

Board of Selectmen
August 8, 1994
Minutes

The meeting was called to order at 7:00 p.m. by Chairwoman Carolina Kiggins in the Library Meeting Room. Selectmen present included Robert S. Costa, David Ernst, Cynthia Paine and Ira Wood.

Open Session:

. Gordon Dutra addressed the Board regarding the Box Lunch Restaurant. He noted that delivery trucks have been left running during deliveries, delivery trucks have not been using the designated pad for deliveries and parking problems.

. Wayne Francis Lis of Briar Lane addressed the Board regarding the Box Lunch Restaurant. He noted that delivery trucks have been left running during deliveries, parking in the roadway, Owen MacNutt directing traffic and parking customer vehicles. There was a consensus of the Board to further discuss enforcement of conditions placed on business licenses with Town Counsel later in the meeting.

On a motion duly made and seconded, the Board voted to approve and sign the Agreement between the Lower Cape Water Management Task Force through the Board of Selectmen and Robert Sobczak, Project Assistant.

On a motion duly made and seconded, the Board voted unanimously to approve the minutes of August 1, 1994 as amended.

On a motion duly made and seconded, the Board voted unanimously to reappoint Ronald Fisette as a police officer through June 30, 1995.

On a motion duly made and seconded, the Board voted unanimously to appoint the following as election officers through August 15, 1995: Republican Party - Warden: Alfred Hill, Warren Rhodes; Inspectors: Phyllis Baker, Margaret Carter, Ruth Ann Dykeman, Eleanor Hazen, Phyllis Hill, Judith Rhodes, Phyllis Scott, Judith Stetson; Teller: Margaret Carter, Roy Cansdale, Eleanor Hazen, Richard Hazen, Phyllis Hill, Deborah Lane, Clarence Smith, Judith Rhodes; Clerk: Ruth Ann Dykeman, Marianne Nickerson, Deborah Lane, Carol North. The list from the Democratic Party was not received.

On a motion duly made and seconded the Board voted unanimously to accept the bid from Sears Auto Sales for \$23,238.83 for a 1994 Jeep Grand Cherokee to be used as the Wellfleet Fire Chief/Department vehicle less \$500.00 trade in allowance for the 1986 Ford Crown Victoria (current Fire Chief vehicle).

There was a consensus of the Board that the Town Administrator schedule another Budget Workshop in late fall.

On a motion duly made and seconded, the Board voted unanimously to appoint Dorrit Bimbi Jacobs and Elizabeth Schultze to the Cultural Council for two year terms expiring June 30, 1996.

Selectman Ernst left the Board. The Board held a public hearing on the application of Myron and Judy Taylor for renewal of Shellfish Grant #734 and for adding the names of Rebecca Taylor and Anna Taylor to said license. The Shellfish Constable read his recommendation to approve renewal of the grant and to remind the Board of Town Counsel's recommendation that grant licenses be issued to individuals eighteen years of age and older (Rebecca is 17 and Anna is 14). On a motion duly made and seconded, the Board voted unanimously 4-0 to accept the recommendation of the Shellfish Constable to renew Shellfish Grant #734 for a period of 5 years through 4/26/99. There was a consensus of the Board to further discuss adding Rebecca and Anna to the grant license to later in the meeting when Town Counsel will be in attendance.

The Board held a public hearing on the application of Alton Atwood for renewal of Shellfish Grant #733. The Shellfish Constable read his recommendation to approve the renewal. On a motion duly made and seconded, the Board voted unanimously 4-0 to accept the Shellfish Constable's recommendation to renew Shellfish Grant #733 for a period of 5 years through 4/18/99. Selectman Ernst rejoined the Board.

Selectwoman Paine updated the Board on the recent High School Building Committee meeting. Discussion included:

- a) scheduling a fall special town meeting for no later than October 15, 1994 to accommodate the time limits for submission of the project to the state
- b) scope of the project - it has not as yet been scaled down
- c) alternatives yet to be considered - charter school, vocational/-technical school programs, logistical changes, increased class size
- d) Finance Committee member attending meetings as auditor - Jim MacLachlan will consult with the Finance Committee

The Board met with Town Counsel, Michael Ford. Discussion included:

- a) Brown's Neck and Village Lane road takings - Town Counsel recommended that the Board proceed even though they have not as yet received releases from all abutters which he noted was a minimal risk. There was a consensus of the Board that Town Counsel will prepare the orders of taking for the Board's consideration and signature next week and that he will then file them at the Registry of Deeds.
- b) Road's status (especially Indian Neck and Pleasant Point areas) - Town Counsel has been unable to find formal layouts and noted that unless the Town has rights by prescription it does not seem that the Town has good title or that the roads were properly laid out. There was a consensus of the Board to continue discussion to next week's agenda.
- c) Harbormaster request for assistance re: Joseph Thomas fishing vessel - Town Counsel has sent off a demand letter and will proceed with Small Claims Court action if necessary.
- d) License enforcement agency - Town Counsel noted that enforcement

of conditions on business licenses is a function of the licensing board and that if violations are occurring the Board may schedule a show cause hearing to discuss the matter with the license holder.

e) written opinion on Board of Fire Engineers executive session - Town Counsel submitted his comments of last week in writing. There was a consensus of the Board to follow Town Counsel's suggestion that he meet annually with members of Town boards, committees and commissions to review their obligations as members.

f) Shellfish matters: Selectman Ernst left the Board.

. adding names on grants of persons under 18 years of age - Town Counsel recommended that the Board limit the age to 18 or older since persons under 18 have no legal capacity to enter into a contract and to be liable for civil matters in the Commonwealth. On a motion duly made and seconded, the Board voted 3-0-1, with Selectwoman Paine abstaining, to automatically add the names of Rebecca and Anna Taylor to Shellfish Grant #734 when they reach the age of 18.

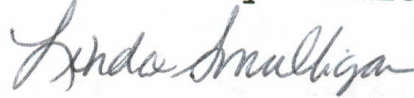
. Pazolt case - discussion included:

- hearings to modify existing grants - the Town is not required to hold hearings as a result of the Pazolt case
- within private tidelands aquaculture is not a protected colonial reserved right but one which requires permission of the owner of the tidelands - the Town's obligation was to alert grant holders of the decision and the Town has fulfilled this
- private property rights - the issuance of a shellfish license does not grant any private property rights
- right to exercise aquaculture - grant holder needs agreement with upland owner, grant of an easement or some grant holders may have prescriptive rights - each case must be looked at individually
- trespass statute - Town Counsel will issue written opinion on trespass orders received by the Police Department
- recourse of upland owner if aquaculture is practiced without their permission - can go to Board for show cause hearing for license revocation or to file complaint in court
- at renewal: a) if upland owner with clear title does not want aquaculture practiced on his property, Board could put restriction on license that aquaculture could not be one of the grant activities; b) if question as to who has title to flats, Board could grant license and include aquaculture to the extent that there is a legal right to do so
- determination of sidelines of grants - Town Counsel recommended going forward with research by Slade Associates to determine boundaries
- accessing grants by driving over intertidal lands - Town Counsel reviewed his June 9th written opinion
- comments by Town Counsel - receptive to listening to other interpretations of statutes and taking them into consideration when advising the Board (been in contact with attorneys of Mass. Aquacultural Association)

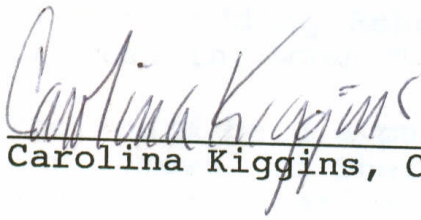
g) town storage of religious items (creche) - Town Counsel advised that someone could challenge that public funds are being used for storage of items for a particular religion

The meeting adjourned at 9:47 p.m.

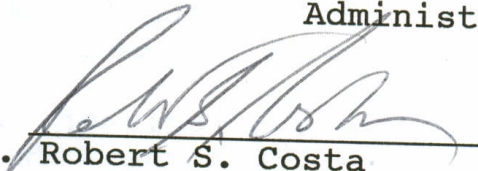
Respectfully submitted,



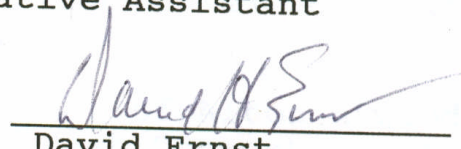
Linda Smulligan
Administrative Assistant



Carolina Kiggins, Chr.



Robert S. Costa



David Ernst



Cynthia Paine

Ira Wood