

Board of Selectmen Minutes

01/03/2012

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
TUESDAY, JANUARY 3, 2012
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, Assistant Town Administrator Nan Balmer, Tom Leach, David Spitz, Foster Banford, Don Howell, Gregg Winston, David Purdy, Eileen Brady, Joe Curran, Deb Curran, Ruth Norton, Thomas O'Keefe, Rosemary O'Keefe, Elizabeth Bridgewater, Joann Rys, Pam Parmakian, John McShane, Bob Murray, Dean Knight, and others.

MEETING CALLED TO ORDER at 7:00 p.m. by Chairman Ballantine.

PUBLIC COMMENT/ANNOUNCEMENTS

David Purdy of 30 Bank Street expressed concerns related to the accident near the Bank Street beach parking lot last Wednesday afternoon when a teenager lost control of his pick up truck hitting a telephone pole and proceeding onto the property at 26 Bank Street. He stated that according to the police the driver was not cited in spite of numerous traffic violations and damage to property. He stressed that the driver should be held accountable and he was bothered that this matter is to be handled privately by his parents. He commented that the driver's mother is a dispatcher in an unnamed town and he questioned what message this sends to the teen. Mr. Purdy added that this is tarnishing the image of the Police Department in our Town as people want to know why there was no citation. He noted another concern is the bigger issue of how lower Bank Street and Bank Street beach parking lot are being used and abused. He stated that people travel unbelievably fast, there is screeching of tires, kids on skateboards, smashing of bottles, and loud parties. He noted that innkeepers are losing clients and residents are losing sleep. He further noted that some of the neighbors have suffered property damage and retaliation for calls to the police. He stated that they have complained to different Town departments and are told that nothing can be done. He stressed that something must be done to prevent the behavior going on down there.

Joe Curran, owner of Inn on the Beach, reiterated Mr. Purdy's remarks and added that he

has witnessed drug deals there. He stated that he has called the police at least a dozen times.

Chairman Ballantine agreed to put this on the agenda and have the Police Chief weigh in next week. Mr. Hughes suggested having a plot plan of the area available at the meeting. Mr. LaMantia asked the Chief to prepare a document for the packet. Mr. McManus stated that they should invite the Traffic Safety Committee as well as Mr. Hooper and Mr. Nickerson to comment on some of the physical road issues. Ms. Cebula stated that the report should include why this young man did not receive a citation and Chief Mason reminded the Board that this involves a juvenile so he is limited as to what he can say in the report but would do his best.

CONSENT AGENDA

- Minutes
- December 5, 2011 – Executive Session
- December 12, 2011 – Executive Session
- Vote to approve Police Chief's recommendation to appoint Robert Brackett to Police Sergeant effective January 8, 2012 at Sergeant Step 1
- Vote to appoint Carolyn Carey as representative to Design Selection Committee for RFP for Community Center lower level

Mr. McManus moved approval of the Consent Agenda. Ms. Cebula seconded the motion. Mr. Hughes asked that the minutes of December 5, 2011 be held as he has some comments on them and Mr. McManus agreed. The motion carried by a unanimous vote.

PUBLIC HEARINGS/PRESENTATIONS *(no earlier than 7:00 P.M.)*

- American Dream update – *Bob Murray*

Mr. Murray stated that this is a typical project in which good and not so good things happen. He stated that one of the not so good things that happened with this project is that on the day of the construction financing closing it was discovered that one of the houses had a problem with the title. He stated that it appears from what the lawyers are telling us is that there are two ways to deal with that and one of them could take 6 to 7 months and the other 6 months to a year. He noted that they haven't got a legal opinion as to whether that knocks out the building permit but if they can't build under the old permit, they haven't got the money to finish. He added that Mr. McShane thinks that 7 Old Campground Road should be finished by February 24, Haromar Heath by March 1 and Sisson Road by March 2.

- E-permitting – *presentation by Patty Daley of Cape Cod Commission and vote*
Patty Daley outlined the statewide Community Innovation Challenge Grant being offered

and noted that they hope to apply for \$500,000 to institute electronic permitting, licensing and inspection services across the Cape. Edson Senteio provided the attached Power Point presentation and took questions and comments from the Board. After discussion, Mr. Hughes moved to support this Community Innovation Challenge Grant local support document with the wording saying “The Cape and Island Towns, in conjunction with the Cape Cod Commission, have joined together...” and authorize the Chairman to sign the document on behalf of the Town of Harwich and the Board of Selectmen. Mr. LaMantia seconded the motion. The motion carried by a 4-0-1 vote with Mr. McManus abstaining from the vote.

- Public Meeting – Policy on Appointments to Town Board, Committees & Commissions

Mr. Hughes read the hearing notice into record and Chairman Ballantine opened the hearing. Mr. McManus outlined the policy which he and Ms. Cebula drew up. Chairman Ballantine noted comments were received by Paul Erickson. Don Howell stated that they are getting into removing people at will during the course of their appointment period which is not anywhere in the Charter. He also noted that this does not talk about appointees having any obligation to be trained in the Open Meeting Law or for regulatory boards. He said the Board may want to reconsider regulating behavior and noted that the Charter gives them the authority not to reappoint or to remove for poor attendance. Mr. Hughes recommended having Town Counsel look at the policy. Ms. Cebula noted that not all of the Board’s policies are related to a section in the Charter but she would have to think about the concept Mr. Howell is presenting. Eileen Brady suggested that the interview process be more detailed and selective.

Mr. Hughes and Chairman Ballantine stated that they had editorial comments to submit and Chairman Ballantine agreed to consider remarks made tonight and bring this back in 3 weeks.

OLD BUSINESS

- Procedure for Remote Participation

Mr. Merriam outlined the procedure. Mr. LaMantia stated that the permissible reasons for remote participation should be listed in the procedure. Mr. McManus noted that the Attorney General’s regulations should be attached and Ms. Cebula pointed out that the Town Clerk does not need to be notified and this should be changed. Mr. Hughes stated that the procedure should specify that the Chair shall identify all remote participants at the start of the meeting and to assure accurate voting the Chair shall specifically ask the person on phone what his or her vote is. He added that it should state that you can’t use remote participation to satisfy a quorum and also remote participation should be limited to no more than 2 members.

- General Fee Waiver Policy for Non-Profit Organizations – *second reading*
Mr. Hughes read the hearing notice into record and Ms. Balmer outlined the changes. Ms. Cebula moved to adopt the General Fee Waiver Policy as presented. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

NEW BUSINESS

- Request by Community Development Partnership for \$30,000 from the affordable Housing Fund to launch “The Real Return Initiative Program”
Elizabeth Bridgewater explained the program and noted that the Housing Authority and Housing Committee voted unanimously to support their request.

After discussion, Mr. McManus moved that we authorize the expenditure of \$30,000 from the Affordable Housing Fund to the Community Development Partnership for “The Real Return Initiative Program.” Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

- Vote to authorize Chairman to sign 2012 Downtown Technical Assistance Grant application
Mr. Spitz outlined his memo (see attached). Mr. McManus moved to authorize the Chair to sign the grant application submittal for DHCD. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

- Vote to appoint retiree representative to Insurance Advisory Committee
Mr. McManus moved to appoint Dorothy Parkhurst to the Insurance Advisory Committee. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

- Request by Town of Erving to support House Bill No. 00200
Mr. McManus stated that this requires more research. Mr. Hughes commented that they are on the right track but this needs some more work. Chairman Ballantine stated to Mr. Merriam that at the very least they need to see the legislation. He stated that they would bring this item back.

- Artificial reef - *discussion*
Brad Chase of the Conservation Commission presented the attached Power Point presentation and he and Mr. Leach took questions and comments from the Board.

Mr. McManus moved to vote support for the project of an artificial reef and ask the

Administrative Officer to assign personnel to begin the process of preparing a Notice of Intent application to the Conservation Commission. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam delivered the following report to the Board:

American Capital Energy Project update for all CVEC Cape landfill projects
See attached.

Mark Dykers from DEP emailed me this morning for some info on the fence at the landfill and said he is "just about finished with the permit letter."~ I suspect that approval is eminent.~ Link

Solar panels / Article 97 (in response to my inquiry re: legislation)

I'm not sure how much can be accomplished with legislation, since Article 97 is a provision of the Massachusetts Constitution. ~One possibility may be a re-interpretation of Article 97 by the current Attorney General. ~Since 1973, reliance for the interpretation of Article 97 has been on the Opinion of the Attorney General issued by then AG Robert Quinn on June 6, 1973. ~The courts, of course, interpret the Constitution when a case raising constitutional issues comes before the court. ~The constitutional amendment process is a possibility also, of course, but is deliberately made difficult and time-consuming.

Jeanne McKnight

I think seeking legislative approval for the particular change in use and/or lease for each site under Article 97 is the only reasonably quick and simple means of dealing with Article 97 and if EOEEA approval is obtained it should go smoothly. In contrast, I'm not sure what can be accomplished with a special act because the Constitution cannot be so easily amended.
Jeanne

I did not mention in my letter to you of December 13, 2011 that under G.L. c.40, §15B, Massachusetts Department of Environmental Protection approval will also be required for the CVEC solar installation on land the Town acquired for water supply protection (Orleans Road Parcel) and for expansion of the water shed and water supply purposes (Chatham Road Parcel), in addition to legislative approval under Article 97 and Town Meeting "transfer" votes. ~Attached is the Policy adopted by DEP's Bureau of Resource Protection/Drinking Water Program, dated September 1, 2011, setting forth the criteria

DEP will use in determining whether to approve a proposed solar or wind energy installation.~ Although the Policy seems to deal only with land within Zone I of a well, G.L. c.40, §15B, which DEP quotes in part on page 2 of its policy, and DEP's regulation at 310 CMR 22.24, also quoted on pages 1-2, are broader and require DEP approval for such installations on any land held for water supply purposes (even if the land is outside Zone I).~ This DEP approval process could be started right away, so that by the time the Article 97 bill is forwarded to EOEEA/DEP for review and recommendation (as the legislature typically does before approving such bills) DEP will already have approved the installations and have a file on the project, so that legislative approval will be expedited.

Jeanne

Advice from MMA's Tom Philbin

A constitutional amendment to change article 97, I assume would run headlong into opposition from Sierra club/ELM and may if fact may boost the Public Land Protection act legislation being proposed. Instead I think it best that the communities do it on a case by case basis getting a home rule bill for each project with support from EOEEA.~ I don't know if the AG would touch it.

Following the request from CVEC to pin down which CVEC PV initiative Round II water properties will be subject to Article 97, a great deal of review around Article 97 was made by various town counselors. This week Celia Riechel from the Executive Office of Energy and Environmental Affairs weighed in as well, making the following statement: "Our position remains that solar panels are not a permissible use on Article 97 lands, and does constitute a change in use." With this statement in mind, it's the consensus of counsel and CVEC administration that the process of installing PV on Article 97 lands will require Town Meeting and Article 97 disposition of the lands through legislative approval.

CVEC believes the legislative process for Article 97 disposition will not be as onerous as it has been in the past due to various state agencies' desires to see the lands used for renewable energy. CVEC also foresees that the bundling of the properties will aid the legislative process. Nonetheless the water properties under Article 97 protection as stated in their deed/title will require the legislative process.

To that end, CVEC again requests that your town counsel verify freedom from Article 97 protection for any of the water properties identified in the attachments to this e-mail. Once verified as free from Article 97 protection, CVEC will keep these unprotected water lands on "List A", signaling the vendors that these installations can be streamlined, not requiring legislative approval before the end of the legislative session in July.

If any of your water properties listed in the attachments are clear of Article 97 protection, do not hesitate to let CVEC know immediately, as this will speed and protect those sites for PV installation.

Liz Argo

Retiree Rep Insurance Advisory Committee

We are in receipt of a letter from Ralph White, President of the Retired State County and Municipal Employees Association appointing Dolly Parkhurst to the Public Employee Committee (PEC) . In order to keep continuity between the IAC and PEC, I would recommend that you appoint Dolly to the IAC as well.

MEGA Assessment

I received a letter dated Dec. 1st from Mega Property and Casualty Group of Wakefield, who provided prior coverage to the Town. They are seeking appropriations of \$21,111 in FY 13, \$21,111 for FY 14 and \$23,925 for FY 15 due to unforeseen claim development during the period of FY 04-06. Town Counsel Michele Randazzo has recommended budgeting for this amount. Attorney Randazzo questions their claim of dispersing \$5 million in dividends as well as seeking copies of signed agreements. I will include in my FY 13 budget recommendation.

Capital Plan

Chairman Pete Watson has filed the Capital Outlay Committee's annual report. (see Attached) The joint public hearing is scheduled for January 9th.

Re-org

As per your request, please find enclosed a copy of the current and proposed Organization Chart. I have an invite to meet with the Water Commission on January 24th.

Allen Harbor Dredging update

We have verbal approval from the Corps to move ahead with all phases of testing (elutriates, suspended phase toxicity tests, and bioaccumulation tests).~ The 10-day whole sediment exposures (with two species) were favorable for the harbor sediments (toxicity was not detected).

~

John

We have received written (e-mail) approval from Phill Nimeskern (ACE-NED) to proceed with all testing (The Allen Harbor sediments had high survival for both species tested in the 10-day tests).~ We anticipated this and we have~already sent the elutriate chemistry samples to Alpha Analytical, the suspended phase toxicity tests are running, one of the bioaccumulation tests (polychaete worms) was started yesterday and the other will be started today (clams) - so we will have everything up and running through the

holidays.

~

Harwichport Pizza

Owner Alex Sotiri met with me to express his concerns re: two accidents which have occurred at his business since he opened at this new location. I encouraged him to write to you expressing his concern and to seek assistance in asking Mass DOT to review safety improvements at intersection /curve layout.

Old burial Ground (see attached plan)

I met with John Morgan, who is researching Town owned Lot 7 on Bank St., just south of Long Road. The parcel is a town owned old burial ground with a note on the plan that it cannot be sold without the approval of the Planning Board and Cemetery Commission. Robbin Kelly will use the ground penetrating machine to verify the locations and Boy Scouts have an Eagle project to install split rail fencing around perimeter.

SELECTMEN'S REPORT

Mr. McManus moved to appoint Gerry Loftus as representative to the Barnstable County Home Consortium. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

ADJOURNMENT

Ms. Cebula moved to adjourn at 9:38 p.m. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Respectfully Submitted,

Ann Steidel
Recording Secretary