



## Town of Dartmouth

400 Slocum Road  
Dartmouth, MA 02747

### Board of Selectmen

### Select Board Members Present:

Michael P. Watson-Chairman  
Lara H. Stone-Vice-Chairwoman  
William J. Trimble

Joseph Michaud-Absent  
Shawn McDonald

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The Chairman called the public meeting to order at 6:30 p.m. on August 22, 2011 in room 304.

Board members signed the **warrant(s)** for the following bills from various departments in the amounts of:

PR06	\$379,436.34	PD1206	\$251,552.34	P1207	\$27,968.90
T1207	\$2,283,795.52				

### **Hearing-Application of 227 State Rd, LLC, d/b/a Busters Sports Bar for a Year Round/All Alcoholic License, Manager John Stone.**

The Chairman opened the hearing.

Attorney Gregory J. Koldys was present for the Application.

The Chairman closed the hearing.

*After a motion was made by Selectman Shawn McDonald and seconded by Vice-Chairwoman Lara Stone, it was voted unanimously to approve the application of 227 State Rd, LLC, d/b/a Busters Sports Bar for a Year Round/All Alcoholic License.*

**Application of Community Foundation of SEMass for a One Day All Alcoholic License and an Entertainment with Alcohol License for September 9, 2011.**

Nancy Harding was present for the Application.

*After a motion was made by Vice-Chairwoman Lara Stone and seconded by Selectman Shawn McDonald, it was voted unanimously to approve the application of Community Foundation of SEMass for a One Day All Alcoholic License and an Entertainment with Alcohol License for September 9, 2011.*

**Application of Beth Motta and Eric Thomas (Running Brook Vineyard) for a Special One Day License to sell All Alcoholic Beverages for September 24, 2011.**

Beth Motta was present for her application.

*After a motion was made by Vice-Chairwoman Lara Stone and seconded by Selectman Shawn McDonald, it was voted unanimously to approve the Application of Beth Motta and Eric Thomas (Running Brook Vineyard) for a Special One Day License to Sell All Alcoholic Beverages for September 24, 2011.*

**Application of St. Julie’s Church for a Common Victuallers License for September 25, 2011 for “Septemberfest”.**

A representative from St. Julie’s Church was present for the Application.

*After a motion was made by Vice Chairwoman Lara Stone and seconded by Selectman Shawn McDonald, it was voted unanimously to approve the application of St. Julie’s Church for a Common Victuallers License for September 25, 2011 for “Septemberfest”.*

**Appointment of Jay Peabody to the Zoning Board of Appeals as an Alternate.**

Jay Peabody was present for his appointment.

*After a motion was made by Vice-Chairwoman Lara Stone and seconded by Selectman Shawn McDonald, it was voted unanimously to appoint Jay Peabody to the Zoning Board of Appeals as an Alternate.*

**Reappointment to the Dartmouth Disability & Accessibility Commission.**

Phil Lenz could not be present. Vice-Chairwoman Lara Stone read his letter into the record. “This letter is to ask the Select Board to re-authorize my appointment to the Dartmouth Disability & Accessibility Commission. My term ends on December 31<sup>st</sup>, however, I feel that my contribution is not complete. I feel we have finally begun to make much needed improvements such as the Town’s beaches, parking, access to our schools and most importantly challenging and changing people’s opinions. We have

done much, but more lies in our path. I would like to continue to be a part of making the Town of Dartmouth a place where everyone can enjoy all that our town has to offer.”

*After a motion was made by Vice-Chairwoman Lara Stone and seconded by Selectman Shawn McDonald, it was voted unanimously to reappoint Phil Lenz to the Dartmouth Disability and Accessibility Commission.*

### **New Business:**

#### **Renewal Application of Gordon W. Burgess for Reappointment as Constable.**

*After a motion was made by Selectman Shawn McDonald and seconded by Vice-Chairwoman Lara Stone, it was voted unanimously to reappoint Gordon W. Burgess as Constable.*

#### **Steelworkers' Contract.**

The Executive Administrator stated to the Board that this is the ratifying contract.

*After a motion was made by Selectman Shawn McDonald and seconded by Vice-Chairwoman Lara Stone, it was voted unanimously to adopt the ratifying contract as presented.*

#### **Licensing Aide.**

The Executive Administrator stated in September, 2011 that Ms. Delahunt is retiring. As part of the last contract with the DTEA, the Town negotiated that this position should be excluded from the union and become a non-union position as it performs confidential work for the Select Board, Town Counsel and myself. Currently, this position does not exist in the Personnel By-Laws. At the October Town Meeting, I will request that this position be included in the Town's Personnel By-Law. In the interim I am requesting the Select Board and then the Personnel Board to temporarily assign this position to NU-8, \$20.37-\$25.05 per hour as this range closely approximates the DTEA Clerical Grade 7, \$20.99-\$25.06 per hour which is the current classification of the Licensing Aide.

*After a motion was made by Selectman William Trimble and seconded by Selectman Shawn McDonald, it was voted unanimously to approve this position to NU-8, \$20.37-\$25.05.*

#### **Special Counsel on Renewable Energy.**

The Executive Administrator mentioned that the Town received two responses to its Request for Proposals to purchase up to 8 MW of Renewable Energy. Once staff completes its review of the proposals, the Town will require the assistance of Special

Counsel in negotiating the Power Purchase Agreement. Thus, I request authorization to use Attorney Mark Kalpin of Wilmer Hale for this purpose. Attorney Kalpin served as Special Counsel for the Borrego Power Purchase Agreement. Also, I have reviewed this with Town Counsel who concurs with this.

*After a motion was made by Vice-Chairwoman Lara Stone and seconded by Selectman Shawn McDonald, it was voted unanimously to hire Attorney Mark Kalpin of Wilmer Hale for this purpose.*

### **Temporary Borrowing.**

Greg Barnes, Director of Budget & Finance briefed the Board on temporary borrowing.

*After a motion was made by Selectman William Trimble and seconded by Vice-Chairwoman Lara Stone, it was voted unanimously to award the \$1,153,655.10 Town of Dartmouth, MA General Obligation Municipal Purpose Loan Notes sold on August 19, 2011 to be dated August 30, 2011 and maturing February 24, 2012 to Eastern Bank Capital Markets at a net interest cost of 0.85%. The other bidders on the issue were UniBank for Savings at a net interest cost of 0.90% and Cape Cod 5 at 0.90%.*

*The purposes included in this issue are as follows:*

*\$65,000 Smith Neck Water Tank Upgrade article 7 of June 7, 2011 ATM;  
\$33,655.10 Old Fall River Tank Repairs article 7 of June 7, 2011 ATM;  
\$675,000 Water Main Upgrade article 7 of June 7, 2011 ATM; and  
\$380,000 Water Pollution Control Facilities Upgrade article 7 of June 7, 2011 ATM.*

### **Old Business:**

#### **Greg Barnes, Director of Finance/Treasurer to discuss Cemetery Finances.**

Greg Barnes discussed the following with the Board: based on my conclusions on a legal opinion and report from the Massachusetts Division of Local Services; a thorough examination of the MGL regarding cemeteries; and examination of how cemetery finances are handled in other communities. My focus was not on examining past history but at looking at current financial practices and procedures and looking at what needs to be done to bring them in full compliance with State law. I want to note, however, that it appears a few incorrect practices previously cited (payment of Commissioners or their relatives to perform Cemetery duties; fees not always being deposited into Town coffers and instead purportedly going to pay vendors directly; and not making purchases through the Town's purchase order system) have been corrected.

My analysis indicates that the Town needs to thoroughly revamp how it handles cemetery finances as much of the monies collected from various cemetery-related fees

are being placed in the wrong accounts and spent without the required authority from Town Meeting. More specifically, the Town has 4 cemetery-related accounts: Evergreen Sale of Lots; Evergreen Perpetual Care; Other Cemeteries Perpetual Care; and Ryder Cemetery Perpetual Care. The latter three funds are broken into expendable and non-expendable trusts. In terms of the Ryder Cemetery Perpetual Care, it appears monies are being spent from this trust in full compliance with MGL and in accordance with the wishes of the benefactors. However, there are problems with how the other three accounts are being handled.

Evergreen Sale of Lots: Two things are being done incorrectly here. First, not all the monies collected for the Sale of Lots are being deposited into the Sale of Lot account, with ½ of the monies currently being deposited into the Evergreen Perpetual Care – Expendable. MGL Chapter 114, Section 15, however, requires that the “proceeds of such sales...be kept separate from other funds” a point reinforced by a November 2009 Financial Management Review for Oakham, MA done by the Division of Local Services. Secondly, both Section 15 and a February 10, 2009 Legal Opinion from the Division of Local Services indicate that monies spent from the Sales of Lot account requires an “appropriation”, which means Town meeting approval. This latter step is not being done.

Evergreen Perpetual Care: Perpetual Care monies are outlined in MGL Chapter 114, Section 25 as “gifts or bequests for maintaining cemeteries or cemetery lots... (which) shall be kept separate from the other monies and accounts of said town.” However, grave opening and other cemetery-related fees for Evergreen are being placed into this account. My reading of MGL and an examination of the financial practices done in another community that I know to be legally vetted would indicate that instead grave opening and other fees, with the major exception of Sale of Lots, should go into the general fund unless a revolving fund is created by Town Meeting to capture such fees and is reauthorized on an annual basis by Town Meeting. It should be noted that while certain fees are incorrectly going into Evergreen Perpetual Care, the Cemetery Commissioners have the legal authority to spend perpetual care monies without Town Meeting approval.

Other Cemeteries Perpetual Care: Recent deposits have not been made into this account due to apparent inactivity in these cemeteries. However, I understand that monies here are treated similar to what is done with Evergreen Perpetual Care. Hence, the same arguments apply.

In addition to the above issues cited regarding each account, there are two other finance-related issues that should be noted. First, according to Town Counsel in a November 13, 2009 legal opinion, rules and regulations for the Cemetery Commission, including the type and amount of fees, must be approved by Town Meeting. This has not been done. Second, to the degree that financial self-sufficiency of a cemetery is a policy goal, further examination needs to be given to the sustainability of the current expenditures for the cemetery relative to its revenue. While revenue is currently

exceeding expenditures, this is largely due to more favorable market returns in the last fiscal year, which is not something the Town can count on for the long-term.

- **CHAPTER 114 CEMETERIES AND BURIALS**
- **Section 15** Appropriation for enclosing and improving cemetery; sale or conveyance of burial rights; disposition of proceeds

Section 15. Towns may appropriate money for enclosing any cemetery lawfully provided by them or for constructing paths and avenues and embellishing the grounds therein, and may establish all necessary rules relative thereto consistent with law. They may lay out such cemetery into lots, and shall set apart a suitable portion as a public burial place for the use of the inhabitants, free of charge. They may sell and convey to any person, resident or non-resident, the exclusive right of burial and of erecting tombs and cenotaphs upon any lot and of ornamenting the same, upon such terms and conditions and subject to such regulations as they shall prescribe. Upon the conveyance of a burial lot, a town: (1) shall assign a number to such lot; (2) shall cause a marker to be installed thereon which indicates such number; (3) shall give a written notification to the purchaser of such lot, or his agent, which notification specifies the location and number of such lot; and (4) may charge the purchaser of such lot a reasonable fee for the cost of such marker and its installation. Towns shall maintain records concerning the location and numbering of such lots, which records shall be open to the public. The proceeds of such sales shall be paid into the town treasuries, be kept separate from other funds, and be appropriated to reimburse the towns for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery.

- **CHAPTER 114 CEMETERIES AND BURIALS**
- **Section 25** Gifts or bequests for cemeteries; investment of funds; disposition of proceeds of sales of lots or burial rights

Section 25. A town in which cemetery commissioners are chosen may receive gifts or bequests for maintaining cemeteries or cemetery lots, which shall be paid into the town treasury and, with the accounts thereof, shall be kept separate from the other money and accounts of said town. The town treasurer shall invest all such funds in accordance with the stipulations, if any, accompanying them; otherwise he shall invest them as ordered by said commissioners and pay the income therefrom upon their order or with their approval. The proceeds of sales of lots or rights of burial in such cemeteries shall be paid into the town treasury and be appropriated to reimburse the town for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery.

Select Board members would like to have a joint meeting with the Cemetery Commission on September 12, 2011 to discuss this issue further and an article for Town Meeting.

Vice-Chairwoman Lara Stone mentioned that the Agricultural Commission would like to be involved when the Town is making any decisions with 61A.

**Minutes:**

**Minutes of August 8, 2011.**

*After a motion was made by Selectman Shawn McDonald and seconded by Selectman William Trimble, it was voted unanimously to approve the minutes of August 8, 2011.*

**Announcements:**

DCTV will have a thirty minute broadcast on our Water & Sewer Division, which will air on various dates.

Attest:

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David G. Cressman, Executive Administrator

Transcribed by: Linda Torres

