

Present: J.B. Riggs Parker, Warren Doty, Frank Fenner, Tim Carroll, Barbara Armstrong, Bette Carroll, Marshall Carroll, Brian Cioffi, Andy Goldman, Wayne Iacono, Dennis Jason, Virginia Jones, Seth Karlinsky, Elizabeth Larsen, John Larsen, Stephen Larsen, Stanley Larsen, Louis Larsen, Frank LoRusso, Gregory Mayhew, Jonathan Mayhew, Scott McDowell, Chris Murphy, David Norton, Donald Poole, Cole Powers, Jim Rogers, Jane Slater, Richard Steves, Robert Young, Robert Zeltzer.

Mr. Parker called the meeting to order at 7:30 p.m. in the Selectmen's Meeting Room.

Mr. Parker called for any changes or corrections to the September 17, October 6 and October 20, 2009 Board of Selectmen meeting minutes. Mr. Doty moved and Mr. Fenner seconded to adopt the minutes as amended. SO VOTED: Three Ayes.

Park & Recreation Committee, Harbor Advisory Committee & Menemsha Bulkhead Tenants Discussion

Mr. Fenner, as the Selectmen representative to the Harbor Advisory Committee, began the discussion by indicating there were a number of things that happened in Menemsha Harbor this season that he found disturbing; most notably debris left on the dock which was hazardous to the general public. Mr. Fenner stated that Menemsha Harbor is one of Chilmark's best assets to be used for the benefit of commercial fisherman and the general public, but the cooperation of the Harbormaster and fishermen is necessary to ensure safety. Mr. Fenner read a letter from Harbormaster Dennis Jason that expressed his concerns regarding the use and condition of Menemsha Harbor; most notably the issue of hazardous materials left on dock which subsequently has to be cleaned up by the Harbor staff, disposed of at the Town's expense and is a liability to the Town. Mr. Fenner declared disposal of waste oil buckets on the docks as a serious situation, which is a potential pollution source for the Harbor; he recommended a heavy fine and repeat offenders have their use of the Harbor reconsidered. Mr. Fenner said the Selectmen were united in the fact that they want to support commercial fishing in Menemsha, but the cooperation of the Harbormaster and fishermen is necessary because the Selectmen do not want to have another season with the docks in poor condition.

The commercial fishermen present explained that waste oil ends up on the dock because there is no designated place to dispose in Menemsha or elsewhere in Town. Mr. Fenner pointed out that waste oil is a personal business item that should not be the responsibility of the town to dispose of and referred to the law stating that waste oil should be returned to where new oil is purchased. Mr. Fenner said that the Martha's Vineyard Refuse District has applied to the DEP to get a permit to have an oil collection facility and have been met with resistance. Mr. Fenner reminded everyone that there is a hazardous waste disposal day at the Edgartown drop off facility on the third Saturday in May, July, September and November. The Selectmen agreed to continue discussions with the Refuse District to have a collection facility.

Mr. Doty expressed that he wants to continue to encourage the Harbor to be an active working waterfront by not charging slippage or unloading fees for fishermen, but that fishing gear should not be stored on the docks for weeks at a time. The current rule for leaving gear "in-transit" on the dock is for up to three days. Mr. Fenner said there was no reason to leave gear on the docks and if needed it should be coordinated through the Harbormaster and used as a transfer location, not as storage. Gregory Mayhew said the dock should not be impassible but a warning should be issued before fining someone. Mr. Doty said there should be no fines. Mr. Parker clarified that cooperation and

coordination has to commence between the fishermen and the Harbormaster to keep the docks safe and clear. Mr. Jason said unfortunately the only resort is to fine offenders because repeat reminders do not work. Mr. Jason asserted that some fishermen do not realize that it is a privilege to use the docks and that the privilege has to be respected.

Mr. Doty addressed a topic of concern this season regarding the amount of alcohol being consumed on the Harbor and beer cans being left on the docks as a result. Mr. Doty expressed that he is sympathetic to fishermen who have had a successful day fishing and want to relax with a few beers, but he wants to see it kept within moderation without having to adopt an open container law. Mr. Doty understands that the Police have a difficult time enforcing without an open container law, but he is concerned with the excessive consumption of alcohol that makes people from the public feel threatened. On behalf of the Park and Recreation Committee, Mr. Goldman recommended that the Selectmen should have a stern discussion with the alcohol offenders to enforce that their behavior cannot make the dock impassible, or make people feel threatened; all those present agreed. Chief Cioffi reported that a three keg party in June resulted in a lot of discussion and the Selectmen tried to deliver the message to the offenders by outlawing kegs in the Menemsha Harbor area. Chief Cioffi indicated that he had spoken directly with the offenders, and encouraged the elder fishermen to give guidance to the younger fishermen in order for the Police to respect the bounds of the Harbor and not have to resort to patrolling the docks. Mr. Jason reemphasized that the offenders have to understand they are required to throw their beer cans in a trash receptacle.

Mr. Doty asked how everyone felt about the live music on the docks on Sunday nights, to which Bette Carroll said she loved it and the others agreed. Mr. Doty was glad that the music was not a problem and looked forward to doing it again next year with everybody's blessing. Mr. Fenner asked how the Bulkhead leaseholders felt about the lot usage on the Bulkhead and inquired how the leaseholders performed this season in support of the local commercial fishing fleet. Mr. Goldman said that the fish markets are required to give the Park and Recreation Committee an annual report of business each year in the fall. Mr. Parker specially asked the fishermen present if the local fish markets were supporting them by purchasing their fish and everyone agreed that things were going well. Mr. Parker said that he has noticed trucks from Larsen's Fish Market and Menemsha Fish Market parked in the road and said that it was unsafe and should not happen.

A year-round resident in Menemsha and Bulkhead leaseholder of Lot 1A, Barbara Armstrong, read a letter on behalf of her and her husband John regarding their feelings about Menemsha and the problems they have experienced; most notably intrusive lighting in the Harbor that reflects into their home at night. Mr. Armstrong said he would like to see the bright lights at the Menemsha Texaco be pointed downward, Mr. Parker said that would in accordance with the zoning bylaw and asked in Marshall Carroll if he would comply and he said he would look into it. Mrs. Armstrong also noted that there were two specific commercial boats on the creek with bright deck lights that remained on most evenings this past summer when there was no work being done on the boats. Mrs. Armstrong said if it was deemed necessary to have the boat lights on through the night she wanted to request the lights be pointed outward away from the houses. Mrs. Armstrong also requested the VTA bus schedule be adjusted on the off-season because it is usually empty, the lights shine into the house and is noisy. Mr. Parker asked Tim Carroll to speak with Angie Grant at the VTA.

The last item Mrs. Armstrong noted was the increased noise in Menemsha at night especially from the Menemsha Fish Market refrigerator truck. Mrs. Armstrong said that she had spoken with Stanley Larsen to move the truck and it did not solve the problem, resulting in one of their tenants leaving their property because of the noise. Mrs. Armstrong said that refrigerator trucks need to

have a limit for when they are parked in Menemsha because they are too loud and big. Mr. Doty explained that if the volume of fishing activity is increased, then there will be the need to have refrigerator trucks in Menemsha. Mr. Parker suggested staging areas for the refrigeration trucks be determined. Mr. Doty asked where Stanley Larsen should park the truck over the winter and it was agreed that parking the truck by the Harbormaster shack would be fine.

Mr. Fenner asked Louis Larsen what he was doing with his building on Lot 5A and Louis responded that he did not conduct any business this season on the lot. Jonathan Mayhew said there was a strong need for an ice facility in Menemsha and Louis Larsen not utilizing his building on the bulkhead that used to provide ice. Mr. Parker said that the Park and Recreation Committee will have to discuss the continuation of Louis Larsen's lease on Lot 5A because the Town does need a building for ice.

Chris Murphy said the Board of Selectmen were not doing their best to protect the local fishermen by allowing non-residents to commercially harvest mussels from Town waters. Mr. Murphy proclaimed that limiting all commercial shell fishing to residents is key to protecting Town resources. Mr. Murphy went on to say that the state law allows towns to limit commercial shell fishing to Town residents and that mussels should not fall by the wayside. Mr. Doty said this was a situation the Shellfish Advisory Committee has been monitoring closely, but the opinion of the committee is there have been few rules established for mussels in the past; second the non-resident shell fishers are working with Stanley Larsen who has a Town shellfish license and processes the mussels in Town; third only mussels are being harvested. Mr. Doty invited Mr. Murphy to further discuss this issue with the Shellfish Advisory Committee at their next meeting. John Armstrong said that when the committee first discussed the topic Stanley Larsen was the only person interested in harvesting the mussels, which cleaned out an area needed to seed for quahog beds and in turn helped to protect the greater shellfish industry.

Everyone thanked Seth Karlinsky with a round of applause for the maintenance of the Menemsha Comfort Station and trash collection. Gregory Mayhew said he wanted to explore the concept of having a open fish market, similar to a farmer's market, in which fishermen could sell fish off their boats. Betsy Larsen said that it would be unfair to everyone who has the proper licensing and paperwork to sell and process fish in their markets. Jane Slater said that the Park and Recreation Committee is very pleased with the fish markets and their response to regulation requirements and does not believe a "farmers fish market" concept would work in Menemsha. Mr. Parker thanked everyone for coming and said the discussion has given the Selectmen important issues to look into.

Dog Hearing Comment

Robert Zeltzer was present to address the Selectmen about their decision regarding the dog attack that resulted in his dog being euthanized due to his injuries. Mr. Zeltzer thanked the Selectmen for welcoming him to the meeting and thanked Tim Carroll and Chris Murphy for their assistance during this difficult process. The issues Mr. Zeltzer wanted to discuss was public safety, in addition to what actions public safety officials and the Selectmen should take moving forward to limit the probability of an event like this happening again. Mr. Zeltzer affirmed that his recommendations were not personal and that he thinks the world of the Morgan family. Mr. Zeltzer said that losing his dog was not the only hardship and that the personal trauma his wife suffered by watching the dog be attacked was devastating. In the interest of public safety, Mr. Zeltzer said the Selectmen should reconsider their decision because the decision should be in the best interest of the whole community and not just for one family being spared having their dog put down. Mr. Zeltzer did not believe it was reasonable

for the Selectmen to take the chance of the Town being liable if a person or another dog was injured by the Morgan's dog.

Mr. Zeltzer recommended that in order to reduce the risk moving forward a leash law should be enforced through out Town and require dogs to be under the owner's control at all times. Mr. Zeltzer also requested that the Dog Officer have a direct line of communication with the Police Department to inform him of unrestrained dogs. Mr. Zeltzer also felt strongly that the Dog Officer and Police Department should be aware of properties where building permits are issued so they can expect where unrestrained dogs might be. In conclusion of his statement, Mr. Zeltzer respectfully requested that the Selectmen reconsider their decision and have the Morgan's dog removed to a "no kill refuge" and have public safety officers work together to prevent dogs from roaming free in town.

Mr. Doty thanked Mr. Zeltzer for expressing his opinion and assured him that the Selectmen would act according to the letter of the law in regard to their decision. Mr. Parker said that it was within the Selectmen's power to reopen the dog hearing, but are not required to and due notice would have to be given to all parties involved. Mr. Parker also said the owner of convicted dog can appeal the decision from the Selectmen but that the appeal period has expired in this case. Mr. Murphy said that it was a very sad and unfortunate event that occurred, but he believes his recommendation to the Selectmen and their subsequent decision was a good process that the Selectmen took it very seriously. Mr. Fenner said that he could not be sorrier for what the Zeltzer's experienced and suggested publishing something in the paper informing contractors that Chilmark is enforcing the leash law. In addition, Mr. Fenner said that information should be distributed to seasonal visitors about the Town's leash law. Mr. Parker said there is no worse a responsibility the Board of Selectmen have than ruling on a dog hearing because the risks are substantial no matter what the decision. Nonetheless, Mr. Parker said that they made a decision they thought was the right one but given Mr. Zeltzer's comments the Selectmen will review the decision again.

Middle Line Road Utility Installation Contract

Mr. Fenner excused himself from the Middle Line Road Utility Installation Contract discussion because he had a conflict of interest with one of the bidders. Mr. Doty called on Executive Secretary, Tim Carroll, as the Town's Chief Procurement Officer to explain that after his discussion with the Attorney General's Office, the Middle Line Road Construction Advisory Committee (MLRCAC) had recommended the Selectmen reject the apparent lowest bid from Rogers Electric & Alarm and award the bid to Powers Electric, Inc.; the second lowest bidder. Frank LoRusso, a member of the MLRCAC, read a statement to the Selectmen addressing the decision to reject the apparent lowest bid from Rogers Electric & Alarm for the following reasons. First, Mr. LoRusso indicated that at the pre-bid meeting, Mr. Rogers said a conduit system, instead of direct burial, could be installed for a lower cost. Because of Mr. Rogers' recommendation, the MLRCAC agreed to write the addendum informing all bidders that they could choose to bid the project with the alternate of installing the NSTAR power loop in conduit instead of direct bury.

Mr. LoRusso continued reading the statement, indicating that at the formal bid opening Mr. Rogers' bid failed to acknowledge the addendum and did not include unit pricing, which the bid document specified as a requirement. Mr. LoRusso said Mr. Rogers' failure to address those items made the Town vulnerable because critical information and unit pricing would not be known until excavation began; putting the Town at a disadvantage and Mr. Rogers at an advantage. Furthermore, Mr. LoRusso said that accepting Mr. Rogers' incomplete bid could result in an appeal from the second lowest bidder, which could delay beginning the project into the winter when the ground would be frozen, resulting in the job being impossible to complete. Therefore, the MLRCAC recommended to

the Selectmen that it would be in the best interest of the Town to award the bid to the second lowest bidder.

Mr. Doty moved to award the bid to Powers Electric, Inc. for \$188,999.99; Mr. Parker seconded and asked if there was any public comment. Robert Young, of Robert Young Electrical Contractor and the third lowest bidder, asked why in the case of first invitation for bids the contract was not awarded to the second lowest bidder (his company) when the lowest bid from Farrell Electric was rejected. Mr. LoRusso clarified that in the first invitation for bids, the apparent lowest bid from Farrell Electric was not awarded because the bid was withdrawn, and the decision to rebid was made because the bids were spread too far apart with approximately \$137,000 difference from the lowest to the highest bid. Mr. Carroll also said that the MLRCAC had agreed that because the bid price was spread so wide between the island companies and the off-island company, rebidding the project could close that gap so an island company could be considered.

Mr. Young said that publishing in the newspaper the Town had budgeted \$160,000 for the utility project and including the first round of bid prices took away from the bidding process and gave an unfair advantage. Mr. LoRusso said that it is standard to publically publish the bids. Mr. Rogers informed the Selectmen that he was misquoted and stated he did not say he could definitively install a conduit system for less than direct burial. Mr. Rogers avowed that he recommended the Town review a double conduit system because it would be in best interest of the Town in the long run for a project of this scale. However, Mr. Rogers went onto explain that the addendum indicated that if conduit was used there was still a requirement to use screened sand. Mr. Rogers said that NSTAR specifications state that, if conduit is used, clean fill can be used. Mr. Rogers' determination that using conduit would cost less was due to not incurring the cost of purchasing, trucking and spreading screened sand for a direct burial trench and being able to use clean fill, which is much cheaper. Because burying the conduit in sand was a requirement in Addendum #1A, Mr. Rogers chose not to select the addendum.

Mr. Rogers' said Mr. Carroll informed him that the Attorney General's Office said that not acknowledging the addendum and unit pricing were minor informalities and it was at the Town's discretion to not award the bid. Mr. Rogers proclaimed from his experience serving on town boards that it is the Selectmen's fiduciary responsibility to secure tax payers the best job they can for the least amount of money. With due respect to the Town's tax payers, Mr. Rogers believes it would be unjust to not accept his bid which is \$26,000 less than the second lowest bid price. Mr. Rogers asserted that the utilities contract has a very good list of specifications and due to the inspection requirements, if he does not do the job correctly, he will not be awarded payment.

Mr. Parker said that the Selectmen rely on the advisement of the Chief Procurement Officer, Tim Carroll, and the Middle Line Road Construction Advisory Committee and their recommendation. Mr. Parker called all those in favor of the motion to award the utility bid to Cole Powers of Powers Electric, Inc. for \$188,999.99. SO VOTED: Two Ayes.

Use of Community Center for Brazilian Community Day

The Selectmen reviewed a request from Christina Montoya to use the Community Center for a Brazilian community day event at a reduced rental fee. Mr. Doty and Mr. Fenner agreed that the letter of request was very informative about the concept of the event although pertinent factors were not confirmed; therefore it would be premature to approve the event without further information. Mr. Doty said the Selectmen encourage community events and are willing to give reduced costs to events

that are free to the public or fundraisers. The Selectmen asked the Executive Secretary to follow up with Ms. Montoya.

Request to use Community Center for Holiday Flea Market

The Selectmen discussed and agreed that the Holiday Flea Market at the Center has been a success in the past and they would be happy to see it continue. Mr. Doty moved and Mr. Fenner seconded to approve the request from Coco Adams to host a Holiday Flea Market at the Community Center for the cost of ten dollars a booth. SO VOTED: Three Ayes.

Dukes County

The Dukes County Commission was incorrect in their original assessment for Chilmark's contribution to the County's pest management control program and requested the Town pay an additional \$143.79. Mr. Doty moved and Mr. Fenner seconded to pay \$143.79 to the Dukes County Commission. SO VOTED: Three Ayes.

Chilmark Police Department Bill from FY09

Chief Cioffi explained that MHQ, Inc. performed repairs on one of the police cruisers in May 2009 but a bill was not received until after Fiscal Year 2009 had ended. Mr. Parker said to put the bill on the warrant for the Special Town Meeting in December.

Ocean Plan Letter to Governor Deval Patrick

Mr. Parker informed the Selectmen that in light of not being able to secure a meeting between Island Selectmen and Governor Patrick, West Tisbury Selectmen Richard Knabel has requested that the chair of each town's Board of Selectmen sign a letter to the Governor expressing their concerns regarding the draft Ocean Plan. Mr. Doty moved and Mr. Fenner seconded for Mr. Parker to sign the Island Selectmen's letter to Governor Patrick. SO VOTED: Three Ayes.

Middle Line Road Rental Duplex Construction Estimates

Mr. Doty said that he had hoped to receive the cost estimates for the rental duplexes at Middle Line Road in time for this meeting, but will hopefully receive them in time for the estimates to be discussed at the Middle Line Road Construction Advisory Committee meeting on Friday. Mr. Doty said if the cost estimates were received in time it would result in a warrant article for the Special Town Meeting. In addition to the construction cost estimates, Mr. Parker said that he would like to see how rental rates compare against the Town's cost of borrowing the money necessary for the project.

Mr. Carroll stated that the deadline for warrant articles is November 13 at 12:00 p.m. in order for the Selectmen to vote to approve the warrant articles at their next meeting on November 17, 2009.

Mr. Doty moved and Mr. Fenner seconded a motion to adjourn the meeting. SO VOTED: Three Ayes.

Meeting adjourned.

Approved November 17, 2009.