

# **Board of Selectmen Minutes**

## **01/07/2013**

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

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

**OTHERS PRESENT:** Town Administrator James Merriam, David Ryan, Ginny Hewitt, Dana DeCosta, Joanne Brown, and others.

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

### **WEEKLY BRIEFING**

Mr. McManus called for a moment of silence on the passing of Harwich High School graduate Tony Spaulding.

### **CONSENT AGENDA**

- Approve Minutes –
  - December 10, 2012 Regular Meeting
  - December 17, 2012 Regular Meeting
  - December 17, 2012 Executive Session
- B. Vote to approve application for 4<sup>th</sup> Annual Harwich 5K Road Race for June 22, 2013
- C. Vote to approve application for Harvest Half Marathon Road Race for October 6, 2013
- D. Vote to approve application for Cape Cod Athletic Club Road Race for January 20, 2013
- E. Vote to approve application for renewal of Common Victualler License for Alecsie's House of Pizza
- F. Vote to approve application for renewal of Common Victualler License for Andale Café
- G. Vote to appoint Al Atkinson as a full member of the Planning Board
- H. Vote to approve request for assistance from the Caleb Chase Fund as recommended

- I. Vote to accept resignation of Robert Neese from the Real Estate & Open Space Committee effective immediately
- J. Vote to accept gift of shed from Lise Tribel per recommendation of Highway Director

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

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

- Town Administrator to submit the FY 2014 Budget to the Selectmen  
Mr. Ryan and Mr. Merriam provided a Power Point presentation of the FY 2014 budget to the Board. They took questions and comments from the Board. The Board requested that Mr. Merriam contact a representative from CVEC to come in and provide an update. Ms. Brown stressed the need for a facilities manager at the Library. (Budget document is on file in the Selectmen's Office.)

#### **NEW BUSINESS**

- Create a gift account and accept gift for Bay View Road engineering expert –  
*discussion & possible vote*

At Mr. Merriam's and Mr. Ford's recommendation, Mr. Hughes made the following motion:

I move that the Board of Selectmen, pursuant to the applicable provisions of M.G.L. c. 44, Section 53A, accept funds from the Friends of Harwich Beaches and establish a gift account to be known as the Friends of Harwich Beaches account, which funds shall be under the jurisdiction and control of the Board of Selectmen and may be expended, at the discretion of the Board of Selectmen, for the purposes of conducting an engineering study, including expert witness services, relating to the history, potential causes and necessity for navigation of the littoral sand transport, also known as accretion, of the beach area extending eastward from Bank Street Beach to the Wychmere Harbor jetty, and for such other purposes related to this beach area as the Board may direct.

Mr. McManus seconded the motion. Mr. LaMantia stated that he is not sure we should get in the middle of this and we should let courts decide. He commented that he is uncomfortable with accepting gifts. Mr. McManus said he might agree if it was purely a lawsuit involving two individual parties, however there is a claim against an area of beach that the Town claims is our beach that has been brought by one of the property owners in this area, and the result of this information may support and aid the Town in our legal battle in this area. He stated that although it is a lawsuit between private individuals, our

interests are aligned with one side with that lawsuit so he believes it is legitimate for the Town to accept help from one of the parties. Mr. Merriam stated that he sees this as a public access interest. The motion carried by a 3-1-0 vote with Mr. LaMantia in opposition.

Mr. Hughes moved to accept the \$9,930 gift to be deposited in the newly created gift account of the Friends of Harwich Beaches. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

- Letter to Comcast requesting direct payment to C3TV – *discussion & possible vote*

Mr. McManus moved that we send the letter to Comcast requesting that they directly make their payment to C3TV. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

- Article on moratorium on medical marijuana clinics – *discussion & possible vote*

Chairwoman Cebula noted that no regulations have come out yet on this issue and it was suggested by Counsel John Giorgio that it is legitimate to place a moratorium on it while waiting for regulations to come out to provide time for towns to decide what they are going to with regard to zoning issues etc. She added that Mr. Giorgio has provided the warrant article wording that is being used in other towns. The Board agreed that it would be advantageous to take this opportunity to think this issue through. Mr. Hughes moved to include in the warrant the as drafted medical marijuana moratorium warrant article. 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:

### Allen Harbor Time of Year extension request to DEP

Dear Mr. Chin,

Enclosed please find letter requesting time of year extension with attachments for your review.~ We would appreciate your expediting the decision as best as you can.~

We really appreciate all your efforts for helping us through this dredging project.

Jim Merriam,

Harwich Town Administrator

Rep Peake has contacted DMF on our application.

I spoke with DMF and told them this is important to me. I hope I got the point across!

Sarah

Attached are copies of the two Water Quality Cert Amendments permitting the use of channel dredge material for berms at the beach parking lots and allowing for disposal of all the dewatered material at the town disposal site. Please retain these for your records.

If you have any questions, please contact our office.

Sincerely,

Amy Lipkind

Coastal Engineering Company, Inc.

A separate application to DEP was filed for the County Dredge work beyond the January 15<sup>th</sup> deadline. (see attached application and Wayne's projected schedule of 17.5 days)

RE: Timeline for Allen Harbor!

I picked up the PTO yesterday in Exeter, NH and found out the drive ring for the M/E was between Chelmsford and Manchester via UPS. I continued on to UPS and found they do not know if it is there until unloaded and checked in! It was sent ground UPS and they are not unloading trucks will not deliver until Wednesday. I plan to pick it up Wednesday. That will be when we can finish dredge repairs!

I do not see enough time for us to do this project without relief from the TOY

restriction!

Attached is the work that I see required by the county and others with timeline to do 8000 CY's of basin dredging at Allen Harbor!  
Wayne

#### DAM, SEAWALL REPAIR LOAN

##### PROGRAM APPROVED: ~

The House and Senate on Monday gave final approval to legislation creating a loan and grant program to facilitate the repair or removal of unneeded dams and help finance repairs to structures aimed at controlling coastal flooding. ~Supporters of the bill, which was pushed in the House by Rep. James Cantwell and in the Senate by Sen. Marc Pacheco, said it would help pay for repairs to seawalls, revetments and jetties, as well as dams. ~The program does not have a recurring funding source but supporters said it will start with \$17 million in funds paid years ago to the state Treasury by about eight cities and towns that repaid drinking water project loans. ~The monies have sat in a trust because they were not authorized to be used for other purposes, according to Steve Long of the Nature Conservancy, who joined Mass Audubon officials in praising the passage of the bill, one of many pieces of legislation to pick up momentum in the final days of the 2011-2012 legislative session. ~Long credited the bill's passage to support from a coalition of municipalities, engineers and environmental and conservation groups. ~In a statement, ~Boston Society of Civil Engineers President Peter Richardson said, "With nearly 3,000 dams in Massachusetts, of which many are well beyond their design life and are no longer serving their original intended purpose, this legislation will help

address the safety and environmental concerns associated with older dams that are in need of repair. The Bill also has provisions to address seawalls, which are critical to protecting properties in coastal and tidal areas. The civil engineering community applauds the Senate and House for working together to help make our infrastructure safer." 4:03 p.m.  
Megan Devine

CCMHG Members: (we have copies on file)

I'm attaching the FY12 Audited Financial Statements for the CCMHG.~ Please distribute to your management and elected Boards.  
Carol

Garden Club

John Rendon sent the Garden Club a thank you letter (see attached) for planting at Saquatucket Harbor.

Harwich Community Center

Carolyn -  
After speaking with my partners, we are going to pass on this project.~ I think it's a little too far away from our home base in Brookline.~ I wish you luck with this project and if you should have any questions I would be happy to be a resource for you in the future.  
Thanks again for your consideration.  
Rob Shapiro, CEO  
BodyScapes Fitness

Medical Marijuana

Attached is a legal opinion and draft by-law for a temporary moratorium.

### Chamber of Commerce

Jeremy indicated that their Board voted to submit an article seeking \$35,000.

He also noted that HJT will be submitting payment for past electrical bills at the Old Rec building and will start paying for heat, with the expectation that storm windows will be installed shortly.

### Harwich Home Rule petition- Health Insurance for Elected Officials.

We have to refile the home rule. It got stuck in Healthcare Financing

Rep. Sarah Peake

### LED streetlight installation update

Hello Participants (and/or future Participants) in the Municipal LED Streetlight Demo Project: Happy New Year and this is to provide you an update on the project.

Fixture delivery is on track to be in our vendor, RISE Engineering Cape Cod, office starting this week for part of the order with all fixtures expected in by the end of next week (by Friday, January 11);

The fixture specs are available at <http://www.cree.com/lighting/products/outdoor/streetlights/ledway-streetlights> and the primary models that will be installed are the STR-LWY-3M-HT and the STR-LWY-4M-HT;

Installations are planned to begin on Monday, January 14 and, barring any weather complications at this time of year, installations are expected to be completed by Friday, February 15;

Beginning next week, January 7, Ralph Carroccio from RISE Engineering, will be contacting Town (and as applicable Fire District) leads, to confirm installation schedule in your community, review any req'd police detail, and will confirm disposition of old fixtures (note: if the Town does not want to keep or dispose of the fixtures, RISE Engineering will take them away and recycle/dispose of properly);

Please check out the following project webpage <http://www.capelightcompact.org/ee/commercial-industrial-programs/ledstreetlights/> that now includes a brief project overview and projected estimated savings by Participant when the full LED retrofit project is completed. This page will be updated as installations begin and will include the Feedback Survey link that we will encourage folks to complete so we can learn the reaction to the new LED fixtures and help us plan for the full LED retrofit project.

I will send along the next update when the first installation takes place and please call or email anytime you need something on this project.

Kevin Galligan~~ (508) 255-2036  
Energy Efficiency Program Manager  
Cape Light Compact  
PO Box 427 SCH, Barnstable, MA~~  
02630

## **SELECTMEN'S REPORT**

Mr. McManus expressed concern that there are articles on the draft Town Meeting warrant indicating they were submitted by

the Board of Selectmen that he has no knowledge of and there was no discussion of them by the Board. He further expressed concern over an article that alters timing for delivering the budget by doing a Charter amendment through a Home Rule Petition. He noted that there are several procedures for doing this spelled out in General Laws and the State Constitution which include electing a Charter Commission. He pointed out that it would be an amendment, not a revision and is outlined in General Laws Chapter 43B, Section 10. He explained that we could, by another provision, notify the Town Clerk and then hold the required public hearings and then collect petitions from registered voters in Town to ask that it be expeditiously put on the Special Town Meeting warrant. He further pointed out that we still have a by-law that requires all articles to be available by the second Tuesday in final form so that by-law would still require that the budget be submitted in final form by the second Friday. He stated that we will need an article to change the by-law and the article in the draft warrant will need to be rewritten as well as a notice to the Town Clerk. He stated that we are going to have to fairly quickly hold a couple of hearings, either the Board of Selectmen or the By-Law Charter Review Committee. Mr. LaMantia suggested looking at other sections of the Charter as well, but stressed that we need to focus on this article. He added that a Charter Review Committee might be helpful. Mr. Hughes suggested getting advice from Town Counsel. Mr. McManus noted that there is a date that the Town Administrator must hand off the budget to the Finance Committee and the presented article would only allow the Selectmen to review the

budget for 24 hours before it goes to the Finance Committee. He stressed that this issue should have been on the Selectmen's agenda for the Board to vote on. It was agreed that Mr. Merriam would speak to Town Counsel.

Mr. LaMantia stated that the Board needs to have a discussion on next week's agenda regarding the hiring process for Town Administrator which he noted impacts the hiring of Assistant Town Administrator as well. Chairwoman Cebula agreed to put it on the Board's agenda for next week.

#### **ADJOURNMENT**

Mr. Hughes moved to adjourn at 7:41 p.m. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary