

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, AUGUST 26, 2013
7:00 P.M.**

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

OTHERS PRESENT: Robert C. Lawton, Jr., Interim Town Administrator, Eric Beebe, Frank Crowley, and others.

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

CONSENT AGENDA

- A. Approve application by National Multiple Sclerosis for Cape Cod Challenge Charity Walk on September 6, 2013
- B. Vote to approve the recommendation of the Planning Board to appoint Peter DeBakker as their representative to the Community Preservation Committee
- C. Vote to approve the updated HEA Memorandum of Agreement

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

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

- A. Public Hearing – Proposed Rate Change by Recreation & Youth Commission

Mr. McManus read the hearing notice into record. Mr. Beebe reported that the Recreation & Youth Committee voted to allow non-resident Town employees to buy beach stickers at the same price that residents pay and noted that the Committee is asking the Board to approve this so that it can be instituted next year. Chairman LaMantia opened the hearing. With no one from the public appearing to give testimony, Mr. McManus moved to close the hearing. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to approve the recommendation of the Recreation & Youth Committee and extend the resident rate to non-resident employees. Mr. Ballantine seconded the motion. Mr. Beebe confirmed that this would not be available to school employees.

Chairman LaMantia stated that we need to do this when the fees for next year are set and recommended holding off on this until then. He noted that the Committee should follow the recommendations of the Department of Revenue and base the fees on their costs. Mr. McManus argued that the Committee needs to get an answer on this now so it is not an open question when they develop the fees for next year. Mr. Crowley stated that the Committee looks at all the other towns' fees and set the rates in early spring. Chairman LaMantia stressed that they need to

understand what their costs are and Mr. McManus responded that this is not part of the fee setting process.

Ms. Cebula asked for a list of benefits extended to non-resident employees and Mr. Lawton agreed to report back on that. She agreed with Mr. McManus that this is not part of the fee setting process.

The Board heard from a resident, Mr. Hadley, who said he considered this to be preferential treatment.

Mr. McManus stated that this is one of those things we can do to make non-resident employees feel that they are more a part of the Town. He commented that it is reasonable to do to ensure their loyalty. He pointed out that we call on them to leave their homes in natural disasters. Mr. McManus withdrew his motion and moved to continue this hearing to September 23, 2013. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

B. Show Cause Hearings on Liquor Licenses:

1. Harvest Fine Wines & Spirits – per MGL Ch. 138, Secs. 15, 23, 64 and 77
2. Harwich Spirits Shoppe - per MGL Ch. 138, Secs. 15, 23, 64 and 77

Mr. McManus read the hearing notice for Harwich Spirits Shoppe into record. Chairman LaMantia opened the hearing. No one appeared before the Board and Mr. Lawton confirmed that notices were sent and we have not heard back. He stated that the Board could revoke the license now or allow more time to determine if there will be a response. Ms. Cebula moved to close the hearing. Mr. McManus seconded the motion and the motion carried by a unanimous vote. Ms. Cebula moved to send another registered letter to the owner of Harwich Spirits Shoppe stating that the Board of Selectmen is giving effectively 30 days to come up with a proposal and tell us what his plan is and that in 30 days we have another Show Cause Hearing and at that point we can discuss what his proposal might be or whatever other action we might want to take. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

Mr. McManus read the hearing notice for Harvest Fine Wines & Spirits into record. Mr. Lawton stated that he spoke to Mr. Deegan today who stated that he is in the process of selling the building and understands he would have to come before the Board for a transfer. Mr. Lawton added that Mr. Deegan asked the Board for 60 days to respond with a plan on how he would be selling and transferring. Chairman LaMantia opened the hearing. Mr. McManus stated that Mr. Deegan doesn't own the building and that it is owned by the Masonic Lodge. Mr. McManus moved to allow him up to 60 days to complete the sale of his business but somehow indicate that he needs to, within the next 30 days, present us with his plan on doing that. Mr. McManus stated that Mr. Deegan has indicated that he is looking towards auctioning the business and if that's the case then he would expect that to be part of his plan and he needs to provide the Board with a copy of the agreement with the auctioneer. He stressed that the license is not one of the assets that can be sold. Ms. Cebula moved to close the hearing. Mr. McManus seconded the motion and the motion carried by a unanimous vote. Chairman LaMantia asked that Mr. McManus simplify his motion. Mr. McManus moved to set a date for another Show Cause Hearing on October 28th and in preparation for that meeting we direct the Town Administrator to write a

letter to Mr. Deegan requiring him to present his plan for disposal of his business within the next 30 days. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Mr. McManus requested that Mr. Lawton update the Board on our liquor license quotas.

OLD BUSINESS

- A. Letter from Town of Wareham requesting support of House Bill 1115 – An Act Relative to the Definition of Low and Moderate Income Housing – *discussion & possible vote*

Chairman LaMantia stated that neither the Housing Committee nor Housing Authority supports this. After discussion, Mr. McManus moved that we should take the advice of our two housing groups and not support the Town of Wareham's effort to redefine what constitutes low income housing. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

- B. Intermunicipal Agreement with Brewster for the Provision of Water Service – *discussion & possible vote*

At Mr. Wiegand's recommendation, Mr. McManus moved that we approve an Intermunicipal Agreement between the Town of Harwich and the Town of Brewster for the provision of water service. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

NEW BUSINESS

- A. Monomoy Regional School District FY14 & FY15 budget assessment – *discussion & possible vote*

Chairman LaMantia reported that several weeks ago the Harwich Board of Selectmen met in a joint meeting with the Chatham Board of Selectmen and the Monomoy Regional School Committee for discussion on how we deal with the fact that after both towns and the school set their budgets, the State changed how much Harwich and Chatham should pay toward the school and that change is about \$300,000. The Board discussed the possibility of going back to Town Meeting and Mr. Ryan did not recommend that but rather he suggested that we start off FY15 with a \$300,000 credit.

Mr. McManus moved that we inform the Board of Selectmen of the Town of Chatham and the Monomoy Regional School District that its our opinion that we put off the reconciling of the discrepancies in minimum contribution calculations to next year's budget development. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

- B. Contracts and Bid Awarding Authority Policy – *first reading*

Mr. Lawton outlined the policy he developed (see attached) on contracts and bid awarding authority and he recommended that the Board set a dollar limit on it. Ms. Cebula stated that the policy should separate what kind of contracts can be signed and added that this needs more work and definition. She commented that she is not sure how comfortable she is with this.

Mr. McManus stated that maintenance contracts don't need the approval of the Board but other contracts should be presented at a meeting so people can know what's going on.

Mr. Ballantine stated that the policy should define and set limits but said he applauded Mr. Lawton for getting the Board away from the minutia of Town business.

Chairman LaMantia stated that the Board doesn't need to read the contracts but just needs to know about them. He stated that the Town Administrator is more knowledgeable than the Selectmen on these issues.

Mr. McManus stated that if the Board is going to get blamed for errors, they need to know about the contracts.

Ms. Cebula said Mr. Lawton should put some meat on this and put some parameters and she reiterated that she is extremely uncomfortable with this. She further suggested that Mr. Lawton look at the format for policies.

No action was taken.

C. Release of Executive Session minutes as recommended – *discussion & vote*

Ms. Cebula moved that according to the master list the executive session minutes that are recommended to be released for the listing that's in the packet that they be released and the ones that are recommended not to be released be retained. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

SELECTMEN'S REPORT

Schedule for annual committee meetings

There were no objections from the Board on the schedule for committee meetings.

Middle School Repurpose Committee Charge

The Board agreed that they should invite the Committee in to report as their charge states they are to do so on a quarterly basis. Chairman LaMantia directed Mr. Lawton to invite them in.

ADJOURNMENT

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Ann Steidel
Recording Secretary

OFFICE OF THE TOWN ADMINISTRATOR

Robert C. Lawton, Jr. *Interim Town Administrator*

Phone (508) 430-7513

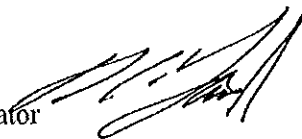
Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



MEMO

TO: Board of Selectmen

FROM: Robert C. Lawton, Jr.
Interim Town Administrator 

RE: Contracts/Bid Award Authority

DATE: August 12, 2013

I would like to suggest a streamlined procedure in awarding bids and contracts. I have reviewed the current Harwich Charter and received an opinion from Town Counsel regarding the authority of the Town Administrator in bidding, awarding, and signing contracts. I have enclosed his opinion for your information.

I would suggest the following policy be adopted by the Board of Selectmen:

The current Charter of the Town of Harwich in section 4 authorizes the Town Administrator to be the Chief Procurement Officer and purchase all supplies, material and equipment for town departments. The Board of Selectmen recognizes and supports that authority for the Town Administrator to develop and award bids and contracts subject to appropriation. Further it shall be the policy of the Board of Selectmen to require the Town Administrator to report, not less than on a monthly basis, all awards and contracts which have a value of \$100,000 or more. Such report shall contain the amount of the contract or award, the department within which the award was made, and the appropriation.

RCL/sr



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August 8, 2013

John W. Giorglo
jgiorglo@k-plaw.com

Mr. Robert C. Lawton, Jr.
Acting Town Administrator
Harwich Town Hall
732 Main Street
Harwich, MA 02645



Re: Contract and Bid Awarding Authority

Dear Mr. Lawton:

You have asked for an opinion regarding the authority of the Town Administrator to sign contracts and award bids.

As I understand the facts, it has been the practice in the Town to have the Board of Selectmen vote to award all contracts. You are proposing a new practice whereby the Board of Selectmen would vote to confirm that the Town Administrator has authority to sign contracts and award bids even if the Board places a dollar limit on this authorization. You have also informed me that some members of the Board have expressed a desire to be kept informed when bids are awarded.

Section 4-3-2(i) of the Town Charter provides that the Town Administrator is "responsible for the purchasing of services, supplies, materials, and equipment for all town divisions, departments, and offices, excepting those for the school department, the water department and the Brooks Free Library." It is my understanding that the Board of Selectmen has designated the Town Administrator to be the Chief Procurement officer pursuant to G.L. c 30B. In addition, Section 3-2-1 of the Charter vests in the Board of Selectmen all executive powers. Section 3-2-3 states that the Board of Selectmen "shall serve as the chief policy-making agency of the Town," and Section 3-2-4 authorizes the Board to enact rules establishing town policies.

The Chief Procurement Officer designated pursuant to G.L. c. 30B is authorized to issue procurements governed by c. 30B. In addition, G.L. c. 40, §4 provides as follows: "A city or town may make contracts for the exercise of its corporate powers, on such terms and conditions as are authorized by the town meeting in a town, the town council in a town without a town meeting, the city council in a city with the approval of the mayor or the city council in a Plan D or Plan E city with the approval of the manager, or as otherwise authorized in accordance with a duly adopted charter. A city or town may not contract for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law." [emphasis added]

KOPELMAN AND PAIGE, P.C.

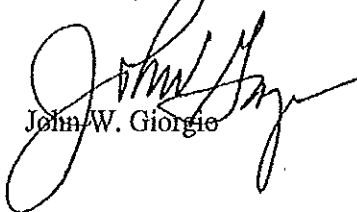
Mr. Robert C. Lawton, Jr.
Acting Town Administrator
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It is my opinion, therefore, that while the General Laws do not authorize a particular board or officer to execute contracts on behalf of the Town generally, G.L. c. 40, §4 makes clear that in a town that has adopted a charter, contracting authority lies with the board or officer authorized to by Charter to sign contracts. In the case of Harwich, although the Board of Selectmen is vested with all "executive power," the Charter expressly authorizes the Town Administrator to purchase services and supplies on behalf of most Town departments. In my opinion, the authority to "purchase" by necessary implication includes the authority to sign contracts on behalf of the Town.

It is my further opinion, however, that as the chief policy-making agency of the Town, the Board of Selectmen has the authority to establish policies and procedures governing the exercise of authority under the Charter. In my opinion, that authority would include establishing policies regarding contract awarding. The Board of Selectmen is, in my opinion, authorized, therefore, to establish a policy or procedure requiring the Town Administrator to obtain approval of the Board of Selectmen before executing certain classes or types of contracts, and to periodically make a report to the Board of Selectmen regarding bids and proposals that have been solicited and contracts that have been awarded.

Please let me know if you have any further questions.

Very truly yours,


John W. Giorgio

JWG/bp
479822/harw/0001

BOARD OF SELECTMEN
EXECUTIVE SESSION MINUTES
MASTER LIST -- 2008 & 2009

<u>Date</u>	<u>Description</u>	<u>Status</u>
January 7, 2008	Collective Bargaining & Real Estate Matters	Recommend to release
January 14, 2008	Collective Bargaining	Recommend to release
January 22, 2008	Collective Bargaining & Personnel Matter	Recommend to release
February 4, 2008	Contract Negotiations & Collective Bargaining	Recommend to release
February 11, 2008	No Matters	Recommend to release
February 25, 2008	Litigation & Real Estate Matters	Recommend to release
March 10, 2008	Litigation	Recommend to release
March 10, 2008	Collective Bargaining	Recommend to release
April 7, 2009	Litigation	Recommend to release
April 14, 2008	Litigation	Recommend to release
April 28, 2008	Collective Bargaining & Litigation	Recommend to release
May 19, 2008	Contract Negotiations	Recommend to release
May 27, 2008	Litigation	Recommend to release
June 2, 2008	Litigation & Collective Bargaining	Recommend to release

June 16, 2008	Collective Bargaining & Litigation	Recommend to release
June 23, 2008	Personnel Matter	Recommend NOT to release
June 30, 2008	Personnel Matter, Collective Bargaining, Litigation, Contract Negotiations	Recommend NOT to Release
July 14, 2008	Litigation & Collective Bargaining	Recommend to release
August 18, 2008	Real Estate Matters	Recommend to release
October 20, 2008	Collective Bargaining	Recommend to release
October 27, 2008	Collective Bargaining	Recommend to release
November 10, 2008	Real Estate Matters & Contract Negotiations	Recommend to release
November 17, 2008	Contract Negotiations	Recommend to release
December 1, 2008	Real Estate Matters	Recommend to release
December 15, 2008	Contract Negotiations	Recommend to release
January 5, 2009	Contract Negotiations	Recommend to release
March 2, 2009	Collective Bargaining	Recommend to release
March 9, 2009	Collective Bargaining & Litigation	Recommend NOT to release

April 6, 2009	Collective Bargaining	Recommend to release
April 27, 2009	Real Estate, Contract Negotiations, Collective Bargaining	Recommend to release
June 6, 2009	Litigation, Collective Bargaining & Real Estate Matters	Recommend to release
June 15, 2009	Real Estate Matter & Litigation	Recommend to release
June 22, 2009	Litigation, Real Estate Matter, Collective Bargaining	Recommend to release
June 29, 2009	Contract Negotiations, Litigation, Real Estate Matters	Recommend to release
July 13, 2009	Real Estate Matter & Litigation	Recommend to release
July 27, 2009	Contract Negotiations, Litigation & Real Estate Matters	Recommend NOT to release
August 10, 2009	Real Estate Matters	Recommend to release
August 24, 2009	Contract Negotiations, Personnel & Real Estate Matters	Recommend to release
September 8, 2009	Contract Negotiations, Personnel & Litigation	Recommend to release
September 28, 2009	Contract Negotiations, Personnel & Real Estate Matters	Recommend NOT to release
October 5, 2009	Contract Negotiations	Recommend to release
October 13, 2009	Contract Negotiations	Recommend NOT to release
October 19, 2009	Contract Negotiations	Recommend to release

November 2, 2009	Real Estate Matters	Recommend to release
November 9, 2009	Contract Negotiations	Recommend to release
November 16, 2009	Contract Negotiations	Recommend to release
November 30, 2009	Contract Negotiations & Real Estate Matters	Recommend to release
November 30, 2009	Contract Negotiations	Recommend to release
December 14, 2009	Contract Negotiations	Recommend to release
December 14, 2009	Contract Negotiations	Recommend to release