

Board of Selectmen Minutes

02/04/2013

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, FEBRUARY 4, 2013
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, Lincoln Hooper, David Spitz, Carolyn Carey, Matt McCaffery, Ted Nelson, Warren Hall, Andi Genzer, Richard Waystack, and others.

MEETING CALLED TO ORDER at 7:15 p.m. by Chairwoman Linda Cebula.

Chairwoman Cebula reported that the Board just came out of Executive Session where they discussed collective bargaining issues.

WEEKLY BRIEFING

Mr. Hooper provided an update on the Route 137 project with regard to utilities.

As Co-Chair of the Monomoy Regional School District High School Building Committee, Mr. McManus reported that the general contractor's bids were received last week and on Tuesday there were three bids that were opened from the firms of CTA, Augustini Construction, and Fontaine Brothers. He noted that in the base bids, Augustini was the low bidder, Fontaine was in the middle and CTA was the high bidder, but when the two alternates were included, Fontaine came in at \$380,000 below Augustini and therefore the recommendation to the school committee was to accept the bid from Fontaine Brothers. He stated that the school committee awarded the bid to Fontaine Brothers on Wednesday. He noted that this is the firm that built the Ashland High School upon which this project is modeled on. He further noted that the Fontaine family donated a substantial amount of money to Holy Trinity Church for their internment wall and to the Fontaine Medical Center. He stated that the bid amount came in a little bit less than \$5.5 million below estimate and the groundbreaking is scheduled for Friday, March 1.

PUBLIC COMMENT/ANNOUNCEMENTS

Andi Genzer of WE CAN thanked the Town for their support during their building project.

Richard Waystack, representing the Chamber of Commerce, encouraged all to vote for Harwich Port on Coastal Living Magazine's website in their Happiest Seaside Town contest, noting that it would do a lot for the tourist economy in the Town.

CONSENT AGENDA

- A. Approve Minutes –
 - 1. January 22, 2013 Regular Session
 - 2. January 28, 2013 Executive Session
- B. Vote to accept various gifts to the Council on Aging Gift Account & Nurses Gift Account
- C. Vote to grant request by Town Planner to allow Planning Board member Alan Atkinson to participate remotely at meetings until March 29, 2013
- D. Vote to re-advertise RFP for West Harwich School including for-profit and not-for-profit applications

Mr. Hughes moved approval of items A2, B, C and D. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote. Mr. Ballantine moved approval of the January 22, 2013 minutes. Mr. LaMantia seconded the motion and the motion carried by a 3-0-2 vote with Mr. McManus and Mr. Hughes abstaining from the vote.

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

- Presentation on East Harwich issues by Town Planner
Mr. Spitz presented and discussed the attached Power Point presentation for the Board.
- Vision statements by East Harwich Collaborative and Planning Board
Mr. Nelson of the East Harwich Collaborate and Mr. McCaffery, Planning Board Chair, provided the attached remarks to the Board.

OLD BUSINESS

- Multi-Purpose Field Complex Naming – *discussion and possible vote*
Chairwoman Cebula reported that the Recreation and Youth Committee Chairman has asked to hold on this item as he would like to get clarification from his committee. The Board took no action on this item.

- Review draft Town Meeting Articles –
 1. Article 51 – Appropriate Fund for Certain Land Taking
 2. Article 52 – Transfer Land in North Harwich for Affordable Housing Development

Chairwoman Cebula noted that these articles were discussed last week and as a result of that discussion, Mr. Merriam has consolidated the two articles into one. Mr. Merriam outlined the article. Mr. McManus stated that other than minor revisions, the articles cannot be changed now and that any drastic changes must be made on Town Meeting floor. Mr. Merriam agreed and noted that they are private petitions. The Board discussed Article 52 and the consensus of the Board was not to jeopardize free cash at this time. Mr. McManus pointed out that they only need to settle the tax debt when they plan to transfer the property. Mr. Merriam stated that the Board can always change the parameters and include a third article in the Special Town Meeting. The Board took no action on the articles.

NEW BUSINESS

- Vote to confirm Harbormaster's changes to the Harbor Management Plan – *discussion on need for Public Hearing (3/4/13) & possible vote*
 Mr. Merriam noted that the Harbormaster and Waterways Committee Chair were present earlier in the meeting but have asked that this item be rescheduled. Mr. McManus stated that there must be a noticed public meeting per the Board's policy. He pointed out that the difference between a public hearing and public meeting is that a public hearing requires 14 days notice. He stated that the Waterways Committee can hold the noticed public meeting, otherwise the Board will have to hold a public meeting. Mr. Hughes said they should schedule the public meeting. Mr. LaMantia requested that they wait until Mr. Rendon is available and have a discussion with him. He suggested that the Waterways Committee hold the public meeting on all changes except for the fees. The Board agreed to move this item to next week's agenda. Mr. Hughes said some of the changes need to be with the Board of Selectmen. Mr. McManus stated that we do business in public and with regard to who has the responsibility, the Board's policy is the overriding factor. He noted that the law does not designate responsibilities to the Harbormaster, it designates them to the Harbormaster or another individual that is so designated and in this case it is designated to the Board of Selectmen in the Harbor Management Plan. Mr. McManus moved to hold a public meeting on the proposed changes on February 19th. Mr. Hughes seconded the motion and the motion carried by a 4-1-0 vote with Mr. LaMantia in opposition.
- Request by Water Commissioners
 for Board of Selectmen to schedule

meeting with National Grid to
intervene in regard to dispute over
road openings – *discussion &
possible vote*

Mr. Merriam stated that the Water
Commissioners and Superintendent were
present earlier but have asked to be
rescheduled. The Board agreed to place this
item on the February 19, 2013 agenda.

- Approve Highways & Maintenance
Director's proposal to exchange
compost for screened material

At Mr. Hooper's recommendation, Mr.
McManus move to authorize the Director of
the Division of Highways and Maintenance
to sign agreements with local contractors for
the removal of our unscreened compost on
the understanding that they will return 20%
of it in screened condition back to the Town.

Mr. Hughes seconded the motion. Mr.
Hughes stated that the documents should
state that it is at no cost to the Town of
Harwich and Mr. McManus agreed. The
motion carried by a unanimous vote.

- License Agreement with Nstar for
easement at 81 Oak Street to provide
service at Monomoy Regional High
School – *discussion & possible vote*

At Mr. Merriam's recommendation, Mr.
McManus moved to sign a license
agreement with Nstar for a right for the
utility installations at the Monomoy
Regional High School Project. Mr.
LaMantia seconded the motion. Mr.
McManus stated the intent will then be to
have a Special Town Meeting article for this
easement. The motion carried by a
unanimous vote.

- Annual Town Meeting Warrant

article review – *discussion & possible votes*

- Article 33 – Reimburse Taxes Paid to Town Relative to Solar Farm
- Article 41 – Decommission the Architectural Advisory Committee
- Article 42 – Long Term Solid Waste Disposal Contracts
- Article 50 – Transfer Care & Custody of the Albro House
- Article 54 – Pleasant Bay Resource Management Plan Update

With regard to Article 33, Mr. Merriam stated that this article can likely be pulled but he would have more information next week.

The Board agreed to wait one week to address it. With regard to Article 41, Mr. McManus recommended inviting the Architectural Advisory Committee to the discussion and Mr. Hughes recommended inviting the Building Commissioner and Town Planner. With regard to Article 42, Mr. Hughes said it is necessary to include an explanation as to when the current contract expires. With regard to Article 50, Mr. McManus noted that the Council on Aging will need to vote to relinquish the Albro House before Town Meeting. With regard to Article 50, Carole Ridley, Coordinator for the Pleasant Bay Alliance, explained that the article presents the updated revised plan and authorizes the Board to renew the Intermunicipal Agreement with the other Towns. She added that there are no major changes in the plan and it is available on their website.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam delivered the following report to the Board:

FY 14 Cherry Sheets

Attached are Governor Patrick's House 1 Local Aid for Harwich, Monomoy and Cape Tech.

Monomoy FY 14 Budget

Dave Ryan and I met with Supt. Cragin, School Business Manager Katie Iernio and Alix Heilala to updates on the FY 14 budget. The Governor increased the Chapter 70 allocation by \$698,335 to \$3,082,875. We expect firm numbers on Health Insurance on Feb. 13th and retirement commitments on Feb. 15th. Supt. Cragin has offered March 4th for the School Committee to attend your meeting. She noted that the Middle School boiler will require replacement in the short term and will provide an evaluation of its condition. See attached Monomoy Ch.70 Preliminary FY 14 foundation enrollment, budget, minimum contribution and net school spending requirements as well as Mark Abrahams e-mail explanation of the Governor's proposal. Monomoy's assessment for Harwich is still greater than \$500k higher than my January 7th budget.

Monomoy High School

Attached is the Building Committee spreadsheet comparing the approved budget to apparent low bidder- Fontaine Brothers, with a projected savings of \$5.3m, inclusive of Add Alternates.

NSTAR wrote a letter seeking the Board's approval by February 3rd of an easement to locate three poles and transformer on the construction site. Realizing that Town Meeting must vote to authorize an easement,

I asked NSTAR if they would accept a temporary license agreement, which they would. Town Counsel redrafted the license agreement for your approval. A STM article will be submitted seeking a permanent easement.

The License agreement looks fine with me, please have the Board of Selectmen sign, have notarized and return to me.

~

Karen Corriveau
NSTAR Electric
Right of Way Agent

Cape –Wide Wastewater Management
Planning letter from Paul Niedzwiecki

Letter explains receipt of \$3.3m
Commonwealth grant to write a new Cape plan under section 208 of the Clean Water Act. Cape Managers are invited for a focus group meeting on Feb. 14th.

CVEC- Solar Project

Maggie Downey informed me that NSTAR signed the interconnect contract with American Capital Energy last week. We're now inquiring about installation dates, payment methods and personal property taxes assessed and reimbursed.

Cranberry Valley Restaurant Lease

CRANBERRY VALLEY GOLF COURSE
RESTAURANT AND BAR
CONCESSION
REASON FOR RE-BID

The RFP for the lease of the Cranberry Valley Golf Course Restaurant was advertised on January 10 and 17, 2013. The

RFP was complete and ready for distribution on January 10. However, the distribution of the RFP was delayed due to information from Bond Counsel that the language in the lease Agreement is critical to maintain the bond on the golf clubhouse's tax exempt status. The Town was informed by Bond Counsel that the lease did not jeopardize the Bond's tax exempt status on January 22, and the RFP was issued shortly thereafter and bids were due on the 28th. Only one bid was received.

A second individual complained that they did not have enough time to complete the RFP before the deadline, and submitted the RFP shortly after the 2:00 pm deadline. The Inspector General's office advised to reject this bid. Another individual who had planned to submit an RFP stated that he never received the RFP (it was submitted to him via email, and he had not checked his email the few days before the bid deadline.)

It was decided that it is in the best interest of the Town to re-issue the bid to give everyone who wanted to bid on the RFP an opportunity to bid. The new bid opening date is February 22.

Water Commission

The Water Commission has written a letter to you dated January 22nd regarding their dispute with National Grid over fees charged for water mark outs. They seek your intervention to call for a formal meeting with National Grid representatives. As you may recall, I have recommended that the Water Dept. simply bill their water customer, not National Grid, for the mark out.

IRS

Attached are two letters approving the IRC 457 and 403B deferred comp plans without change.

- Regional Golf Advisory Committee
– Reciprocal Agreement/Pilot Status
with Harwich

Mr. Merriam,

I have attached the approved Minutes from the Chatham Board of Selectmen's meeting of January 8, 2013. The section relevant to Harwich residents as members at Seaside Links is located on pages 2-3.

Shanna Nealy

Executive Secretary, Town Manager/Board of Selectmen

Town of Chatham

Dan Tobin, Director of Parks & Recreation Department, said that last year Cranberry Valley, the Harwich Municipal Golf Course, opened membership up to Chatham residents at the Harwich resident rate. He said Harwich was asking for a reciprocal agreement for memberships at Seaside Links, the Chatham Municipal Golf Course. He said Sports Management, Inc., which leases golf course operations from Chatham, has agreed to a pilot program offering 25 memberships to Seaside Links to Harwich residents at the Chatham resident rate for 1 year. He said Sports Management, Inc. will review the program at the end of the year and evaluate. He said the concern was that the additional memberships could negatively impact daily play at the course in the summer.

Ms. Seldin said she believed the opening up of memberships was successful for Harwich.

Dennis Hoye, Director of Golf for the Town of Harwich, said Harwich began offering

memberships at Harwich resident rates to Chatham residents after seeing membership decline. He said the program brought in 49 additional members to the course in a year raising the total number of memberships for Chatham residents to 90.

Mr. Summers said the Joint Regional Ad Hoc Golf Committee had many good ideas that could benefit both Towns in the future. He was concerned about capping the memberships available to Harwich residents at 25. He said the memberships for Chatham residents at Cranberry Valley were not limited.

Mr. Whitcomb said he was glad that Sports Management, Inc. is willing to try the pilot program. Ms. Goldsmith said Sports Management, Inc. was comfortable with 25 memberships. They are concerned about slowing play during the summer months.

Mr. Hoye said the Town of Harwich has an outside consultant come in on a yearly basis to test soil samples at Cranberry Valley. He presented the Board with a copy of 8 years of these reports to forward to the Golf Advisory Committee.

Mrs. Norma Avellar, South Chatham, referenced a letter from the Joint Regional Ad Hoc Golf Committee, and asked who was driving the recommendations in the letter. Ms. Seldin said the only current proposal for the Board to vote on was the pilot program for memberships.

Motion: by Len Sussman to endorse the pilot program for 25 memberships to Harwich residents at Seaside Links at Chatham resident rates.

Second: by Tim Roper.

Vote: 5-0

TA Draft North Harwich Article with
Town Counsel comments

TRANSFER LAND IN NORTH
HARWICH FOR AFFORDABLE

HOUSING DEVELOPMENT
APPROPRIATE FUNDS FOR CERTAIN
LAND TAKING

ARTICLE 51 To see if the Town will vote to authorize the Board of Selectmen to take by eminent domain the below described parcel of real estate for the purpose of confirming the Town's title to said parcel, which is already owned by the Town through tax title proceedings:

3.2 +/- acres on Main Street Extension, North Harwich, as described in a deed recorded at the Barnstable County Registry of Deeds in Book 26617, Page 138 and shown on Harwich Assessor's Map 55 as Parcel G8

And that the Board of Selectmen be authorized to take said land or interest therein on such terms and conditions and with such limitations as they deem appropriate the Town's interest and to vote to appropriate, transfer from available funds or borrow a sufficient sum of money to pay back to the Town the taxes, interest and fees owed for said parcel to the time of Judgment by the Barnstable Registry of Deeds Book No. 26617, Page No.138 on August 24, 2012; And to transfer the care, custody, management and control of the land from the Board of Selectmen which currently holds the land for general municipal purposes to the Board of Selectmen for the purpose of transferring the land for the construction of affordable housing pursuant to the Town's Comprehensive Plan, and further to authorize the Town of Harwich to negotiate a land disposition agreement with a qualified builder or developer, which agreement shall provide for the construction of affordable

rental on the land, with the overall development not to exceed four (4) units per acre; said land to be transferred in fee simple determinable, subject to the condition that should five years elapse from the date of transfer without commencement of construction of the units pursuant to a valid building permit therefore, title to the land will revert to the Town; and further such transfer shall be subject to such additional terms and conditions as the Board of Selectmen deem necessary and appropriate to insure that the land so transferred will continue to be used for affordable housing purposes and to carry out the purpose of this article, and to act fully thereon. By request of the Harwich Housing Committee and the Harwich Housing Authority.

Hi Jim:

I'm reviewing the warrant article for John, and have a couple questions/comments.~ One, the article says that the Selectmen hold the property for general municipal purposes.~ Since the Town originally acquired the property by tax taking, I assume that Town Meeting voted at some point to transfer the property from the Tax Collector for the purpose of sale to the Selectmen for general municipal purposes – is that correct?

Also, the article is very detailed/restrictive – it says that the property must be for rental housing (not ownership) and cannot exceed 4 units per acre.~ If that's how it's voted on, the Selectmen won't have the flexibility to change it to an ownership project, or change the density, without coming back to Town Meeting.~ If we want to preserve the Selectmen's flexibility, I recommend we

take such limitations out.~

Lastly, the article says that the property must be conveyed subject to a reverter – I understand that the goal is to ensure that the property won't lie fallow, but a developer is unlikely to find financing, especially these days, if there is a reverter on the property.~ Again, if a reverter is stated in the vote, we cannot dispense with the reverter without a new Town Meeting vote.

If you wish, we could leave the density, reverter, and other requirements to the Selectmen, rather than having them in the vote.~ The Selectmen could, of course, insert such requirements in the RFP and in the deed to the property, but if for any reason we want to vary any of the terms, we wouldn't have to go back to Town Meeting; a vote of the Selectmen would suffice.

Please let me know how you wish to proceed.

Shirin Everett, Esq.

DPW proposal to offer contractors to remove compost in exchange for screened material

As you know, the Town has received permission from MA DEP, under two separate BUD's (Beneficial Use Determination), to relocate 16,000 cubic yards of dredgings from Allen Harbor~to the Disposal Area pit and to relocate approximately 10,000 cubic yards of street sweepings from the capped landfill to the pit area to make room for the solar project.~ The DPW is currently reorganizing this area in preparation of the~influx of materials, but

needs~do something with the 35,000 +/- cubic yards of unscreened compost we have stockpiled.~ Given that this material has no financial value and~that we continue to generate several thousand yards more than we are able to give away each year, I would like to propose the following:

~

Allow local contractors who~own screening plants to~haul as much unscreened compost as they want~with the condition~that they return 20% to the Town~once it is screened.~~We have~discussed this with four local contractors~(Robert Our, T.W Nickerson, Paul Daniels and Robert Childs) who are all interested.~~This~deal would benefit the Town in two ways:~It will free up needed space~that will allow us to deal with the two BUD's in an orderly manner and it will provide the residents with~free screened compost that we~typically screen in-house, saving weeks of fuel and labor costs.~ ~ ~

~

Although compost is exempt from MGL Chapter 30B under Section 1(b)(30), I would like your~and the Board of Selectmen's consent before proceeding.~ Unfortunately, there is a public perception that~the mountain of unscreened compost we have stockpiled is a gold mine, when in fact it is a liability.~ That is, other municipalities and contractors sometimes pay to get rid of the material, pay to screen it to make it useable or simply give it away.~~In~my opinion, this proposal~saves the Town money and frees up necessary space for our scheduled projects.~ The only costs associated with this would be the loading of the compost by Town personnel with~Town equipment, but since we have to move~the material~anyway, there really~aren't~any additional costs.~~

~

Please contact me with any questions you may have regarding this request.~ Thank you for your consideration in this matter.~~

~

Link~~~~~

I just called Chris Our as the largest local contractor and asked if he would be interested in a bid requiring the removal of the entire pile by a contractor.~ He said, and I quote, "we'll bid it, but it will cost you."~ We need all these contractors to even come close to moving the entire 35,000 cu yds.~ Further, we do not have the luxury of time as we are responsible for moving the dredgings, moving~the sweepings~and being ready to gear up for summer by April / May.~

~

FYI - Yarmouth has a no bid agreement with an off cape company to remove their compost, but~they haven't been responsive enough for the town and huge piles remain.~ Dennis simply stockpiles as they have enough area to do so, but admits that it is a problem they will have to address at some point.~ Chatham swaps with two local contractors~in the same manner I have proposed.~ Brewster charges residents for leaves and therefore doesn't produce that much compost.~Orleans has been lucky in that they have had a few major water projects where they have been able to use what they produce.~ One thing should be clear --unscreened compost is a problem, not a commodity.~ I urge you consider~my original proposal~and not complicate matters by bidding this problem.~ It will inevitably cost the town more and slow things down.~ I would be happy to meet to discuss, or show you what we are talking about, if you

want.~ ~

~

Link~~~~~

Compost Bidding exemption from Bob Cafarelli

MGL Chapter 30B Section 1(b)(30) states:

~Section 1. (a) This chapter shall apply to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body as defined herein.

~~~~~ (b) This chapter shall not apply to:

~~~~~ (30)  
a contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable

~~~~~  
~  
materials;

This pretty much exempts all facets of handling compost (transportation, processing, receipt, etc.).~ Linc's proposal makes a lot of sense, especially if the contractors are willing to give the Town 20% of the screened compost.~ Unscreened compost is more of a waste than an asset, and I had a hard time getting rid of it in the Towns that I was DPW Director. ~The Town wins in a number of ways with Linc's proposal.~ I see no reason to jeopardize Linc's favorable arrangement with a bid when it is not required.~ His legitimate concerns of time restraints add to this argument (removal of the 16,000 cubic yards from Pleasant Road Beach will be time consuming, and requires space at his facility).~ The fact that he needs a number of contractors to remove the pile, and not just one, also negates the purpose of a bid.~ I think it is in the best interest of the Town to

quickly support Linc's proposal, and take advantage of the bid exemption.

Robert Cafarelli, P.E.

Town Engineer

Allen Harbor dredging update

Burnham has removed 44 loads, with another 26 projected to completion. Marina cuts 7&8 remaining- Marina should be complete by Feb. 15<sup>th</sup>.

County Dredge status –should be complete by Saturday

We dredged the area from the inlet channel to the booster's location. Yes we are west of the curtain. It took about three hours to reset anchors, pipeline and dredge. The SE corner of the sand dike was built up today using Barrows excavator. The operator did well leveling the top of dike all around and building up the low corner. The CDA is working well. I plan to raise the outfall in the morning. ~I have not done an AD dredge survey of Herring River which I need to calculate the volume removed. I will ASAP. The Cod Fish pumping time stops every 1.5 to 2 hours for 20 to 30 minutes to clear debris from the main pump and /or cutter head! A lot of stuff falls over board in an anchorage! We have two longer cuts down the west side of the basin and then we need to move the booster to dig the S/W corner. The basin area should be finished Friday or Saturday! It will depend on running time.

Oyster Creek?

AFN

Wayne

CVEC Solar update

I have copied CVEC legal on this email so they can review the solar tax

issue. Regarding NSTAR cash or credit decision, as soon as we complete the System of Assurance application, we will go back to NSTAR. ~I believe The SA should be completed in the next 14 business days.

Maggie

#### Muddy Creek Culvert

The Project Team met with the #1 ranked engineering firm to discuss scope and price. We hope to have an award by your 2/11 meeting.

#### Finance Team

The Finance Team continues to meet weekly to track budget revenues and expenditures for future amendments.

### **SELECTMEN'S REPORT**

Mr. LaMantia outlined his letter dated February 11, 2013 regarding revenues vs. expenditures. He asked for it to be an agenda item as well as to request that Mr. Ryan prepare a Sources and Uses document for both Recreation & Youth and the Community Center.

Carolyn Carey questioned why Mr. LaMantia was singling out only two departments and he responded that he was just following the budget letter. He also said that every department that sets fees should have the proper financial back up. Mr. Ballantine noted that we do have some functions that cross departments so we would need to look at those. Mr. LaMantia stated that we don't need to look at all the departments because some operate independently. Mr. Ballantine responded that they have a fiduciary responsibility to

include all departments. Mr. Hughes suggested asking Mr. Ryan to gather the fees and revenue for each department as well as what their budgets are as a starting point.

He commented that he doesn't think it will be as clear as Mr. LaMantia thinks it will be and there is a difference in expectations for department and programs as well. The Board questioned if further discussion is really necessary. The consensus of the Board was that they would just gather the data right now for all departments.

### **ADJOURNMENT**

Mr. Ballantine moved to adjourn at 10:29 p.m. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary