

# Board of Selectmen Minutes

## 10/22/2012

MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, OCTOBER 22, 2012  
7:00 P.M.

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

**OTHERS PRESENT:** Town Administrator James Merriam, Chief Clarke, Mary McIsaac, Michael Lach, Allin Thompson, Paul Lagg, and others.

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

### WEEKLY BRIEFING

- Bond refinancing approval – *vote to sign documents – M. McIsaac*  
Ms. McIsaac appeared before the Board with Jim Eldredge of Cape Cod Five Cents Savings Bank to process the signing of refinancing of bonds. Ms. McIsaac noted that this will result in a savings of \$741,300.66. Mr. McManus moved to approve the bond refinancing. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote. Mr. Eldredge distributed the documents to the Board for signature.

### CONSENT AGENDA

- A. Approve Minutes:
  1. October 9, 2012 Regular Session
  2. October 9, 2012 Executive Session
- B. Vote to sign Allen Harbor dredging betterment assessment
- C. Vote to rescind appointment of Jeanne Steiner to Historical/Historic District Commission
- D. Vote to reaffirm signing contract amendment to Allen Harbor Dredging & Disposal Project
- E. Vote to release 2006 Executive Session minutes as recommended
- F. Authorize Chair to sign Community Innovation Challenge Grant application
- G. Vote to sign revised Inter-Municipal Agreement for the Muddy Creek Restoration Bridge Project

Mr. Hughes moved approval of the Consent Agenda with the exception of item C to which he noted the Committee has rescheduled their meetings to accommodate Ms. Steiner so this item is no longer necessary. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

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

- Annual Meetings with the Board of Selectmen
- Water Commissioners

Allin Thompson delivered the annual report of the Water Commissioners.

- Cultural Council

Paul Lagg delivered the annual report of the Cultural Council.

### **NEW BUSINESS**

- Conservation Restrictions submitted by Harwich Conservation Trust – *review/ vote to sign*

Mr. Lach outlined the three conservation restrictions from the Compact of Cape Cod Conservation Trusts to the Harwich Conservation Trust for the following parcels:

- (1) Pleasant Lake Ave, Assessor's Map 100, Parcel M-3
- (2) 2 and 6 Grist Mill Lane, Assessor's Map 41, Parcels S1-17 and S1-18
- (3) off Bank Street, Assessor's Map 31, Pcl P7 and Map 41, Pcl P1-1

He explained that the intent of the granting of each of these Conservation Restrictions is to retain each property in its natural condition. He stated that the current property owners have been approved to receive a Massachusetts Conservation Land Tax Credit (CLTC) for their proposed conveyances to the Compact, owing to the significance of each property's conservation values.

He stated that the Conservation Restrictions are a requirement of the CLTC program and the Harwich Conservation Commission voted at their October 16, 2012 meeting to recommend that the Board of Selectmen approve these restrictions.

Chairwoman Cebula said she would like to know what the taxes are on these parcels and next time the Board should have that information ahead of time. Mr. Ballantine moved to accept the recommendations for the proposed Conservation Restrictions as listed in the memo (see attached). Mr. LaMantia seconded the motion and the motion carried by a

unanimous vote.

- Subsequent amendments to Harbor Management Plan – *discussion & possible vote*

Mr. Merriam noted that this issue came about due to a minor editorial change that the Harbormaster made to the Harbor Management Plan. He stated that there needs to be clarification on who has the authority to change the Plan. Mr. LaMantia said it was clear in the “Purpose” section of the Plan which was voted last week. He suggested that changes of little consequence be placed on the Consent Agenda. Ms. Cebula said the methodology to amend the Plan should be spelled out in the Plan. Mr. Rendon said there would be more changes coming and he feels some of them fall within his regulatory authority. He said he will send them to the Board for review. He also said he believed that it was spelled out in the “Purpose” but can spell it out further in the Plan. Mr. McManus pointed out that the Board adopted a policy which states that any changes to Town policies, fees or regulations need to be approved after a noticed public meeting. He stated that he is not sure how to define whether a change is minor or major. He said a change to the Harbor Management Plan needs to be adopted by the Board of Selectmen. Mr. Hughes suggested Mr. Rendon bring all the changes at once before the boating season. Chairwoman Cebula asked Mr. Rendon to think through what he would constitute as minor and major changes. Mr. Rendon responded that formatting changes could go on the Consent Agenda. Mr. Hughes moved, based on the recommendation of the Harbormaster, that we include this Section 24.0 entitled Massachusetts Excise Tax. He noted that the words are the same as were in Section 23 before and this is just a formatting formality. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

- Letter from CVEC regarding early determination of interconnection costs for solar photovoltaic project – *vote to authorize Town Administrator to sign*

At Mr. Merriam’s recommendation, Mr. Hughes moved to authorize the Town Administrator to sign the letter. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

- Cape Cod Water Protection Collaborative response to request for input – *discussion & possible vote*

Mr. Ballantine explained that the Cape Cod Water Protection Collaborative (CCWPC) has agreed to send a memo he prepared to each Cape Cod town seeking their input as to advice they should provide to the County regarding priorities and solutions to the Cape's waste water issues. He noted that he has gotten comments from the Citizens Advisory Committee and the Implementation Committee, as well as from Orleans and Sandwich which he has provided to the Board as well.

~

He noted that there is a lot of discussion about wastewater and a lot of it has to do with

control, particularly if the county controls the towns or vice-versa. He said he would like to turn it around to how can the Cape Cod Commission help each of the towns. He stated that the intent of the Collaborative is to compile these and come up with 3 to 5 priority items to give to the County Commissioners as to what we think they should be working on. The Board agreed to provide recommendations at their meeting in 2 weeks which would be prior to the next Collaborative meeting in mid-November.

The Board agreed to take up the item of the recent letter from the Harwich Taxpayers Association although it was not on the agenda. Chairwoman Cebula provided a proposed response to the letter. Mr. Hughes moved to authorize the Chair to sign the letter to the Harwich Taxpayers Association. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

### Bond Re-financing

Treasurer Mary McIsaac has good news to report. Harwich retained its Standard and Poor's Bond Rating of AA+ and received favorable bids for re-financing its debt, saving taxpayers and ratepayers \$741,000 over the life of the bond. Congratulations to Mary, the Finance Department and Cape Cod Five for this good work.

One of the debt issues re-financed was the Cranberry Valley Golf Course clubhouse. Bond Counsel had concerns re: the tax exempt status of the bond given a private lease on premises (Restaurant lease). Bond Counsel will provide language for new RFP which addresses this concern.

The bond issues affected are 3 Land bank parcels, CV clubhouse and irrigation system, Water Dept. tank and Police Station plans.

### Allen Harbor dredging

The Board and Craig Burnham reached agreement on October 16<sup>th</sup> re: Contract amendment (see attached). Craig Burnham needs 24-36 hours of good weather to mobilize (after 10/19 predicted storm with less than 15mph winds).

Burnham will have 12.5 weeks of dredging to January 15<sup>th</sup> to remove 42,133 +/- c.y. of material. He will use 2 scows holding 600 to 700 c.y. /trip and it takes 24 hours to make one round trip. There is a 5% fluff factor in each load, so we'll use an average of 650c.y. per trip times seven days per week. Burnham will need approximately 65 good workdays based on the average volume per scow trip to remove the total contracted volume. There are approximately 87 days available, less any for bad weather.

#### State fines for elevator violations

The Commonwealth is proposing stiff fines for any owners of elevators who fail to comply with permits and inspections. (see attached. Duty should be assigned to Building Maintenance Supt.)

#### Community Center Rose gardens

Lincoln Hooper has received an e-mail from Oz Osborn, President of the Lower Cape Rose Society, indicating that they are no longer able to manage the rose garden. We should seek other groups to consider “adopting” the rose garden. The Town currently does not have the staffing capacity to maintain this garden.

#### Building Maintenance

Dick Hoyer has called to inform me that David Bernstein will be writing a report on their building walk- throughs and observations as per your request.

#### Capital Outlay Committee

Tammy Taylor has offered to serve as COC secretary. Since there is no COC Operating Budget, I intend to pay her hours from our Administration Part time Board Secretary \$3,500 line.

*Mr. McManus stated that it strikes him that in the last budget round we established Board Secretaries as part of the budget process and there was never a Capital Outlay Board Secretary and he doesn't know how we did this without going through the budget process. He further noted that we under-funded our own Board Secretary this year so he doesn't know how our minutes will be properly done when adding this unbudgeted position. Mr. Merriam said we have sufficient funds as we haven't filled the Assistant Town Administrator position.*

*Mr. McManus expressed concern that a position was created without advertising it or going through the proper process and it was not established as part of the budget passed by Town Meeting.*

*The Board discussed the needs of other committees for secretarial service and there was a consensus that Mr. Merriam should assess the needs of the other committees and that Board Secretaries need to be in the budget.*

#### John Bologna's /Coastal Engineering explanation for Betterment adjustment

As discussed at our meeting last week, the estimated dredge volume used for betterment assessments for the individual dock owners at 3, 4, 5, and 9 Fiddlers Lane and at 23 Allen Harbor Lane should be reduced as shown on the attached spreadsheet. This

reduction is due to 1) the revised dredge perimeter extents in the dredge contract area and 2) the ACOE requirement that the permit area for individual permit holders be reduced so that the majority of the permit area is under the control of the town permit. ~The initial assessment was based on an estimated dredge volume within the individual dock owners permitted area.~ Per the town betterment agreement, the final assessment will be based on the actual volume of material removed from each site, calculated as the volumetric difference between the pre and post dredge survey within the permitted dredge prism.~ ~The methodology used for the determination of the betterment estimate is as follows:~ A volume was calculated with the theoretical limits of the permitted dredge area for each individual dock owner. The determination of the permitted area was based on either the maximum dredge limits for existing permit holders or new limits determined~ for the individual owners.~ Permit areas were laid out for each dock area based on the regulatory limitations for the specific site and "best fit" to fill in the gaps between existing permits, proposed permits for the individual stake holders and the overall town permit extents.~ While not an exact science, some of the parameters that were taken into consideration included the location of the existing structures, size of the floats, property line offset, distance from fairway, adjacency to adjoining structures, depth of water and breakout elevation at side slope from the proposed dredge depth.~ In each case the permitted area was adjusted to balance between the interest of the individual permit holders and the overall project needs. Where possible, the permitted areas were extended to allow maximum flexibility to dredge the individual dock areas should the town project not go forward. Where individual permits were not obtained, the areas were proportioned to fit within the town's general permit. When it came time for the ACOE to issue the general permit for the entire project, the Corps reviewing engineer requested that some of the permitted dredge areas be reduced so that the most of the dredge footprint would be under control of the town dredge permit. For this reason, the dredge volume for some of the dock owners needed to be reduced.

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

### Phase 2- Allen Harbor Dredging

(Pursuing removal of remaining 8,000 c.y. in Allen Harbor)

Based on earlier email to you, I do not concur that the Current BUD would allow County Dredge/ beach dewater/ polymer add /trucking to landfill. The summary of that email is repeated below:

We researched the BUD approvals and have found the following:

Regarding Dredge Permit Approval dated 9-2-2010:

- This was superseded by the 8-30-2011 Approval to combine the Marine Sediments Berm with a Berm needed for Catch Basin Cleanings (CBC) and Street

Sweepings (SS)

- This was for dredge material that was produced by a dewatering machine located at the Harbor Dock in accordance with the Water Quality Certification dated May 27, 2009 (developed by Coastal Engineers)

Regarding Approval to combine the Marine Sediments Berm with a Berm needed for CBC and SS dated 8-30-2011:

- This approval superseded the previous Marine Sediment BUD approval and the previous CBC and SS BUD approval
- This change was made to allow the CBC and SS material that had been placed on the landfill cap to be moved to the location that had been approved to the marine sediment berm. This change allowed the photovoltaic system to be installed on the landfill cap.
- This approval states that the “Town would like to maintain the option of bringing marine sediments to the site in the future, but the Town understands that a new BUD will be needed in the future to be specific to the new material” (Condition IV.E., page 5)

In summary, if the town now wants to place Marine sediments at the Solid Waste Management Site, a new BUD approval is needed, or at least a modification to the latest approval. That approval may be possible. At the least, the engineer will need to let us know the estimated quantities, characteristics of the dewatered sediments using the new process, and timing of its production.

When John subsequently asked about the MassDEP approval process and timing, I responded to him:

I can make those inquiries to MassDEP and offer up our judgment on the needed approval process. Before I get started, can you provide the following information:

- Details on the new dewatering process and who will oversee it
- estimated dredge quantities for placement at the Solid Waste Management site,
- characteristics of the dewatered sediments using the new process
- timing of its production

If you would like, I will followup with MassDEP once I receive that information from John.

I apologize for repeating this information, but I am concerned that crossing email may cause misunderstanding and poor decision-making. Feel free to forward this information to others in your teams if you feel that it is useful. At this point, I will wait to hear from John.

John, If there are amendments to the May 27, 2009 Water Quality Certification (as referenced below by Don Munroe), I would like to receive pdf copies.

Many thanks,  
Nate

### Beach Road

Paul Sweetser has staked out the ROW and MHW as requested. I will notify abutters of the stakes and timeline for re-nourishing above MHW. (see photo and map)

### Route 137 Project update (as of October 17th)

I am please to inform you that Lynch will be done paving (black base and binder) Phase II of the Route 137 project today and that the one way only detour will be terminated this afternoon.~ In fact, Lynch finished in 7 work days what was anticipated to take 3 to 5 weeks.~ They will continue~with shoulder work~until winter shutdown, which includes curbing installation, sidewalk construction, drainage system adjustments, ramp work, signal installation and box widening at the northern end of the project.~ Lynch and MassDOT have both done a fantastic job, have been extremely accommodating~of Town and~abutter request and have exceeded every expectation I have.~ Harwich PD and its detail officers have also done a great~job at managing the traffic~over the last two weeks and should be recognized for doing so.~

Link~~

### Whitehouse Field project

Mr. Merriam,

I wanted to reach out and thank you for your wisdom and guidance through the process of bringing Whitehouse Field a brand new infield this fall.~ The work that was completed several weeks back is of first class caliber and I could not be happier with the results.~ Our town, the school system and the Harwich Mariners will now have one of the best infield surfaces on the Cape!

The Harwich Mariners are beginning to make a few long term plans for the facility, one of the main areas of focus will to provide Whitehouse Field with a permanent bathroom facility in order to remove the port-o-johns and provide our citizens and fans of baseball modern facilities.~ I have reached out to the Yarmouth-Dennis Red Sox organization and asked them for the blueprints of the recent facilities they constructed at their Red Wilson Field in order to start the process of fundraising for this endeavor.

As we continue with this process I would like to have your council and also explore the opportunity of seeking out state grant monies to help with this project if they are available.

Once again I on behalf of the Harwich Mariners I thank you for your wiliness to work with us in providing our community with a new infield at Whitehouse for all to enjoy!

Thanks again for all you do for our town and let me know if I can ever be of any assistance!

Ben Layton  
Eastern College Athletic Conference  
Director of Sport Administration

Artificial reef meeting

There will be a meeting with Mark Rousseau of the Division of Marine Fisheries as well as with DEP and representatives from the town of Yarmouth (as they are going through permitting with us) regarding the artificial reef on November 8 at 10am in the small meeting room.~ We already have the Conservation Commission Order of Conditions for it and some other approvals at the state level.~ Mark wants this meeting to discuss options for materials so we can go ahead and get the Chapter 91 permit as well as the Army Corps permit.~ Ed McManus approached me last week wondering if we can use the foundation from the old school.~~ Mark said this is a possibility depending on if the concrete is clean and not coated with anything.~ Please send this out to the board of selectmen as they are welcome to attend this meeting.~ It is not a public meeting but more of a workgroup session.~ Thanks!

Amy Usowski  
Conservation Agent

Snow and Ice Operations

Lincoln Hooper has compared our current snow plowing rates (not adjusted since 2007) to neighboring communities and concluded we need a rate increase. He will prepare a spreadsheet for your consideration for your Oct. 29<sup>th</sup> meeting.

Dear Legislators, Elected Officials, and Staff,

~~~~~ The Massachusetts Department of Transportation would like to invite you to a series of statewide discussions this fall to engage the public in a conversation about the transportation system they want and what we need to do to achieve that vision. The purpose of these meetings is to hear from customers and residents in order to generate ideas and help prioritize agency initiatives now and in the future. Please join MassDOT and other Commonwealth leaders in this important discussion that will shape our transportation system for future generations.

~~~~~ We would like to extend this invitation to you and your constituents. The nearest meeting to your district will be on **October 25, 2012 at 6 pm** in the **1st Floor Conference Room** at the **Cape Cod Regional Transit Authority**. In addition, there will be a conference call on **October 22, 2012 at 11 am** for you and your staff, where members of Legislative and Community Affairs at MassDOT will answer any questions

you may have about these meetings. If you are able to call in, the conference call number is **866-648-9462** and the participant number is **4585148**.

~~~~~ We look forward to hearing from you and hope you are able to attend.~ If you have any further questions, please do not hesitate to contact our office at (857) 368-8985.  
Courtney

~

Monomoy Zoning /Site Plan exemptions

Bill,

Thank you for attaching ~your minutes of the inspectors' portion of the 10.3.12 meeting at Town Hall. Regarding your last 2 ~points attributed to the building official ~I would re-state the following.

As the official appointed and authorized to administer and enforce the provisions of the zoning by-law my official determination about what may or may not be exempt from zoning, i.e. the Town's height regulations and/or the Town's Site Plan Review process, would follow a written request for a determination by the owner or agent. Your client has every right to seek the exemptions afforded by MGL 40 A § 3 and the Town's zoning By-laws though I would also re-state that the owner/agent is advised to contact the Planning Department to discuss this matter in order to avoid any miscommunication.

Geoffrey S. Larsen, CFM  
Building Commissioner ~

Planner David Spitz response re: Reasonable regulations that do not restrict the use

Hello Geoff et. al.,

Thank you for advising me of recent correspondence relating to the new high school.~ Regarding Site Plan Review, the Planning Department's position remains the same as stated several months ago.~ The MGL 40 A § 3 exemption relates to use of the property.~ The Town of Harwich is not allowed to apply regulations that will restrict the use of any property in town for any item on the exempt list.~ However, we are entitled to review specific conditions related to the site as long as we do not use such conditions to deny a use.

This position is most succinctly stated in § 325-55.E(2) of the Harwich Code:~  
"However, the Board cannot deny approval of a site plan for a use which is allowed by right (not by special permit) in the district but may impose reasonable conditions on the proposed use ... ".~ The Harwich Planning Board has consistently applied Site Plan Review in accordance with this section and will do so for the Monomoy High School as well.

Please contact me if you or the applicant have any questions.

David

### Recreation restrooms

I discovered a 1998 TM vote appropriating \$42,000 to build a new restroom at Fernandez Bog. I then asked Diane Silva to research the article and she discovered it was closed to fund balance “surplus revenue” on 6/30/2002. Also, a 1996 appropriation of \$40,000 to build a restroom at Earle Road Beach was also closed to fund balance on 6/30/2002.

The Capital Outlay Committee, at my urging as ADA Co-ordinator, is recommending the Recreation Commission’s request to build a new restroom at Long Pond. I’ll be attending their 10/ 23 meeting to review plans.

### Salt Marsh study –Plum Island

See Boston Globe article entitled “ A Delicate Balance in Plum Island Marsh” by Beth Daley (on Selectmen’s table).

### Community Center expansion

A meeting was held on October 17<sup>th</sup> with the Architect to review plans. Mr. Strekalovsky provided elevation plans. Rich Larios has assumed Chair of Committee. Carolyn Carey will update COC next week.

### Community Youth Services

With the retirement of Lynn Snow, the 7 Harwich Churches invited several youth stakeholders to meet with them to identify unmet youth needs. We looked at Chatham’s youth program (extended for Harwich youth) in the basement of the Chatham Community Center to Monomoy Guidance Dept. with Robin Titus, the Tech School and to Sheila House, Counselor for Harwich Youth.

## **SELECTMEN’S REPORT**

- December Board of Selectmen meeting schedule and Town Hall hours –  
*discussion & vote*

Chairwoman Cebula said she wanted to have a discussion about whether Town Hall should be open on Christmas Eve and New Years Eve as they fall on Tuesdays, as well as whether the Board will meet on those days. The consensus was that the Board would not meet on Christmas Eve and New Years Eve. Chairwoman Cebula suggested giving the employees off. Mr. Hughes said we should go by the contract. Mr. Ballantine said it would look funny if we move away from the contract while negotiations are going on. Mr. McManus noted that tradition is that Town Hall closes at noon on Christmas and New Years Day. Mr. Merriam said it is tradition not contract. Mr. Hughes said we should follow the contract.

## **ADJOURNMENT**

Mr. Ballantine moved to adjourn at 9:15 p.m. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary