

Board of Selectmen Minutes

01/22/2013

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
TUESDAY, JANUARY 22, 2013
7:00 P.M.**

SELECTMEN PRESENT: Ballantine, Cebula, LaMantia

OTHERS PRESENT: Town Administrator James Merriam, David Ryan, Leo Cakounes, Francis Salewski, Hank Jansen, and others.

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

Chairwoman Cebula reported that the Board just came out of Executive Session where they discussed strategy with respect to collective bargaining.

WEEKLY BRIEFING

Mr. Cakounes, Harwich Representative to the Assembly of Delegates, reported that he introduced a resolution to the Assembly which will be on their February 6, 2013 agenda. He explained that this resolution directly impacts the voters and citizens of Harwich as it is a restructure of County government. He noted that its intent is to have 5 Commissioners, rather than the present 3 Commissioners, representing 5 districts of the Cape and they will not be elected positions. He added that this will require a change to the Barnstable County Charter and the proposal is on the County's website.

CONSENT AGENDA

- Approve minutes – January 7, 2013 Regular Meeting
- Vote to approve request by Harwich Port Seafarer to close until March 8, 2013 for renovations as per Board of Selectmen's Liquor License Regulations Sec. 1.19b
- Vote to hold Public Hearing on requests for amendments to Town Charter and By-Laws on March 11, 2013 relative to the timing of presentation of the budget by the Town Administrator
- Vote to authorize Chair to sign FY13 Community Development Block Grant

application form

Mr. Ballantine moved approval of items B, C, and D. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote. The Board agreed to hold item A until there is a full Board present.

OLD BUSINESS

- Bike sign fee waiver – *discussion and possible vote for Town Administrator to sign*

Mr. Spitz outlined the map of sign locations and noted that it is the intention of the committee to do a combination of bike signage and maps directing people and designating certain loops. He stated that the Cape Cod Regional Transportation Authority has funding available through a grant to install and maintain these signs, so a fee waiver is no longer required but the Board must approve the placement of these 34 signs. He added that signs in the Historic District need approval from the Historic District Commission.

Mr. LaMantia expressed concerns over liability issues. Mr. Cakounes objected to the placement of the signs and commented that it encourages people to use these roads as safe bike routes, which is dangerous. Mr. Spitz noted that this proposal has gone through the Police and Fire Departments. Mr. Ballantine stated that the health benefits of biking are greater than the risk here. Mr. Cakounes disagreed noting that these roads aren't safe for bicyclists.

Mr. Ballantine moved to approve the suggested signage on roads for bicycling. Chairwoman Cebula seconded the motion. The motion carried by a 2-1-0 vote with Mr. LaMantia in opposition.

NEW BUSINESS

- Suspend Board of Selectmen's Policy Guidelines on Caleb Chase Assistance Account, approve request for assistance, and reinstate Policy Guidelines, respectively – *discussion/possible vote*

Mr. Ballantine said he is not in favor of this as they would be setting a precedent and other people may need the money. Chairwoman Cebula suggested the Cape Cod Times Needy Fund or asking people to send in donations for this person. Mr. LaMantia agreed that they should not use the Caleb Chase Account for this as it sets a precedent. He added that lawyers often do pro bono work and we should inform the Council on Aging of that.

Mr. Cakounes said he could assist in looking for help at the County level. Chairwoman Cebula asked Mr. Cakounes to meet with Mr. Merriam. The Board took no action on this item.

- Request to petition Barnstable Assembly of Delegates to amend the Barnstable County Home Rule Charter to insert a recall provision – *discussion/possible vote*

Mr. Cakounes reported that this item is on the agenda for the Assembly of Delegates. He noted that he is not opposed to it but there are some legal questions on the language and there is a process for amending the County Charter. He suggested that the Board support language for recall but let the Assembly determine the language to be used.

Mr. LaMantia moved to write a letter to the Assembly of Delegates suggesting that this be one of the items that they look at as they consider Charter changes. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote. Chairwoman Cebula requested that Mr. Merriam write the letter.

- Town Administrator search - *discussion of position description*

Chairwoman Cebula noted that if they change the Town Administrator's job description, they would have to change the Charter. Mr. Ballantine and Mr. LaMantia said they were satisfied with the job description as is. Chairwoman Cebula reported that she has contacted 3 search firms and is waiting for proposals. Mr. LaMantia stressed the need to appoint an interview committee and Chairwoman Cebula noted that she has been acquiring the names of volunteers.

- Annual Town Meeting Warrant review – *discussion*

Chairwoman Cebula stated that the Finance Committee has set aside some Saturdays for joint budget and article hearings. She questioned what the Board would like to do.

Mr. Ballantine said the Saturday joint hearings make sense. Mr. LaMantia agreed but said they should be held in the Griffin Room in front of the camera. He added that someone should determine which articles require presentations. He suggested doing the hearings on Monday nights at the regular Selectmen's meetings and Chairwoman Cebula said she would talk to the Chair to see if they would consider it. Mr. LaMantia said employees have to go to this and holding hearings on Saturdays is disruptive to the department heads. Mr. LaMantia said if hearings can't be on Monday nights then the Finance Committee should tape their

meetings. Mr. Ballantine suggested having department heads make their presentations on Mondays yet still hold the Saturday hearings.

Mr. Ballantine noted that Article 18 “Fund Multi Purpose Fields Restrooms” is the same as Article 64 and Mr. Merriam responded that we could delete Article 18. Mr. Ballantine questioned if it is necessary at all if we are going look at expanding the Community Center basement because that would provide bathrooms for the ballfields. Ms. Carey stated that she believes it is 2 different things but would research it to see if we can save some money here and meet the needs.

TOWN ADMINISTRATOR’S REPORT

Mr. Merriam delivered the following report to the Board:

Allen Harbor dredging update

Staff and contractors met on Jan. 15th to discuss project status. Volume estimated at 22,800c.y. The silt curtain was delivered by trailer truck from Florida and deployed at dawn on the 15th. Don Munroe received e-mail approval from Ken Chin to run silt curtain north/south from ramp to channel. Ted finished cuts 1&2 next to Morrison/Peterson docks. Chris Our is re-installing AHYC docks/pilings. Ted will start on cut 5 in front of marina today. Craig LeBlanc will move his floats up into Oyster Creek to assist Wayne. Wayne started pumping sand from Herring River on the 14th. His pit will extend up to barricades in parking lot. He should finish building pit by 1/17, then

move County dredge to AH by 1/18. Pam took videos with no flounder found. Craig Burnham has leased third scow, which should arrive by the weekend.

CCRTA bike signs

Attached is their application, pictures of signage and locations.

Here is the current status of the bike signs.

1)~ Police - Bill Mason got back to me.~ He advised that if I have not heard anything by next Tuesday (1/22) then they have no objection.

2)~ Public Works - Chris Nickerson reminded me that they responded to my 1st inquiry in December.~ They have no issue with the sign locations but have two questions.~ Will RTA be responsible for maintenance of these signs?~ Can we seek a waiver of the \$25 fee per location that Harwich Water has been charging for Dig Safe services?

3)~ Historic District - the location on Oak Street in front of Brooks Park is not likely to be approved.~ The other 3 signs are less problematic but are not guaranteed of Historic Commission approval.~ Their next meeting is mid-February.

I believe you should determine next steps for Water Dept fee waivers - whether through the BoS or Craig W.~ I can handle the other questions.

David

Community Center expansion

Staff met with Vcevy Strekalovsky, who has completed his concept plan and provided us with floor plans for phase 2. He will

assist with a brochure for presentations.

Affordable Housing issues

As you know, I have been providing staff support to the Harwich Housing Committee (HHC) for several months.~ I would like to summarize my opinion of current priorities and opportunities:

1)~ Thankful Chase 2 - with anticipated Town control of the land, this site moves to the top of the HHC priority list.~ Major infrastructure components are already in place due to recent construction at the abutting Thankful Chase 1 site.~ It should be feasible to build another 12 units or so of affordable units on the new site.~ The Board of Selectmen should be asked to resolve the issue of payment or write-off of approximately \$100,000 in back taxes.~ Then I believe the Town should move actively towards design and construction of a new affordable housing project.

The Board agreed to agenda the above item.

2)~ American Dream 2 - HHC initially identified three scattered sites for new affordable single-family homes.~ Two of those sites dropped out due to wetland issues.~ I am now starting to prepare an RFP for the 3rd site, located on Pleasant Bay Road.~ Is it possible to complete title work relating to the one remaining site from American Dream 1 (Depot Street)?~ It would certainly be preferable to prepare the RFP for two sites rather than just one.

3)~ 72 Willow Street - if I understand Michael Ford correctly, there are issues of compensation in addition to perfecting title.~

I believe the next step would be to conduct an appraisal to determine the value of compensation needed to complete the Town's ownership of the land.

4)~ West Harwich School - apparently the RFP for non-profit arts groups yielded no bidders. ~HHC believes it is now time to return to consideration of affordable housing on this site, perhaps in combination with arts groups or other users.~ The Board of Selectmen should be asked if it would support such an effort.

I have copied this e-mail to Michael Ford as I believe he could advise us on work needed for several of these items. I hope that we can move forward on one or more of these affordable housing priorities.

David H. Spitz, Harwich Town Planner

Gov. Patrick Proposes \$13B Transportation Investment Plan
Chapter 90 Would Grow to \$300M a Year, a 50% Increase
Other Major Investments Would Benefit Cities and Towns

Governor Deval Patrick and Transportation Secretary Richard Davey today provided the details of the Patrick-Murray Administration's long-awaited comprehensive transportation investment plan for Massachusetts.~ Speaking before a large crowd at a special event at UMass Boston, the Governor called for \$13 billion in transportation investments over the next 10 years as an essential strategy to spur economic growth and create a "21st Century Transportation Plan" for the

Commonwealth.

A key element of the Governor's transportation investment plan is adoption of the MMA's call to increase Chapter 90 funding for cities and towns by \$100 million a year for the next 10 years, adding \$1 billion for local roads over the coming decade.~ The current \$200 million allotted to Chapter 90 would increase to \$300 million beginning in fiscal year 2014, with the Administration suggesting that a portion of the first-year increase be targeted for a new asset management system at the local level.~ The MMA is gathering information on the asset management aspect of the proposal, and will report on that when details are available.

In addition to the annual \$100 million increase for Chapter 90, the Governor's plan also calls for impressive increases for other transportation programs and projects for cities and towns over the next 10 years, including: \$1.1 billion more for regional transit authorities; \$1.175 billion for a new bridge repair program modeled after the nearly complete \$3 billion accelerated bridge program initiated several years ago; \$1.25 billion for a "multi-modal highway program" targeted for hundreds of local and regional projects to decrease congestion; \$430 million for bicycle and pedestrian projects; and hundreds of millions for system and facility improvements.

Today's announcement was designed to establish the Governor's transportation vision for Massachusetts.~ The comprehensive "21st Century Transportation Plan" unveiled by the Governor articulates the current funding shortfall to meet today's programs, and the additional investment that is necessary to modernize and enhance our highway, transit and multi-model transportation system over the next 10

years.~ The plan did not embrace any revenue options or propose any specific tax initiatives.~ The Governor said that he would outline his tax proposals in his State of the Commonwealth address on Wednesday, January 16, and in his fiscal 2014 budget plan when he submits it to the Legislature on Wednesday, January 23. The Governor's transportation plan would require new tax revenues of \$1.02 billion a year to fund the investments he is calling for.

Governor Patrick will be at the opening session of the MMA's Annual Meeting and Trade Show on Friday, Jan. 25th, and he is expected to discuss his transportation and budget plans at that time.~ Secretary Davey will appear at the Annual Meeting on Saturday, Jan. 26 at a special forum on transportation investment and funding.~ If you have not yet registered for the MMA Annual Meeting, you can do so by visiting the MMA website at www.mma.org.

Increasing Chapter 90 to \$300 million a year is a top MMA priority, and would represent a 50% increase for cities and towns across the state.~ Please contact your legislators today and tell them that the Chapter 90 increase is essential, and please let them know that you recognize that a revenue increase will be necessary in order to adequately maintain and enhance the local and state transportation system.~~

Legal opinion for minor Charter change

Jim:~ John asked me to look at the issue regarding the proposed minor Charter amendments; I have not had a chance to give you a formal response yet, but I understand that it may come up this evening, so let me at least give you the high points. ~The proposed amendments are considered minor, so the amendment process in G.L .c.43B, §§10 and 11 is available ["major"

amendments, like changing the number of members on the Board of Selectmen, require a special act or a Charter Commission].~ Once the proposed amendments are filed, there needs to be a public hearing on them (this need not be too formal a hearing, but there must be proper notice), and if they are then approved by a 2/3 vote of Town Meeting, the amendments get sent to the Attorney General for review.~ This is only to see if there is anything that conflicts with the state Constitution or General Laws, and I would not expect any problems with these amendments.~ The amendments then must go on the next Annual Town Election ballot (the next Annual election held at least two months after the AG approves it) and be approved by a majority of voters.

As a result of this schedule, if the amendments are approved at this spring's Town Meeting, it will take another entire year before it can go before the voters.~ While it is difficult to gauge exactly how long it will take the General Court to handle a petition for a special act, it may likely be shorter than the Chapter 43B process – of course, you would need a vote of Town Meeting to authorize the Board to file such a petition.~ The General Court deals with many Charter amendment petitions, and I wouldn't foresee problems with one of this nature.~ Sometimes the General Court wants to see a special act be approved on a Town election ballot before it takes effect.~ This is also generally reserved for more major Charter amendments, however, so I would not expect that these amendments would need to go on the ballot.

I hope this helps – if there are other specific questions after tonight, please let me know.

Brian W. Riley, Esq.
Kopelman and Paige, P.C.

Charter Change

Anita Doucette has forwarded to me the attached letter for a Charter amendment filed in her office by Ed McManus.

Hello to all of our wonderful Harwich Road Race Supporters,

Happy New Year! ~We hope that 2013 brings you the best of health and prosperity.

We are excited to inform you of how our proceeds from last summer's Harwich 5K Road 2012 Race have been designated. ~We sought out to see if there were more folks who had a fitness idea or program that would benefit our Harwich kids -- so we issued a RFP in last fall to various organizations. ~ We want to thank Jeremy Gingras,~the Harwich Chamber of Commerce Charitable Foundation and the Friends of Harwich Youth for their help in this process.

- Monomoy Athletics: Weight Room additions and items for Physical Education Programs ~ ~ ~

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- Monomoy Cooperative Learning Programs' Running Program ~ ~ ~ ~

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- Harwich Athletic Association Scholarships for Clinics ~ ~ ~ ~ ~

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- Town of Harwich Youth and Recreation~for Saturday Night Open Gym and a new~Lacrosse Program

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- Lower Cape Crust Softball ~~~~~

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- Richard Gifford Archery Program for Harwich Middle School ~~~

Our Mission remains to keep our Harwich Youth moving...and we are so happy to support all of these organizations with these funds for their programs and to give all of our Harwich Youth an opportunity to participate in a wide variety of fitness related programs. ~Keep them moving, keep them healthy.

We are now working on ideas for our 2013 Harwich Road 5K Race which is scheduled for June 22, 2013. ~We welcome any ideas/ input to for this race and of course we are always in need of help. ~We are a very small committee of moms that really could use an extra hand or two.

We thank you for all of your support and know you can be proud that your contribution has made all of this possible.

Joanne Logie and Kristen Crooker (Harwich Road Race Committee) ~~~~~

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Cape Light Compact

Several months ago, Cape Light Compact asked all town council on aging and Recreation Departments to promote their free energy home assessment program.~ We put out their flyers on the Recreation side of the building.~ Anyone who chose to take advantage of their free energy assessment voted for a town/department for the prize money to go to.~ We just got the breakdowns of the prize money throughout the Cape and we will be receiving \$494.50 for the Harwich Recreation Department.~ Just wanted to let everyone know.~

~

Eric

Overdue Excise bills

John & Craig,

I've enclosed a current list provided by the Assessors Office of customers/members of AHM, AHYC, and HPBY who have outstanding boat excise tax bills.~ As you may be aware, the Harbormaster Department will not renew a Town slip or mooring permit to those who have not paid their boat excise tax.~ Those customers who have not paid their boat excise tax and are assigned to one of your Town issued transient Boatyard/ Marina moorings will need to do so prior to issuing permit.~ Any support that you can provide to compel all of your listed customers/members to pay their bill would be much appreciated. Thanks.

John C. Rendon

Harbormaster

Water Dept. Cell tower

Craig Wiegand is working with Town Counsel to prepare an RFP to solicit proposals for a cell tower, contingent upon a STM vote in May.

Muddy Creek Culvert

The Chatham/ Harwich design review committee reviewed the RFPS/ price proposals and selected three firms for interviews, which are scheduled for January 24th.

Brooks Park

The Design review Committee met on January 16, 2013 and ranked eight proposals, selecting the top firm. Our recommendation has been forwarded to the Recreation Commission.

Seeking State clarification re: Community Center paths- ADA compliance

Hi Jeff,

Last year I had correspondence with you regarding a gravel walkway installed around ball fields created at the Community Center in Harwich. ~This has been constructed but there have been issues regarding maintaining this gravel path on a continuous basis.~ The Disability Rights Committee issued a grievance that it is not being maintained to a level they feel is appropriate for the disabled.~

A Recreation Commission member recently found the material below describing ADA requirements for accessible routes in areas of sports activity.~ We feel that the entire field is an area of sports activity, as there are two baseball fields there, and the fields are also used for soccer and related sports.~ Even areas off of the defined ball fields are subject to sport activity (i.e.: chasing foul balls, etc.).~ The regulations indicate that:

"Areas of sport activities must comply with all ADAAG requirements, except that they are exempt from the requirement that surfaces must be stable, firm, and slip resistant, and from the restrictions on carpets, grating, and changes in level. They are also exempt from restrictions on protruding objects. These provisions are not required inside of the area of sport activity since they may affect the fundamental nature of the sport or activity. For example, an accessible route is required to connect to the boundary of a soccer field, but there is no requirement to change the surface of a field to an accessible surface".

Do State Requirements differ from the Federal Requirements on this subject?~ If not, is it correct to assume that the Town is not legally responsible to maintain this pathway to strict ADA requirements?~ Is it also correct to assume that we may allow the path to grass over as it will still provide a firm surface for an accessible route, but may not conform to strict ADA surface interpretations? Any guidance on this matter would be appreciated.

Robert Cafarelli, P.E.
Town Engineer

Health Insurance for Elected Officials –
update from Representative Peake

Hi Jim, I filed this bill 10 minutes ago. It is Docket No 1375.

On Wed, Jan 16, 2013 at 10:42 AM, James Merriam <jmerriam@town.harwich.ma.us> wrote:

Hi Sarah and Dan. Please find a copy of a

letter signed by the Board of Selectmen regarding their request to re-file Harwich's Home Rule petition pertaining to Health Insurance for Elected Officials. We understand the deadline for filing is this coming Friday. A hard copy will follow. Thank you. Jim

Hi Jim, I'll put the hard copy of this in the mail to the Board, but in the interim, can you make sure the Board receives this pdf?

The other thing we're working on getting confirmation of, is whether Senate or House Counsel will require the vote to be "freshened" since this is a new session.~ I think we are okay on the House side, but the Senate has different rules.~ When does your warrant open and close for your Annual Town Meeting?~ We'll make sure to get you an answer before then.

Sarah

I think it is arguable whether, based on the language of the Town Meeting vote, money in the revolving account can be used for advertising expenses.~ I suppose one could argue that advertising expenses are an appropriate expenditure in connection with the operation of the "Pro Shop and golf lesson programs," which is the description in the warrant article and~motion for which monies can be spent.

The much more troublesome issue is the fact that the Director of Gold apparently expended these funds without the formal approval of the Board of Selectmen which is an explicit requirement of the Town Meeting vote as well as the statute.~ In this regard,~MGL c. 44, s. 53D expressly requires the written approval of the Board of Selectmen for any expenditures from the

Revolving fund.~ In my opinion, therefore, neither the Director of Golf nor the Golf Committee has the authority to expend any money in the revolving fund for any purpose without the written approval of the Board of Selectmen.

The fact that a single member of the Board of Selectmen may have given tacit approval for the expenditure on advertising, does not substitute for the legal requirement that the Board of Selectmen approve the expenditures in writing.~ I recommend that, in the future, the Board set up a procedure and policy requiring the Golf Committee and the Director~to submit a request for approval in advance of any expenditures from the Revolving Fund.~ The Board of Selectmen should sign off on the request in much the same way that the Board approves other warrants for payment of town funds. Please let me know if you have any further questions.

John W. Giorgio, Esq.
Kopelman and Paige, P.C.

GOLF REVOLVING FUND

ARTICLE 47.~~ To see if the Town will vote to establish a revolving fund for the purpose of funding the Pro Shop and golf lesson programs at the Cranberry Valley Golf Course pursuant to the provisions of Massachusetts General Laws Chapter 44, Section 53D and to act fully thereon.~ By request of the Board of Selectmen.

ARTICLE 47

I move that this article be accepted and adopted to create a revolving fund for the

purpose of establishing self supporting Pro Shop and golf lessons programs at the Cranberry Valley Golf Course pursuant to provisions of MGL 44, section 53D, monies to be expended with the written approval of the Board of Selectmen and further, that the unreserved fund balance shall not exceed ten thousand dollars at the close of each fiscal year.~~

Chairwoman Cebula asked Mr. Merriam to convey to the Golf Committee and Golf Director that the Board must authorize any requests from that fund and they should not be signing purchases orders or anything else without Board approval.

Monomoy FY 14 School Budget

Dave Ryan and I met with our Chatham and Monomoy Finance Team to discuss the proposed budget and timing. Supt. Cragin provided us with calculations of the foundation enrollments and averages for operating/ transportation/ debt-capital. David also received a copy of the School Committee hand out which currently shows their preliminary budget exceeding my 2.75% increase by another \$648,678. Hopefully, Governor Patrick's FY 14 Local Aid which is scheduled to be released on Wednesday, will address some of this gap. Supt. Cragin does wish to schedule budget meetings in February for BOS and FinCom.

Finance Committee

FinCom met on 1/16 and formally approved a RFT for Fire to purchase automated scheduling software which will replace dispatch work when dispatch is transferred to County, still planned for March 1st.

ADJOURNMENT

Mr. Ballantine moved to adjourn at 9:02
p.m. Mr. LaMantia seconded the motion
and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary