

# **Board of Selectmen Minutes**

## **10/01/2012**

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, OCTOBER 1, 2012  
7:00 P.M.**

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

**OTHERS PRESENT:** Town Administrator James Merriam, David Ryan, Paula Champagne, Carolyn Carey, John Rendon, Lee Culver, Matt Hart, Adrienne Johnson, and others.

**MEETING CALLED TO ORDER** at 7:05 p.m. by Chairwoman Linda Cebula.

Chairwoman Cebula reported that the Board had just come out of Executive Session for the purpose of discussing strategy with respect to collective bargaining or litigation.

### **WEEKLY BRIEFING**

Ms. Champagne noted that October 15<sup>th</sup> will be the public flu clinic at the Community Center from 2:00 to 6:00 p.m.

### **CONSENT AGENDA**

- A. Minutes – September 10, 2012 Regular Session
- B. Vote to approve the gift of a memorial bench to be placed at Saquatucket Harbor in memory of Tom Barker
- C. Vote to approve various committee/board/commission appointments
- D. Vote to approve Chapter 90 requests for Rte.137 reconstruction project

Mr. Ballantine moved approval of the Consent Agenda items A, B and D. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Mr. Ballantine moved to accept item C. The motion was not seconded. Mr. McManus moved to approve the appointment of Jeanne Steiner to the Historical/Historic District

Commission for a 3 year term, Bob Thomas to the Real Estate and Open Space Committee for a 3 year term, Deborah Ferry to the Cultural Council for a 3 year term, Marguerite Heffernan to the Disability Rights Committee for a 3 year term and recommend that we hold John Bologna's appointment to the Water Quality Task Force. Mr. LaMantia seconded the motion. Mr. McManus noted that Mr. Bologna is the owner of Coastal Engineering who we are having some interaction with over the Allen Harbor project and we would like to hold on this until those issues become clear. He stated that in no way does this reflect on the potential benefit Mr. Bologna would have to the water quality effort in this Town which we believe he would contribute to greatly. The motion carried by a unanimous vote.

**PUBLIC HEARINGS/PRESENTATIONS** *(Not earlier than 7:00 P.M.)*

A. Annual Meetings with the Board of Selectmen

1. Community Center Facilities Committee

Lee Culver provided the annual report of the Community Center Facilities Committee.

2. Council on Aging

Adrienne Johnson provided the annual report of the Council on Aging.

B. Public Hearing – Harbor Management Plan Amendments

Mr. Ballantine read the hearing notice. Matt Hart outlined the changes as approved by the Waterways Committee (see attached). Mr. Ballantine stated that the last paragraph of section A should include the text “and to the benefit of all town residents.” Mr. Hart made note and had no objections. Chairwoman Cebula said it would be more appropriate to refer to the Harbormaster's Maintenance Budget as the Harbormaster's Maintenance Fund and Mr. Ryan agreed. Chairwoman Cebula further noted that all other revolving funds do not have just one person who can approve spending the money and it is usually the department head and the associated committee. She suggested that the Waterways Committee have discretion and approval over it.

Mr. McManus asked for a financial flow chart of all harbor and waterways funds.

Chairwoman Cebula had concerns about the language in the Harbormaster's Maintenance Budget section with regard to committing to the \$175,000 and recommended that the language be changed. Mr. Rendon objected noting that they generated a lot of money and

they need work done. He commented that \$175,000 is not enough. He said that at some point we need to make a commitment to upgrade our harbors, waterways and dredging, as well as their office citing years of years of not putting our revenue back into the department. He asked for consideration on that issue. Chairwoman Cebula suggested adding the wording “based on the availability of the free cash.” Mr. Hart noted that if we earmark it as available funds our Harbormaster can still make plans such as reservations for the dredge and it is a matter of fine tuning the language. Mr. McManus argued that there have been maintenance projects over the years at the harbor and encouraged that maintenance items should be in the budget. Mr. McManus said the revenue from the slips should be included in the budget for their capital needs.

Chairwoman Cebula opened the hearing. With no comments from the public, Mr. McManus moved to continue the hearing until October 15<sup>th</sup>. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

#### C. Selectmen’s Fiscal Year 2014 Budget Message

Mr. McManus disagreed with the use of the word “discretionary” on page 2 with regard to recreation and asked to remove it. With regard to the first goal which called for no general override for any reason, no new additional taxes, and consideration for capital exclusions and/or debt exclusions for major projects, Mr. McManus stated that it is ill-advised and we should be open to all possibilities. Mr. LaMantia agreed and commented that it is too hard and fast and that we should consider inflation. Chairwoman Cebula offered to remove the text “for any reason” from the goals.

Mr. McManus stated that they should remove the first goal and put in another goal because our capital needs are substantial and last year he proposed a capital maintenance and capital stabilization fund and he thinks we should have as a goal requesting the voters to fund that. The Board agreed that “consideration for capital exclusions and/or debt exclusions for major projects” should be a separate bullet under the goals. Mr. Ballantine suggested the goals may be too stringent and Chairwoman Cebula offered to change the heading to “Goals To Be Considered” and Mr. McManus disagreed with that wording. Chairwoman Cebula agreed we should make it a goal to fund the capital stabilization fund.

Mr. Ballantine moved to approve the budget message as amended tonight. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

### **OLD BUSINESS**

#### A. Beach Road Status Update – *Town Administrator*

Mr. Merriam provided the following Beach Road status update:

Near term

The Town has established its rights to provide public access to the water within its 40 foot Right of Way. In order to maintain this access, the Town built a boardwalk which it maintains and periodically trims back plantings (rosa rugosa). The Conservation Commission has also permitted beach re-nourishment above the Mean High Water level. The Town has historically and should continue to maintain the ROW within the 40 foot layout above MHW.

I recommend that Town staff proceed with routine maintenance by trimming (not greater than the width of the boardwalk plus a foot on either side, through administrative approval granted by the Conservation Agent.

Secondly, I recommend that Staff proceed with re-nourishment by adding beach sand above MHW within the Right of Way to maintain grades and eliminate any steep drop off at the end of the boardwalk. To that end, Town Surveyor Paul Sweetser should stake the ROW and MHW marks, then prepare a plan delineating the re-nourishment area. Copies of said plan should be shared with interested stakeholders, including abutter owners Fitzpatrick and Morris as well as Attorney Cavanaugh to share with property owners who use the ROW.

Finally, this property ought to be referred to Beach Road Right of Way, and no longer Beach 22.

Long Term

I have recently executed a contract with Coastal Engineering to file for the necessary Federal Army Corps and State Water Quality Certification and Chapter 91 permits to re-nourish below the MHW from Beach Road to Pleasant Road beach.

Harwich Real Estate Attorney Michael Ford wrote an opinion dated August 8, 2012 in which he addressed the Town's legal rights pertaining to Lot 36 in front of the Fitzpatrick's property as well as extending a groin /jetty in order for sand to accrete. Attorney Ford has written that the Town's legal standing regard to Lot 36 and groin /jetty extension depends on whether the Town's beach still exists (on the west side of the Fitzpatrick lot). (A survey in 2009 by Town Surveyor Paul Sweetser confirmed that a tiny portion on the easterly side of Lot 36 remained.)

I recommend that a new survey be conducted by the Town Surveyor to establish the current status of Lot 36 at MHW. This will determine whether the Town has standing to

proceed with re-nourishing Lot 36 and extend the groin/jetty.

The Board and Conservation Agent, Amy Usowski, took questions and comments from Attorney Joseph Cavanaugh.

Chairwoman Cebula asked Mr. Merriam to provide an update on this including where we are on permits in January.

B. Allen Harbor Dredging Update – *Town Administrator*

Mr. Merriam provided the following statement on the status of Allen Harbor dredging:

As you know we have developed a schedule working with Burnham Associates, who is the general contractor, in which the Harbormaster would work with the Town Engineer and the impacted property owners in which we'd have the county dredge come in and clear out the channel. Wayne Jaedtke did that on schedule then John worked on clearing out the mooring field and then Wayne came out and took out the pilings for the Town dock. Our Town docks have been removed, John Our is under contract and started to remove at least one piling and several of the docks at the yacht club. So there's been a lot of movement and we've been waiting for the general contractor to show. He was supposed to move his scows into the channel by the week of August 27<sup>th</sup>. He didn't do that, he indicated that there was a storm in the Atlantic at the time and so there was some delays. We have had a series of meetings, conversations, emails and phone calls and at this point he was waiting for what they call the coordinates and a template and that is basically an engineering survey of the footprint of the harbor in order to be able to know what material to remove. As you know, the last week of August there was a pre-dredge survey performed by Coastal Engineering in which it was discovered that the quantity of the material to be removed was 50% greater than the original bid specs, budget and Town Meeting. All of our work had been predicated on approximately 40,000 cubic yards removed. The pre-dredge survey said it could be within a range 50,000 to 60,000 cubic yards. The credibility of those numbers were questions. Coastal agreed to pay for a second independent survey company. We retained CLE Engineering out of Marian. They came in and on September 18<sup>th</sup> and they performed a second pre-dredge survey and confirmed the first numbers so it is required to recalculate so they have had to reset the coordinates in the template in order to get it down to the 40,000 +/- range which would fit within the \$2.9 million appropriation. Burnham Associates contract reads there would be a mobilization fee of \$125,000, a demobilization cost of \$75,000 and a unit price of \$59 a cubic yard for removal so the volume to be removed is critical to staying in the budget so we have had a series of meetings and Coastal and CLE agreed on the coordinates and provided that information to Burnham Associates and with that information we posed the question to Burnham -- when are you going to mobilize, when

are you going to be here to dredge? He had estimated using his 2 scows that he could finish in 2 months. Had he started the day after Labor Day when he was supposed to start dredging he would have been done by November 1. Having lost a month we feel now that his schedule would be as such that he would finish up on or about December 1. There is a time of year restriction which the state restricts us from dredging after January 15 so we don't have the luxury of extending the deadline by anything beyond January 15. All that information has been provided to Burnham and we are waiting for his answer. We continue to communicate and keep all the stakeholders in the loop as to what is going on. We will have Town Counsel in the loop with regard to the quantity question as well as the performance issue. Our estimation is that there is still a 6 week window from December 1 to January 15 and he has already closed that window and said he cannot make the January 15 window.

- Monomoy Regional School Lease – *vote to approve*

Mr. Merriam said this document reflects the negotiations back and forth and all of the Board's comments, in particular modified language in regard to the Middle School building on page 2. Mr. Merriam confirmed that the lease has been voted and accepted by the Chatham Board of Selectmen and the Monomoy School Committee. Mr. McManus moved to accept the lease as proposed. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Mr. McManus asked to consider something out of order and the Board agreed. He read two letters of resignation from Jack Brown indicating his resignations from the Community Preservation Committee and the Community Center Lower Level Committee effective immediately. Mr. McManus moved to accept his resignations. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

## **NEW BUSINESS**

- RFP for the West Harwich School Building – *vote to approve*

Mr. McManus suggested allowing a sufficient amount of time for advertising the RFP such as two months and the Board agreed. Brooke Williams stressed the need for the roof to be done. Mr. McManus moved to authorize the advertising of the RFP. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

Coastal Engineering providing Burnham Assocs with Co-ordinates to commence work (9-25-12)

Dear Mr. Burnham

Attached please find dredge limit coordinates, plans and volume calculations for the Allen Harbor Dredge Project. These coordinates have been adjusted based on the pre-dredge, low frequency survey prepared by CLE Engineering on 9/18/12. Volume calculations determined based on these coordinates and resultant dredge prism results in an estimated dredge volume to be approximately 28,000 cu yd to grade and 44,000 to over dredge. ~Pre-dredge survey and coordinate CAD files will be provided under separate cover. ~This email serves as your notice to proceed with work per contract. Please let me know if you have any questions.

John Bologna, PE, President/CEO  
Coastal Engineering Company, Inc.

DOT response to Lighthouse request

This issue does not fall under DOT since it is not a state highway.~ I hope this clarifies and let me know if you have any additional questions/concerns.~ Thank you.

Trish Foley  
Legislative Liaison  
MassDOT

Lighthouse Charter School – Stacking issue response from Chief Mason

I will have officers make observations at the school for a few days to see what the problems if any may be and get back to you both. ~The Police Department received complaints the first few days the school was open. ~My School Resource Officer Tom Clarke talked to them about the matter and it has seemed to improve. ~Since then, the Department has not received any complaints on this issue. ~If there is a continuing problem, does the Town have any authority to compel site modification to address the issue? ~Every school day, traffic backs up on Sisson Road in the afternoon to accommodate parents picking up first at the Middle School then one hour later at the Elementary School (to a lesser degree); this has become an accepted practice. ~Route 137 is a different matter due to volume, businesses, driveways, intersections, etc. ~Thanks.

At our last Public Safety Review Team meeting on September 20th, several issues regarding the Route 137 project were discussed including the school zone speed restriction request. ~Since then I have been in contact with Representative Peake's office, Lincoln Hooper, and Joseph Magni from Mass Highways. ~Efforts to develop and fund the school speed zone signs are still in progress through Representative Peaks' office. ~According to her Administrative Assistant Dottie Smith, they are working their way up the Mass Highway chain of command to get this accomplished; however, no specifics are available at this time. ~After talking to Lincoln Hooper and Joseph Magni (who reviewed and approved the Route 137 improvement project), the left turn stacking lane is not justified or allowed as the back-up of traffic is for a specific and limited time (only

justified when there is a consistent issue regarding left turning vehicles for several periods in the day). ~Under the current design, there is enough room for vehicles to safely clear left turning vehicles on the right shoulder. ~I will bring this up at our next Team meeting; however, there is no interest on the part of Mass Highways to allow or add this to the existing project. ~I did share this with Representative Peake's office to keep her informed of this emerging concern. ~My recommendation would be to see how this lane configuration works as currently designed and then make modifications as justified and necessary within the existing layout. ~Please let me know if the Board or you need further information or have questions regarding this matter. ~

Following consultation with Town Counsel ~both the building permit and the certificate of occupancy were issued with the condition that the School's "site plan may be subject to reasonable regulation concerning yard sizes, set backs, open space, parking and building coverage pursuant to MGL c. 40 A§3 and relevant town zoning by-laws." ~In a 9.30.12 e-mail, the design professional for this project certified that the owner/builder's site work was "... complete and ready for its intended use." ~If there is a problem or a continuing problem with the site plan as designed and completed by the school, the town may decide to contact counsel to discuss the best way to reasonably regulate existing site conditions in order to address potential safety concerns.

Geoffrey S. Larsen, CFM

#### Red River Beach

I executed at Amy Usowski request, an NOI with DEP to extend a revetment 45 feet at the east end of Red River Beach. The soft solution has not held up well.

#### Great Western (new parking lot)

Amy Usowski has had conversation with HCT re: connecting the Town's trails on the west of Sand Pond and around the perimeter of a cranberry bog across HCT parcels. Mike Lach has recommended signing an MOA which authorizes the linkage.

#### CDM answer re: Sewering Rt 124 prior to reconstruction

Thanks for communicating this issue with us. Right now there are no sewers planned for the Rte 124 area north of Rte 6. Phosphorus removal would be the issue if that were to change and most of the development is south of the freshwater ponds with the groundwater flowing south.....thus sewerage those homes would remove very little phosphorus from the ponds. Bottom line is town will not be sewerage this area for at least 20 plus years if ever at all. We would not recommend putting wastewater related pipes in the ground at this time.

Doing stormwater improvements will be key as recommended in the Hinckleys Pond Report. Best Management Practices of getting the stormwater into vegetated swales or leaching basins versus direct run-off into bogs or surface waters will have a positive impact.

Dave Young

Harwich Junior Theater lease

HJT has not commenced utility payments yet, waiting for storm windows to be installed. Selectman McManus has advised that it is his wish to have the windows installed by end of calendar year, which I've informed Bob Doane.

Solar project

Attached is information for the October 5<sup>th</sup> meeting re: interconnect cost estimates and net energy price impacts. The NSTAR spreadsheet estimates for Queen Anne Road is \$125,368 to \$208,946.

Little League Fields

Supt. Cragin and Monomoy Chair Brian Widegren have blessed the Little League proceeding with the removal of the playground and replacement of backstop and fencing. I have conveyed this information to Little League President Vince Veery. \_

Monomoy Lease

The Monomoy School Committee has unanimously approved last night (Sept. 26<sup>th</sup>) the lease with one wording correction. Chatham Selectmen also voted to approve the latest version, which included John Giorgio's edits.

Muddy Creek MOA

Attached is a draft MOA which has been reviewed by Town Counsel and is currently before Chatham's T.C. I am attaching for your review my suggested redline revisions to the agreement.

As you know, towns are authorized by G.L. c. 40, sec. 4A to enter into intermunicipal agreements for the types of shared services contemplated on this project.~ A Town Meeting vote is no longer required to authorize an IMA.~ It simply requires approval of both boards of selectmen.~ Accordingly, I have revised the agreement to make clear that it is an IMA to be signed by the boards of selectmen in each Town.

Please also note that I have left blank the number of committee members from each Town.~ I would, however, recommend at least two members from each town.

I have also made several revisions to make clear what happens in the event the Towns are unable to agree on the scope of work or appropriate any funds that may be required.~ You will also note that I have included a sentence that obligates both Towns to meet any financial commitments made prior to termination. Please let me know if you need

anything further.

John

Skinnequit Road Private Road petition

Engineer John O'Reilly submitted the plan to our office. Town Engineer Bob Cafarelli will verify lots and Assessors are scheduled to certify 50% of abutters signed petition at their October 3<sup>rd</sup> meeting. Here is a policy question for your Board regarding exempting five lots. Two corner parcels fronting on Rt 28 at Skinnequit Road are Town owned under ConCom jurisdiction, two parcels on Skinnequit are owned by non profit Harwich Conservation Trust and one privately owned parcel fronting on Skinnequit was barred by Court order from accessing this road. I would recommend that the Board exempt all five parcels from receiving a betterment assessment.

Whitehouse Field

The infield has been completely rebuilt and sodded-looks fantastic. Sports Turf Specialties, Inc. did an outstanding job.

**SELECTMEN'S REPORT**

Mr. McManus moved to go into Executive Session for the purposes of potential litigation issues. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

**ADJOURNMENT**

The meeting adjourned at 10:23 p.m.

Respectfully submitted,

Ann Steidel  
Recording Secretary