

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, JUNE 17, 2013
7:00 P.M.**

APPROVED

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

OTHERS PRESENT: Town Administrator James Merriam, Lincoln Hooper, Mary McIsaac, John Giorgio, Tom Johnson, Jeremy Gingras, and others.

MEETING CALLED TO ORDER at 7:10 p.m. by Chairman LaMantia.

Chairman LaMantia reported that the Board had just come out of Executive Session where they discussed contract negotiations and some litigation matters.

CONSENT AGENDA

- A. Approve Minutes - June 3, 2013 Regular Meeting
- B. Vote to accept letter of resignation from Debra Salewski from Council on Aging
- C. Vote to authorize Chair to sign Amendment #4 to Agreement with CDM Smith, Inc.
- D. Vote to sign Bond Anticipation Note
- E. Vote to approve annual committee reappointments
- F. Vote to sign revised letter of financial commitment for Muddy Creek bridge project grant application
- G. Vote to approve request by Cape Cod Hospital Auxiliary to hold annual Tag Day event on August 1, 2013
- H. Vote to approve renewal of Lodging House license for Gingerbread House
- I. Vote to award contract for purchase of new 2013 Volvo L70G Front End Loader in the amount of \$153,400 to Woodco Machinery of Woburn, MA
- J. Vote to award contract for purchase new 2014 367 Peterbilt Dump Truck in the amount of \$146,803 to McDevitt Trucks, Inc. of Tewksbury, MA
- K. Vote to accept donation of \$250 to Friends of Harwich Bikeways Committee from Cape Cod Five Cents Savings Bank
- L. Vote to approve request for assistance from the Caleb Chase Fund

Mr. McManus moved approval of the Consent Agenda and the recommended actions thereon. Mr. Hughes seconded the motion. Chairman LaMantia asked to hold Item L as this is to pay a Water Department bill. He noted that there are abatement procedures and they should allow time for the Water Department to look at the bill and for the Caleb Chase fund administrator to look at the situation in conjunction with the Water Department. The Board agreed to hold Item L. The motion carried by a unanimous vote.

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

- A. Discussion with Town Counsel regarding:
 - 1. Covanta Term Sheet / ABC Disposal proposal – *discussion & possible vote*

Mr. Giorgio led the discussion on the two proposals. He noted that he has been working with the Cape Cod Solid Waste Consortium and this Committee has examined various options for a new long term disposal contract as the current contract with SEMASS expires on December 31, 2013. He described the procurement process and noted that the Committee has focused on negotiating a term sheet with SEMASS for renewal of the contract. He pointed out that there are representatives present from both Covanta and ABC Disposal. Mr. Giorgio reviewed the term sheet and the essential terms of the Covanta contract. He gave a brief presentation of the ABC Disposal proposal and facility and noted that the Committee has not gotten specific details on that proposal. Mr. Giorgio took questions from the Board. The Board heard comments from Mike Camarra representing ABC Disposal. Mr. Giorgio expressed concerns over whether their current site assignment is adequate to allow them to build this new facility and have this new solid waste processing. He said he is confident about the Covanta proposal and wished he had more information about the proposal from ABC Disposal. He stated that he would like to see a letter from DEP indicating exactly what the permitting requirements are for that facility and he doesn't have that. The Board took comments from Steve Diaz of Covanta. Mr. Hughes stated that there are a lot of questions about the environmental aspects, which one is better, what are the heat rates, etc. He commented that someone needs to do a waste stream analysis to know if this is the best way to dispose of our waste product. Mr. Giorgio responded that if they don't sign by June 30 the economic terms on the term sheet are not necessarily going to be available on July 1 however the language in the first paragraph is clear that it doesn't create any legally binding obligation on the part of the Town to execute a contract. Mr. Ballantine moved to sign the term sheet with SEMASS Partnership as presented tonight. Ms. Cebula seconded the motion. Mr. McManus said he does not want the vote to sign the term sheet to be an indication that we are not going to continue on investigating the other proposal. Mr. Giorgio suggested that the Board amend the motion to include directing him to contact the Commission to express the will of the Board and Mr. Ballantine agreed to amend his motion as such and Ms. Cebula accepted the amendment. The motion carried by a 4-1-0 vote with Mr. Hughes in opposition.

2. Finance Committee members serving on other Committees and Boards

Mr. Giorgio outlined his opinion that he provided to the Board on this matter (see attached). Mr. McManus disagreed with Mr. Giorgio's opinion noting that he reads the Charter as an accumulation of different sections. He stated that the Charter in and of itself defines an office as holding a position on a committee and doesn't make a distinction as to what type of committee it is and in talking to a number of people involved in the Charter Commission involved in creating the Charter, their intent putting in that language was that if you are on the Finance Committee you are only on the Finance Committee except for the one exception of the Capital Outlay Committee. He stated that personally he thinks that serves Town Meeting best as they are to advise Town Meeting and not act in a role of policy advisor to the Board of Selectmen which all other committees do. Mr. Giorgio pointed out you are supposed to do a periodic review of the Charter and the Board may want to clarify issues that have been raised. He said the Board has the ability to interpret that provision any way they see fit. The Board agreed that this needs to be clarified. Mr. Ballantine said that from the people they've talked to, the intent was clear to keep Finance Committee separate from the other committees. The Board agreed to interpret the Charter that Finance Committee members can only serve on the Finance Committee and the Capital Outlay Committee.

3. Training seminar for Boards, Committees and Commissions

Mr. Giorgio stated that they provide free training in the form of seminars on topics including procurement, open meeting law, land use decisions, and labor and employment. Mr. Ballantine suggested having a seminar on Robert's Rules of Order, open meeting law and executive session requirements. Mr. Hughes suggested that Kopelman & Paige review the Committee Handbook. Chairman LaMantia asked Mr. Giorgio put something together in regard to the time and what would be required to conduct such a seminar. Mr. Giorgio suggested holding two seminars – one on how to conduct a meeting and related issues and one for regulatory boards and the Board agreed.

B. **Public Hearing** – Application for change of location to Annual, Common Victualler, All Alcoholic Beverages License for Kedja, Inc. d/b/a Andale Café

Mr. Hughes read the hearing notice into record. Chairman LaMantia noted that the hearing was continued pending information from the Planning Board and Board of Health and those issues have been addressed. Attorney Matt Kelley explained that this is simply a change of location and noted that there will be more seats than the existing location. With regard to abutter concerns expressed at the site plan meeting last week, Mr. Kelley stated that Andale and the property management company agreed to put up a 6 foot stockade fence on the side of the property that borders the Harwich Port Resort Club as well as some higher vegetation to serve as a natural barrier. He noted that they are agreeing to limit their service outside to 10:00 p.m. to limit the noise and they would shut down all music at 10:00 p.m. Ralph Schwartz, owner of Harwich Port Resort Club's hospitality and management company, noted that they have been working with the owners of Andale and Mr. Kelley to come to an agreement to best protect themselves from noise and activity and Andale has agreed to stop serving food and beverage outside at 10:00 p.m. and that there would be no electronic or live music after 10:00 p.m. He said he would like the Board to stipulate that as part of their licensing. Ms. Cebula moved to close the public hearing. Mr. McManus seconded the motion and the motion carried by a unanimous vote. Mr. Hughes recommended extending the fence further down than what is indicated in the photo. Mr. McManus moved that we grant the transfer of the alcoholic beverage license for Kedja Inc. d/b/a Andale Café from 703 Main Street, Harwich to 554 Route 28, Harwich Port providing that a 6 foot fence and plantings are placed between the outside patio and the Harwich Port Resort Club, that a fence barrier separate the patio from the surrounding parking lot and that doesn't need to be a tall barrier just something to keep people from briskly walking through, it could be a split rail fence, something that is going to have to be some effort to climb over and that any entertainment that is licensed and permitted in the future on the outside patio cease at 10:00 p.m. and the outside service would cease at 10:00 p.m. Mr. Hughes seconded the motion. Ms. Cebula asked to amend the motion to put up small signs indicating that alcoholic beverages are not allowed beyond that fence and Mr. McManus agreed to amend his motion as such and Mr. Hughes agreed to second that. The motion carried by a unanimous vote.

C. Report of the Town Administrator Search Committee – *discussion/next steps & possible vote to schedule interviews*

Mr. Wheeler, Chairman of the Town Administrator Search Committee, presented the attached Power Point presentation of the Committee report. He submitted the names of the three candidates being recommended by the Committee as Neal J. Beets, Timothy J. King and Bonnie Therrien. The Board agreed to set up a "Meet & Greet" with department heads and the candidates as well as candidate interviews and discussed possible dates. Mr. McManus noted that it is important to contact the towns that the candidates worked in before.

OLD BUSINESS

A. Interim Town Administrator Candidate Interview – Robert Lawton

The Board interviewed Mr. Lawton for the position of Interim Town Administrator. The Board agreed to allow the Chair to work out the details of the employment agreement with Mr. Lawton.

B. Extend Chatham treatment plant letter of interest to December 31, 2013

At Mr. Merriam's recommendation, Mr. McManus moved to vote to approve the new joint statement of the Boards of Selectmen from Harwich and Chatham relative to wastewater treatment and move that we sign it. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam delivered the following report to the Board:

Allen Harbor update

We have paid Burnham for his demobilization and Coastal Engineering for work performed to date. I've requested that Treasurer Mary McIsaac bond for the full \$2.9m authorized. See budget attached. We currently have a balance of \$191k uncommitted. We have received requests from the following for additional dredging: Bud Weofel, Peterson/Morrison, Fehrm and AH Marina/Town just to west of ramp. The volume to be removed approximates 2,000 c.y. Our proposal to remove the balance is to take a sample of each area and determine if acceptable under the Water Quality Certification by DEP for beach nourishment. Dredging work by County Dredge to proceed after Labor Day so not to interfere with summer boating. County Dredge to perform pre- and post dredge survey in order to determine actual volume removed for betterment purposes. Option A- If sample determined acceptable for beach nourishment- then County Dredge to pump to area between Pleasant Rd Beach to Beach Road and deposit below MHW. Option B- If sample determined not acceptable for beach nourishment, County Dredge pumps to Earle Rd Beach into sand berm de-watering pit (1/5 size of last year's Pleasant Rd Beach pit), material de-watered and trucked to landfill site. Notification only required, no permitting. Attached please find a revised Term Sheet regarding long term solid waste disposal with Covanta/SEMSS.

Covanta Term Sheet for solid waste disposal at Semass

1. The new term sheet allows communities to adjust their guaranteed tonnages from the 2012 tonnages shown in the "Potential Participating Towns" attachment B. If you intend

to adjust your tonnage from the 2012 number shown on the attached, please let me know asap and also know that you must document the new number with Tom Cipolla.

2. The revised term sheet provides an opportunity to change tonnages based on substantial programmatic changes in how communities collect or accept MSW (such as PAYT programs) in 2017; the ability to readjust tonnages in the 5th year remains as originally written.
3. There is a fifty-cent increase in the tip fee schedule at all levels.

Please note that towns intending to pursue this contract should bring this term sheet to their authorizing board BEFORE JUNE 30th (with the exception of the few towns going to Fall Town Meeting). Please let me know as soon as you have authorization to sign. I am putting up a graphic on the Commission website to keep track of the committed, accumulated tonnages as they come in (bags of trash on a scale □). I'll send you a link next week.

Patty Daley

Cape Cod Commission- Wastewater interactive games for community input

See brochure from Emerson College contract seeking greater involvement for the 208 Planning process.

Muddy Creek Bridge cost estimate from CD MaGuire: \$3.3m

Please see attached preliminary estimate for the Muddy Creek Restoration Bridge Project. Please note the following changes from the number quoted at last week's Monthly meeting:

- The cofferdam cost has been verified and reconsidered which makes a substantial difference in the price.
- The remaining unit costs have been rechecked and adjusted where appropriate.
- Costs for Highway Approaches, Drainage and Traffic Control have been added.

The revised estimate is \$3,300,000.

Please note that the file provided from Fuss & O'Neill did not contain a detailed estimate for the single span bridge with trapezoidal channel option. It had estimates for a Multi-Cell Box Culvert, 3 Sided Precast Bridge Arch, Single Span Rectangular Opening, and 3-Span with Trapezoidal Opening. Also the breakdowns provided have very limited item information and major items such as the piles supporting the structure are not included.

Lastly, we looked at the cost for the two possible railing options, our proposed concrete rail CT-TL2 and the more open steel railing S3-TL4. The cost difference between the two appears to be minimal but the steel railing is more expensive. I have attached pictures of both systems.

Let me know if you would like me to forward this email on to the entire Project Team for discussion.

Fox News Zip Trip update

Andy Devine is going to go down early next week to check out the location. As soon as he does we will confirm with you.

Jesse Grossi will be the producer working on the Harwich Zip Trip. He will reach out to you in the next week or so to get your ideas on possible show guests.

Thanks Jim!

Amy

Allen Harbor /State Grant status

Jim/John, Ren had a phone conversation with Doug Cameron about the town lot. The main purpose of the call was to find out more about how the post-grant restrictions work and if there is any way around the private renting issue. He said that there is a procedure for the town to apply for a hardship exception that if granted may allow the town to continue renting the lot. The fact that we (or whoever) is a single entity renting the lot and that individual boat owners aren't allowed to come in and work on their boats would be in our favor. Also that there is still parking available, boat ramp access and that the town has significant public assess at Saquatucket would all be positives too. He offered to come down and meet with all of us to discuss the possibilities, but that request would need to come from the town. Ren has great difficulty navigating around places he's not familiar with at this point. Would you guys be willing to try and see if Doug could come down here for a meeting next week? His view is that the grant is at least a couple of years away and didn't see any reason for us not to be able to rent it for this coming off-season (maybe he gave you guys a different impression on timeframe?). Let me know if you can set up a meeting with him (preferably here for Ren's benefit and that we could look at the lot if needed). Thanks.

Craig LeBlanc
General Manager
Allen Harbor Marine Service

I talked to Doug Cameron this morning who indicated that Ren had called him. I was happy to hear that he seemed to be somewhat willing to at least consider an exemption from the state regs that he outlined to me that prohibited the leasing of a parking lot that is part of a public access facility... that wasn't the case when I requested consideration. Also Doug indicated to me this morning that state grant funds would likely be available in FY15... so a year or so away. The first step would be to finalize a Land Management Agreement between the Town and the State, and then we can proceed as early as this coming Fall to replace the main bulkhead with Town funds and that would be accepted as part of the Town's overall cost share. I will request a meeting with Doug for next week or the soonest he is available to meet.

John C. Rendon

Bay View Rd memo from Jan Kalicki
REVISED DRAFT

Board of Selectmen
Attn: James Merriam, Town Administrator
Town of Harwich

732 Main Street
Harwich, MA 02645

RE: Friends of Harwich Beaches - Bay View Area Beach

Dear Selectmen,

We would like to offer deep thanks for your interest and support, conveyed so effectively by Jim Merriam and Mike Ford, for public access and enjoyment of the Bay View Area Beach. We were pleased to contribute, as Friends of Harwich Beaches, to the gift account which the Town set up for the marine engineering study and other purposes. As you know, that study demonstrates definitively that over 400 feet of the beach, from Merkel to Bank Street, are solely attributable to public funding and construction - by the Town, Commonwealth and US Army Corps of Engineers - of the jetty which is essential for navigation in and out of Wychmere Harbor. This clearly validates the Town's and Commonwealth's objections, which we strongly support, to efforts by a small number of new property owners on Davis Lane to privatize the public beach, consisting of former Commonwealth submerged tidelands, by seeking registration beyond their existing beach holdings.

We understand that you have seen the attached letter to the Attorney General, copied to the Governor, Senator, Representative, Jim and our attorneys. We will update the endorsement list which had 31 Harwich residents last week with many more names by the end of the month. So you can be assured of the strongest support for continuing full access and enjoyment of the Bay View Beach, which many Harwich residents have enjoyed for the past century. We also understand that there's a private effort to take away a portion of Bank Street beach, which is unconscionable. We think it is very important is to maintain the strong alignment and mutual support the Town and we have had, and have the following suggestions for your consideration:

1. Attorney General Martha Coakley's office advises that the matter has now escalated to her desk (beyond the earlier staff review) for moving from support to active participation. Even if that decision is delayed, we wish to join the Town in strongly defending public beach rights - meaning the use and enjoyment of the beach as has been the case for generations, and for which the public path was established in the first place. We request that the Town reject any settlement for "walking rights," which we already fully enjoy. The Town and we have much stronger leverage at our disposal, given the Town's categorical ownership of Bank Street Beach and the strong support of the marine engineering report for the legal case for public use and ownership of over 400 feet of Bay View Beach from the ocean.
2. The Board wisely established the "Friends of Harwich Beaches" gift account to pay for the marine engineering study and *other purposes* related to Bay View beach. We would like to remove any financial obstacles to continuing the pending legal case at Land Court and, if necessary, appeals levels. Therefore we would appreciate the Board's agreement to open the gift account to contributions for Bay View Beach Area legal, expert and technical expenses, related only to public purposes, which can be used beyond available funds in the Town budget. The great benefit would be that this will likely make future steps much more financeable, since we have received expert tax advice that donations to

the gift account will continue to be tax deductible for public purposes. For the avoidance of doubt, any expense identified by either side as problematic can be billed separately, although we do not expect that problem to arise.

3. This case has benefited from the excellent work and collaboration of Jim Merriam and Mike Ford, as well as our attorney Diane Tillotson whom you have met. We greatly appreciate the plan for Mike to continue to represent the Town on this case after his withdrawal from future cases as Town Attorney. We would like to request that the Board and Jim Merriam also agree to his continued assignment with regard to this case after his pending retirement. Again, necessary support for the public case, beyond Town budget allocations, should be eligible for coverage by the Town's gift account. We believe that it would be very much in the Town's interest to maintain the continuity and high quality of attention to this matter, which offers an almost unprecedented opportunity to defend the beach rights of our community.
4. Finally, we would be happy to meet with you to discuss these and any other issues in executive session. As Jim and Mike will tell you, we feel a strong personal commitment to the public interest, and would like to be helpful in any way possible. In the meantime, Diane is available to visit again with you and Mike to update and discuss pending legal issues.

With best wishes - and many thanks,

Solar panel project update from American Capital Energy

See attached from Eric McLean

Buck's Pond temp closure

we've received notice of a pond closure today- Bucks Pond- town beach.

Retest has been taken and will be ready tomorrow PM

Health dept is posting the beach

Patricia Sampson
Town of Harwich
Health Department

DEP report on ABC Disposal's pending application

The answer to your question is the previously issued permit for the Rochester facility in July 2009 is valid until July 2016 due to permit extension act and other legislation.

- On July 14, 2009, MassDEP granted to the facility's previous owner ("Casella Waste Management") an approval for the complete redesign/reconstruction of the facility so that the facility could manage both C&D as well as MSW, without changing its total daily tonnage rate of 890-tons/day. As of this date, these previously approved facility modifications have not been implemented. Therefore, the facility, as currently designed and constructed, is only allowed to manage C&D.

Status of Current Permit: MassDEP received a permit modification for the NBWS Rochester facility on May 23, 2013. The following excerpt is from “Overview” section of the permit application:

“The modification requested is to provide for construction of a new building with new MSW and single stream processing equipment. The facility includes a fully enclosed 90,000 square foot pre-engineered processing/handling building for MSW, C&D and recyclable materials. Material which can be recycled is baled and shipped to recycling markets”

The facility also processes high BTU residual waste from C&D processors in a proprietary system (Werc-2) to produce Eco Tac briquettes for use as a coal substitute and transfers C&D waste (Category 1 material) for processing at other facilities.”

Permit Review Regulations and Requirements: According to the specific regulations for the application under 310 CMR 4.00, upon submittal of the application and the payment of the application fee for the application, MassDEP is required to review and process the permit application in a timely fashion under specific timeframes for both Administrative “completeness” and Technical “conformance”. During the review process, in the event the application is determined to be deficient (at either the “completeness” or “technical” stage), the applicant is similarly required to respond to any such deficiencies within specific timeframes. In the event that MassDEP does not review the application in a timely fashion, the applicant may be entitled to a application fee refund (either partial or in full). In the event that the applicant does not properly respond to any cited deficiencies, MassDEP could terminate the review process.

The permit review timeframes are as follows:

Administrative Review -MassDEP has 24 days to complete the Administrative Review

If MassDEP has comments the Applicant has up to 180 day to respond

Technical Review - MassDEP has 72 days to complete the Technical Review

If MassDEP has comments the Applicant has up to 180 day to respond

2nd Technical Review- MassDEP has 72 days to complete the 2nd technical review and render a decision on the permit application.

The permit application under review is *BWP SW07 Modification of Previous Approval Permit Large* for a Large Handling Facility and the schedule of timeframes and fees can be found at <http://www.mass.gov/eea/agencies/massdep/service/approvals/bwp-sw-07-11-16-21-22-45.html>

It shall lastly be noted that MassDEP’s issuance of all final permit decisions are subject to a 30-day judicial appeal process pursuant to the provisions of MGL c30A, s.14.

If you have any other questions I will be in the office the rest of this week.

Mark Dakers, Acting Chief
Solid Waste Management Section

Massachusetts Department of Environmental Protection

Human Service Grants update for FY 13

I am trying wrap up the FY13 Harwich Human Services grant on our end. Could you please confirm, via response to this email, that the Town of Harwich is aware of the inability of the Cape Cod Ecumenical Youth Ministries inability to fulfill their grant agreement. Their award of \$2,000 will not be issued. Therefore, the total award amount that the Town of Harwich is disbursing to awardees is \$74,500.

I need this confirmation for my Finance Department to adjust the total amount.

Thank you for your response!

Katherine Garofoli
Resource Development Officer
Barnstable County

SELECTMEN'S REPORT

A. Board of Selectmen goals – *discussion*

Chairman LaMantia handed out a list of starting points for goals and asked the Board to review them and make additions and/or changes. Mr. Ballantine suggested focusing on safety in Town as a goal to ensure the safety of employees.

B. Board of Selectmen Liaison Policy – *first reading*

Chairman LaMantia asked the Board to review and provide comments on the policy and he distributed the committee liaison list.

ADJOURNMENT

Mr. McManus moved to adjourn at 9:57 p.m. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary

Sandy Robinson

From: James Merriam [jmerriam@town.harwich.ma.us]
ent: Tuesday, May 07, 2013 3:23 PM
To: 'Sandy Robinson'
Subject: FW: Eligibility of Finance Committee Members to Serve on Middle School Re-use Committee

From: John Giorgio [mailto:JGiorgio@k-plaw.com]
Sent: Sunday, May 05, 2013 1:13 PM
To: James Merriam
Subject: Eligibility of Finance Committee Members to Serve on Middle School Re-use Committee

Dear Jim;

You have asked me to provide an opinion whether a member of the Finance Committee is eligible to serve as a member of the Middle School Re-use Committee. I am assuming for purposes of this opinion that the Committee was formed by the Board of Selectmen for the purpose of studying the options for the re-use of the Middle School and that the charge of the Committee is to make recommendations for action to the Board of Selectmen.

The appointment of members of the Finance Committee to the Re-use Committee is being questioned in light of the provisions of Section 9-1-4 of the Charter which states that: "No member of the Finance Committee shall hold any other elected or appointed office, except for membership in the Capital Outlay Committee." Accordingly, whether this provision prohibits members of the Finance Committee from serving on the Re-use Committee depends on whether the Committee is deemed an "office" within the meaning of the General Laws and the Town Charter. Furthermore, it is quite relevant, in answering this question, to evaluate how this provision of the Charter has been interpreted and applied in the past.

Although the term "office" is not defined in the Town Charter, the term was considered by the Supreme Judicial Court in the decision of Attorney General v. Tillinghast, 203 Mass. 539 (1909). In Tillinghast, the SJC cited several criteria which may be used in making the distinction between public "officers" and "employees." The primary factor is that an "officer" generally exercises authority or duties entrusted to him or her by the Commonwealth. This certainly includes, in my opinion, a Town office that is created by statute, charter or special act of the General Court. If a position is created by Town by-law and given duties and authority, in my opinion, this would also suggest that the person holding that position is an "officer" rather than an employee. By contrast, members of a multiple member board that is created by the Board of Selectmen to perform an advisory function with no authority under the charter or the by-laws would not generally be considered "officers."

In this instance, it is my opinion that the Re-use Committee would not likely be deemed an "office" of the Town because it is only an advisory committee to the Board of Selectmen. There is no question that the Board of Selectman is the chief policy making board in Town (see Section 3.2.3 of the Charter) and that it has the authority to create committees for the purpose of making recommendations to the Board with respect to matters within the Board's jurisdiction under the Charter (see Section 3.6.2) In my opinion, this would include any recommendations that the Board intends to make to Town Meeting. (See Section 3-2-3 of the Charter). The re-use of a Town building is certainly a policy matter within the Board of Selectmen's official duties under the Town Charter and any re-use of the building will ultimately likely require a town meeting vote. However, in my opinion, any committee appointed by the Board of Selectmen to make recommendations as to the re-use of the Middle School Building is only advisory in nature and, based on the Tillinghast case cited above, would not likely be deemed a town office. Please note that Section Charter 9-1-4 exempts the Capital Outlay Committee from the prohibition of Finance Committee members' serving in "any other elected or appointed town office." I would note that the Capital Outlay Committee is a committee created under Section 9-5-1 of the Town Charter. Accordingly, the express exemption of the Capital Outlay Committee to the prohibition of Finance

Committee members' serving in other town offices is consistent with this opinion since the Capital Outlay Committee is a committee created by Charter and thus would be deemed a town office under Tillinghast.

You have asked whether converting the Committee to a task force would avoid a Charter violation. This question may be moot, however, in light of my opinion that Finance Committee members are not precluded by the Charter from serving on the Re-use Committee. Nevertheless, It is not clear from your question what the difference would be between a committee and a task force. Furthermore, if the official duties of a "task force" remained the same; i.e., studying re-use possibilities and making a recommendation to the Board of Selectmen, I would see no practical difference between a committee and a task force.

Finally, you have asked whether appointment of the Re-use Committee by the Town Administrator rather than the Board of Selectmen would provide a means for a member of the Finance Committee to serve on the Re-use Committee. Again, I do not believe that a change in the appointing authority would render a different result. As long as the ultimate charge for the committee is limited to making recommendations to the Board of Selectmen, such a committee would not constitute a town office for the reasons stated in this opinion.

Please be advised that by rendering this opinion, I have made no judgment as to the ultimate policy question whether members of the Finance Committee should serve on the Re-use Committee. That is a policy issue for the Board of Selectmen to decide. Furthermore, if the Town has historically interpreted the prohibition in section 9-1-4 of the Town Charter to generally prohibit members of the Finance Committee from serving even on advisory committees, then, in my opinion, the Board of Selectmen may be guided by that past practice in determining whether to appoint members of the Finance Committee to the Re-use Committee. In this regard, it would be useful to examine the legislative history of the Charter to determine why the drafters of the Charter used the term "office" rather than "committee" in section 9-1-4 and whether that distinction was intended.

If you need anything further, please do not hesitate to contact me.

John

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Harwich Town Administrator Search Committee

Final Report

June 17, 2013

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I. Introduction

With the announcement of Jim Merriam's retirement from the position of Harwich Town Administrator the Board of Selectmen (BOS) initiated an effort to find a suitable replacement. In March, 2013 a sub-committee of the BOS selected seven (7) individuals from a pool of townspeople to serve on a 'Search Committee.' This report will share the Committee's given charter, membership, search approach, process and the names of those finalist candidates recommended for final review by the Board.

II. Committee Charter

The Committee was charged with developing a list of qualified candidates for the Harwich Town Administrator (TA) position, and bringing that list of candidates to the BOS for final review and consideration. (As such, the Committee has performed a 'screening' function on behalf of the Board.)

III. Committee Membership

As stated earlier a sub-committee of the BOS selected the members of the Search Committee. Following interviews with a number of individuals who volunteered to serve on the Committee the following were chosen:

Leo Cakounes
Shirley Gomes
Christina Joyce
Tom Johnson
Pam Parmakian
Frank Sampson
John Wheeler

The above individuals represent a diverse set of stakeholder groups in Harwich, including taxpayers, non-profits, the business community, local and regional government and education. Some of the Committee members also brought previous direct experience in the search process to the Committee's efforts.

At the initial organization meeting on March 21 the following positions were filled by Committee nomination and vote:

John Wheeler - Chair
Tom Johnson - Vice-Chair
Christina Joyce - Clerk

IV. Search Committee Guidelines

To insure a systematic and comprehensive search process the following guidelines were adopted by the Committee:

1. All work will be completed according to the agreed upon process and will abide by Massachusetts Open Meeting Law.
2. Candidates may come from either the Public or Private sector.
3. All candidates will be evaluated through a combination of the Desirable Town Administrator Competencies document (created by MMA), additional MMA input, and other relevant attributes deemed important by the Committee, with a focus on a candidate's demonstrated experience in each critical area.
4. The Committee will work closely with MMA Consultants (the vendor chosen by the BOS to generate candidates for the Committee's consideration) and leverage MMA knowledge of the candidates wherever possible
5. The confidentiality of all candidate personal information will be maintained throughout the search process. The identification of all finalists will be made public when presented to the BOS.
6. If, through the screening process, a sufficient number of 'qualified' candidates is not found by a certain date the search process will continue until that number is reached.
7. As directed by the BOS details regarding the search process were kept confidential.

V. Desirable Town Administrator Competencies

As stated above the Desirable Administrator Competencies document (developed by MMA Consultants) was used to frame the search for Town Administrator candidates. That document, developed from a comprehensive set of interviews, the Town Charter and other background research completed by MMA, detailed a number of competencies deemed critical for the Harwich Town Administrator position. They are:

1. Education, Training and Direct Experience
2. Strong Leadership skills
3. Excellent Human Relations skills and the ability to form strong relationships with a variety of stakeholder groups (both inside and outside town government). Among them are:
 - a. Town employees
 - b. Board of Selectmen
 - c. Taxpayers (Resident and Non-Resident)
 - d. Business Community
 - e. Elected officials at the regional and Commonwealth level
 - f. Other Town Administrators
4. Strategic Thinking, and the ability to align tactical efforts with a long-range town vision
5. Creative and Innovative thinking
6. Excellent oral and written communications skills

7. Demonstrated management skills in the following areas:
 - a. Fiscal management (short, long-term)
 - b. Complex organization management
 - c. Delegation (with follow up as appropriate)
 - d. Engagement with department heads in a team-oriented manner
 - e. Customer Service orientation
 - f. Communication of Town policies and plans with all stakeholder groups
 - g. Applied Commonwealth, Federal and regional policies to Town operations

VI. Search Process

The Committee's portion of the search process began with an orientation meeting held on March 21. That meeting included a presentation by Town Counsel covering all aspects of Open Meeting and Public Records Law, an overview of the search process by Mark Morse from MMA and the election of Committee officers. Further, from guidance received by the BOS and Committee discussion a target number of three (3) was set for the minimum number of finalists to be submitted to the BOS was agreed to.

From a comprehensive search consisting of advertisement placement and outreach efforts by MMA a total of forty-seven (47) resumes were received by May 9, the cutoff date. The resumes came from fourteen (14) states, including Florida, Texas and the state of Washington. To insure confidentiality all resumes were held by the Town Treasurer's office, with a sign-out/sign-in process implemented for each Committee member.

Matching each submitter's background with the Desirable Candidate Competencies document and coupled with referential checks MMA identified seven (7) individuals as "strong candidates." Through May 16 Committee members reviewed all forty-seven (47) resumes to determine whether other individuals might warrant further review.

On May 17 the Committee completed an exhaustive review of all of the "strong candidates." MMA provided additional feedback on several additional individuals identified by the Committee, helping the Committee understand why they did not make the "strong candidate" list. From that review five (5) individuals were chosen for face-to-face interviews. MMA coordinated the scheduling of those interviews for the Committee.

In preparation for the interviews a series of questions (primary and follow up) focused on desired competencies was developed. It was agreed that all candidates would be asked the same questions, allowing Committee members to better evaluate each candidate on a similar basis.

On June 5 and 6 all face-to-face interviews were completed in the Executive Conference Room at the Harwich Information Center. Each interview lasted sixty (60) minutes. At the completion of the interviews an extensive discussion of each candidate's qualifications was undertaken.

From that discussion the Committee reached unanimous agreement on which candidates would be presented to the BOS for final review.

VII. Finalist Candidates

From the initial list of forty-seven (47) resumes three (3) individuals were deemed to have competencies necessary to perform the Town Administrator position successfully. Those individuals are:

1. Neal J. Beets (currently the Town Manager in Windham, Connecticut)
2. Timothy J. King (currently the Assistant Town Administrator in Wellfleet, Massachusetts)
3. Bonnie Therrien (Until recently, the Interim Town Manager in North Branford, Connecticut)

Additional information on each finalist can be found in Appendix 1.

VIII. Summary

In response to Jim Merriam's December 17, 2012 retirement announcement the BOS began the development of a search committee for a replacement. The Committee, comprised of a diverse group of seven (7) Harwich residents, worked with MMA Consulting to generate a list of at least three (3) qualified candidates for the Town Administrator position. The Committee's efforts were guided by a systematic review process, consisting of a predefined set of desirable competencies (developed by MMA), additional candidate input from MMA, resume reviews and face-to-face interviews. From a total forty-seven (47) candidates received from fourteen (14) states the Committee identified seven (7) individuals appearing to have competencies required for the TA position. From that list the Committee interviewed five (5) 'semi-finalists.'

Based on the above review, feedback and extended discussion by Committee members three (3) individuals are being forwarded to the BOS for final consideration. Recommendation of these three (3) candidates to the BOS is based on a comprehensive review of each candidate's competencies, background information and other information uncovered by the Committee. Although the Committee is confident that the candidates being submitted to the BOS are highly qualified The Committee believes that the final decision on the next TA should include any/all additional reference information and input that can be obtained on each candidate.

Appendix 1. Biographies of Harwich Town Administrator Finalist Candidates

NEAL J. BEETS

Mr. Beets has more than 30 years of professional experience: 12 years as a municipal manager and more than 20 years of experience as an attorney, much of it as a municipal legal counsel. He is currently the Town Manager in Windham, Connecticut where he reports to an 11-member Town Council. He is the first Town Manager in Windham and has been in Windham since October 2009. Prior to being employed in Windham, Mr. Beets was the City Manager of Federal Way, Washington for approximately three years and the City Manager of Roseville, Minnesota for five years. He was the City Attorney of Mesa, Arizona for 14 years before becoming a municipal manager.

Mr. Beets holds a Bachelor of Arts Degree from the University of Virginia and a Juris Doctor Degree from Arizona State University.

TIMOTHY J. KING

Mr. King has more than 30 years of professional experience, with 28 years as a City Manager, Town Manager, Town Administrator, and Assistant Town Manager. He has worked as a municipal management professional in Maine, Massachusetts, and Rhode Island. He has eight years of experience as the CEO of a non-profit corporation providing programs to residents of two Maine counties (Hancock and Washington). He is currently the Assistant Town Administrator in Wellfleet, where he has been employed since 2011. During his career, he served as the City Manager of Ellsworth, Maine for 13 years, Town Manager of Westerly, Rhode Island for approximately two years, and Town Administrator of Auburn, Massachusetts for approximately six years.

Mr. King holds a Bachelor of Arts Degree from the University of Maine and a Master of Public Administration Degree from Pennsylvania State University.

BONNIE THERRIEN

Ms. Therrien has approximately 30 years of municipal management experience. She has been a Town Manager in Hebron, Wethersfield, and Berlin, Connecticut; an Assistant City Manager in Jacksonville, North Carolina; a Deputy City Manager in Hartford, Connecticut; and an Assistant Town Manager in Enfield, Connecticut. She was the Town Manager in Hebron for approximately two years, Town Manager in Wethersfield for approximately six years, and Town Manager in Berlin for approximately seven years. She also served as an interim administrator in Wrentham, Massachusetts in the early 1990s and has been a consultant. Ms. Therrien recently completed an eight-month assignment as interim Town Manager in North Branford, Connecticut. Previous to the North Branford assignment, she worked as a consultant to the Capital Region Council of Governments.

Ms. Therrien holds a Bachelor of Arts Degree, a Master of Arts Degree in criminal justice, and a Master of Science Degree in Public Administration from American International College.



Harwich Town Administrator Search Committee Report

June 17, 2013

Harwich Board of Selectmen Meeting

Town Hall, Harwich, MA

Committee Members

- Leo Cakounes
- Shirley Gomes
- Christina Joyce (Clerk)
- Tom Johnson (Vice-Chair)
- Pam Parmakian
- Frank Sampson
- John Wheeler (Chair)



Committee Charge

- To develop a list of qualified candidates for the Harwich Town Administrator (TA) position for final consideration/selection by the Board of Selectmen.



Search Committee Guidelines

- Complete work according to an agreed upon process
- Work with MMA Consultants to generate a list of potential candidates for TA position
- Candidates from Public/Private Sectors
- Leverage MMA candidate knowledge through review process
- Maintain Candidate confidentiality
- Continue search process until sufficient candidates
- Minimal discussion of process/findings with outside parties.



Desirable TA Competencies

- Education, Training, Experience
- Leadership
- Human Relations
- Strategic Thinking
- Ability to form Relationships
- Creativity and Innovation
- Communications Skills



Desirable TA Competencies(cont'd)

- Demonstrated Management Skills
 - Complex organization management
 - Strong fiscal management (short, long term)
 - Delegation (with follow up)
 - Engaged in ongoing communication with dept heads
 - Bargaining
 - Customer Service orientation
 - Communicated Town policies and plans
 - Applied State, Federal and regional policies to Town operations



Search Process

- Organization Meeting (March 21)
- Develop Desirable Candidate Characteristics Document (MIMA)
- Develop/publish vacancy notices
- Receive resumes (47) (May 9)
- Select semi-finalists for interviews (7) (May 17)
- Semi-finalist Interviews deliberations (5) (June 5-6)
- Finalist selection and notification (June 9)
- Finalist submission to BOS (June 17)



Town Administrator Position Finalists

- Finalist 1
- Finalist 2
- Finalist 3



Questions

