

# **Board of Selectmen Minutes**

## **01/17/2012**

### **MINUTES SELECTMEN'S MEETING GRIFFIN ROOM, TOWN HALL TUESDAY, JANUARY 17, 2012 7:00 P.M.**

**SELECTMEN PRESENT:** Ballantine, Cebula, (via remote participation), Hughes, LaMantia, McManus

**OTHERS PRESENT:** Town Administrator James Merriam, Assistant Town Administrator Nan Balmer, Pete Wall, and others.

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

Chairman Ballantine reported that the Board had just come out of Executive Session where they discussed real estate matters and collective bargaining.

#### **CONSENT AGENDA**

- Minutes –
  - December 12, 2011 Regular Meeting
  - December 19, 2011 Executive Session
- B. accept gift of \$1,000 from the Friends of Harwich Youth to fund Saturday night open gym program
- C. Vote to approve renewal of Common Victualler license for Dave's Cape Cod Smokehouse

Mr. McManus moved approval of the Consent Agenda. Mr. LaMantia seconded the motion and the motion carried by a 4-0-0 vote.

#### **OLD BUSINESS**

- 2012 Cape Cod Claddagh Entertainment Licenses – *discussion*
- Ms. Cebula entered the meeting via remote participation.

Chairman Ballantine noted that we have a request from the abutters' attorney, Mr.

Cavanaugh, to postpone this item until the end of January due to a medical issue. He noted that he had talked to the owners of the Claddagh who have confirmed that they have done considerable work. The Board agreed to take up this item at their January 30<sup>th</sup> meeting and to deal only with indoor entertainment at that time. Chairman Ballantine asked Mr. Merriam to communicate this to the Claddagh.

- Reorganization - *discussion*

Mr. Merriam outlined a revised Assistant Town Administrator job description and organization chart (see attached). The Board agreed that discussion needs to begin regarding the role of the wastewater function. Mr. McManus said that the Charter and MGL, as they relate to water and sewer commissions, needs to be explained in detail to the Board. Chairman Ballantine pointed out to Mr. Merriam that the revised Assistant Town Administrator job description does not recognize what he put in the organization chart.

Mr. LaMantia questioned if it is appropriate to review filling positions at this time due to the shortfall with the exception of the Assistant Town Administrator position. Mr. Hughes suggested advertising for the position to see what we get. Mr. McManus commented that you get what you pay for and more responsibilities are being added without benefit of upgrade. Chairman Ballantine disagreed with the need for an upgrade. The consensus of the Board was to post the position and see what we get.

## **NEW BUSINESS**

### **A. McGuerty Road Betterment:**

1. Vote an Administrative Fee of \$13,047.00 and a 5% Interest Rate
2. Vote a total Road Betterment of \$143,522.00 and a prorated share of \$6,834.38
3. Vote to certify the list of Betterment Assessments to the Board of Assessors

Mr. McManus moved to vote an Administrative Fee of \$13,047.00 and a 5% Interest Rate, to vote a total Road Betterment of \$143,522.00 and a prorated share of \$6,834.38, and to vote to certify the list of Betterment Assessments to the Board of Assessors. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

### **B. Release of 2002 Executive Session minutes – *vote***

Mr. McManus moved to approve of the Master List for 2002 Release of Executive Session minutes. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

C. Agreement with Cape Cod Community Television Corp. – *vote*

Mr. McManus moved to approve the agreement between the Cape Cod Community Television Corporation and the Town of Harwich and authorize the Chairman to sign on behalf of the Board. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

- Review of Annual Town Meeting Warrant

Chairman Ballantine and Mr. Merriam agreed to prepare a schedule for warrant articles to be addressed by the Board. Mr. Hughes recommended changes to the order of the articles.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

### Local Home rule petitions

We are moving them, but we have until the end of this year (not that we want to wait that long!)

Both bills moved into 3rd reading on 12/22. You may have read that Chairman Pedone has left the legislature. I am hoping we can get the bills released before a new Chair gets appointed. This shouldn't be an issue, but it is a wrinkle.

Rep. Sarah Peake

### Allen Harbor testing update

This is a quick summary of where we stand with the Allen Harbor program:~ We've completed the 10-day tests (results submitted to ACE and approved).~ The Allen Harbor site water chemistry has been completed by Alpha.~ The elutriate samples have been submitted to Alpha Analytical and the suspended phase toxicity tests have been completed.~ We are currently in~week two of the bioaccumulation tests (28 day tests, 14 more days to go.).~ At this point we think things are looking good (the organisms are burrowed in the mud - kind of out of sight).

John Williams, Manager, Environmental Toxicology  
Aquatec Biological Sciences, Inc.

### Mary Giorgio update: Bardsley, Trustee of the Herring Realty Trust v. Conservation Comm.

I am pleased to report that I received the Court's decision on the plaintiff's motion for judgment on the pleadings (and our cross-motion) today and the decision denies the plaintiff's motion and allows the Conservation Commission's cross-motion.~ By so doing, the Court upheld the Conservation Commission's denial of a permit requested by

the plaintiff which, if granted, would have permitted the construction of a 16-ft driveway over Carding Machine Brook to access property owned by the trust.~ The property has no other practical access available to it.~ I will be sending correspondence explaining the decision, along with the decision, but I did want you to know the result sooner.~ Mary

#### Northborough CPC funding

Attached is a page provided by Chief Clarke depicting Northborough's purchase of machinery with CPA funds to assist with search and rescue operations from trails and remote forested areas.

#### Open Letter re: East Harwich Initiative from David Spitz (see attached)

Please see attached letter.

Next meeting - East Harwich public input session - Community Center, Tuesday, January 31st - more details to follow later.

David

#### Town counsel opinion re: Capping used motor vehicle businesses (Harwich has no cap)

#### Appeals Court Invalidates Cap on Class 2 Licenses

~~~~~ Many municipalities have adopted regulations to control the number of used motor vehicle businesses within their borders.~ These include businesses which require a Class 2 license to buy or sell "second hand motor vehicles" or a Class 3 license to buy or sell used vehicle parts.~ For example, a zoning by-law use table may restrict such businesses to a particular commercial district.~ Another method some cities and towns have utilized is imposing a cap on the total number of these licenses that are available.~ The Massachusetts Appeals Court recently invalidated the use of such caps.~ If your municipality has such a by-law, ordinance or regulation, you may wish to revisit your regulatory scheme for motor vehicle businesses.

~~~~~ The Appeals Court issued this ruling in Grenier v. Board of Selectmen of Shrewsbury.~ The Shrewsbury Board of Selectmen had adopted a policy to cap the number of Class 2 licenses in town at 20, although the facts of the case showed that the Board had not always strictly enforced that limit.~~ When the plaintiff Grenier was denied a license based on the policy, he appealed the denial.~ While the trial court upheld the policy, the Appeals Court reversed that judgment and ordered that the plaintiff receive a Class 2 license.~ While the Appeals Court noted that the Board's policy had not been uniformly implemented, the Court went further and ruled that the cap was invalid as inconsistent with Chapter 140, §59.~ Citing earlier court decisions mandating a case-by-case review of license applications, the Court stated that such review requires "neutral and

defined standards” that were missing from the Shrewsbury policy.~ The Court further stated, however, that “we conclude that to the extent [the policy] purports to set a per se cap, it is invalid as it conflicts with the statute governing the grant of Class 2 used car dealer licenses.”

~~~~~ We waited to issue this advisory in case the Town of Shrewsbury might appeal this decision, but it did not.~ If your municipality has such a cap on Class 2 licenses (a Class 3 cap will likely be analyzed the same way) and a denial based on the cap is appealed, it is our opinion that the reviewing court will be bound by the Grenier decision and invalidate the cap.~ You may wish to review your by-laws, ordinances or regulations on this subject to avoid future litigation and use other means of regulating such businesses, such as zoning. If you have any questions or would like further information in this regard, please contact [Brian Riley](#) at (617) 556-0007 or toll-free at (800) 548-3522.

#### Muddy Creek Culvert (see attached Chatham Capital plan)

I contacted Bob Duncanson regarding the schedule and funding requirements for design and construction of the Muddy Creek culvert replacement. ~Below is what Bob has put into the Chatham capital plan. ~You will see \$250,000 for design in FY13 and \$1,750,000 for construction in FY14. The assumption is that these amounts would be matched by Harwich. ~If you would like any further confirmation of the design amount, we could ask Fuss and O'Neill to break out the design cost component of the overall cost estimate they are developing as part of the current report. ~That final estimate is being revised based on new modeling information just received, but should be available shortly. ~It might be best for Martha Rheinhardt to make that request of Fuss and O'Neill since she is their project overseer. Please let me know if there is any further information I can provide. Carole Ridley

#### Economic Development

I have had conversation with Chamber Executive Director Jeremy Gringas and Dave Spitz re: creation of a Chamber/ Town partnership to promote economic development. Jeremy has provided us with the current Chamber charge/committee composition and proposed composition.

#### Caleb Chase balance

Chase Trust As of today \$1,510.16 and the Chase~gift fund \$ 7,080.80. David

#### Wychmere Overlook

Linda Cebula had inquired about replacing missing park benches at the Wychmere Overlook. Dave Scannell found the deed which restricts all “structures”.

*Mr. LaMantia moved that it is not a permanent structure. Mr. McManus seconded the motion and noted that benches are considered furniture in the Historic District. He stated that we don't want to put out picnic tables as we don't want to develop it as a picnic site. No vote was taken.*

#### Rt 137 Update

Great News.... Lawrence-Lynch Corp. has been awarded the Route 137 project from MA DOT.

Joseph D.~Magni, Principal

#### Barnstable County reform

As you may recall Charlie, Bud and I (Bob Lawton) are on the Barnstable County Review Committee.~ At our meeting in December~members asked us to meet with Mark Z. and Maggie D. and also meet with Paul N. and Andy G. to discuss questions on County government organization and wastewater,~respectively. We held those meetings and we are submitting to you~our proposed positions on County Government organization.~ We will discuss these at our meeting tomorrow 1/12.~ For those~who~cannot attend could you let me know any comments you have on the~recommendations by Monday January 16 as we need to submit our position to the full Committee on Wednesday January 18. Thanks, Bob Lawton

#### Cape Cod Collaborative

Press release dated January 11, 2012 re: MEP validation

#### ADA

I met with Chair Carla Burke to discuss 1) amending ATA Job Description to include ADA Coordinator duties, 2) STM article for codification of parking regs; 3) notice of non-discrimination to coincide with 48 hour posting of meeting notices.

#### **SELECTMEN'S REPORT**

Mr. McManus outlined the timetable for the new Monomoy Regional High School.

#### **ADJOURNMENT**

Mr. Hughes moved to adjourn at 8:33 p.m. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Respectfully Submitted,

Ann Steidel  
Recording Secretary