

Board of Selectmen Minutes

05/13/2013

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, MAY 13, 2013
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, Chief Clarke, John Rendon, Lincoln Hooper, Matt Hart, and others.

MEETING CALLED TO ORDER at 7:00 p.m. by Chairwoman Linda Cebula.

CONSENT AGENDA

- Approve Minutes –
- April 8, 2013 Regular Meeting
- April 16, 2013 Regular Meeting
- April 22, 2013 Regular Meeting
- April 29, 2013 Executive Session
- May 6, 2013 Executive Session
- Vote to approve FY14 Human Services Grant Allocations
- Vote to authorize Town Administrator to sign Brokerage Agreement with Brindle Mountain Fire Apparatus for 1992 E-One Pumper
- Vote to accept gift of \$1,200 to Friends of Harwich Beaches from John Fletcher
- Vote to sign Golf Department Revolving Fund Orders
- Vote to approve renewal of Junk Dealer License for Port Peddlar
- Vote to approve renewal of 2013 Taxi/Limo Licenses
- Vote to sign Memorandum of Understanding with Elder Services of Cape Cod
- Vote to approve request for assistance from the Caleb Chase Fund
- Vote to award contract for Patrol Boat to Eastern Boats of Milton, NH in the amount of \$149,760
- Vote to authorize Chair to sign MEMA document designating the Town Administrator as signatory for grant for Hurricane Sandy in the amount of \$22,448.84
- Vote to award contract for Recreation van to MHQ of Marlborough, MA in the amount of \$26,795

Mr. Hughes moved approval of the Consent Agenda with the exception of Item A1. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Mr. Ballantine moved approval of Item A1. Mr. LaMantia seconded the motion and the motion carried by a 3-0-2 vote with Mr. McManus and Mr. Hughes abstaining from the vote.

OLD BUSINESS

- Letter to Rep/Senator regarding Health Insurance for Elected Officials – *vote to sign*

Mr. McManus and Mr. Ballantine recused themselves on this item. Mr. LaMantia moved to approve and send the letter to Representative Peake. Mr. Hughes seconded the motion. The Board took questions from Dean Knight and the motion carried by a unanimous vote.

NEW BUSINESS

- Disposal fees at Transfer Station – *discussion & possible vote*

Mr. Hooper discussed his disposal fee sticker analysis in light of the potential impact of the expiring agreement with SEMASS. He questioned how the Board wants to deal with the projected approximate \$27 increase per sticker including whether they would prefer to have three \$10 increases over three years or two \$15 increases over two years. He noted that there is no impact for FY14. Mr. Hughes said we should not raise the fee now in anticipation of the increase but rather should do it when it is needed. Mr. LaMantia agreed and commented that the economic times aren't that great. Mr. McManus said it is better to raise fees annually in smaller amounts. The Board discussed where they would put the money if they raised the fees now and Mr. McManus asked Mr. Hooper if he had any equipment he needed replaced. Mr. Hooper noted that they have two tractors in need of replacement and he described his vehicle replacement plan. The Board discussed having two \$15 increases over 2 years and Chairwoman Cebula said she is reluctant to pre-bill people.

Mr. Hughes moved to direct the Director of Highways & Maintenance to institute a two year program to increase disposal sticker fees to cover the new contract with SEMASS as the contract goes into effect. Mr. LaMantia seconded the motion. Mr. Hooper questioned the need for any vote as he will have to do an analysis next year and this vote assumes that everything else remains static which probably will not be the case as there are too many unknowns. Mr. Hughes withdrew his motion and Mr. LaMantia withdrew his second.

Mr. Hooper said he brought this forward at this time for discussion only and is not recommending or requesting any fee increases now. The Board took no action on this.

- Cape Light Compact Streetlight Retrofit Project Agreement – *discussion & possible vote to authorize Chair to sign*

Mr. Hooper noted important items to consider on this agreement (see attached).

Mr. Hughes said he is in favor of it as it is an energy savings and it is a better light. Mr. McManus noted that several years ago we passed a bylaw revision on exterior lighting, the purpose of which was to minimize the amount of light spillage to neighboring properties and the night sky. He questioned if anybody has looked at how these lights perform with respect to our ordinance and Mr. Merriam said they had not. Mr. McManus stressed that before we sign up someone should look and see how these lights perform and that may determine whether we want to look at putting in requests for shields or other measures to potentially lower the height of the heads. Mr. Hughes suggested getting the product data sheets on the current and proposed lights to make sure they fit our bylaw. Mr. Hooper suggested having our Town Engineer contact Mr. Galligan to see if this complies with our bylaw and then bring it back and the Board agreed.

- Review of outside Entertainment Licenses – *discussion & information*

Chairwoman Cebula said this is for information only at this time but we are going to have to think about consistency on hours going forward. Mr. Hughes commented that we have to be reasonable and adapt to what the business is trying to achieve. The Board took no action on this item.

- Release 2007 Executive Session minutes as recommended – *discussion & vote*

Mr. McManus requested to hold this item as he had not had a chance to read the minutes and the Board agreed.

- Solicit advice from Housing Authority/Housing Committee regarding \$107,357 Thankful Chase 2 funding from Affordable Housing Fund

Chairwoman Cebula stated that at Town Meeting we authorized a transfer of \$107,000 from the Affordable Housing Fund to pay off real estate taxes and that the Board's policy states that they have to solicit advice from the Housing Authority and Housing Committee. Chairwoman Cebula asked Mr. Merriam to put the letters together.

- Eligibility of Finance Committee members to serve on other committees – *discussion/possible vote*

The Board discussed the legal opinion (see attached). Mr. LaMantia noted that the Interview and Appointments Committee has just interviewed two candidates for the Middle School Repurpose Committee. Mr. Hughes stressed that we need leadership on the Committee and time is of the essence. He said we should appoint the Finance Committee members that are willing to serve. Mr. Ballantine said he is concerned that they will use this as carte blanche going forward to do this all the time. He commented that he didn't want Finance Committee members serving on a committee and then lobbying for funds for that committee and he suggested having a policy to deal with this. Mr. McManus stated that the opinion is not germane to the situation as we are not asking for a distinction if someone is an officer or an employee. He indicated that the opinion is in conflict with the totality of the Charter and as such referred to and read the sections entitled "Powers of Appointment" and "Appointed Town Agencies." He commented that the number of short term ad hoc committees we have was probably never anticipated. He questioned if because we have changed

should we do what we consider expedient and ignore the Charter or should we follow the constraints of the Charter, decide that it's wrong and move to amend the Charter. He stated that the only responsible way is to start the process of amending the Charter. Mr. LaMantia commented that he is concerned that we are pushing the Charter way past where we can legitimately do so. Mr. Hughes stated that the Board should have a discussion with Mr. Giorgio about his interpretation of the Charter and what implications this might have going forward but we should move ahead with this.

Mr. Hughes moved to appoint Jon Idman and Rich Larios as full members of the Middle School Repurpose Committee based on advice of Town Counsel. Mr. Ballantine seconded the motion for discussion. He stated that he wanted a document to set some boundaries for this. Mr. McManus commented that they are just looking for a way to get around the Charter.

The motion failed on a 2-3-0 vote with Mr. McManus, Mr. Ballantine and Mr. LaMantia in opposition. Chairwoman Cebula asked Mr. Ballantine to come up with a statement of parameters and Mr. Merriam to request that Mr. Giorgio come in.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam delivered the following report to the Board:

House Budget

Attached are the House Local Aid numbers, which are \$29,898 less than Governor Patrick's proposed receipts and identical in charge. The House Local Aid is \$15,437 higher than the TA Local Aid projected last January.

Allen Harbor update

Burnham removed his dredge equipment on Wednesday's high tide (except for 27 ft. aluminum boat). Mary McIsaac is proceeding with a \$2.9m bond bid opening with first year principal payment scheduled for FY 15. Betterments are deferred until all dredging work is complete. Coastal Engineering is seeking quotes for removal of very small quantities for a couple spots. We're attempting to perform the additional dredging work in June, but definitely can be achieved by October. Attached is a final report on Flounder performed by Pam Neubert.

Officer Derek Dutra and Sergeant Kevin Considine

On May 1st, Officer Derek Dutra and Sgt. Considine responded to a fire at 65 Ryder Road. Officer Dutra performed life saving rescues by removing a male occupant from the garage several times. (See attached letter from Deputy Chief Farrenkopf.)

Brooks Library

Foster tied the Library into the Town's phone system this week.

Monomoy

Dave Ryan and I met with Supt. Cragin, Business Manager Katie Isernio, and our Chatham counterparts to discuss the budget and the high school project. Supt. Cragin

showed us the live camera which tracks the construction project from their website.

Muddy Creek Bridge Project

On May 2, 2013, staff met with CD Maguire and consultants to track the permitting and design. Two road borings at the site are planned for week of May 13th and will require details as one lane will be closed.

I (Bob Duncanson) queried our Town Counsel on the issue of the two Conservation Commissions working together and the answer is a yes and no.

The two Commissions can hold a joint meeting(s) in either town, just needs to be appropriately advertised. There would, however, need to be two NOI's (Notice of Intent) and two OOC's (Order of Conditions), one for each town. I would recommend that as part for the NOI filing the same conditions are suggested to each town to streamline the process and to try and minimize different conditions being imposed. May not be completely avoidable due to local bylaws.

Bob Duncanson

CWMP – MEPA Certificate issued

Yes we knew the MEPA Certificate was issued. Normally they send a copy to the proponent as well. I sent staff over to get all comment letters and they are attached herein for your info along with the Certificate which commends the Town for a well done document. We are reviewing comments now and will be prepared to discuss at the next WQMTF meeting on May 22nd. I have been anyway in Washington DC lobbying

our Congressmen for more SRF funds and explaining issues here on Cape. More need to do the same.

Dave Young

Allen Harbor state grant status

For some reason I did not receive your voicemail until last night.~ Sorry for the delay in getting back to you. I did check with my director regarding the question of whether OFBA can be involved in a project that allows the commercial use of the site for boat storage.~ Unfortunately, we cannot allow this activity.~ The commercial storage of boats at an OFBA facility is prohibited by 320 CMR 2.04(4), 2.04(5), 2.04(6) and 2.04(8).~ We have had requests from other towns to do the same and on every occasion have not allowed that type of use at an OFBA site.

Douglas H. Cameron

Assistant Director/Deputy Chief Engineer

Department of Fish and Game

Fishing and Boating Access

ATM Article 45 Capital Stabilization Fund

I realize the wording of the law is very confusing, but reference to the “local appropriating authority” in Proposition 2 ½ means the Board of Selectmen and not Town Meeting.

~

Here is the definition contained in G.L. c. 59, s. 21C(a):

“Local appropriating authority”, in a town, the board of selectmen; in a city, the council, with the mayor’s approval when required by law; in a municipality having a town council form of government, the town council.

~

If Town Meeting votes by a two-thirds vote to appropriate the money into the Capital

Stabilization Fund and the override passes, in FY 2014 the levy limit will increase by the amount of the override and the Stabilization Fund will be funded by that amount.~ In each successive fiscal year, the Board of Selectmen will vote how much to raise the levy limit by in order to fund the Stabilization Fund.~ The levy limit will only be raised by the amount voted by the Board. The amount cannot exceed 102.5 % of the amount raised in FY 2014. The Board will, however, have the discretion to raise a lesser amount.~ So, for example, if the Board of Selectmen votes in FY 2015 to only raise \$50,000 for the Stabilization Fund , the Assessors can only raise that amount and not the full amount voted at the 2013 election (plus the 2 ½ percent each year.)~ The next fiscal year, the Board could vote to raise a maximum of 2 ~½ percent of the \$50,000. Once the Board takes it vote each year, the amount voted and raised on the property tax levy is automatically credited to the Stabilization Fund without a further appropriation vote of town meeting.~ The requirement for a two-thirds vote by town meeting to expend money in the Stabilization Fund remains. ~I hope this make sense, but please let me know if you need a further explanation.

John W. Giorgio, Esq.

Seaport Council grant funding for
Wychmere Pier

As discussed, enclosed is the Seaport Advisory Council grant application submitted by Tom Leach in April 2011. Received a call from the POC Ellen Cebula, who indicated that the project was selected for funding. The scope of the project includes the replacement of the Wychmere pier and bulkhead... Seaport

Advisory to fund 1.7 mil and town share is \$426K.

John C. Rendon, Harbormaster

American Dream 2 RFP

American Dream 1 built successfully on 3 of 4 lots.~ Gerry hoped that the 4th lot could be carried over to American Dream 2.~ However, it does not appear that title questions have been resolved yet.~ The current status should be rechecked.

American Dream 2 also started with 4 lots.~ Two of those were nixed due to wetland issues.~ A third had other problems.~ The only remaining lot is at 215 Pleasant Bay Rd, a decent-sized lot with no apparent wetland issues.~ However, it turns out there is a long history with this lot.~ About 10 years ago, the Water Dept. acquired land in the vicinity for well fields.~ This was a leftover lot that was smaller than the current 1-acre zoning requirement for minimum lot size.~ An application was made to the Board of Appeals for a variance, but it was denied.~ The landowner then sold the land to the town, I believe for \$1.~ There was a subsequent Town Meeting vote to allow the Town to seek a building permit on this lot, but the article did not pass.

Overall, I believe this is the best building lot that Gerry has come up with in either American Dream 1 or 2.~ However, the history of the lot causes zoning problems.~ Gerry wants to proceed with an RFP and allow a non-profit builder to apply again to the Board of Appeals for a variance.~ I sent out the draft RFP (attached) to all department heads but have not yet received a response from the most important department - Water. The other issue is the

amount of available funding in the Affordable Housing fund.

David Spitz

Muddy Creek Bridge

Please find attached a copy of comments to Secretary Sullivan re: Phase 1 waiver from CDR Maguire.

Bike Crossing signal

Cross Alert will be shipping the bike crossing poles and batteries this week to the Highway Department.~ He said that the three batteries should arrive Wednesday or Thursday.~ Two crates containing the signal posts should arrive early next week.~ The crates containing the posts, which are all assembled, are 11' long by 4' wide by 4' deep and may require a fork lift or equivalent to off load.

Bob Cafarelli

Commander appraisal

FYI... results of professional survey on the Commander enclosed for your review.~ I have sent the results to Wayne Jaedtke for consideration.

John C. Rendon

Retirement

I have filed my retirement forms with Barnstable County Retirement and notified the Town Treasurer. My last day of reporting for work will be June 28th. I also have accrued vacation to be paid through September 9th. This amount can be charged to the FY 13 balance in the salary and wage account, due to having been shorthanded without an Assistant Town Administrator for the past year and a half.

New Rec van –trade in

The article did not call for a trade as the 1992 dodge van is not worth anything and cannot be driven due to safety concerns.~ Charlie planned to dispose of the van in our metal recycling program which should yield us about \$100.~ Unfortunately, article 16 did not address the disposition of the old van.~ Charlie will be coordinating the purchase of the new van through MHQ, which is on state bid.~
Link

SELECTMEN'S REPORT

- Memo from Selectman LaMantia regarding appeals process - *discussion*

Mr. LaMantia outlined his memo dated May 6, 2013 (see attached). The Board discussed it and took comments from Dean Knight. Mr. LaMantia and Mr. Ballantine offered to work together on this issue by gathering information on processes followed by other committees.

- Town Administrator Search Update
Chairwoman Cebula reported that the Town Administrator Search Committee would like to deliver three candidates by June 15. Mr. Ballantine suggested putting out an RFP for Interim Town Administrator. Mr. McManus suggested contacting the search consultant on that matter. Chairwoman Cebula said she would contact the agency for recommendations.

ADJOURNMENT

Mr. McManus moved to adjourn at 9:41

p.m. Mr. Ballantine seconded the motion
and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary