

SPECIAL MEETING OF THE BOARD OF SELECTMEN

Date of Meeting: July 25, 2006

Date of Transcription: July 28, 2006

Transcribed by: Brenda Eckstrom, Clerk of the Board of Selectmen

I. CALL MEETING TO ORDER BY CHAIRMAN

Chairman Fernandes-Abbott called the meeting to order at 6:09 PM

II. ROLL CALL

Selectmen Present: Renee Fernandes-Abbott, Chairman
Brenda Eckstrom, Clerk
Mary Jane Pillsbury
Bruce Sauvageau
James Potter

(NOTE: Michael Hartman, Town Administrator was on vacation. No one was present from Administration on his behalf)

III. TOWN BUSINESS

A. Liquor Licenses

Chairman Fernandes-Abbott told the Board that last week Senator Pacheco's office had called the Town Administrator because the Home Rule petition re: the five liquor licenses for economic development that had passed in the House was in its third reading in the Senate. The Senator had requested a copy of the formal vote on the parcels designated in the bill. While the Board had voted to designate this area of town, the specific lots (by book and page) were not voted. She also said that as she read the House bill, she saw a potential problem in the wording. It states if the holders of the licenses were not identified within one year, the licenses would become inoperative. She believes this will be a problem as the Wareham Plaza has a 5-year build out plan and the hotel has no potential plan yet. Even the cinema, which would be the closest to be ready, has not even begun applications to the planning board, let alone building, so one year seems like a stretch for them as well. She was also concerned that the area of the BDOD is not stipulated in the bill.

Chairman Fernandes-Abbott has spoken to both Representative Gifford's office and Senator Pacheco's office trying to see what could be done. Senator Pacheco was going to speak with Senator Morrissey, the Chairman of the committee to see what would be acceptable. She had drafted two versions of the bill for us to vote on, the first one was essentially the same as the House bill, with the BDOD identified and the second was with the BDOD added and with the local licensing authority the ability to issue the licenses when needed (and to reissue them to another business at the same location).

Selectman Sauvageau stated during a conference call with himself, Mr. Hartman, Selectman Pillsbury and the Chairman of the House committee, the chair was adamant that the licenses were not ours, but they were state licenses and we could not transfer them. Selectman Pillsbury concurred and stated that it was Chairman Perdoni in the House that was insistent on the time frame for issuing the licenses and for the licenses to go back to the state so the licenses could not transfer to a new applicant.

Selectman Eckstrom stated that the call she received just before the meeting started was from Mary at Senator Pacheco's office. She asked Selectman Eckstrom to relay to the Chairman that the Senator said the version she offered them to add the BDOD and having the licenses stay in the community were fine with acceptable to the committee. Discussion ensued re: would changing the wording be problematic at this stage.

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Selectman Pillsbury stated that if Senator Pacheco has Okayed these changes and it is going to the Senate, then we should follow his advice. Selectman Sauvageau concurred and stated that version #2 is in direct contradiction to what Representative Perdoni told them, but is far more favorable to the Town and we should vote on that one and let the joint committee work it out. Chairman Fernandes-Abbott concurred but reminded the Board that the ABCC could still deny these even upon passage.

Selectman Eckstrom moved that the Board accept the following:

(Inset version #2)

Selectman Sauvageau seconded, Selectman Pillsbury asked for discussion. She stated that in reading the bill, it seems that paragraph 3 is confusing. Chairman Fernandes-Abbott agreed, but assured Selectman Pillsbury that she was told that paragraph 4 negates the last line in paragraph 3. Selectman Pillsbury questioned why it was there if negated.

VOTE: Unanimous (5 – 0 – 0)

Town Clerk Mary Ann Silva was present to affirm the vote and witness the Selectmen's Signatures. She confirmed that she would fax it to the Senator.

B. MARION APEAL W/S PERMIT

Chairman Fernandes-Abbott told the Board that she and Town Planner, Chuck Gricus, attended the Town of Marion's Planning Board meeting Monday night. Marion has hired special counsel, Attorney Troy from Sandwich, to represent them if they decide to file an appeal to Wareham's Planning Board decision for Wareham Crossing (Plaza project).

Chairman Fernandes-Abbott stated that Attorney Troy told Marion they would have an uphill battle if they decided to fight this. Selectman Pillsbury asked the Chairman on what ground were they considering an appeal. Chairman Fernandes-Abbott stated they claim there will be an increase in traffic and impact on their roads and police. She stated Marion's Board was very apologetic and stated it was not their intent to stop or delay the project. Chairman Fernandes-Abbott stated she felt Marion was looking for something from the developer that amounted to "extortion."

Selectman Sauvageau interrupted and stated that he did not want the Board to be associated with that remark, but he did feel they had ample time to address their issues and questioned if Marion even had standing. He is concerned with not only this project, but also what the message this is sending to future developers when a neighboring town can keep quiet and then come in after the fact. He believes that if this continues, Wareham Crossing should consider a lawsuit towards Marion for Frustration of Trade. He added that the Town might even want to consider Abuse of Process and Malicious Prosecution. Discussion ensued re: salutatory time limits to appeal decisions and standing.

Selectman Pillsbury reminded the Board that when Rochester was discussing the Rock crushing plant, Wareham sent Mr. Gricus to listen and comment as part of the public comment portion, and even sent the Town Attorney to the Appeal, which all produced standing for Wareham.

Chairman Fernandes-Abbott reminded the Board that the Planning Board had open meetings for eighteen months and while Marion's planner attended some of the meetings, he never spoke. She is disappointed with Marion. They work closely with Wareham on MEPA and SERPEDD level and even through these, they gave no hint of complaints. She said their planner claimed he was "intimidated" at our meetings and that is why he never spoke.

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Chairman Fernandes-Abbott stated she spoke with Chairman of Marion's Board of Selectmen, Mr. Jeffries. He explained to her that there has been quite a bit going on in Marion and said that he felt he had to choose either go against his own Planning Board or go against Wareham; he chose to go against Wareham.

Selectman Eckstrom stated that she received an email from the Chairman of the Zoning Board of Appeals. She read part of the email, which said, "Once an appeal is filed, I would like town counsel to meet with the ZBA to prepare us for the case and possibly sit in during the hearing to assist us in writing whatever decision the ZBA takes. Because if Marion pursues an appeal assuming the ZBA upholds the PB, what took place at the hearing will have an impact. On the other hand, if the ZBA overturns the PB, then I assume Weiner and or the Town PB will pursue an appeal in court."

Discussion ensued re: Attorney Witten said he would recuse himself from this situation, as he is Town Counsel for Marion and often works as special counsel for Wareham's land-use boards.

Selectman Eckstrom then made a motion for the Board of Selectmen to authorize the Zoning Board of Appeals to contact Kopelman & Paige upon notification of an appeal being filed, In order for counsel to meet with the Board to address the procedure to be taken; and for counsel to be present at the hearing and to assist the Zoning Board of Appeals in anyway they require regarding this appeal. Selectman Pillsbury seconded.

Selectman Sauvageau asked for discussion. He asked that we also have counsel advise the Board of Selectman on the legal issues mentioned previously. All members concurred.

VOTE: Unanimous (5 – 0 – 0)

IV. ADJOURMENT

Selectman Pillsbury motioned to adjourn, Selectman Sauvageau seconded

VOTE: Unanimous (5 – 0 – 0)

The meeting adjourned at 6:55 PM.

Respectfully submitted,

Brenda S. Eckstrom

Brenda Eckstrom, Clerk

The Board of Selectmen/Sewer Commissioners approved the foregoing minutes on: 8/2/06.

Attest: Brenda S. Eckstrom

Brenda Eckstrom, Clerk

BOARD OF SELECTMEN/SEWER COMMISSIONERS

Date signed: 8/2/06

Date copy sent to Wareham Free Library: 8/3/06