn and Beach Resort - 4 Braddock Street
3. Braddock, Inc. d/b/a Winstead Inn and Beach Resort - 114-118 Parallel Street
4. Harwich Inn and Tavern - 77 Route 28
5. Harwich Port Seafarer d/b/a Mooncussers Tavern and Inn - 86 Sisson Road

6. Sands Hospitality, Inc. d/b/a The Platinum Pebble Boutique Inn - 186 Belmont Road
7. Siceamp, Inc. d/b/a The Tern Inn - 91 Chase Street

Ms. Anderson moved to vote to approve the 2022 Annual Lodging/Innholders License renewals as presented, 2nd by Mr. Ballantine. Vote 5:0 in favor. Motion carried unanimously.

### **CONTRACTS**

No Contracts

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

Town Administrator Powers noted that after David Ryer presented, staff was alerted by other staff that his report was actually submitted and lost in another department's mailbox so it is included in the correspondence.

### **SELECTMEN'S REPORT**

Mr. Ballantine, no report  
Ms. Kavanagh, no report  
Ms. Anderson, no report  
Mr. Howell, no report  
Mr. MacAskill, no report

Ms. Anderson moved to adjourn, 2nd by Mr. Howell. Vote 5:0 in favor. Motion carried unanimously.

Respectfully submitted,

Judith R. Moldstad  
Recording Secretary