

**MARION BOARD OF SELECTMEN
WATER/SEWER COMMISSIONERS**

November 3, 2009

Minutes

The meeting was called to order at 7:00 p.m. Present were Chairman Stephen M. Cushing, Board members Jonathan F. Henry and Roger F. Blanchette and Town Administrator Paul F. Dawson. Also present were Lee Craver, Gretchen Grundstrom of *The Sentinel*, Adam Silva of *The Wanderer*, Eunice Manduca, W. Dale Jones, Police Chief Lincoln W. Miller, candidate for police officer Ryan A. Bernier, Douglas and Cheryl Bernier, Barbara Whitney, Norman Hills, David K. Pierce, William G. Saltonstall, Jr., Richard L. Pomroy, Hamish Gravem, Johnathan R. and Robert J. Sylvia and Helene Craver, secretary.

Mr. Blanchette moved the minutes of October 20, 2009; the motion was seconded and carried unanimously.

Mr. Blanchette moved the minutes of October 26, 2009; the motion was seconded and carried, Mr. Henry abstaining.

The Board then met with Chief Miller and Mr. Bernier. Chief Miller introduced Mr. Bernier and said that he is requesting Mr. Bernier's appointment as a full-time police officer, commencing November 7, 2009. Chief Miller said that Mr. Bernier is from Dartmouth, has been working at Stonehill College in security, has a degree, is an EMT, attended the police academy and is fully qualified. Chief Miller said that Mr. Bernier would replace the retired Carl Lamoureux.

Mr. Blanchette moved to appoint Mr. Bernier a full-time officer with the Marion Police Department; the motion was seconded and carried unanimously.

The Board then met with Mr. Sylvia, who explained that he lives with his grandparents in Marion and had attended last week's Zoning Board of Appeals hearing. Mr. Sylvia said that he was an accounting student at UMass Dartmouth. Mr. Cushing said that it was nice to see someone young take an interest in Town government.

Mr. Henry moved to take the appointment under advisement and make a decision at the next meeting; the motion was seconded and carried unanimously.

The Board then discussed the alleged alcohol license violation at The Wave.

Mr. Henry recused himself and left the room.

Mr. Dawson summarized the situation—the hearing was held, officers provided testimony for the record, the hearing was continued at the request of counsel for The Wave, then a letter was received from the President of The Wave, indication that a violation has occurred and indicated that they would not be presenting additional

witnesses. Mr. Dawson said that it was his recommendation, since there were no violations under this ownership, the Board would consider a written reprimand to the establishment. Mr. Dawson read the following proposed letter to The Wave into the record.

"Dear Mr. Zell:

"With regard to the above-noted matter (Report and Findings with Regard to The Wave Restaurant and the Violation of the All-Alcohol Restaurant Common Victualler's License dated December 16, 2008), the Marion Board of Selectmen has made the following findings of fact:

- "1. The Wave Restaurant, d/b/a Short Wave Bar & Grill, located at 210 Spring Street, Marion, Massachusetts, is the holder of an All-Alcohol Restaurant Common Victualler's License issued by the Marion Board of Selectmen on December 16, 2008.
- "2. The Wave's All-Alcohol Restaurant Common Victualler's License and applicable regulations prohibit the consumption of alcohol on the premises after 1:00 a.m.
- "3. As reported by Marion Police Officer Anthony DiCarlo and as verified by Marion Police Sergeant Marshall Sadeck, on August 30, 2009, at or about 1:21 a.m., Officer DiCarlo observed a male patron drinking alcohol within The Wave Restaurant, Spring Street, Marion, Massachusetts.
- "4. Pursuant to its authority found at General Laws, Chapter 138, the Board of Selectmen advertised a public hearing to discuss the above-noted reported violations and scheduled the same for October 6, 2009. The holders of the above-noted All-Alcohol Restaurant Common Victualler's License were notified of the scheduled public hearing.
- "5. On October 6, 2009, at approximately 7:15 p.m., the Board of Selectmen opened the advertised public hearing, allowed Marion's Town Counsel to outline the hearing process and heard from Marion's Police Chief Lincoln Miller. Chief Miller read into the record the written report of Officer DiCarlo.
- "6. On October 6, 2009, the holders of the above-noted License, together with their counsel, who, upon information and belief is a co-owner of The Wave Restaurant, appeared before the Board of Selectmen and participated in the public hearing.
- "7. At the request of counsel for The Wave Restaurant, the Board of Selectmen continued the public hearing in this matter to October 20, 2009.

"8. On October 14, 2009, the President of The Wave Restaurant, Mr. Todd Zell, delivered an executed letter to the Board of Selectmen and the Town Administrator stating in relevant part, '{w}e hereby admit to a minor violation on August 30, 2009. We have instituted new policies with our staff to ensure there will be no further infractions'. In addition, Mr. Zell informed the Town Administrator that the owners of the restaurant had no intention of defending this matter further. In fact, the above-noted letter states in relevant part, 'We sincerely hope that the Board will consider our unblemished record...and take that into consideration when deciding what penalties, if any, to impose on The Wave Restaurant, Inc.'

"Based upon the above-noted facts and applying the relevant law"

- "1. The Board of Selectmen finds that the report of the Marion Police Department is uncontested and the observations and conclusions contained therein should be accepted as undisputed facts.
- "2. The holder of the Common Victualler's License has admitted to a violation of its License.
- "3. Accordingly, the Board of Selectmen has the authority to impose a monetary fine, revoke or suspend the issued License or a combination thereof.

"In arriving at an appropriate sanction, the Board of Selectmen may look to factors in aggravation and mitigation of the license violation. In aggravation of the license violation, the Board concludes that the licensee and its counsel unnecessarily and incorrectly argued on October 6, 2009 that it was not properly notified of the advertised hearing and needlessly disputed the violations, as reported by the Marion Police Department. In addition, the licensee requested a postponement of the hearing, further prolonging adjudication of this matter.

"In mitigation of the license violation, there are no reported prior license violations by the owners of The Wave and, by letter dated October 14, 2009, the licensee, by admitting its license violation, avoided further expenditures of municipal resources that would be required to continue and complete the public hearing process.

"After a thorough review of the facts, the law, aggravating and mitigating circumstances, the Board of Selectmen has concluded that suspension or revocation of the Common Victualler's License is not warranted at this time. In addition, the Board of Selectmen has concluded that, based upon past practice with regard to first-time license violations, the imposition of a monetary fine is also not warranted at this time. However, the Board wishes to make clear that the admitted-to violation is a breach of the terms of the issued license and will not be tolerated a second time without serious repercussions, including, as has been past practice, to temporarily or permanently revoke the issued license. Accordingly, the Board has voted to issue this reprimand to the licensee and ordered that a copy of this letter remain permanently on the file within the Board's records of this establishment."

Mr. Blanchette said that he was not sure of the effect on the license of the information that the manager and ownership of The Wave have changed. Mr. Blanchette said that he was not sure, but thought that the Board had to be notified when there was a change of manager or ownership. Mr. Cushing said that they needed to know about the requirements as it pertained to the license.

Mr. Blanchette moved to approve the decision as outlined; the motion was seconded and carried.

Mr. Dawson said that he will determine whether The Wave is required to notify the Board of the change in manager and ownership.

Mr. Blanchette moved to authorize the Chairman to sign the letter of reprimand; the motion was seconded and carried.

Mr. Henry returned to the meeting.

Messrs. Pierce and Hills then met with the Board to discuss the Mattapoissett River Valley Water Supply Protection Advisory Committee and the Alternative Energy Committee. Mr. Pierce said that the Advisory Committee has representatives from Fairhaven, Mattapoissett, Marion and Rochester, which raises fees to purchase land to preserve the land around the Mattapoissett River Valley in the water resource area. Mr. Pierce said that, over the last ten years, very little property has been available, during which time an assessment was for 1¢ per each 100 gallons pumped per town. Mr. Pierce said that the Advisory Committee has been approached by four land owners in critical areas to purchase property, but they are not generating enough money under the current assessment to enter into negotiations. Mr. Pierce proposed raising the assessment to 2¢ or more per hundred gallons, which must go to Town Meeting. Mr. Cushing asked if the Advisory Committee has any kind of plan or priority; Mr. Pierce said that they decide based on the land affording the most protection of the water resource. Mr. Blanchette asked how many years the Advisory Committee had been collecting the \$87,000. Mr. Pierce said that, when land wasn't moving, they had only been collecting ½ ¢ per 100 gallons but, about three years ago, they increased it to 1¢, which they were authorized to do. Mr. Blanchette asked where the money is from the last three years. Mr. Pierce said that it was complicated—a land purchase with a matching grant had wiped out their funds. Mr. Blanchette asked how much is in the treasury now. Mr. Pierce said that there is over \$100,000, but they have commitments to pursue with other parties several parcels, which are now being negotiated. Mr. Cushing asked if they had priorities, so as not to waste money on parcels which are less desirable. Mr. Pierce said that they only pursue important properties. Mr. Cushing said that it is hard to make monetary decisions when he doesn't know what the plan is. Mr. Blanchette asked if the \$19,000 from Marion is paid from the water enterprise account. Mr. Dawson said that it comes from the general funds. Mr. Henry said that the Town has \$20 million dollars worth of work to do and the burden is onerous. Mr. Henry said that building the water protection district has very long-term implications and we have a long way to go—Mr. Cushing is correct: we need some kind of plan and a general statement of the financial health of the Advisory Committee to be presented along with the assessment request. Mr. Pierce said that he is the treasurer and can do that. Mr. Henry noted that some of these issues are within the purview of the Open Space

Acquisition Commission. Mr. Cushing said that it would be helpful to have a map of the properties already owned and those the Advisory Committee is pursuing. Mr. Pierce said that the Advisory Committee has no control over the issues forced on them by the state, such as the effect the water the four towns are withdrawing may be having on surface water and they are spending \$100,000 trying to come up with studies to show that the pumped water doesn't affect the surface water in Mattapoissett. Mr. Henry noted that Marion's infrastructure had been in poor condition and there is a huge bill to restore it.

Mr. Hills reported that the meteorological tower at ORR showed that there wasn't sufficient wind speed to make the installation of a wind turbine feasible, so they are looking into another meteorological tower on top of Great Hill in Marion. Mr. Hills said that it would take a year's worth of data to determine whether this one would be more productive.

The Board then met with Chief Miller and Mr. Pomroy regarding the change order request for the police station. Mr. Dawson reported on the ongoing negotiations with the contractor regarding removal of rocks and additional fill at the police station building site. Mr. Dawson said that the test boring information was given to all bidders and they based their bids accordingly. Mr. Dawson reported that, during initial construction, very large boulders were encountered unexpectedly, which required special equipment and additional fill. Mr. Dawson explained that there had been intense negotiations with the contractor, resulting in about one-half the initial extra charges. Mr. Dawson said that change order #1 was for \$95,487.39. Mr. Pomroy said that the soil was glacial till, where conditions can change from foot to foot. Mr. Pomroy said that, on September 1st, the first numbers for the excess rock removal and fill were presented and, after strenuous discussions, they were able to cut the number by more than half. Mr. Dawson said that another change order will be coming for the water line crossing of Route #6, which will be \$10,048.01. Mr. Pomroy said that the Committee had approved a 30-day contract extension at no cost for the contractor, which now has the completion date of November 3, 2010. Mr. Pomroy said that things are moving along quite well and he expects framing to begin the first week in December.

Mr. Henry moved to approve the change order as submitted and to authorize the Town Administrator to sign on behalf of the Selectmen; the motion was seconded and carried unanimously.

Mr. Henry moved to sign the water liens list; the motion was seconded and carried unanimously.

Mr. Dawson reported that the Department of Public Works had submitted a list of surplus equipment, which will be advertised and sold to the highest bidder.

Mr. Henry moved to accept the list as recommended by the Superintendent of Public Works and included in the record:

1997 Ford Crown Victoria (needs work)
1987 FMC Sweeper (rotted frame)
1999 Ram 3500 Wheelchair Van (bad frame)

1990 International Recycling Truck (rusted out)
1990 International Recycling Truck (rusted out)
1995 GMC Sonoma (bad frame)
2000 Ford Crown Victoria (bad motor and rusted out)
2000 Ford Police Interceptor (bad frame)
1995 Chevy 2500 (bad frame)
1994 GMC 3500 (bad motor)
1992 Dodge Ram 150 (bad frame)

Mr. Blanchette noted that the Town no longer has a street sweeper and that he hopes it will come up again at the Annual Town Meeting. Mr. Dawson said that there have been complaints about the condition of the streets—dirt and sand have accumulated and weeds are growing. Mr. Cushing asked that we look into having a private contractor clean the streets.

The motion was seconded and carried unanimously.

Mr. Blanchette moved to approve a one-day wine and malt license for the Selectmen's annual party at the Music Hall on December 1; the motion was seconded and carried unanimously.

Mr. Blanchette moved a one-day all-alcohol license for the Beverly Yacht Club on December 5; the motion was seconded and carried unanimously.

Mr. Blanchette moved a one-day all-alcohol license for the Marion Social Club on November 21; the motion was seconded and carried unanimously.

Mr. Blanchette moved a final water reading commitment in the amount of \$7,159.88; the motion was seconded and carried unanimously.

Mr. Dawson announced a change in personnel in Administrative Services—Margaret ("Sally") Putnam-O'Leary, Board of Health secretary, has resigned, as she is relocating to Florida. Mr. Dawson reported that the Board of Health advertised the position internally, has conducted interviews and hired Debra Paiva, current Planning Board secretary.

Mr. Dawson reported that there had been a motor vehicle accident on October 28 involving two police cruisers who were making a routine motor vehicle stop when they were hit by another vehicle. Mr. Dawson reported that neither of the two officers had been injured, being out of the cruisers at the time of impact, but one of the cruisers is totally wrecked, the other able to be repaired. Mr. Blanchette asked if the Town could recover the difference between the value of the wrecked cruiser and its replacement cost. Mr. Dawson said that he is pursuing making a claim against the operator of the vehicle who caused the accident.

Mr. Dawson proposed the following holiday schedule for the Town House:

Thanksgiving One-half day on Wednesday, November 25
Closed all day Thursday, November 26
Closed all day Friday, November 27

Christmas One-half day Thursday, December 24
Closed all day Friday, December 25

New Year's Office open Thursday, December 31
Closed all day Friday, January 1

Mr. Henry moved the schedule, as proposed; the motion was seconded and carried unanimously.

The Board received word that Hilary Sadeck, paramedic, has resigned, as she has begun a new job, limiting her volunteer time. Mr. Cushing noted that she had been a valuable employee, having served as an EMT for nine years and as a paramedic for two.

The Board reviewed a letter from Joseph Carver, who hoped the Town would look into cleaning up the utility poles and wires on South Street, when the road is repaved. Mr. Dawson said that he would forward this request to the Superintendent of Public Works.

Mr. Blanchette asked about the status of a new sign for the front of the Town House. Mr. Dawson said that he has gotten some designs, but the cost is prohibitive.

Mr. Blanchette said that he noticed that there are signs on Delano Road at the entrance of Dexter Beach, asking people to pick up after their pets; he would like the Recreation Committee look into having similar signs down at Silvershell Beach. Mr. Blanchette also requested that pet clean-up bags be stocked at the station at the beach and the stations be relocated to the beach, instead of the parking lot.

Mr. Henry moved to adjourn the regular meeting at 9:15 p.m. and go into executive session for the purpose of negotiations with non-union personnel and not to return to open session following the executive session; the motion was seconded and carried unanimously, Messrs. Cushing, Henry and Blanchette voting aye.

Respectfully submitted,


Roger F. Blanchette, Clerk

Date approved: 11/17/09