

# **Board of Selectmen Minutes**

## **04/09/2012**

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, APRIL 9, 2012  
7:00 P.M.**

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

**OTHERS PRESENT:** Town Administrator James Merriam, Tom Leach, and others.

**MEETING CALLED TO ORDER** at 7:12 p.m. by Chairman Ballantine.

Chairman Ballantine reported that the Board had just come out of Executive Session where they discussed status of litigation and contract negotiations. He noted that one of the litigation items was about Public Beach 22 which will be an agenda item in the near future for discussion.

**WEEKLY BRIEFING** – Eel grass – *Tom Leach*

Mr. Leach provided a map of the state survey of the eel grass beds off of Harwich Port conducted in 1995, 2001 and 2010 indicating that the eel grass beds are shrinking. He commented that we have lost a tremendous amount and the state will be conducting another survey this summer and to look at this further.

### **CONSENT AGENDA**

- A. Approve Minutes – March 26, 2012 Regular Session
- B. Vote to approve Road Race application from Harwich Fire Assn. for Oct. 13, 2012
- C. Vote to approve Road Race application from National MS Society for June 24, 2012
- D. Vote to approve 2012 Summer Concert Series organized by Harwich Youth Services at Brooks Park
- E. Vote to hold Public Hearing on proposed amendment to Beach Rules and Regulations on May 14, 2012
- F. Vote to approve 2012 Seasonal General License Renewals
- G. Vote to approve 2012 Junk Dealer License Renewals

H. Vote to approve request for assistance from the Caleb Chase Gift Fund in the amount of \$700 (Nstar and National Grid)

I. Vote to approve Long Pond Bass Tournament for Take a Break Trail on May 16, 2012

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

### **PUBLIC HEARINGS/PRESENTATIONS (7:15 P.M.)**

- Impact Study for Solar Farm – *discussion with Nstar*

No one from Nstar appeared before the Board. Mr. Merriam explained that our electric costs are about \$900,000 per year and he projects a \$300,000 savings after the solar farm is connected and progressing to about \$600,000 savings over the twentieth year. He stated that to our detriment he already budgeted the savings for FY13. He reported that he had been informed by representatives of the installer that they could be on-line by July 1 but NStar has indicated that an impact study was needed to do the interconnect. He noted that this report will be released on April 13 at NStar's Westwood Office and we can dial in or attend in person.

### **OLD BUSINESS**

A. Town Meeting Warrant Articles - *vote*

#### Annual Town Meeting

Mr. McManus moved that Article 7, Chase and Harwich Port Libraries, be accepted and adopted with a figure of \$20,000 raised by Annual Meeting 2007 Article 23 HVAC leftover of \$16,280 and Annual Town Meeting 2009 Article 14 HVAC leftover balance of \$3,720 for a total of \$20,000. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to accept and adopt Article 8, Promote the Town of Harwich, at a cost of \$21,000 to be raised by reprogramming from Annual Town Meeting 2011 Article 9 HVAC leftover funds of \$21,000. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to accept and adopt Article 9, Capital Plan Adoption, as proposed and with amendments that will be presented. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Chairman Ballantine recused himself on Article 21, Health Insurance for Elected Officials. Mr. Hughes moved to accept and adopt. Mr. LaMantia seconded the motion. The motion carried by a 3-1-0 vote with Mr. McManus in opposition.

Mr. McManus moved to accept and adopt Article 22, Amend By-Law, Licensing, Permitting Fees – Violations and Penalties. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to accept and adopt Article 23, Amend the Code of Harwich – Noise By-Law. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to take no position pending further information on the following articles:

Article 26 – Approve Funding for Fire Union Contract

Article 27 – Approve Funding for Water Union Contract

Article 28 – Approve Funding for DPW Union Contract

Article 29 – Approve Funding for HEA Union Contract

Article 30 – Approve Funding for Police Federation Union Contract

Article 31 – Approve Funding for Superior Officers Union Contract

Article 32 – Approve Funding for Management Employees Union Contract

Article 33 – Approve Funding for Non-Union Compensation Plan

Article 34 – Fund Compensation Schedule for Contract Employees

Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

### Special Town Meeting

Mr. McManus moved to accept and adopt Article 2 of the Special Town Meeting, Annual Allocation of Mass Cultural Council for Local Cultural Council Grants, \$2,500 to be paid from Annual Town Meeting 2007 Article 58, Socio Economic Study, and 2009 Annual Town Meeting Article 10, Roll Off Trailer, \$1,250 to be used as a funding source. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved that we take a position of accept and adopt on Article 3 of the Special Town Meeting, General By-Law – Parking for People with Disabilities. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to accept and adopt Article 4, Council on Aging Membership Reduction. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to accept and adopt Article 5, Various Planning Board Zoning Amendments, however take a position of amending the provisions on signage to insuring that there remains a public posting sign area in Harwich Port. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to accept and adopt Article 6, Authorize Intergovernmental Agreements Related to Renewable Energy Projects. Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

Mr. McManus moved to accept and adopt Article 7, Solar Energy Project – Westgate Road. Ms. Cebula seconded the motion. Mr. Hughes asked to hold on Water Department Articles 7, 8 and 9 until next week and the Board agreed. No vote was taken.

## **NEW BUSINESS**

- Annual Election Ballot – *vote to sign*

The Board noted that this item has been rescheduled to take up at their meeting on Thursday, April 12, 2012.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

### Legal opinion from John Giorgio re: MRSD budget assessment vs. ballot amount/ Capital Stabilization Fund

The answer to your first question is yes. As you know, once the election warrant is finalized and the ballot questions are sent to the printer (at least 35 days before the election), there is no ability to change the amount of the override amount.~ That being said, if the RSD reduces the amount of the Town's assessment prior to town meeting and town meeting votes the amount of the lower assessment "contingent on an override (I am assuming that the lower assessment will still require an override), and the override in the higher amount subsequently passes, the Town will have approved the budget.~ If the dollar amount in the override question is higher than the amount appropriated, the Town's levy limit is still permanently increased.~ In FY 2013 the net increased amount can only be used for the purposes stated in the override question; i.e., funding the regional assessment.~ Starting in FY 2014, however, the amount of the override can be used for any lawful appropriation unless there is a subsequent under ride vote. As to your second question, I need a bit more information.~ When the Capital Stabilization Fund was first

established by Town Meeting was it subject to an override vote and did that override pass?

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

#### Ballot question for Capital Stabilization Fund.

In that case, there is no need for a ballot question to change the purpose of the stabilization fund.~ It will, however, require a 2/3 rds vote at town meeting pursuant to G.L. c. 40, sec. 5B.~ The only time a ballot question would be required is if the Town established a special purpose stabilization fund that was contingent on a Proposition 2 and ½ override.

John

Hi John. The May 1, 2006 ATM Article 33 passed to establish a Capital Replacement Stabilization Fund to create a funding source for replacement of vehicles and equipment. There was no funding included. There was no ballot question either. Jim

#### Muddy Creek Bridge funding

The CPC voted unanimously at its meeting of April 5<sup>th</sup> to recommend funding of \$225,000 from Open Space Reserve to share with Chatham the design of the bridge project. Selectman Cebula and I were present for the vote. Dean Knight is to be credited with the idea of funding under the definition of “restoration of wildlife habitat”. Town Counsel John Giorgio opined that it was within the scope of the CPA and Moderator Ford indicated he would accept a motion to fund from CPA, if recommended by CPC, as within scope of Article 12. (see written justification and legal opinions.)

#### Barnstable County Dispatch

Chief Clarke and I attended the kick-off meeting of the Barnstable County 911 Dispatch Study Steering Committee on April 3<sup>rd</sup>. Bill Flynn representing Cape and Islands EMS is also on the 8 member Committee. All members were interested in proceeding with the study. We plan to visit a joint regional dispatch center off Cape and plan to meet monthly.

#### Legal opinion re: NSTAR net meter credits for Water /MRSD

My understanding is that Nstar will have the option of either crediting Town-owned meters or writing a lump sum check to the Town for the value of the net metering credits.~ That decision is at the discretion of Nstar.~ At this point, I assume that the Town is in the process of identifying the meters that will be credited for purposes of allocating the net metering credits.

With respect to the water department, the Town can simply identify on its Schedule Z that is filed with Nstar the water department meters. Although there is a separately elected

Board of Water Commissioners, the water department is a department of the Town.~ If Nstar chooses to credit the water department meters, the department's electricity bills will be correspondingly reduced.~ If Nstar, on the other hand, opts for a lump sum payment to the Town, I am assuming that the Town would still want the water department to receive the benefit of the net metering payment (rather than retaining the entire cash payment for the benefit of the General Fund). Any cash payment from Nstar that is allocable to water department meters could simply be credited to the water enterprise fund revenue to offset the cost of electricity.~ The remainder of the payment which represents the value of the net metering credits for other town meters would be credited to the general fund.

With respect to the school department, there will be no meter crediting or cash payments from Nstar before July 1, 2012.~ Thereafter, the school building meters will be under the control of the Regional School District pursuant to the lease agreement. Because the RSD is a separate legal entity from the Town, it is not clear whether Nstar would be willing to credit the meters of the RSD.~ If Nstar is willing to credit the RSD meters, there would be no further action required.~ Similarly, if Nstar opts to make a cash payment and agrees to split that payment between the Town and the RSD, there would be no need to do anything further.~ If, on the other hand, Nstar opts to make a single payment to the Town, there would have to be some mechanism in place to permit the Town to make payment to the RSD (again assuming that the Town decides to provide this benefit to the RSD).~ In the case of the Dennis project, we handled this by negotiating a net metering credit allocation agreement between the Town and the Dennis-Yarmouth Regional School District, which we treated as an intermunicipal agreement pursuant to G.L. c. 40, sec. 4A.  
John

#### Proposal to share costs with Chatham

Attached is a proposal from GHD Inc Project Manager Jefferson Gregg to Robert Duncanson, Chatham Director of Health and Environment regarding a regional Facility evaluation of the Chatham Wastewater Treatment plant. Tasks 1a-g costs \$8,800. I propose that this cost be contracted and paid by Harwich through the CWMP article and authorized by the Water Quality Task Force.

In exchange, I ask that Chatham assume the cost of the Carole Ridley contract to seek Grants for the construction of the Muddy Creek bridge project.

#### E-mail from Jill

Jim – I'm looking for Harwich to pay for items 1-4 (Tasks 1a through 1g ~as attached \$8,800) ~as you are looking at options for your CWMP.

If it moves forward from there to step 5 by both BOS, we can then have a cost sharing mechanism for the remainder of the study/review.

Let's discuss at your convenience. Thx! ~

Jill R. Goldsmith

Chatham Town Manager

Retirement Announcement

Attached is a letter from Harbormaster Tom Leach announcing that he is retiring after serving the Town in this capacity for the past four decades. Tom has earned a reputation across the Cape over the years for his passion for the water, the stars, and the marine environment. We thank him for his dedicated service and wish him the very best in his retirement.

Dredging Schedule

Latest surveys from the County Dredge from last week have helped us determine where best to spend our money that we have on hand. We will move a total of 7,186 cu. Yards. The Saquatucket channel is doing very well with only some should dredging needed and really not enough to mobilize the dredge into there. I am considering contacting Linda Pettengil who put down \$3,850 to get sand on her beach east at Saquatucket Bluffs about refunding her that money since we will not be in there until 2013 at the earliest. However, Allen Harbor approach still needs work and a bar has formed at the west-jetty again. Therefore, the plan here will be for all short line work removing material from west jetty and a bar at 1200 feet:

~~~~~	~~~~~	~~~~~	Ayer Lane	~~~~~	~~~~~	686 cu. yards
~~~~~	~~~~~	~~~~~	Wah Wah Taysee	~~~~~	~~~~~	2000 cu. yards
~~~~~	~~~~~	~~~~~	Gray Neck (private)	~~~~~	~~~~~	2300 cu. yards
~~~~~						
Total	~~~~~	~~~~~	~~~~~	~~~~~	~~~~~	4,986 cu. yards

Herring River entrance bar is pervasive and needs work.

~~~~~	~~~~~	~~~~~	Old Mill West (private)	~~~~~	~~~~~	1100 cu. yards
~~~~~	~~~~~	~~~~~	Seaway Beach (private)	~~~~~	~~~~~	1100 cu. yards
~~~~~						
Total	~~~~~	~~~~~	~~~~~	~~~~~	~~~~~	2,200 cu. yards

The Mass Audubon is surveying these beaches for signs of plovers but outward signs for a greenlight on these projects look good for now.

Tom Leach

NSTAR invite (Meeting set for April 13th at NSTAR Westwood main office)

Hi Joe. I reported to the Harwich Board of Selectmen that the NSTAR Impact Study was due on March 27th based upon your information but the deadline had past without the

report. ( Our understanding is that all 9 Cape sites in CVEC's Phase 1 solar are incomplete.) The Board asked me to extend an invitation to you and /or an NSTAR representative to attend next Monday night's Board meeting at 7:15pm in the Griffin Room at Town Hall, 732 Main St. The purpose would be for you to provide the community with information as to who is responsible for writing the Impact report (NSTAR staff or contracted) and if contracted whether time extensions were requested and granted, whether penalty clauses were included in the contract and whether penalties for delays have been assessed. Most importantly, when will the report be delivered and what further steps are required to upgrade for connection. Please confirm your attendance. Thank you. ~Jim Merriam

Mr. Merriam

The impact study was completed by Engineering on April 2, 2012.~ We are now ready to schedule a meeting to discuss the results with you and your engineering group.~ A date for the meeting will be scheduled and sent to you later today.~ If you have further questions please contact me.

Joseph V. Feraci, Jr.  
Interconnection Program Manager  
NSTAR Electric

#### Red River (East End)

The town engineer and surveyor asked me today if we wanted to use these water-filled bags, that the town has been using for the culvert project, instead of the sand-filled burlap bags at the east end of red river beach to curb the erosion. I am checking with DEP but I believe this to be a soft solution that could be used for an emergency purpose just as the burlap bags are. It wouldn't require volunteers and may last longer than the bags would - it is definitely more durable. In the event it doesn't work, it is easily deflated and removed. See attached photos of it. It is about 75' long and can be filled up to 6' high.  
Amy

#### Red River Culvert project

The diversion pipe and water-filled bags did not function properly with a porous sand base, so Highway crews re-filled the cut and sought emergency quotes for steel shoring. One quote was for \$90k and second from Robert Our for \$23k. Bob Cafarelli secured an emergency declaration by DCAM in order to hire Our Co. Sheeting will start on Friday. Jeremy Bell secured DEP permission for the sheeting.

Jeremy,

Thanks for the up-date.~ Given the difficulties using the approved “portable cofferdam” at the project site, the Department hereby approves the change to a sheet pile cofferdam in essentially the same location as the failed portable cofferdam.~ You have indicated that the sheet pile cofferdam will still be located within the Limit of Work line at the site.~ In

accordance with special condition #2 of the 401 WQC, the Department has determined that no formal revision to this Certification is required.~ Please let me know if you have any questions.~ Thanks.

Jim Mahala  
DEP  
20 Riverside Drive  
Lakeville, MA~ 02347  
tel: 508-946-2806  
fax: 508-947-6557

[Jim.Mahala@state.ma.us](mailto:Jim.Mahala@state.ma.us)

**From:** Bell, Jeremy (FWE)

**Sent:** Thursday, April 05, 2012 10:18 AM

**To:** Mahala, Jim (DEP)

**Cc:** [ausowski@town.harwich.ma.us](mailto:ausowski@town.harwich.ma.us); Chris Nickerson; Kris Houle; Joe Henderson; Neal Price; Rheinhardt, Martha - NRCS-CD, Hyannis, MA; Liptack, Donald - NRCS, Hyannis, MA; Linc Hooper

**Subject:** Red River DEP file number #SE32-2078

Jim,

Per our conversation yesterday, I am emailing you on behalf of the Town of Harwich regarding the water control problems at the Red River salt marsh project. As discussed, the water bag coffer dams have not been performing as expected and water is leaking severely under the bags into the construction area making water and sediment control an issue at the site. Both the upstream and downstream bags have been undermined in the sandy soils. The town's highway crew were alerted at 3 am on April 4 and were at the site by 3:30 am to try everything to secure the coffer dams. They sand bagged, put a vinyl sheet down, and tried to reconfigure everything to fix the issue. By noon on the 4<sup>th</sup> it was clear that the water filled coffer dams would not work due to the soils at the site. With more high tides, the problem will only get worse. We have therefore determined that the only way to perform water control to prevent sedimentation to the marsh outside the is by the installation of a sheet pile coffer dam is the only solution for the site. As discussed, this is an emergency situation where we need act quickly to remedy the situation, in order to avoid resource impacts beyond what was permitting on the plans. ~The sheetpile coffer dam will be installed in such a way so that there is no work outside the existing Limit of Work. The sheets will be completely removed after construction, and any disturbance created will become part of the restoration and revegetation that is already planned for the site. We have already coordinated as well with Amy Usowski, the Harwich Conservation Agent about our plans. Please let me know how this will affect the town's 401 permit, and if you have any questions.

Jeremy

### Monomoy High School Financing

Attached are spreadsheets prepared by Cape Cod Five Advisor Matt Varnum for a \$68m project with Harwich paying 72% of local costs -\$26.785m either in one bond (3.25%) or split into two bonds (3.75% & 4.0%) over 20 years.

### Finance Committee

The FinCom met on April 4<sup>th</sup> with Monomoy School Committee, Building Committee, OPM and Supt. Cragin to discuss the process for determining the project cost. The MRSC will vote a project cost on April 25<sup>th</sup> and FinCom will review status on April 24<sup>th</sup>.

### Phase 2 Solar Community Center

The one open issue on the community center is the authorization to go ahead with Phase II solar installation as planned, even though the payment to the town might be one half the net metering credit if all credits are already allocated. That would reduce the annual "profit" from that site to \$16K. Are you and board OK with that. Don't know if that was discussed on Monday evening and I need the decision ASAP-- I would think the answer would be yes

BRW

### Building Maintenance

Dick Hoyer, Dave Bernstein and Bill Stoltz has submitted their first building inspection/evaluation- Community Center with Carolyn Carey. See attached.

### LED experimental streetlights

Maggie Downey is sending this save the date email for an upcoming meeting, Friday, May 18<sup>th</sup> at 8:30 AM, on streetlights at the county complex in Barnstable.~ The purpose of the meeting will be twofold: (1) the Cape Light Compact (CLC) will give an overview of its proposed LED streetlight retrofit proposal.~ Under this proposal the CLC energy efficiency program will fund 100% of the cost of retrofitting existing municipal owned streetlights to LED streetlights.~ Participating towns will see both energy savings, a reduction in streetlight electric bills, and lower maintenance costs.~ The CLC will install pilot projects (4-7 lights) in participating towns, and issue an RFP for a qualified LED product (this is key because energy efficiency funds can only be used for qualified LED streetlight products); and (2) discuss how the existing streetlight maintenance contract relates to moving forward with streetlights.

A presentation on the LED retrofit project and an estimate of potential savings for your town will be provided at the May 18<sup>th</sup> meeting.~ A letter will be sent to you later this month inviting you to the meeting; however, I wanted to send out an email in advance and

to let you know that this project exists and will move forward with interested towns.

#### Harbor Study

The Study Group met with GZA consultants to review several options of Saquatucket sheet layout and Wychmere pier structural improvements. Consensus is developing on one plan which Tom Leach will present to Waterways Committee before scheduling a public hearing after Town Meeting.

#### Men's Club

Selectman Angelo LaMantia, Finance Director Dave Ryan and I were invited on Monday morning to discuss the Town's budget and Monomoy High School Project. We enjoyed the opportunity to address the Men's Club and respond to their questions. There are many concerns about both the Monomoy first budget and costs of the High School project. We hope that lower numbers will be forthcoming prior to Town Meeting. At Tuesday's Finance Committee meeting, we learned that final High School project numbers should be voted on April 25<sup>th</sup>.

#### **ADJOURNMENT**

Ms. Cebula moved to adjourn at 8:37 p.m. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary