

# **Board of Selectmen Minutes**

## **06/25/2012**

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, JUNE 25, 2012  
7:00 P.M.**

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

**OTHERS PRESENT:** Town Administrator James Merriam, David Ryan, Carolyn Carey, Ginny Hewitt, Atty. John Giorgio, Brian Widegren, Scott Ridley, Ted Nelson, Leo Cakounes, and others.

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

Chairwoman Cebula reported that the Board had just come out of Executive Session where they discussed pending litigation matters

### **WEEKLY BRIEFING**

Mr. Cakounes requested that the Board and Town Administrator do whatever they can to help the Connelly's whose property was affected by the oil spill from the accident at Lothrop Avenue and Great Western Road. Mr. Merriam stated that he has been in touch with Senator Wolf's office and they are in communication with DEP and the Connelly's about this. Mr. McManus asked if Mr. Merriam had discussed this with Town staff and Mr. Merriam said he had not. Mr. Hughes asked Mr. Merriam to provide an update at every Board of Selectmen meeting until there is action.

Scott Ridley addressed last week's incident when he was told he could speak on an agenda item and when it came up he was not allowed to speak. He noted that it is up to the chairperson to make this decision per Massachusetts General Law and the Board went against her wishes. He noted that other people were allowed to make favorable comments on the issue at a public meeting of the Board and they were not residents of Harwich. He stated that Mr. McCaffery is a public official and certainly public officials are accountable to the people of Harwich. He said it is not a matter of his behavior, it's his philosophy as well. He stated that we have a significant problem here and it's not something you can sweep under the rug. He stated that if you ask around Town there are a lot of people who

have things to say about Mr. McCaffery including people here in Town Hall and people that work with him that have known him for a long time and that feel that he is unsuited for this position. He commented that they are afraid to speak up because of fear of reprisal. He stressed that the Board's behavior last week in cutting him off sends that message.

Mr. Hughes stated that the matter of the reappointment is not still on the table and he questioned if there is a point in discussing this now.

Mr. Ridley stated that the Board needs to state to the people of Harwich what their policy is on people speaking on agenda items whether for or against.

Chairwoman Cebula stated that there is going to be a discussion on appointments tonight and part of that discussion will be what should our process be, our rules for who speaks and when and at what point should it be allowed or shouldn't be allowed. She said they have been extremely liberal in allowing people to speak during public comments but this issue has been settled.

Mr. Ridley said if in the interim these matters come up again he hopes it is noted in the agenda and there is an opportunity for the public to speak at that time.

Mr. Hughes stated that Mr. Nelson requested to have an update on the East Harwich zoning on July 9 and that is a public forum. Chairwoman Cebula noted that it is also an update from the Planning Board to present proposed changes to the by-law. Mr. Hughes commented that it is an opportunity for the Board to listen to both sides.

Mr. Nelson stated that what Mr. Ridley was speaking about had nothing to do with East Harwich but rather has to do with Mr. McCaffery's conduct and it was shameful the way Mr. Ridley was treated.

## **CONSENT AGENDA**

- A. Approve Minutes - June 4, 2012 Regular Session
- B. Vote to approve the Bond Anticipatory Note for the Allen Harbor Dredging expenditures
- C. Vote to approve 2012 Seasonal General License Renewals
- D. Vote to approve the list of annual Police appointments per the recommendation of the Police Chief
- E. Vote to rescind re-appointment of Chris Wood to the Brooks Academy Museum Commission per her request
- F. Vote to accept immediate resignation of Brian Murphy from the Brooks Academy

Museum Commission

- G. Vote to accept immediate resignation of Shannon McManus from the Brooks Academy Museum Commission
- H. Vote to rescind re-appointment of Capt. Romme and appoint Buck Mabile (Fire) as the *Right-To-Know Coordinator for Hazardous Materials* for a one-year term
- I. Vote to accept the gift of \$9,496.00 from the Ora Gaylord Arooth Trust to provide services to the community and provide support to Community Center
- J. Vote to authorize Chair to sign the Animal Control Officer Warrant
- K. Vote to approve expenditure from the Caleb Chase Fund in the amount of \$700
- L. Vote to accept the donation/gift of a new beach wheelchair from the Smile Mass Organization to be used at Bank St. Beach

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

**PUBLIC HEARINGS/PRESENTATIONS (7:00 P.M.)**

- A. Monomoy Regional School District Draft Lease Presentation – *discussion of outstanding issues*

Mr. Merriam outlined Atty. Randazzo's email (see attached). Mr. Widegren said they have received the lease but not have reviewed it or taken any action on it and he is present more for information gathering purposes. He noted their next meeting is July 10. The Board discussed the recommendations and the lease with Mr. Widegren and Atty. Giorgio.

Mr. McManus said there should be some general language on what would happen to jointly owned assets upon dissolution of the district. Atty. Giorgio agreed that this section of the lease needs some work. He stated that at that point 70% is owned by Harwich and 30% by Chatham so the assets should be divided in a 70/30 split but it should be referenced in the lease.

Chairwoman Cebula said she would like to see all the maintenance at the Monomoy Regional School District level and they can figure out how they subcontract it.

The Board discussed whether it would be appropriate to have one or two leases and Atty. Giorgio recommended that this is something they might want to talk to the Counsel for the Monomoy Regional School District about to see what the rationale was for coming up with the proposal for one lease and if there is a way to put language in that fully protects both towns. He asked that he be allowed to work on that detail.

Mr. Merriam questioned what would happen if another town wanted to join the district and Atty. Giorgio responded that it would have to go before Town Meeting for approval and may or may not be an amendment to the lease as it would be driven by the nature of the relationship of the new town. He said that it is not so much an issue for the lease as it is for the regional school agreement. Mr. Widegren made comments which Atty. Giorgio made note of. Atty. Giorgio said he would provide a redline version of the lease to the Monomoy Regional School District and then get back to the Board with a final lease.

- Public Hearing – Harbor Management Plan Amendments

Mr. Ballantine read the hearing notice into record. Mr. Hart asked to continue the hearing as there are changes that he would have to take back to the Waterways Committee at their July 10 meeting. Mr. McManus moved to continue the hearing until July 23. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

## **OLD BUSINESS**

### **A. Allen Harbor dredging preliminary betterment assessments – *discussion/vote to sign***

Mr. Merriam outlined his draft letter and asked the Board to sign it (see attached). Mr. McManus moved to approve of the betterment assessments for the Allen Harbor dredging project as specified in documents from the Town of Harwich office of the Board of Selectmen to be filed with the Registry of Deeds of Barnstable County with a total cost of the improvements of \$2,671,590 with a Town share of \$1,511,318 and assessments to individual parties as specified in the documents of \$1,160,272. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

### **B. Open the Warrant for the August 28<sup>th</sup> Special Town Meeting on Monday, July 2<sup>nd</sup> and close Warrant on Tuesday, July 3<sup>rd</sup> at Noon – *vote***

Mr. McManus asked if Mr. Merriam had reviewed this schedule with the Regional School District and Mr. Merriam said he had not. Mr. McManus said it is his understanding we can't submit the article until the School Committee votes to incur the debt on July 10. Mr. Merriam said we have to close the warrant July 19 so we would have to have a special Board of Selectmen's meeting after the School Committee votes but before the 40<sup>th</sup> day. Mr. McManus said if they take their action too early the 60 days runs out. Mr. Merriam said we will have to close it after July 10. Chairwoman Cebula stressed that these dates need some work and told Mr. Merriam to get the timing down.

## **NEW BUSINESS**

A. Request by Frank Grenier to review the vote of Waterways Committee to allow 6 boats to increase to 18 passengers each and discuss amending the Harbor Management Plan – *discussion*

Mr. Hart read the vote of the Waterways Committee approving Mr. Grenier's request to increase the number of charter passengers with conditions (see attached).

Mr. McManus moved to issue Mr. Grenier a permit based on the action the Waterways Committee took in August 2011. After discussion Mr. McManus retracted his motion and moved to issue a permit under the conditions as the Waterways Committee authorized on August 9, 2011 for a Class C permit with a larger passenger base. Mr. Hughes seconded the motion. Mr. Cakounes asked to change the date in the motion to December 13 as at the August meeting they only voted to increase the passengers. Mr. Hughes stated that it is the conditions that matter not the meeting. Chairwoman Cebula suggested adding "as affirmed in the December 11, 2011 meeting" but the Board the consensus of the Board was to keep the motion as is. Mr. Hughes clarified that the motion is to go to 18 passengers. The motion carried by a unanimous vote.

B. Request to place the Cape Verdean flag along with the U.S. flag at the memorial site of military hero Clarence Clifford Peters lost in WWII – *discussion/vote*

Mr. Hughes moved to approve the request provided that the appropriate protocol with regard to the placement of the American flag versus any other flag is observed. Mr. Ballantine seconded the motion. Mr. McManus noted that the location of the memorial is the intersection of Main Street, Main Street Extension, and Great Western Road and the American flag that is there is one of the graveside flags on a brass flagholder. The motion carried by a unanimous vote.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

### Monomoy High School

A School Building Committee met on June 19<sup>th</sup> to review the total project budget and support or delete various cost items. The architect and OPM estimate a base budget of approximately \$63m plus \$2.1m in add alternates pertaining to exterior athletic facilities. The MRSC is scheduled to vote on June 22<sup>nd</sup> for the final costs submitted to MSBA.

Dave Ryan and Alix provided me with a total project budget originally prepared in

October 2011, which shows the progression of costs based upon enrollment increases from 500 to 700 with Grade 8 added times 235 sf/student and \$375/ s.f. totaling \$61.7m.

Monomoy Lease – grounds maintenance

The DPW has no problem with removing snow and ice from the new HS, as this is our current practice.~ However, we do not currently perform any services except snow and ice there.~ Also, we now have 9 acres of additional new ball fields and 15 acres of new cemeteries to service without any~increase of~staffing or equipment.~ I would strongly recommend against assigning maintenance for the new regional HS grounds to the Town of Harwich DPW as we have more work than we can handle now.~ Furthermore, without seeing what is actually built it is nearly impossible to estimate the~size and scope of~future maintenance activities at the complex.~ ~ ~~~~

Link

Allen Harbor temporary borrowing

Jim Eldredge and I have conferred and the bid sheet is out for \$150,000.00 due and payable on February 28th.

Mary

Community Gardens ADA section sprinkler replacement by Water Dept.

The handicap beds at the Town Garden were completed and are operational as of last week.~

Craig

Barnstable County Solid Waste update

Attached please find the RFQ that the Barnstable County Cape Cod Solid Waste Advisory Committee voted yesterday to refine and release within the next 30 days.~ John Giorgio, Kopelman & Paige Attorney, led~a lively discussion about the process to date, the four main bidders~(Waste Management, Covanta, TL Harvey and Casella) they~envision~and how to~solicit the best possible pricing for the~120,000 tons of annual MSW~estimated to be on the Cape.~~John informed the group that there were no bidders on~Yarmouth's RFP~to run their commercial transfer station.~ There was also~discussion on the timing of a potential award, the need for a town meeting vote~to enter into a~long term contract,~the possibility of having an article authorizing the BOS to enter into the~LTC,~and how best to keep the towns together given how open and~varied the RFQ is.~ The plan is to~allow bidders to bid disposal, transportation and disposal or both.~~

~

On the transportation side it was confirmed by~John that private~trucking of MSW requires the payment of State~Wage (Rate - \$50.11 per hour for trailer drivers) to drivers that haul for municipalities.~~Although I did not cite this fact in my recent analysis of disposal area hauling,~it probably was a factor~in the Town of Dennis'~decision to

start~trucking their own MSW in-house (started~within the last few weeks).~It should also be noted that most municipalities collectively bid~diesel fuel, typically receive very good pricing on that commodity and don't pay the Federal~diesel tax (\$.244/gal),~giving~in-house handling of MSW another advantage.~ I think it will be extremely interesting how the transportation portion of the bid evolves given how varied~the towns are.~Please contact me with any questions you may have.

~

Link~~~~

#### General Landing permits (from Tom Leach)

Please find insurance certificate from Jonathan Polino that the Waterways Committee temporarily endorsed to use the Herring River Landing on Tuesday's meeting.

I strongly suggest that you write a letter to the BOS about this recommendation and send a copy to me and Mr. Palino. Whatever it was you voted?

Further, I would recommend that the Waterways Committee take up the task of developing a general landing permit that might provide controls by the Town for such uses. I have heard of organized for profit groups and guides using landings all over the cape for profit for adventures including paddleboarding, kayaking, windsurfing and kiting. This brings with it the misfortune towns risk as a deep pocket for liability claims.~Holding a reasonable insurance level naming the Town of Harwich as a certificate holder is important as the first line of protection the Town can get.

#### Response from Chairman Matt Hart

I'm still getting into this new WWC chairman position quicker than I thought; but because we just had a meeting on Tuesday I wanted to convey to you and the BOS the valid comments that Tom Leach and those of the other WWC members about a request by Mr. Jonathan Palino DBA Cape Kayaking to use the Rt. 28 and Herring River boat launching area for charter and nature tours in the Herring River.

This request which was temporarily approved and recommended for by the WWC for this year was done so for three reasons.

First this is a new version of a 'Charter' and we believe the concept should be tried and evaluated before we make any recommendations for full authorization.

Second the specific use of kayak charters needs to be included in the Harbor Management Plan.

Third this is a relatively small operation of two or three boats once or twice a week during fair weather in the summer months.

As Tom suggested we required the same insurance coverage from Cape Kayaking that the Town of Harwich requires for all of the Charter Boats and I will be scheduling a public meeting in the future at a regular WWC meeting to discuss this type of waterways based business and make more specific recommendations to the BOS.

I, (Jim Merriam), recommend that the sequence is to amend Harbor Management Plan first, then seek RFP's to seek competitive bids.

Not necessarily, because the Harbor Management Plan has provisions for Boat Charters and that is why Tom and the WWC insisted on the same insurance coverage as other charter boats are required to have.~ We made the provision as temporary (as Ed McManus observed at the meeting) so that the individual can proceed for now. ~The change that would be needed in the Harbor Management Plan is an expansion of the definition of what Charters consist of including this kind of business, sail boards and other floating devices along with where and when these new types of businesses can operate.

I do not believe there would be a requirement for an RFP because we are following the same rules and regulations that any request for a charter would follow.

Thanks

Matt

Trash Pick up (Link has thanked Conor)

i just did a walkthrough of the bells neck conservation area and road, a trash bag will be ready by the end of the weekend. i found a few piles of tile on a path off north road before the foot bridge. i also found piles of cardboard which i piled at the corner of the bike trail and bells neck for pick-up at your convenience. it looks like some one bought and dumped the waste from three of four lawn chairs.

best wishes, Conor Byrne

Yarmouth Wages and Benefits comparison with Private sector June 11, 2012

As requested, I'm sending out the presentation we prepared which looks at comparisons with the private sector. As you will see, it is just a summary of information that I was able to find from existing media reports and studies. It is by no means a rigorous analysis of original data. There is some additional information in the notes section of the slides.

Perhaps we could put paid leave on a future Cape Mgrs agenda. I'd be interested to hear whether anyone has recently made significant changes or intends to bargain changes in paid leave benefits.

Peter K. Johnson-Staub  
Assistant Town Administrator



## Town of Yarmouth

Take a look at employee wages, pensions, health insurance and paid leave to see how Yarmouth compares to the private sector as context for budgeting and bargaining. The information presented is taken from previous studies and is intended to provide a general idea of the landscape. We have not undertaken a detailed study of the pay for each position.

This issue is also timely given the recall election in Wisconsin and the attention public employee pension and benefits is receiving in the national media. Yesterday, the CC Times reprinted an editorial from the Washington Post suggesting that unions engage governments in a good faith effort to restructure and preserve public services for the long term.

### Clarence Clifford Peters Memorial Flag

The site of this memorial is at the corner of Old Main St. and Great Western.~ Ed went over to see it and says that there is only the small 1' x 2' veterans flag at the site.~ NO flag pole.~

Sandy

### Route 124 Funding request

I would like to follow through with the BOS request for a short presentation on the proposed Route 124 project with a powerpoint~from Joe Magni.~~Other than~June 25th, Joe is available.~ Do you~have any suggestions on a date that~would be good?~

~

When~are you opening the warrant for the STM?~ I~would like to~recommend an article for \$400k as~a~debt exclusion to fund survey, engineering and design, ROW acquisition and construction phase services.~ We are on the TIP for \$3.5M in 2015.~

Thank you,

Link

*The Board requested that Mr. Merriam provide a one page summary of what his plan is and what he is looking for.*

### Beach Cleaner

Please be advised that our beach cleaner went down the end of last week requiring an estimated \$5k worth of repairs.~ Given that this equipment is critical this time of year, I authorized Charlie to proceed with ordering parts to fix it.~ As the mechanics were disassembling it today~to confirm the parts order, the main belt that appeared to be in ok shape ripped due to dry rot.~ This 2006 Barber Surf Rake has not required any work other than normal servicing to date and has been extremely reliable.~~The current parts estimate is now around \$15k, with Charlie refining the order now.~~As soon as I know

the exact amount and timeframe for the repair, I will email you.~ Unlike the front end loader, the surf rake~is not scheduled for replacement for a long time.~~  
Link

## **SELECTMEN'S REPORT**

Appointment to committees, commissions and boards – *discussion*

Chairwoman Cebula said there has been some stress as to who should be speaking at these points, what kinds of comments should be allowed at a meeting about an individual or department and she has discussions with Mr. McManus on it. Mr. McManus said the issue comes down to the fact that technically members of committees are special town employees and if a member of the public came in with complaints about a town employee the only way we could handle that is by notifying the employee and entering into Executive Session. He said it is a reason for Executive Session and he would argue that it applies to special town employees as well. Chairwoman Cebula said they also talked about whether the public should only hear the positives and not the negatives and she commented that doesn't do well for transparency.

Mr. Hughes stated that the Board serves at the pleasure of and for the purpose of serving the community and if something is not working they need to take action. He stated that they could talk about it in Executive Session but the public cannot participate in the discussion. He stressed that this is a topic they need to sort out. He commented that he didn't think they handled this especially well and they need to learn from it. Mr. Ballantine agreed that they didn't handle it well and added that he is concerned about airing problems in public and they need to find a balance. Mr. LaMantia said it behooves us to investigate everything very carefully and deal with it in a written recommendation to the Board for their consideration without a broad discussion at the meeting. He said that the letters people wrote were very helpful and they have to make a judgement based on that. He said that discussion at the Selectmen's meeting becomes a lobbying thing.

Chairwoman Cebula stressed that it is all lobbying one way or the other – whether pro or con. She said it troubled her that people popped up at a prior meeting to that, outside of the public comment section, to speak on this. She said they caught her off guard and they aren't going to be allowed to do it again.

Mr. Ridley said that the basis for good government is public accountability and when you begin hiding things and not allowing people to make comments about public officials, particularly chairmen of regulatory committees who show a complete lack of impartiality, there is a problem. He stated that if you were talk to people in this building and on various committees you would find that there is a widespread problem with this

person. He stated that the investigation that was done was not adequate. He said that Mr. LaMantia misled his colleagues about sharing the letters with Mr. McCaffery and as it turned out he had never read them. He said that they never spoke to the people who wrote the letters of complaint. He said that public accountability falls on the Board to set up a process by which people with real issues can discuss the qualifications of an individual and should be allowed to speak. He noted that it sends a message to committee members that they can't be abusive to people and they can't act without impartiality. He stated that they have to listen to varying opinions from people and there is a huge problem here they have swept under the rug or attempted to. He commented that sometimes things are unpleasant but you have to deal with them.

Mr. Erickson agreed with Mr. McManus that they should be treating appointees as employees and the Board has the authority to investigate complaints just as they would an employee and would discuss it in private session.

Chairwoman Cebula agreed that there needs to be an investigation including interviewing those who raised the issues.

Mr. Cakounes stated that at some point the chairman has to step up and make sure people keep their comments polite and accurate and this applies to all committee and board chairmen. He urged that there be education for our volunteers.

Mr. Nelson stated that once a complaint is brought to the Board about a committee member there should be an auditing system where someone from the Board regularly attends the meetings to follow up on the behavior and there should be a proper form you complete for the record. He said that in this instance they made the critics appear to be the bad guys and they need to be treated with respect. He said the suggestion was that this all had to do with an issue and not with conduct. He said he thought it was understood that everyone who wrote a letter would be spoken to and the fact that none of them were spoken to was a really bad problem.

Mr. LaMantia said he spent 2 hours speaking with Mr. Nelson in the office and 2 hours at Starbucks so Mr. Nelson shouldn't say no one who wrote a letter was spoken to. He asked Mr. Nelson if there is anything similar about him and the previous speaker and commented that they are both involved in a certain project. Chairwoman Cebula told Mr. LaMantia that they are not going to make this personal and indicated that she would not continue in this vain. Mr. LaMantia responded that she should end the meeting now because he is not going to put up with this.

Mr. Nelson noted that what just happened with Mr. LaMantia is the type of thing that is happening with Mr. McCaffery and it is not the way to treat someone who has come to

you with a proper request. He noted that the meeting he had with Mr. McManus and Mr. LaMantia was not at their request and clarified that he had asked to speak to them. He noted that the other people did not have a chance to speak to them.

Chairwoman Cebula said she liked the idea of training manuals and increasing the level of information. She noted that the idea more training sessions might make a lot of sense as well.

## **ADJOURNMENT**

The meeting adjourned at 10:40 p.m.

Respectfully submitted,

Ann Steidel  
Recording Secretary