

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, SEPTEMBER 5, 2017
6:30 P.M.**

APPROVED

SELECTMEN PRESENT: Ballantine, Brown, Howell, Kavanagh, MacAskill

OTHERS PRESENT: Town Administrator Christopher Clark, Atty John Giorgio, Chief Clarke, Carolyn Carey, Aly Sabatino, Anita Doucette, Larry Cole, Cyndi Williams, Richard Waystack, Erin Orcutt, Mary Maslowski, Chris Joyce, and others.

Chairman MacAskill reported that the Board had just come out of Executive Session where they discussed a land purchase and the recent Land Court decision on the Congregational Church.

Chairman MacAskill called for a moment of silence on the passing of Bill Reuss, Small Equipment Operator for DPW.

WEEKLY BRIEFING

Mr. Cole reported that CVEC voted to increase the cap on legal expenses due to the Eversource rate case. He noted that CVEC voted unanimously in favor of requesting a half cent adder in FY19 so Ms. Argo will likely be coming with that request. He responded to questions from the Board.

Chief Clarke reported on the upcoming 9/11 ceremony.

Mr. Waystack invited the Board to meet the new Council on Aging Director next Tuesday from 2-4 p.m. at the Community Center.

Ms. Goodwin reported that Paul Coughlin is retiring from the volunteer crew at Channel 18 after 17 years and she invited the Board to his farewell gathering on August 22 from 9-11 a.m.

Ms. Williams of the Chamber of Commerce reported on the upcoming Cranberry Festival events including the parade, fireworks, and business expo.

Mr. Waystack reported that the Friends of the COA will be sponsoring a dinner and dance on October 20 at the Sea View in Dennis.

Ms. Orcutt, Business Administrator for Cape Cod Regional Technical High School (CCRTHS), stated that the packet materials provided by Attorney Giorgio are confusing regarding the vote on October 24, as there are many references to CCRTHS deciding, electing or opting to use mechanics of the vote, with the vote being Chapter 71, Section 16N and this is unusual as most regional agreements use Chapter 71, Section 16D. She clarified that Chapter 71, Section 16D calls for a town vote whereas Section 16N is a ballot vote. She pointed out that CCRTHS is not choosing or opting to use this method to conduct that vote but simply using their regional agreement which was established before their construction in 1975.

Ms. Joyce reported that the Voter Information Committee will host a discussion on the CCRTHS construction on October 3 which will be shown on Channel 18.

CONSENT AGENDA

- A. Approve Minutes –
 - 1. May 1, 2017 Regular Session
 - 2. May 30, 2017 Executive Session
 - 3. June 19, 2017 Executive Session
 - 4. July 10, 2017 Regular Session
 - 5. July 24, 2017 Regular Session
 - 6. August 7, 2017 Regular Session
- B. Confirm the offer of employment to Dean Langlois to the position of Greenskeeper II for Golf Dept.
- C. Accept gift of \$10,925 from the Ora Gaylord Arooth Trust for the Community Center and authorize Chair to sign acceptance letter

Mr. Ballantine moved approval of Consent Agenda Items A2 through A6, and Items B and C. Ms. Brown seconded the motion and the motion carried by a unanimous vote. Mr. Ballantine moved approval of Item A1. Ms. Brown seconded the motion and the motion carried by a 3-0-2 vote with Mr. Howell and Mr. Ballantine abstaining from the vote.

PUBLIC HEARINGS/PRESENTATIONS *(Not earlier than 6:30 P.M.)*

- A. KP Law update on sale of marijuana ban – John Giorgio

Mr. Giorgio addressed the Board with the following statement:

On the 28th of July the Governor signed the new marijuana law which was intended to address some of the ambiguities and issues that came up in terms of the law that was approved at the ballot last November 4th and as Chris said there are some significant changes that were made to the law and in particular the law now distinguishes between towns that voted in favor of retail marijuana and those that voted no. Because Harwich voted no, should the Town wish to ban retail marijuana establishments, you would have to only enact a zoning by-law at Town Meeting. If you had voted in favor of marijuana last November, then you would also have to have a subsequent ballot question plus the zoning by-law. So in terms of what your options are, the law essentially allows you first to enact the zoning by-law that would ban retail marijuana establishments altogether, that's your first option. The second option would be to limit the number of retail marijuana establishments to 20% of your off premises alcohol licenses and then thirdly you, and I don't think this is actually relevant right now in Harwich, but you can also limit the number of retail establishments to fewer than the number of medical marijuana dispensaries that operate in the Town and I don't believe you had any applications for that. So that would be if you want to limit or ban retail marijuana establishments and the Attorney General takes the position, because the law is not entirely clear on this, but takes the position that you would have to enact a zoning by-law. We're actually recommending that if you choose to pursue that route that you also enact a general by-law as well in order to address some potential issues with grandfathering, zoning freezes and that kind of thing. Short of banning marijuana retail sales, the Town has the option to enact a zoning bylaw that would regulate what's called the time, place and manner, so just as you do with other forms of retail or other uses you could limit the location of marijuana establishments to certain zoning districts, you could do it by an overlay district, you could certainly require a special permit issue before a building permit could issue for a marijuana establishment and those are all options that, and a lot of towns are pursuing that, to make sure that these establishments are located in the appropriate location within the Town. I would also point out that as of last Friday there is now a five-member Cannabis Control Commission and that Commission

has to start accepting applications by March 1st of next year and to enact regulations in that same time period, so there are a number of unanswered questions in terms of how this new Commission will regulate the sale of marijuana and we're going to just have to wait and see what those regulations provide so if you have a question tonight and I can't answer it because we haven't seen those regulations, I certainly hope you'll understand. Now just to set the table here in Harwich, at last annual Town Meeting you voted a zoning amendment to create a moratorium on the location of retail marijuana establishments, and that moratorium extends through July 30, 2018 so you certainly have time here in Harwich to decide what you want to do. If you do want to enact a zoning by-law that either regulates the location or if you want to ban marijuana in some fashion, you could certainly do that at the next annual Town Meeting in May. Should an application be filed in the interim with the Cannabis Control Commission, the way the process works is the Town will be notified and you'll be given an opportunity to provide comments to the Commission, if you want to oppose it obviously you have a zoning moratorium in place, you may or may not have a zoning by-law proposed for the May Town Meeting, but the only thing we would caution the Town is we would want to make sure that whatever you decide to do that that be in effect before June 30 of 2018 so that there's no gap, if you will, in terms of the Town's regulatory scheme. So one of the things you might want to consider in addition, for example, if you wanted to ban marijuana, you might want to consider extending the moratorium as well so you would avoid any gap in terms of the prohibition. The Attorney General has been quite open about approving the zoning moratorium through December 31, 2018 but not beyond but that is certainly an option the Planning Board could also consider. The one other thing I would mention is that the new law provides a local acceptance statute that allows you to tax the retail sale of marijuana. I believe the state tax went up, I want to say it's 10.45% thereabouts. If Town Meeting adopts the local acceptance statute, you can assess a 3% tax on the sale of retail marijuana here in Harwich.

Mr. Giorgio took questions from the Board regarding tax assessment, by-laws, and timeline. Mr. Giorgio encouraged the Board to read the update he submitted. Chairman MacAskill said he intends to bring this back mid-October or early November and at that time they'll have a vote on whether or not they are going to allow it or whether to create a zoning by-law. He asked the Board to put their thoughts together.

B. KP Law update on funding of assessment for Cape Tech building project – John Giorgio

Mr. Giorgio addressed the Board with the following statement:

I would like to address the comment that was made during Public Comment. That's absolutely correct. In the regional agreement that governs Cape Cod Tech, the process for approving debt is under the procedure for a district wide election. So Mr. Clark at first asked us about how this process would work and I think the concern was that for a Town like Harwich obviously it is a significant increase in your assessment (Mr. Clark clarified that it is \$685,000) which raised the issue of the debt exclusion in order to be able to fund the assessment should the question pass without necessarily targeting other programs. So the process under the statute when you have a Town Meeting vote, and this is what you did with Monomoy, you approved the debt contingent on the passage of a debt exclusion, and if that debt exclusion didn't pass then you were deemed to have disapproved the debt. Under this procedure for the Tech, you don't have the same ability to make the vote contingent on a debt exclusion but what you can do is you can have a separate debt exclusion question that isn't tied necessarily to the vote approving the debt but it will allow you to exempt your assessment from Prop 2 1/2. So the question comes up, do you want to sponsor a debt exclusion vote at some point and assuming the answer to that question is yes then the question becomes what is the timing of that. So one option my understanding is, certainly if I'm wrong I would like to be corrected, but my

understanding is that if this passes on October 24th you're not actually going to see the assessment until I believe it's fiscal year 2020. So you do have time deal with the financing portion of this if the question passes which means that you could potentially wait until your annual election in May to put your debt exclusion question on the ballot. That gives you plenty of time to plan for the impact of this should the debt exclusion not pass. The other option would be to do the debt exclusion on the very same day of the district wide election which is October 24th. Now, it can't be on the district ballot because only the Selectmen can place a Prop 2 1/2 question before the voters, so what we've been discussing with Anita and with Chris is the possibility of having a separate Town election held on the same day as the districtwide election and if you choose to do that there are some logistical issues that the Town Clerk will have to deal with, and I'll let Anita address those directly to the Board, but it certainly is possible for you to do that, to have both a districtwide election and the local Town election on the same day, i.e. October 24th, and there are certain I think advantages and disadvantages to both but that's why you guys get paid the big bucks to make these decisions.

Mr. Clark recommended the two elections be co-terminus. He stated that it is an important project but his concern as Town Administrator is that we need to be able to pay for it in a responsible manner and not leave ourselves in a precarious financial situation. Mr. Howell commented that he wanted assurance that the people who are going to pay for it are going to act upon it and said that down the road the agreement should be altered to look like a typical regional agreement. Mr. Ballantine commented that "it is what it is" and if it passes, then we are obligated for it.

Mr. Giorgio took questions and comments from the Board. Mr. Ballantine and Chairman MacAskill said they were in support of a double ballot. Chairman MacAskill said he would bring it back next week with the ballot question.

OLD BUSINESS

A. First Congregational Church v. Cemetery Commission decision

Mr. Clark provided a brief history of the litigation. Chairman MacAskill announced that tonight the Board voted that they had no interest in appealing the decision of the Land Court. He noted that they instructed the Town Administrator to meet with the Pastor of the Church to discuss ongoing maintenance and other issues related to this.

B. Visiting Nurse Association's FY18 Contract – authorize Chair to sign

Mr. Howell moved to authorize the Chair to sign the contract. Ms. Kavanagh seconded the motion. Ms. Eldredge responded to questions from Mr. Ballantine regarding services provided and amount of contract spent in the past. The motion carried by a unanimous vote.

C. Housing Authority Charge and discussion of meeting held on July 10th in regard to Middle School housing and CPC conversation

Chairman MacAskill noted that Ms. Urbano did not respond to his invitation to be here tonight but sent corrected minutes to their meeting of July 25. He commented that he finds this interesting as Mr. Stewart takes the minutes and there was no discussion about changing the minutes. He said he would bring this back when Ms. Urbano can attend and questioned why they are talking about housing at the Middle School when the Board has come back with a two year use plan for the building. Mr. Howell stated that Ms. Urbano alleges that she went back to the State and they're fine with this. He expressed frustration that 12 lines of new business in the minutes was considered properly noticed by the State Board of Selectmen minutes

simply by indicating “New Business” on the agenda. He stressed that people didn’t have the opportunity to decide if they wanted to attend the meeting. Ms. Kavanagh said it would be good for the Housing Authority to come in and explain their charge and agreed that housing at the Middle School building shouldn’t be a topic of discussion for them. Mr. Ballantine indicated that it was more concerning that it wasn’t properly noticed than that they had the conversation. Chairman MacAskill said he would bring this item back.

D. Municipal Revenue and Economic Development Committee Charge

Ms. Brown questioned where the changes to the charge came from and stated that she still didn’t agree that the Chamber should be a voting member. She questioned where the language reference to the Town Planner came from and Mr. Clark responded that the Board had discussed it. He also stated that there was a split decision about the Chamber having voting rights. Ms. Brown stated that we have a liaison to the Planning Board so she doesn’t know that the Town Planner needs to be involved. Chairman MacAskill and Mr. Ballantine disagreed and stressed that staff support is vital. Mr. Ballantine said he would like them to look at efficiencies such as regulatory impacts as well as revenue generation. He stated that he wants to see the Chamber as being a voting member. Chairman MacAskill agreed with Ms. Brown on the Chamber not being a voting member and commented that it is in place to support business but we should work hand in hand and keep them informed. He stated that the Town Planner should be overseeing this. Ms. Kavanagh agreed with Ms. Brown and Chairman MacAskill said that the Chamber should not be a voting member. Mr. Howell agreed with Mr. Ballantine’s remarks but added that there should be a comment in the charge about assessing revenues versus obligations that might be occurred. Chairman MacAskill asked the Board to send their ideas so they may bring back a completed document.

NEW BUSINESS

- A. Request by the Housing Committee Chair to address the matter of a member’s non-attendance at Housing Committee meetings

Chairman MacAskill recommended turning this over to the Interview Committee and the Board agreed.

- B. Support for passage of An Act Regulating and Insuring Short-Term Rentals

Ms. Kavanagh stated that she would not support this and she doesn’t agree with taxing primary homeowners who rent their homes. She added that she couldn’t see how it could be uniformly enforced. Mr. Ballantine noted that this has come up at Town Meeting and failed and he is concerned about the regulatory aspects. Ms. Brown stated that she supports this 100% as a lot of our B&B’s are not at full capacity and it is hurting our local businesses. She commented that it is free income for people and that isn’t fair. Mr. Howell stated that this has been to Town Meeting twice, it still has major holes in it, and people are already paying income taxes, real estate taxes and in some cases personal property taxes. Chairman MacAskill said he would not support this as it is written now. The consensus of the Board was not to support this.

- C. Award of design contract for Fire Station 2 to Kaestle Boos in the amount of \$310,000

Mr. Clark stated that Town Meeting approved \$310,000. He reported that they met with Kaestle Boos to negotiate a contract and they came back with \$266,760 which gets us through design and bidding but not to construction and administration. Chief Clarke reported that the Committee worked

diligently, they reviewed 6 proposals, selected 4, and in his estimation Kaestle Boos was the clear choice and the committee unanimously agreed. He noted that they built the Police Department and renovated the present Fire Station. Ms. Kavanagh to award the AIA contract to Kaestle Boos in the amount of \$266,760. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

D. Water Commission meeting August 23, 2017 - discussion of governance of wastewater

Mr. Clark reviewed his memo to the Board dated August 23, 2017 regarding his meeting with the Water Commission (see attached). He said he would like to task Mr. Giorgio with drafting the necessary Charter changes to formulate a Water/Wastewater Commission and to also form the Enterprise Fund. He stated that he hasn't received any negative feedback from the Water Commissioners but would follow up. He asked the Board's approval to head in this direction. Mr. Howell, Ms. Brown and Ms. Kavanagh supported the move in that direction. Mr. Ballantine said he was in general agreement but would like it clarified that the Board has clear responsibility for the CWMP and questioned if, in terms of implementation and design, we need a contract engineer to tackle that phase before it goes into operation. He said we are one person short of having adequate staff support and he would like it to show up in a simple organization chart. Mr. Clark stated that the first item is already in there and Mr. Ballantine responded that he wanted it to be clearer. With regard to Mr. Ballantine's second comment, Mr. Clark stated that Chatham has their engineer working with the outside consultant whereas we have a more team approach and when necessary he brings in Mr. Cafarelli or Mr. Pelletier to provide assistance. He stated that the real work on designing goes to CDM Smith and we already have a contract with them. He commented that he isn't sure what that person would do and it would likely cost \$100,000 per year. The consensus of the Board was for Mr. Clark to move forward with this. Chairman MacAskill asked the Board to send Mr. Clark their comments. He added that he is going to bring forward an item to dissolve the Wastewater Implementation Committee. The Board took questions from Sharon Pfleger.

E. Letters of Agreement with CDM Smith for Cold Brook and Wastewater Implementation

Mr. Clark provided an overview of the Letters of Agreement with CDM Smith dated July 21, 2017 for the following:

1. Professional Services Related to Natural Nitrogen Attenuation Project at Cold Brook in an amount not to exceed \$35,000
2. Professional Services Related to Wastewater Implementation Services in an amount not to exceed \$20,000

TOWN ADMINISTRATOR'S REPORT

A. Planning Board priorities

Mr. Clark outlined the Planning Board priorities resulting from the prior week's meeting with the Planning Board and noted that the asterisked items are the primary priorities (see below). Chairman MacAskill concurred that the list is accurate.

- Review and draft a Recreational Marijuana by-law *
- Review and draft amendments to the existing Accessory Apartment by-law *
- Review, revise and draft amendments to the Town's Local Initiative Program (LIP) Regulations and Procedures *

- Review and revise the Commercial Village Overlay District zoning, Harwich Port
- Start new Comprehensive Plan by reviewing the scope of work, estimated time and costs *
- East Harwich zoning
- Research and inspect highly trafficked sidewalk areas for ADA non-compliance

Mr. Ballantine provided an article from the Cape Cod Times regarding accessory apartments which Mr. Clark said he would scan and send to all Board members.

B. Wastewater Status Report – update on Cold Brook design/partnership and Phase 2 survey work

Mr. Clark reported that this is an ongoing process and we will see more details in the December/January timeline.

C. Golf Department – 2017 Customer Service Survey

Mr. Clark noted that the recent Golf Department Customer Service Survey has been provided per Ms. Brown's request.

D. Staffing Plan / Housing Court

Mr. Clark reported that only 2 positions are still waiting to be filled out of the recent 18 vacancies. He explained that the State has funded an additional Housing Court judge so they are looking at coming down and meeting in Barnstable to do Housing Court related issues on the Cape.

E. Departmental Weekly Reports

Mr. Ballantine asked about the extent of the vandalism at Bank Street Beach. Mr. Clark responded that he would follow up with Mr. Hooper. Chairman MacAskill stated that there have been a lot of positive comments on the weekly reports and it is a great way to showcase the work we do.

SELECTMEN'S REPORT

A. Vacancy Listing

No action was taken on this item.

ADJOURNMENT

Ms. Brown moved to adjourn at 8:55 p.m. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel
Recording Secretary

Harwich Dinner Dance!

Dinner & Dance to the Big Band Sound of
The Sound Dunes Swing Ensemble!

SAVE THE DATE!

OCTOBER 20TH 5:30 PM

**The Sea View, Dennisport
Friends of the Harwich COA**

When was the last time you had a lovely dinner with a 15 + piece Big Band playing the songs of yesterday that you could actually dance to? Dig out those dancing shoes and join us Friday, October 20, 2017 at 5:30 PM as we raise funds to support the Friends of the Harwich COA! \$75 per person, including full buffet dinner, cash bar and dancing with a Big Band! Tickets available at the Harwich Chamber of Commerce!

October 20th, 2017 5:30PM

The Sea View

76 Chase Avenue

Dennisport, MA 02639



The Friends of The Harwich COA



Tickets available at the Harwich Chamber of Commerce
and by calling 508-776-0964, 508-868-0743

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Christopher Clark, *Town Administrator*
Charleen Greenhalgh, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA



MEMO

To: Board of Selectmen

From: Christopher Clark
Town Administrator

CC: Water Commission
Dan Pelletier, Water/Wastewater Superintendent

RE: Meeting with the Water Commission August 23, 2017

Date: August 23, 2017

They seek to provide the Board of Selectmen with an update of my meeting with the Water Commission on Wednesday morning August 23, 2017. I thought the meeting was very productive and wanted to provide an update.

First, on the issue of governance of wastewater, the Water Commission is supportive it has previously voted to have their commission be transformed into a five member elected Water/Wastewater Commission. I believe it is also further understood that the Board of Selectmen through the Town Administrator will be responsible for the capital presentations of the wastewater system and then upon operational acceptance the system will be turned over to the Water/Wastewater Commission. If the board of selectmen is in concurrence with this to model I will ask attorney John Giorgio to draft the necessary charter changes to effectuate this new organization. The commission did ask also that the wastewater be considered as an enterprise fund as soon as practical. I did inform them that it is my belief that operationally the town would have to subsidize the wastewater operation because the initial number of users of the system would be too small to make it operationally self-sufficient. A sewer budget will have to be presented for the FY 19 budget process.

Second, the Water Commission felt that because the duties and responsibilities of the Water/Wastewater Superintendent included wastewater already that operationally Dan Pelletier could assist Town Administration in the regulatory compliance of our Comprehensive Wastewater Management Permit. Dan will also be available to assist in the implementation of Phase 2 of the Comprehensive Wastewater Management Plan. It would be my recommendation that the duties and responsibilities of the Wastewater

Implementation Committee whose duties primarily included the completion of the comprehensive wastewater management permit acceptance be thanked for their service and dissolved. If individual members wish to volunteer to assist the town in this continuing education of the community to the integration of the wastewater system this service would be greatly appreciated. These efforts can be coordinated through the Town Administrator or the Water/Wastewater Superintendent.

I think at this point it also makes sense to lay out some general guidelines for how the wastewater program will be administered. Under our CWMP it listed the responsible party as the Wastewater Management Authority (WMA) which is been deemed to be the Board of Selectmen. I believe that the overall policy permitting authority should rest with the Board with the Board guiding the construction and project development and implementation of the capital component. The policy direction as it relates to permit areas outside of wastewater infrastructure such as fertilizer management, open space acquisition, conservation restriction, alternative systems technologies such as utilized at Muddy Creek and Cold Brook would also fall under the WMA.

The Board of Selectmen would officially delegate authority to the Water/Wastewater Commission that would consist of a five member elected commission who would be responsible for the overall operation of the wastewater infrastructure upon turnover from the Board of Selectmen. All billing and budgets related items to wastewater operation primarily focusing on operation and maintenance costs will be the Water/Wastewater Commission including applications for abatements. Contracting with various authorities to ensure the efficient operation and the implementation of the current IMA with the town of Chatham and the potential regional authority with Dennis and Yarmouth.

I think initially this lays out a thought process for a reasonable delegation of authority. Town Administration throughout this process will need to work closely with both the Board of Selectmen and the Water/Wastewater Commission.

Related Documents - September 5, 2017 BOS Meeting

- 01 Agenda.pdf
- 02 Minutes May 1, 2017.pdf
- 03 Minutes July 10, 2017.pdf
- 04 Minutes July 24, 2017.pdf
- 05 Minutes August 7, 2017.pdf
- 06 Greenskeeper Appt..pdf
- 07 Gift to Community Center.pdf
- 08 Marijuana Ban.pdf
- 09 Cape Cod Tech Funding.pdf
- 10 VNA Contract.pdf
- 11 Housing Authority Discussion.pdf
- 12 Municipal Revenue & Econ Dev Charge.pdf
- 13 Housing Committee Membership.pdf
- 14 An Act Re Short Term Rentals.pdf
- 15 Station 2 Design Contract.pdf
- 16 Governance of Wastewater.pdf
- 17 CDM Smith Cold Brook.pdf
- 18 CDM Smith Wastewater.pdf
- 19 Planning Board Priorities.pdf
- 20 Golf Dept Survey.pdf
- 21 Staffing Plan - Housing Court.pdf
- 22 Weekly Report.pdf
- 23 Vacancy List.pdf