

Board of Selectmen Minutes

02/19/2013

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
TUESDAY, FEBRUARY 19, 2013
7:00 P.M.**

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

OTHERS PRESENT: Town Administrator James Merriam, Mary McIsaac, Craig Wiegand, John Rendon, Geoff Larsen, David Spitz, Liz Groves, Matt Hart, Allin Thompson, and others.

MEETING CALLED TO ORDER at 7:07 p.m. by Chairwoman Linda Cebula.

CONSENT AGENDA

- A. Minutes
 - 1. February 4, 2013 Regular Meeting
 - 2. February 11, 2013 Executive Session
- B. Vote to approve request by Director of Channel 18 to purchase two replacement decks for the systems at Town Hall and at the studio to be charged to the cable fund.
- C. Vote to approve annual renewal of Common Victualler license for Dave's Cape Cod Smokehouse
- D. Vote to approve expenditures from the Golf Revolving Fund
- E. Vote to approve the Bond Anticipatory Note for Allen Harbor Dredging

Mr. Hughes moved approval of the Consent Agenda. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote. Mr. Merriam suggested using the unexpended balance of the Allen Harbor dredging funds to fund Article 19 – Allen Harbor Bulkhead Repair and Parking Lot Drains. The Board discussed the suggestion with Ms. McIsaac and Mr. Merriam and no action was taken.

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

- Public Meeting on Harbor Management Plan amendments – *discussion and possible vote*

Mr. Ballantine read the hearing notice into record. Mr. Rendon outlined the changes (see attached) and he and Mr. Hart took questions from the Board. Mr. Hughes requested that Mr. Rendon re-look at item #3 and report back. No one from the public appeared before the Board. Mr. McManus moved to close the public hearing. Mr. Hughes seconded the motion and the motion carried by a unanimous vote. Mr. McManus moved to approve the amendments as presented. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

OLD BUSINESS

A. 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. Thompson reported that since 2009, National Grid has been in the process of replacing all their iron gas mains and they owe the Water Department \$10,005 for markouts. He noted that they have stopped doing them and they have gone directly to the customers to explain this when they need the gas service. He said they charge \$25 for up to 2 markouts and it comes out of water rates which is not a fair shake for the ratepayers. He reported that they have met with the Town Administrator and 2 representatives from National Grid and they paid us up to date to last year under protest. He stated that they send all the markouts to the Water Department and they mark them out but then National Grid doesn't start work and they have to mark them out again as the markouts are only good for 30 days under state law. He stated that they would like to get paid but also wants to go back to the table with them and would like the Board to get involved to see if they can get some result as National Grid refused to respond to them at all. He suggested that the Commissioners formulate something in writing that the Board could weigh in on. Mr. Ballantine suggested appealing to a regulatory agency that has authority.

Mr. Wiegand stated that he has tried to contact National Grid at least 75 times and they do not respond. He further noted that National Grid is telling the customers that the Water Department is not doing the markouts and are holding up the process but they don't receive most of them.

Chairwoman Cebula questioned if other towns are having a similar problem and Mr. Wiegand responded that other Cape towns are having this problem.

Mr. Hughes suggested that Mr. Wiegand provide a letter of the history of the dispute and the contact names and the Board will request a meeting with National Grid and the Water Commissioners. Mr. Thompson said they would put something together.

Mr. Thompson said when the homeowner calls the Water Department directly, the homeowner ends up paying.

B. Public Hearing v. Public Meeting/second reading – *discussion and possible vote*

Mr. Merriam outlined the changes to the draft policy since the last meeting (see attached). Mr. Hughes stated that the word “for” should be removed from the first paragraph and the word “who” should be changed to “which” in the final paragraph. Mr. LaMantia said the last paragraph in the small print should be included as part of the policy. Mr. Hughes said that in that case there should be a period after the word “approval” and the words “should be noted” should be removed. Mr. LaMantia said he is not sure the second paragraph needs to be in at all and Mr. Merriam responded that other boards may want to adopt a state regulation and they don’t need the Board’s blessing to do so. Mr. McManus said that somewhere in state law it gives authority for boards to make changes. Mr. LaMantia said he would like to see some state regulation examples on various boards and committees on what allows them to make changes and how. Mr. McManus pointed out that the second page that describes the difference between a public meeting and public hearing is taken from the revised code adopted by the Washington State Legislature and has nothing to do with what they are talking about. The Board agreed to bring back this item.

- CWMP amendments/edits –
discussion and possible vote

Mr. Ballantine noted that the Board already voted this. The consensus of the Board was that they were satisfied with the edits that were made. Mr. McManus commented that the edit on Title V is somewhat confusing as it indicates that Monomoy is not on a phasing program to tie into sewers. Mr. Ballantine noted that it takes a specific request from the Town and the School Committee and the statement is correct as of today. Mr. Hughes stated that the plan is meant to be modified over time. Mr. Ballantine moved to accept the draft CWMP as edited and confirm the approval. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

NEW BUSINESS

A. Submission of Town Budget to the Finance Committee

Mr. Ballantine moved to submit the FY14 Town budget to the Finance Committee. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

B. Annual Town Meeting Warrant – *review/vote to include articles and vote to sign warrant*

#41 De-commission the Architectural Advisory Committee

At Mr. Merriam's recommendation, Mr. Hughes moved to remove Article 33 (Reimburse Taxes Paid to Town Relative to Solar Farm). Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes moved to remove Article 48 (Sale or Lease of Bank Street Fire Station Property) from the warrant. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes moved to remove Article 41 (Decommission the Architectural Advisory Committee) from the warrant. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Mr. Hughes moved to include all the articles that are in the warrant with the exception of Articles 33, 41 and 48. Mr. Ballantine seconded the motion and the motion carried

by a unanimous vote. Mr. Ballantine moved to sign the warrant. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

- C. Warrant Article review:
- # 7 Water Department Budget
 - #25 Water Treatment Plant
 - #26 Water Department Vehicles

Mr. Wiegand outlined the Water Department budget as well as Articles 25 and 26. No action was taken.

- Review One-liners – *possible votes*
- The Board requested to wait on voting support for articles and Chairwoman Cebula agreed and noted that the free cash figure needs to be adjusted.

TOWN ADMINISTRATOR'S REPORT

Mr. Merriam delivered the following report to the Board:

Allen Harbor update

AH Marina area was completed on Feb. 8th. Captain Ted Augustine projects 9 more loads in cut 4/5 to complete. Target to complete is February 28th or before. Post Dredge survey to be performed after March 1st by CLE Engineering. County Dredge post dredge calculation was 6,800c.y of sand from Herring River and 8,000 c.y. from Allen Harbor. The pit is draining well.

Winning Bank bid for \$2.9m BAAN was . 44 percent.

Emergency scow disposal due to storm

Mr. Langley,

With the building seas conditions reported by the tug operator, combined with the forecasted approach of a major storm, the request by Mr. Craig Burnham for the emergency release of approximately 600 cubic yards of dredge material from one of his loaded dump scows that was enroute from Allen Harbor in Harwichport, MA to the MA Bay Offshore Disposal Site is warranted.~ Returning to Allen Harbor with a loaded scow to seek refuge from the storm is not a feasible option.~ First of all there is not sufficient water depth in Allen Harbor basin to keep the loaded scow off the bottom during a low tide period.~ With forecasted hurricane force winds, building seas conditions, and significant storm surge, the structural integrity of the scow could be jeopardize as it pounded against the bottom.~ The real potential ~of a capsized or partially capsized loaded scow in Allen Harbor would not only pose a navigational hazard, but it would also have a detrimental impact of the known shellfish areas and marsh areas within the basin. Thank you very much for your consideration, and please let me know if additional information is required.

v/r,

John C. Rendon
Harbormaster

The status of the Turbidity Curtains is as follows...from Captain Ted Augustine – provided repairs and added more silt curtain from Robert Our.

R Our Curtain~....two of the thee 100' sections are missing the bottom 12' of the curtain rendering them ineffective for our needs.

Town Curtain....600' has been compromised due to the 'Blizzard of 2013'. 400' is still intact and usable. ~When I say compromised I mean that the bottom 12' or a portion there of has separated from the visible sections that you can see floating.~~ Please note~that the severity of the blizzard was able to relocate the County Dredges 2 150lb Danforth~anchors which were helping to hold the curtain in place as well as relocate our 100lb mushroom anchors. ~We also found the factory fastenings to have failed due to the high winds.~ We were able to use the one good section of Our's curtain and fasten it to a section that has failed. During my yard tour at Our's yard I noticed that they have more curtain...not sure of the dimensions. We will be getting two more loads out today....that is the Good News!!!
Respectfully Submitted
The Captain!!!

Kathryn Ford from DMF will visit AH on Feb. 15th with Pam Neubert and Don Munroe. Pam will video the harbor floor for flounder.

Supporting Grant application to address
Time Of Year Restrictions

Below are some talking points that you can use for your meeting tomorrow to explain what the winter flounder TOY restriction is about, how it affects Cape Cod embayments, dredging, and the upcoming NEAFWA grant application.~ The proposals are due March 1st.~~ Let me know if you need any more information or detail.
Pam

- Time of year restrictions are

primarily based upon protection of spawning marine fish, horseshoe crabs, and nesting shore birds associated with estuaries.~ Because of these concerns, more projects were receiving TOY restrictions.~

- Sustaining tidal flushing and dredging to avoid interfering with tourism versus potential effects on the selected species of concern is an important consideration.
- March 2012 MA DMF prepared Summary of Marine Fisheries Resource Recommendations for Municipal Maintenance Hydraulic Dredging Activities on Cape Cod and the Islands.
- DMF recommendations include in water, silt producing work should be avoided during TOY restrictions.~ A winter flounder TOY is recommended in all embayments and inlet channels.~ If work in an inlet channel is 3 days or less and is within a cumulative impact cap (e.g. no more than 3 inlet channels in a given region), a TOY waiver is granted.~ As stated within the DMF documents Embayments are not eligible for waivers.
- Harwich, with assistance from EcoAnalysts (Dr. Pam Neubert) and Coastal Engineering Company (Mr. Don Munroe) were able to obtain a TOY waiver for Allen Harbor with the implementation of monitoring measures during dredging activities beyond the TOY restriction.
- Winter flounder is a major commercial and recreational fish species that is undergoing a severe population decline.~ Cape Cod divides two major winter flounder

stock regions:~ Gulf of Maine (Cape Cod Bay) and Southern New England/Mid Atlantic Bight (along the outer Cape and all areas south of Cape Cod.~ Both stocks can utilize nearshore bays and estuaries for spawning and nursery habitat.~ Winter flounder have demersal eggs that are sensitive to impacts of sedimentation.~

- Winter Flounder TOY as follows:~ South Cape Cod East and West, Buzzards Bay East and West, Island (January 15-May 31); North Cape Cod, South Coastal (Feb 1-June 30); Boston Harbor and North Shore to NH (Feb 15 to June 30)
- Not known when exactly winter flounder spawn in Cape Cod Embayments, either north or south side
- Climate changes, sediment changes may be impacting where winter flounder prefer to spawn and the time of year
- A study is necessary to determine when winter flounder are found within Cape Cod embayments to assist with developing dredging legislature that will relate the TOY restriction for winter flounder to actual data
- EcoAnalysts (Dr. Pam Neubert) and Coastal Engineering Company (Mr. Don Munroe) have identified a grant that they will apply for that will provide matching funds through ~the Northeast Association of Fish and Wildlife Agencies. ~Topic to be addressed includes design and implement monitoring protocols, measures and indicators for winter flounder, and address TOY life

history related data gaps for winter flounder.

- Use Truro and Harwich as north and south Cape models to determine time of year when flounder utilize the embayments for spawning.

Special US Senate election

I am attaching a letter from the State Auditor regarding the up coming Special Elections.

I will keep you posted if I receive further information

Anita

Response from Peter deBakker

I read Mr. Haffner's article in the newspaper. I don't often get my hairs up, and let things slide when they appear as a newspaper article. What Mr. Haffner states is his opinion, but reflects only half the truth of what happened. But, when Mr. Haffner wants to go the route of involving other departments (implying he wants to chastise the PB, including me), then a complete response is required, and I want to face my "accuser". In other words, I would find it not unreasonable for Mr. Haffner to appear before the BoS to make have his say, and for the PB to respond to his statement.

I am willing to state that the Planning Board made every effort to accommodate Mr.Haffner's request to the Applicant. Developers want to maximize their investment, neighbors want to minimize the impact of the development around them. There are Zoning bylaws and regulations that dictate what can and cannot be done. The PB, sympathizing with SOME aspects of Mr. Haffners's concerns, spent close to an hour on Mr. Haffners's issues, none of which the the Developer, LEGALLY, had to do. Mr. Haffner got, let's say 90% of what

he wanted, but kept pressing into the margin of what came to be perceived as unreasonableness, and an unwillingness to compromise. There is more to this story than meets the eye. Clearly he is a frustrated abutter. To express an opinion is everyone's right, but let's get all the facts out, especially when the Planning Board is now being taken to task.~
Peter de Bakker

ACE Solar panel project

Good news about the~NSTAR net metering cap.~ All of the projects submitted so far are within the 149MW limit. ACE is scheduled to walk the site with investors on February 14th. We have not received a schedule yet.

Monomoy Foundation Budget

Attached are the Department of Elementary and Secondary Education spreadsheets for Monomoy. The FY 14 Foundation budget is \$17,616,424 and per pupil cost of \$9,512. Chapter 70 Aid has increased to \$3,082,875, an increase of \$622,415. DESE has noted the enrollment decline of 46 students from last year, which translates into a reduction of the Required minimum contribution of \$1,607,434. Harwich's share of this reduction is \$775,147.

DOR

At the MMA, DOR informed me that they have updated their At a Glance reports to be interactive with Recaps, approved values, Cherry Sheets and Schedule A. See attached. Note Harwich's FY 13 average tax bill of \$3,690 compared to the Statewide average of \$4,926.

Snow and Ice Deficit

Lincoln Hooper advised me that Highway spent approximately \$125k last weekend.

FEMA criteria for Reimbursement

- Over the next few days, the National Weather Service will finalize the official snowfall totals for the February 8-9 snowstorm. MEMA will then compare the snowfall totals for each county to the all-time record snowfalls for each county. Snow assistance from FEMA is available to cities and towns in a particular county, and for state costs incurred in that county, if:
 - The county received a record snowfall during the February 8-9 storm; or
 - The total snowfall in the county is within 10% of the all-time record for the county; or
 - The total snowfall in the county, although neither record setting nor within 10% of the record, exceeds the snowfall in a contiguous county if the contiguous county received a record or near-record snowfall.

Harbor Management Plan –
interpretation question from Matt Hart

John and I really appreciate the progress with the approved “Processes” but because of that accomplishment we are sensitive to complying with the area of “Fees”.

The Public Hearing the WWC needs to schedule is about existing Charter Regulations. The HMP already allows an A Class Commercial Fishing Boat to supplement their income by taking out charters. The changes we are recommending will enforce that the A Class Permit is primarily for commercial fishing and as such

the boat owner will provide a copy of the documentation that shows their total catch weight and type of fish for the year to the Harbormaster.

In addition if the A-Class Permit holder wants to also take out charters then the boat has to comply with the Charter Regulations, including the present fees. I'm suggesting that the change in the HMP is an enforcement of the existing regulations ...and .not a new or a change of a fee.

Also if we drop the car/truck parking requirement for A permits with Charter and make it like the existing Charter Boats that do not have to provide off-site parking, then once again we are not changing the HMP for Charter Boats but we are enforcing existing regulations.

Separately if we decide we want to charge for car/truck parking at Saquatucket Harbor, I believe that would require a BOS Public Hearing.

John and I would like your opinion; and if you believe it is necessary to also inform the selectmen of our question, thanks.

Matt

Matt, I concur that WWC is not proposing a change in fees. Jim

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Monomoy Septic System design from Paula Champagne

Just to let you know I have been dealing with DEP and Niche Eng (school eng) the past week concerning recent developments with the septic system. Seems as though there was a miscalculation submitted to DEP on design flows and all have been working on the assumption that a groundwater discharge permit situation was automatic (anything > 10,000 gpd is state review, automatic treatment and discharge permit) The path chosen by the development team was to obtain a design flow variance to allow a standard title 5 system to be installed as a temporary measure. This would have required the towns to sign an administrative consent order requiring either a hook-up to the sewers when available in Harwich Center or, if that was not an option, then the school would have to design and install their own treatment plant. I understand that the construction plans in the bid ~are based on a ~13,000 gpd flow standard system.

The miscalculation now puts the flow design

at less than 10,000 gpd. assuming ~they apply for and receive the correct flow design variance from DEP. The assumption for that flow design will be somewhere around 6,000 gpd.~ It is expected that DEP will grant this. HOWEVER , DEP is now kicking the project back to the local level for review and approval as it no longer qualifies to be in their jurisdiction.

This project will now have to go back to square one---be redesigned for the correct flows, BUT ~there has been no environmental review presented to the BOH and hearings will be necessary to comply with Reg 1.211.~ This requires an environmental impact review which may result in an onsite treatment plant.~ (same results I suppose as the DEP---just backwards). There has been some work done by CDM in this area that may be useful for the schools to absorb in their reports.

I have presented this info to the BOH on Tues nite and they wanted me to share with you and our BOH liaison. We need to wait for the school eng to apply for and receive the flow reduction variance before this can continue.

Paula

We had many conversations/meetings with DEP and the design flow rate (14 GPD) indicated on our plans is what DEP directed us to use. I did fight for a lower daily rate and was told no. We will get started on the variance process in accordance with 310 CMR 15.416, Variances for Schools. William Maher, PE, LSIT~ |~ Project Manager

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Cape Cod Municipal Health Insurance

I'm attaching the FY14 CCMHG funding rates for health and dental plans. These rates were approved by the CCMHG Board yesterday.~ The Board applied \$9.9 million from its fund balance in order to reduce the rates that were projected by underwriting methods and calculations to the levels that appear on the attached sheet. ~There was one exception to this, i.e. no subsidy to Master Health Plus since the Board had previously voted not to subsidize this plan.
Carol Cormier

Cape Managers Monthly meeting

We discussed \$3.35m Cape grant for regional Wastewater planning, focus groups. We discussed CCMHG budgeted surplus/ rate setting process. We discussed post storm impacts- Communities wanting local shelters but Red Cross staffing issues; better feedback from NSTAR on power restoration plans; I briefed Managers on Single dispatch and TOY restriction grant application

SELECTMEN'S REPORT

A. Review Town Administrator Search Proposals – *discussion and possible vote*

The Board agreed to check references and bring in the firms for interviews in two weeks.

- Recommendation of the Nomination Sub-committee to appoint a Town Administrator Search committee

Mr. Ballantine moved to accept the recommendation of the Interview Committee on the make-up of the Screening Committee.

Mr. Hughes seconded the motion and the motion carried by a unanimous vote. The following are the individuals who were recommended for the Screening Committee by the Interview Committee: Frank Sampson, Shirley Gomes, Leo Cakounes, Pam Parmakian, John Wheeler, Christina Joyce, and Tom Johnson.

ADJOURNMENT

Mr. McManus moved to adjourn at 10:22 p.m. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary