

TISBURY BOARD OF SELECTMEN MEETING AGENDA

Tuesday, August 5, 2014
Tisbury Town Hall – 5:30 PM
Jonathan V. Snyder, Chairman
Tristan R. Israel
Melinda F. Loberg, Clerk

TOWN ADMINISTRATOR'S REPORT

USDA Loan Commitment - \$1,240,500 - (\$893,000 Loan & \$347,500 Grant) + \$20,000 Town Funds for
Wastewater Collection Project – BOS Resolution
Spring Pond Dredging
LED Purchase Contract
MSW Disposal Feasibility Study
Open Meeting Law – Public Records Complaint

DEPARTMENTAL and OTHER REPORTS

Shellfish Constable – Request for Shellfish Trust Transfer of \$479.04 for Netron
Town Clerk re: September 9, 2014 State Primary Warrant – to be Signed by Board of Selectmen

BOS APPOINTMENT

Martha's Vineyard Commission Vacancy Advertised – One Candidate on File (Ian Aitcheson) (Deadline 8-15-14)

DISCUSSION SESSION

CDM Smith Report Recommendations

PUBLIC COMMENT

ADMINISTRATIVE SESSION

Approval of Treasury Warrants

| | |
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| Payroll Warrant #8-4-2014 | \$234,859.13 |
| Bills Payable Refund Warrant #08-01-4R | \$33.87 |
| Bills Payable Warrant #8-05-2014 | \$511,246.81 |

Approval of Minutes

May 6, 2014 – Executive Session
May 20, 2014 – Executive Session
June 3, 2014 – Executive Session
January 28, 2014 – Regular and Executive Sessions
March 18, 2014 - Special Session (open) and Executive Session
March 20, 2014 - Executive Session
April 1, 2014 – Executive Session
July 9, 2014 – w/Planning Board
*June 17, 2014 – Regular Session

Gift Acceptance

(1) \$500.00 from Rick and Jan Homans for Fire Department;
(2) \$50.00 from Mr. & Mrs. Ray Lincoln for Tashmoo Spring Building Preservation Fund
(3) \$12,200 from the Martha's Vineyard Shellfish Group for Lagoon Pond Pier Repairs

NEW BUSINESS

OLD BUSINESS

EXECUTIVE SESSION

Vote to go into Executive Session to discuss strategy with respect to current and pending litigation and to discuss approval of Executive Session Minutes, (not) to reconvene in Open Session.

The Board of Selectmen met in a Regular Session on Tuesday, August 5, 2014 in the Tisbury Town Hall.

Present: Jonathan V. Snyder, Chairman, Tristan R. Israel and Melinda F. Loberg, Clerk; John W. Grande, Town Administrator and Aase M. Jones, Assistant to the Town Administrator.

Call to order: 5:30 p.m. by Jonathan Snyder.

Town Administrator's Report: was taken up first. Mr. Grande addressed the following matters:

USDA Loan Commitment for Wastewater Collection Project: was taken up first.

Mr. Grande explained that a meeting was held last week with Selectman Melinda Loberg, Finance Director Tim McLean, DPW Director Glenn Mauk and himself to discuss with Ron Koontz of the USDA a proposed loan commitment from the USDA that would extend credit to the Town in the form of a low interest loan for \$893,000 and a grant for \$347,500 plus \$20,000 in Town funds for a total package of \$1,240,500. In return for this commitment the USDA wants the Town to provide certain assurances to the agency in the form of a resolution, which the Selectmen must vote and approve at this meeting.

It was noted that the resolution must be voted and that the Town has one year to fulfill the terms of the resolution which requires additional engineering work and that \$893,000 must be expended on the project in order for the Town to qualify for and receive the \$347,000 USDA grant.

It was further noted that Melinda Loberg, Clerk of the Board of Selectmen, as authorized signatory for Town Contracts, signed some of the preliminary documents during the meeting with the USDA on Thursday, July 31, 2014. After a brief discussion,

Motion: That the Board vote to approve the USDA resolution in connection with the USDA Loan commitment for the sewer facility expansion to serve the area lawfully within the jurisdiction of the Town of Tisbury, authorizing the borrowing of funds to provide a portion of the cost of acquiring, constructing, enlarging, improving and/or extending its sewer facility collection area, i.e., \$893,000, by adopting the following resolution::

Whereas, it is necessary for the Town of Tisbury, (hereinafter called the Association), to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of \$893,000, pursuant to the provisions of Massachusetts General Laws; and

Whereas, the Association intends to obtain assistance from the United States Department of Agriculture (herein called the Government), acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.

8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.
11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$347,500 under the terms offered by the Government; that the Chairman of the Board of Selectmen and the Town Clerk of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in

regard to or as evidence of such grant; and to operate the facility under the terms offered in said agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

Motion: That the Board of Selectmen adopt this resolution regarding the USDA Loan Commitment for the sewer project as stated and as discussed.

The vote was as follows: Yeas: 3; Nays: 0; Absent: 0

M/s/c on August 5, 2014, signed by Chairman Jonathan V. Snyder and witnessed and certified by Town Clerk J. Hillary Conklin.

Spring Pond Dredging Project: was discussed next.

Town Administrator Jay Grande reported that he has received a lengthy report on the project from Ms. Lynne Fraker, who has been retained to provide some services and information regarding this project which, along with other information, will be forwarded to the Dredge Committee for review. Mr. Grande continued by stating that the costs associated with the project remain to be determined, bid documents must be prepared and the scope of work described, which will be based on information already derived from numerous different sources. Mr. Grande stated that all these materials should go to the Dredge Committee to be reviewed and then a professional consultant engaged to prepare bid documents for the project.

Mr. Grande commented further that the Wastewater Committee may have some information available on how the dredging of the Spring Pond may impact the nitrogen level in Lake Tashmoo. Mr. Grande noted that an accurate estimate of the cost of the project is needed, suggesting that additional funds will be needed to get the project moving forward.

At this point Mr. Israel asked if we have a draft report of the Tashmoo estuaries study yet. Ms. Loberg reported that a draft report has been received and that this will go to DEP for review and comments.

Mr. Grande advised the Board that no action is required at this time, except that the information be provided to the Dredge Committee for review.

Ms. Harriet Barrow, in the audience, commented on Community Preservation Act funds received for the Spring Pond Dredging Project, \$30,000 (ATM 2013)+ \$35,000 (ATM 2014), noting that

these funds cannot be held indefinitely without earmarking specifically for a portion of this project. Ms. Barrow continued by stating that something has happened to change the thrust of this project, adding that the Island Farm Initiative (IFI) has offered to take the spoils from the project and distribute to the Farm and others for soil nourishment.

Ms. Barrow noted that there are 5-6 permits required to do this project, noting that there is no need for a species/habitat permit; there may be a requirement for a Wampanoag Artifact Review/Permit, and noted that an Army Corps of Engineers permit has already been obtained.

Mr. Israel acknowledged that this is "over his head", adding that he does not recall a community discussion on the topic of dredging the Spring Pond. He continued by questioning the cost of the project asking if the Town will get something for the value of the cost, and then reiterated his question of what the total cost might be, acknowledging that he is not comfortable with the estimated scope of the whole project at this time.

Town Administrator Jay Grande stated that the project requires professional services for engineering and permitting to work towards the development of a scope of services. He added that it has been suggested that so-called "geo-tubes" may be one method to be used for de-watering the spoils.

Ms. Fraker, in the audience, stated that she hopes the Dredge Committee will look at the various options available for this project.

Ms. Loberg commented that once the Dredge Committee has looked at the materials and plans, the Selectmen will decide to go forward and a consultant will be hired.

Ms. Barrow suggested that some of the Community Preservation Act funding now available could be used for engineering and the permitting process, adding that as a Town we must accept responsibility for moving this project forward. Ms. Barrow then reiterated that she wants to inform the Community Preservation Committee that some of the allocated funds will be earmarked for consulting, engineering and permitting the project.

A brief discussion followed on whether the State or local Community Preservation authorities have the authority to decide whether unexpended funds are returned to the fund if not used within a certain time.

Mr. Snyder suggested that the Dredge Committee be asked to discuss this issue and ask how the allocated funds can be expended.

Town Administrator Jay Grande suggested that Danielle Ewart and others could plead with the Community Preservation Committee to allow the Dredge Committee to move forward with the permitting and engineering process using already allocated Community Preservation Act funds.

Motion: That Town Administrator Jay Grande be authorized to speak with Heidi Dietrich, Secretary to the Community Preservation Committee, about allowing the Dredge Committee to take up the engineering, permitting and scope of services development, (using CPA allocated funds), at the next meeting of the committee. M/s/c.

In conclusion it was agreed that Ms. Ewart will set up a meeting of the Dredge Committee for such a discussion.

Purchase and Sale Agreement Regarding Municipal Street Lights:

Mr. Grande informed the Selectmen that the Town has been given an extension until October 1, 2014 to accept the terms of the agreement and related documents, now under review by David Doneski. No action was taken.

It was noted that the Board has already agreed to approve the Cape Light Street Light Conversion Program, with certain specific conditions regarding historic and special fixtures, including the "Admiral Hat" fixtures, within and outside the Historic District.

MSW Disposal Feasibility Study: Town Administrator Jay Grande reported that he is working with Oak Bluffs Town Administrator Bob Whritenour on a joint solid waste disposal plan, with the possible barging of waste from both communities to New Bedford and an evaluation of the expected and potential cost benefits to both communities.

Mr. Snyder asked about a time-line on this. Mr. Grande informed the Board that this is estimated to be short, adding that the services of a consultant will be needed at a cost not to exceed \$10,000. Mr. Grande further pointed out that the Towns need to evaluate the economics for municipalities to share the cost of joint enterprises.

Mr. Israel commented that this issue will require input from the Steamship Authority.

At this point, Mr. Hyung Lee, in the audience, commented and raised his concerns about the LED Street Light conversion project, raising questions about this change, the cost of future maintenance and benefits to the community.

Mr. Grande responded by stating that it is complicated for people who are not familiar with LED lighting to evaluate the future impact, noting that Tisbury will have a Participation Agreement that excludes certain fixtures and special provisions for those in the Historic District.

Mr. Grande continued by stating that the question now is whether the Town will purchase the fixtures from NSTAR. He suggested that if there is a group of people interested in this agreement the Town would like to hear from them, noting that the Town is looking carefully at find out what the savings will be if we are going forward with this, then offering to make the proposed agreements available for any interested party to review.

Mr. Grande stated further that there is a proposed contract with Siemens through the Cape Light Compact to install the new LED lights, and a 3-year Operating and Maintenance (O & M) Agreement, also with Siemens, to repair, install and service the light fixtures with a set fee structure for all services rendered, this agreement has a 2-year option to extend the agreement after the 3-year initial period.

Mr. Grande acknowledged that the Town now has little control over the fixtures on the poles and suggested that if any way a way to evaluate the proposal before the Town to please him, adding that he understands the concerns expressed, particularly if there will be a long-term savings for the town by implementing this LED streetlight fixture conversion plan.

Mr. Lee reiterated his concern about future maintenance costs and also the brightness of LED lights.

Mr. Grande conceded that the Town has not had this proposal evaluated by a professional lighting engineer to see whether it need a study of Tisbury's lighting needs and a plan.

Mr. Israel suggested that there may be a place where other installations such as those proposed here have been implemented and could be looked at.

Mr. Grande noted that a formal lighting plan might be something for the future.

Open Meeting Law - Public Records Complaint: was addressed next by Town Administrator Jay Grande, who explained that a request was filed for minutes of an Executive Session when the Selectmen discussed ownership of a property on Beach Road referred to as "the Fish Pier", property presumed to be owned by the R. M. Packer Company. The question had been raised as to whether Mr. Packer was the owner of this property or not when Building and Zoning Inspector Ken Barwick requested permission to declare the building on the Fish Pier unsafe and considering recommending its demolition.

Mr. Grande reported further that extensive research into property records show that Mr. Packer is in fact the owner of this property, adding that the Town has worked deliberately and cautiously to preserve property rights and ownership, including a meeting with Mr. Packer and Building and Zoning Inspector Ken Barwick at the site. He noted that a yellow line delineates the property lines in the area between the Town land and that of the Packer Company. Mr. Grande stated further that the Office of the Tisbury Assessors has issued a letter stating that the land in question does belong to the R. M. Packer Company, noting that the GIS mapping of the area needs to be updated on the Town's Assessors Map records.

Mr. Grande concluded by stating that the Town cannot make claims that we cannot back up, adding that speculation about ownership continues. Mr. Grande stated then that the Executive session Minutes when this matter was initially discussed, will be

reviewed later and that it is expected that the Board will vote tonight to release the portion of those minutes that relate to this matter.

Mr. Israel commented that if further review shows that the Town owns more of this area than the maps reflect that would be what he described as "a good thing". Mr. Grande noted that the issue of ownership was raised, the matter was researched and it was found that the Town has no ownership of the property at the so-called Fish Pier, although Mr. Brunelle who raised the issue, may think otherwise.

At this point Mr. Hyung Lee, in the audience, questioned why minutes of BOS meetings are not available on-line and stated that he had been denied access to Selectmen's minutes at Town Hall.

Mr. Israel responded that the Town does not have the capability to put all these on the Town web-site at this time, but that Mr. Lee may come to Town Hall and request to review minutes on file at any time. A brief discussion followed.

Shellfish Constable Request for Shellfish Trust Transfer: of \$479.04 to purchase Netron for scallop culture, was approved without discussion. M/s/c.

State Primary Election Warrant - September 9, 2014: was presented for Board of Selectmen signing and approval. M/s/c.

Martha's Vineyard Commission Vacancy: will be addressed at the next meeting of the Board. The deadline for submitting applications for the position is August 15th.

CDM Smith Organizational Assessment Report Recommendations: were discussed next.

Mr. Grande asked the Board if there are any suggestions for him to pursue follow-up on with the consultant, for example the Natural Resources Officer position establishment.

Mr. Israel noted that the Board had discussed hiring an IT person and a personnel/human resources person, adding that he is not in favor of the latter, noting that for him there is a disconnect in relationships between certain boards, for example the Selectmen and the Board of Public Works Commissioners, suggesting that an in-depth discussion on that matter would be desirable.

Ms. Loberg commented that two things "leaped out" at her, one was the IT person role and that no written standard procedures are in place. She continued by stating that within a few years the Town will lose key personnel and that procedures to move forward will be needed. She commented that Jay Grande has done many policy reviews but pointed out that more are needed.

Mr. Grande asked if the Board would object to him contacting CDM Smith regarding these issues and the Board agreed that he should do that.

Mr. Israel noted that the Town needs to keep up with new technology. Mr. Grande stated that there should exist a process on how positions are plugged into the personnel system.

Public Comment: At this point Chairman Snyder noted that he will open this up to brief public comments and recognized Fire Chief John Schilling.

Mr. Schilling commented on the fact that he initially did not get a copy of the CDM Smith Report, and only recently was provided with a copy. He added that some of the recommendations have not been implemented, noted that the Town Administrator has lately been spending a lot of his time on personnel matters and that Mr. Grande was hired as Town Administrator based on his background as a planner, which are skills that he has not had an opportunity to utilize. He concluded his comments by suggesting that people pull together and get involved in the process. A discussion followed. It was noted that one way to approach this is to identify the problem first in order to find a solution.

Mr. Snyder acknowledged that the recommendations and issues raised in the CDM Smith Report need further review and discussion adding that this will be done at the next regularly scheduled Cabinet Meeting in September.

The Chairman next recognized Ms. Lynne Fraker, who brought up the enforcement issues that she perceives exist in Lake Tashmoo at the Lake Street dock, particularly this past summer during the month of July when she stated that she observed many unattended boats at the dock as well as some tied up overnight. She urged better enforcement but acknowledged that it is better this year than it has been in the past. She stated that something has to be done to make such occurrences not happen.

At this point Mr. Snyder stated that he invites the public comment, but wants each to be limited to 2 minutes, suggesting that some of these issues be taken up with the Town Administrator.

Mr. Grande stated that he will accept written comments - in one paragraph, please.

Ms. Fraker than stated that the concerns she has with the Lake Street Dock are management, not so much enforcement issues.

Mr. Snyder next recognized Hyung Lee, in the audience, who asked about the IT person and why the Town does not have such a person on staff to keep the Town web-site up-to-date.

Mr. Grande responded that the Town will hold a training session this fall for all Town Administrative Secretaries to be able to post basic information on the Town's web-site. He commented that the Planning Board has a well-kept and up-to-date web-page [providing good information, and added that the ability to add information to the web-site has not been made available to everyone.

Next the Chairman recognized Mr. Gene DeCosta who commented that

there is no accountability in the Harbor Department. He also suggested that existing regulations must be enforced.

Mr. Israel commented that if the Harbormaster does not feel safe enforcing regulations she should call the Police Department for back-up.

Gift Acceptance:

\$500 from Rick and Jan Homans for Use by the Fire Department: was accepted with thanks. M/s/c.

\$50 from Ray and Merle Lincoln for the Spring Building Preservation Fund: was accepted with thanks. M/s/c.

\$12,200 from the Martha's Vineyard Shellfish Group, Inc.: for Lagoon Pond dock repairs, was accepted with thanks. M/s/c.

Ms. Loberg inquired who will oversee the project.

Mr. Grande reported that Shellfish Constable Danielle Ewart is the Project Manager, with John Lolley, the consultant providing engineering services, adding that a bid for the project has been obtained from Steven Ewing, who will be the contractor at an estimated cost of \$43,000.

Mr. Grande pointed out that the appropriation for the project by the Town was insufficient and that the Martha's Vineyard Shellfish Group voted to donate \$12,200 to get the dock repair project underway.

Approval of Treasury Warrants: Payroll Warrant #8-4-2014; Bills Payable Refund Warrant #08-01-4R; and Bills Payable Warrant #8-05-2014, were approved and signed. M/s/c.

Approval of Minutes: January 28, 2014, Regular Session and March 18, 2014, Special Session, were approved as submitted. M/s/c.

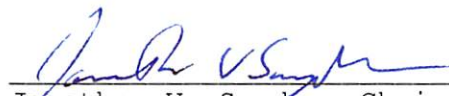
Minutes Deferred: May 6 and 20, 2014, Executive Sessions; June 3, 2014, Executive Session; March 20, 2014, Executive Session; April 1, 2014, Executive Session; July 9, 2014 w/Planning Board; and June 17, 2014, Regular Session.

There being no further business in Open Session,

Motion: To go into Executive Session to discuss strategy with respect to contract negotiations and to approve Executive Session Minutes, not to reconvene in Open Session. Seconded.


Voting on the Motion: Mr. Israel: Yes; Mr. Snyder: Yes; Ms. Loberg: Yes.

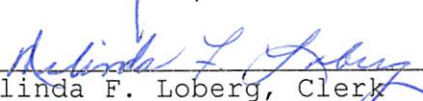
Adjourned to Executive Session: 6:55 p.m. M/s/c.


Jonathan V. Snyder, Chairman


Tristan R. Israel

Respectfully submitted,


Aase M. Jones, Asst. to Town Adm.


Melinda F. Loberg, Clerk