

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

**October 6, 2009**

**Minutes**

The meeting was called to order at 7:00 p.m. Present were Chairman Stephen M. Cushing, Board member Roger F. Blanchette and Town Administrator Paul F. Dawson. (Selectman Jonathan F. Henry was not present for this meeting.) Also present were Lee Craver, Eunice Manduca, Adam Silva of *The Wanderer*, Gretchen Gundstrom of *The Sentinel*, Robert C. Zora, Superintendent of Public Works, I&I senior project engineer James Brodeur, Police Chief Lincoln W. Miller, Interim Fire Chief Thomas Joyce, Officers Marshall Sadeck and Anthony DiCarlo, The Wave partners Todd M. Zell, Steven Nye and Attorney Stewart Grimes, Town Counsel Jonathan Witten and Helene Craver, secretary.

Mr. Cushing noted that two people who had been associated with the Town for a number of years had recently died—Donald Kusza (Planning Board) and Maurice Smith (Electrical Inspector) and asked for a moment of silence.

**Mr. Blanchette moved** the minutes of September 15, 2009; the motion was seconded and carried.

At 7:05 p.m., Messrs. Zora and Brodeur met with the Board to discuss the I&I program status and schedule. Mr. Zora explained that, on September 14, the Town began replacing the sewer service connections, which has gone very well. Mr. Zora said that the work began on South Street, with Hiller Street to follow. Mr. Zora reported that the test pits are being done in the village and they have determined that the most difficult area will be near the Music Hall and through the village, where gas lines and electrical cables will have to be moved. Mr. Brodeur said that notices to the residents have been distributed to instruct them where they can park their vehicles and when utilities will be disrupted. A brief discussion followed regarding the property owners' responsibility to replace the pipe from the street to the structure. Mr. Brodeur noted that only the Board of Health can enforce this requirement. Mr. Blanchette said that the most frequently asked question is, when will the Town fix the roads and he tells them May 10, 2010. Mr. Zora said that they cannot put a date on the final paving yet, but it will probably take place after Labor Day next year. Mr. Brodeur noted that the necessity of moving the gas lines will cause a delay. Mr. Brodeur said that the contractor is doing a decent job as long as he is around; Mr. Zora said that he had reservations, because they hadn't worked with this contractor before, but it is going well so far. Mr. Zora said that they were hopeful that Nstar could move their cables quickly, so as to not delay the contractor.

Mr. Dawson reported that the Fire Chief Study Committee was now complete and recommended its appointment. Mr. Dawson explained that the Police Chief and an at-large member had been added, as requested by the Board.

**Mr. Blanchette moved** the Fire Chief Study Committee; the motion was seconded and carried.

**Mr. Blanchette** moved to appoint David Zander as an EMT-Basic; the motion was seconded and carried.

Mr. Dawson explained that it was necessary to grant an easement for a temporary right-of-way for Verizon and Nstar for the new police station, which must be followed by a Town Meeting vote in the spring.

**Mr. Blanchette** moved to grant the temporary easement to Verizon and Nstar; the motion was seconded and carried.

Mr. Dawson said that they had had communications from the State Ethics Commission concerning recent changes to the state ethics laws, which require a new process for municipal government. Mr. Dawson said that this information will be on for action for the next meeting.

At 7:30 p.m., the public hearing regarding The Wave was convened.

**Mr. Blanchette** moved Town Counsel as the hearing officer; the motion was seconded and carried.

Mr. Grimes immediately objected that they had gotten the notice of the hearing regarding an alleged violation on August 30, 2009 but that he had not seen a police report. Mr. Witten said that the Board is in possession of a memo from Chief Miller and a copy of Sergeant Sadeck's report and outlined the options that would be available to the Board concerning the alleged violations of the all-alcohol restaurant license. Mr. Grimes objected that he had never seen any of these documents and did not want the hearing to continue, plus he pulled the records of The Wave and the Town has the wrong date. Mr. Grimes complained that there was a failure of due process and he was not prepared to bring witnesses for the date of the alleged violation. Mr. Grimes said that he intended to put on a full defense and wanted the hearing continued to a date when everyone was aware of the discoverable evidence to address these issues. Mr. Grimes said that he wanted to make sure there was no decision tonight. Mr. Witten said that the Board controls the agenda and there was no question that both counsel and his client had been afforded all due process. Mr. Witten recommended that the Board hear from the Police Department. Mr. Witten said that he is not here to debate—the public hearing is being held in accordance with the law and has been duly advertised. Mr. Witten said that the police report speaks for itself—counsel may probe the report for veracity, accuracy and substance. Mr. Grimes said that he needed the report prior to the hearing. Mr. Cushing said that Mr. Grimes had been given ample time to gather the information he needed for the hearing and that he would like to proceed. Chief Miller quoted from the police report and indicated that the notice of the hearing was delivered by personal service on September 17. Mr. Grimes said that they received none of the attachments to the notice of the hearing and objected that there was already a presumption that there had been a violation of the law and that the officers are prepared to give evidence when he hasn't seen the report. Mr. Witten said that Mr. Grimes may cross examine. Mr. Grimes again objected to not having seen the police report. Mr. Grimes said that the band member wasn't around on that date and that he had never heard about a gathering in the parking lot; he denies that alcohol was served as alleged. Mr. Grimes said that he is counsel and an investor in The Wave and the notice given

was not adequate for a public hearing. Mr. Grimes suggested, even if he sees all the facts, it fails on a summary judgment level. Mr. Grimes said that if an officer saw an individual in the band who was drinking a beer, the staff can't follow the band members around—he could have brought it in in his guitar case; the band is a subcontractor who is not under their control. Mr. Grimes suggested that, in order for the Board to give them a full and fair hearing, they continue the hearing to another date and allow The Wave to bring in every employee. Mr. Witten said that counsel is not here to testify to facts unless he was present. Mr. Witten said that it was not the fault of the Town of Marion that Mr. Grimes had not obtained a copy of the police report. Mr. Witten said that it is up to the Board as licensing authority whether to proceed. Mr. Blanchette said that, in his opinion, The Wave had ample time to gather the information and reports and it was incumbent upon them to do so; they should have gone to the Police Department to gather the necessary documentation. Mr. Blanchette said that, having said that, he would feel uncomfortable if they felt he had done them a disservice; he would like to continue the hearing to afford them the opportunity to bring in their witnesses so that whatever decision the Board reaches, they will not feel short changed. Mr. Cushing said that he has a different opinion—they had had ample time; however, he will grant the time to come back and mount a defense. Mr. Witten asked Mr. Witten to notify him who the witnesses will be. (It was agreed to continue the hearing until October 20.)

The Board then met with Chief Joyce, who reported on the planned open house at the fire house on Saturday, October 10, to mark Fire Prevention Week. Chief Joyce announced that the Marion Firefighters' Association will be providing breakfast from 9:00 a.m.-noon, there will be rides on an antique fire truck, a "jaws" drill and a tour of the facilities. Chief Joyce invited everyone to take part.

Mr. Dawson reported that he had anticipated receiving a letter from the Chairman of the Fireworks Committee that stated that the Committee did not want to be responsible for raising the money to cover the public safety aspects of the fireworks and did not plan on placing that part of the expense in their budget for the coming year. Mr. Dawson reminded the Board that Town Meeting had voted not to fund the fireworks, but that it be funded by private contributions. Mr. Dawson said that the problem is that, even if the Board wished to reintroduce an Article before Town Meeting and see if the Town would vote to change its mind and fund the fireworks, the time frame for the vote at the Annual Town Meeting would be too late. Mr. Dawson outlined the Board's options, which would include an Article for the Annual Town Meeting for the 2011 fireworks, ask the Fireworks Committee to reconsider or discharge the Committee and recruit new volunteers. Mr. Cushing said that he was sad to hear this, but understood the committee's frustrations in light of the economic conditions. Mr. Cushing said that, although it was thankless, the committee had done a really good job. Mr. Cushing thought that the Town would probably not reverse its vote. Mr. Blanchette noted that, when other cities and towns that have fireworks, there is never any discussion about the cost of public safety. Mr. Cushing said that the location of other fireworks displays doesn't require the amount of crowd control that is necessary at Silvershell Beach. It was agreed that Mr. Collings and the committee members would be invited to the October 20 meeting.

Mr. Dawson reminded the Board that, some time ago, Ray E. Pickles, Town Clerk, suggested purchasing resident stickers that adhered to the driver's side of the windshield, instead of the present rear bumper, to make them more visible, to which Chief Miller agreed. Mr. Dawson said that the stickers are available, but the current regulations would have to be revised, if the Board wishes to make this change. Mr. Dawson said that the draft regulations are before the Board and noted the several changes. Mr. Blanchette asked if the registration numbers would continue to be placed on the stickers and whether Rochester would agree to comply with this requirement. Mr. Blanchette reported that he had asked the Recreation Committee Director to record how many Rochester residents use Silvershell Beach, to determine what percentage of the cost of running the beach should be shared by Rochester. Mr. Blanchette also noted that the stickers issued to boat owners for Island Wharf parking do not have the registration numbers on them. Mr. Dawson said that they had discussed these issues with Rochester several years ago and the situation had temporarily improved. Mr. Blanchette said that the Board and the Rochester Selectmen need to discuss this among themselves.

**Mr. Blanchette moved** the amended sticker regulations; the motion was seconded and carried.

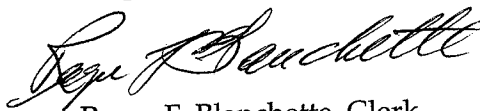
The Board reviewed the plans for the Hallowe'en Parade by the Marion Art Center.

**Mr. Blanchette moved** the plans for the Hallowe'en Parade; the motion was seconded and carried.

**Mr. Blanchette moved** the street closures for the Christmas Stroll to be held by the Marion Business Community Association on December 13, 2009; the motion was seconded and carried.

**Mr. Blanchette moved** to adjourn the meeting and convene the executive session at 8:40 p.m. for the purposes and litigation and contract negotiations with non-union personnel and not to return to open session following the executive session; the motion was seconded and carried, Messrs. Cushing and Blanchette voting aye.

Respectfully submitted,



Roger F. Blanchette, Clerk

Date approved: 10/20/09