



**Wellfleet Board of Selectmen
Minutes of the Meeting of September 22, 2009
Wellfleet Public Library, 7:00 p.m.**

Present: Chairman Dale Donovan, Michael May, Jerry Houk, Jacqueline Wildes-Beebe and Ira Wood; Town Administrator Paul Sieloff; Town Counsel, Elizabeth Lane; and Finance Committee members Steve Oliver, Dennis Murphy, Robert Wallace, Elizabeth Sorrell, Robert Kelley, and Samuel Bradford.

Chairman Dale Donovan called the meeting to order at 7:00 p.m.

Open Session and Public Comment

Bob Gross, Chairman of Marina Advisory Committee (MAC) requests that the MAC be put on the next Selectmen's meeting on October 13th to review the draft changes to the Marina Regulations. Donovan agreed and requested that the draft Regulations be provided to the board a week prior to the meeting. Gross agreed to provide the draft Regulations as requested.

Houk raised the matter of the directive given to the Town Administrator at the last Selectmen's meeting concerning the Marina Regulations, and suggested that the Town suspend the directive until we have a chance to review the changes to Marina Regulations. Wood agreed that it would be a good idea to suspend the directive.

Donovan explained the history of the debate concerning the Marina Regulations over the course of the summer, and disputed the need to delay anything at this time.

Wood commented that he has been reading up on Massachusetts General Law, and has some questions about the interrelation of local and state laws regarding the Harbormaster and Marina.

Donovan asked Sieloff to explain the situation as it stands. Sieloff explained that the Town has given notice to the boat owner in question as required by the current Marina Regulations, and the process is playing out according to those rules. The boat owner has 10 days from receipt of the notice to remove the boat as requested or appeal to the Board of Selectmen.

Houk reiterated his desire to wait to act on this matter in order to preserve taxpayer dollars and address the proposed changes to the Marina Regulations.

May recused himself from the discussion.

Gross noted that the changes being discussed for the Marina Regulations are not solely about the length of boats.

Ernest Rose, the owner of the Ginny Lu, commented that the Marina Regulations are out dated and very misleading. He asked what the gross weight of a boat has to do with the stability of the pier. He also commented that there are no dates on the Marina Regulations to show when they were adopted and/or amended.

Audience member Ned Hitchcock explained the discrepancy about the definition of boat length (e.g., measured at the water line or overall length), which lends to the confusion over this issue. The current Regulations do not state how a boat's length is to be measured.

Another boat owner explained that his boat was at the commercial pier for 20 years and was 55 feet in length and 55 gross tons and never had a problem at the commercial pier.

Public Hearing(s) [7:30]

Shellfish Constable Andy Koch came forward to discuss the following grant requests:

Transfer of Shellfish Grant License

MOTION 09-0212: Wood moved to approve the application from Joel Fox to transfer shellfish grant licenses #739 and 739A from Joel and Anne Fox and Michael Parlante to Michael Parlante.

Houk seconded, and the motion carried 5-0.

Application for Shellfish Grant

Donovan explained that Koch's recommendation is that the grant not be approved without permission from the neighboring grantholder. Koch explained that the neighboring grantholder and the applicant have had a "gentlemen's agreement" for many years that neither would officially apply for use of this acreage as a grant. The neighboring grantholder explained that he has shared the property between these two grants for nearly 30 years and would have no problem with this request if the land was split down the middle and shared equally. Applicant disputes that there ever was a gentlemen's agreement.

MOTION 09-0213: Wood moved to continue this hearing until October 13th on the application from Anne and Joel Fox for a .2 acre shellfish grant at Mayo Beach.

May seconded, and the motion carried 4-0; Houk abstained.

Two Day Beer and Wine License

MOTION 09-0214: Houk moved to approve the application from S.P.A.T., Lisa Brown for a two day beer and wine license at the contained beer and wine tent behind Town Hall on Saturday, October 17, 2009 from 11:00am to 4:30pm, and Sunday, October 18, 2009 from 12:00 noon to 4:30pm for Wellfleet Oysterfest weekend.

Wood seconded, and the motion carried 5-0.

Use of Town Property

Houk questioned why the Elementary School and other non-profit Town groups are being charged \$75.00 or more to have booths in the Oysterfest, when these are groups that are in need of money and/or trying to raise money for themselves. Lisa Brown explained that this issue is being addressed at the moment and said that she will take it under advisement that the fees be waived for these groups.

Houk also questioned the issue of public notice and hearings concerning the Main Street businesses that are greatly affected by the Oysterfest. Brown explained that the businesses are invited to public meetings to discuss these issues and the meetings are posted on S.P.A.T.'s website.

Donovan requested that portable toilets be provided by S.P.A.T. at the beach parking lots since the beach bathrooms will be shut down for the season by then. Brown agreed that S.P.A.T. would provide portable toilets at the beach parking lots.

MOTION 09-0215: Wood moved to approve the request by Lisa Brown of S.P.A.T. for use of Town property for Wellfleet Oysterfest weekend as follows:

- ◆ Town Hall & 335 Main Street parking lot – From Thursday, October 15, 2009 at 4:00pm to Monday, October 19, 2009 at 4:00pm
- ◆ Main Street (including sidewalks) from Holbrook Ave., down Bank Street to Commercial Street – From Saturday, October 17, 2009 at 6:00am to Sunday, October 18, 2009 at 7:00pm
- ◆ Marina & Ocean Beach parking lots – From Saturday, October 17, 2009 at 6:00am to Sunday, October 18, 2009 at 7:00pm

May seconded, and the motion carried 5-0.

Discussion with Finance Committee on upcoming budget season and legal expenses issue

Sieloff explained that there were two main purposes here tonight: to have Town Counsel available to the board and the FinCom to answer questions regarding the Town's legal expenses, and to have board and FinCom reach an agreement on budget scheduling and discussions going forward.

Steve Oliver, Chair of the FinCom, explained that the main problem last year was that the FinCom was not receiving information in a timely fashion, but that they have changed their meeting schedule so that Sieloff can attend their meetings, which will alleviate the problem of untimely information this year.

Sieloff was asked when, in view of the ATM on April 26, 2010, the FinCom would have the final numbers for the budget. Sieloff explained that the budget process starts so early that several budgets are really unworkable in early December, in particular, the school budgets. Sieloff explained that he will try very hard to limit the number of changes and try to give a good budget in December.

Oliver asked whether the STM could be postponed to allow the board, the FinCom and other boards and committees to provide their recommendations in time for the printing of the warrant. Donovan explained that no board or committee will be able to provide recommendations in time for the printing deadline for the October STM, including the Board of Selectmen.

Donovan noted that the majority of the articles on the STM involve items that will generate money for the Town, rather than spending money.

Sieloff explained that the Energy Committee is planning to meet with the FinCom to explain the wind turbine project, in addition to having a series of public meetings to explain it to the voters in advance of the STM.

Robert Kelley explained that it is inappropriate to come to the FinCom with requests for transfers of money after the money is already spent. FinCom has been historically excluded from the process of decision-making, and asked only to “rubber stamp” decisions that are essentially already made by the Board of Selectmen. Kelley stressed that the FinCom would like to be included much earlier in the process and in a more meaningful way.

Sieloff introduced Town Counsel, Betsy Lane from Kopelman & Paige, who addressed issues concerning the Town’s legal expenses. Lane explained that it is true that legal expenditures are going up, but that this is in response to the issues that have arisen in the Town, e.g., National Seashore zoning issue and the Community Preservation Act. Lane also explained all of the free legal resources available to the Town, including free seminars offered by K&P on topics in municipal law and frequent memoranda prepared by K&P for its municipal clients.

Oliver explained that there were questions about the high legal fees in the past few years in Wellfleet, as compared to fees in larger towns such as Orleans and Eastham.

Lane explained that the legal costs are not necessarily determined by the size of the town involved, but rather by the culture of the particular town as well as the specific issues that arise in the towns in any given year. She also explained that the Town is obligated to defend itself whenever it is challenged, even when the challenges are without merit or frivolous.

Donovan also noted that legal fees rose as laws were enforced, e.g., dogs, building or health codes. Lane explained that dog cases are a classic for huge expenditures of money because of the passion of dog owners and their willingness to hire attorneys to defend themselves and appeal every decision.

Sieloff explained that the Town should also see a benefit from the union negotiations that took place last year – e.g., seven union contracts negotiated last year, and negotiated five-year contracts, rather than three-year contracts.

Oliver thanked the board and the Town Administrator for inviting the FinCom to the meeting tonight and said that it was a very positive step.

Appointments

MOTION 09-0216: Wood moved to approve the request of the Wellfleet Housing Authority that Mary Fontanarosa be appointed by the Selectmen to fill the vacancy left by the resignation of Gary Sorkin until the Town Election in May 2010.

Houk seconded, and the motion carried 5-0.

MOTION 09-0217: Wood moved to approve the request of Chief of Police Richard Rosenthal to the Board of Selectmen to appoint Chief Edward V. Kulhawik to the

position of Special Police Officer in the Town of Wellfleet from September 22, 2009 through June 30, 2010.

May seconded, and the motion carried 5-0.

John Riehl of Natural Resources Advisory Board re: Wellfleet Harbor Conference and great ponds advisory committee

John Riehl announced the Wellfleet Harbor Conference to be held on Saturday, November 14, 2009 at the Elementary School in Wellfleet at 8:30am. There will be presentations on the Herring River project and ocean management, as well as issues of pharmaceuticals and toxins in wastewater. Riehl also talked about the great ponds advisory committee and invited anyone interested to contact the NRAB.

Discussion on request from the Commonwealth of Massachusetts to acquire land in Wellfleet

Donovan read the required announcement from the MA Department of Conservation and Recreation concerning its interest in acquiring 13.93 +/- acres along the old railroad bed near Lecount Hollow Road.

Adoption of Special Town Meeting Warrant

The board members agreed that the "Message from the Board of Selectmen" was good.

The board agreed to wait to make recommendations.

Wood suggested that the article on the wind turbines should include a sentence on potential revenue generated by the turbines.

Rex Peterson, Assistant Town Administrator, explained that Article F is premature at this time, and he recommends this article not be on the warrant.

MOTION 09-0218: Wildes-Beebe moved to eliminate Article F from the warrant.

May seconded, and the motion carried 5-0.

Peterson explained that Article H.a. is also premature because the Town cannot establish clear title at this time, and he recommends this article not be on the warrant.

MOTION 09-0219: Wood moved to eliminate Article H.a. from the warrant.

Houk seconded, and the motion carried 5-0.

Peterson requested that the order of Article P and Article Q be switched on the warrant.

MOTION 09-0220: Wood moved to place the articles and questions as discussed.

Houk seconded, and the motion carried 5-0.

Minutes of 8/25/09

MOTION 09-0221: Wood moved to approve the minutes of August 25, 2009.

May seconded, and the motion carried 3-0 (Note: All 5 members voted, but only 3 were required – Donovan, Wood, and May.)

Minutes of 9/8/09

MOTION 09-0222: Wood moved to approve the minutes of September 8, 2009.

Houk seconded, and the motion carried 5-0.

Announcements

Marilyn Crary, Town Accountant, anticipates free cash of approximately \$300 – 350K for the year, and believes that the Town will have a deficit of about \$150 – 300K.

Sieloff reports that the Town Moderator supports the videotaping of the STM in October, with two conditions: use of stationary cameras and no special lighting so as to be as unobtrusive as possible to the meeting attendees.

MOTION 09-0223: Wood moved to approve the videotaping of the October 26, 2009 STM as per the conditions of the Town Moderator.

Wildes-Beebe seconded, and the motion carried 5-0.

Adjournment

There was a need to go into Executive Session to discuss ongoing legal issues.

MOTION 09-0224: Wood moved to go into executive session and not return to open meeting. Wildes-Beebe seconded.

Houk, May, Donovan, Wood and Wildes-Beebe each said, yes, and the regular meeting was adjourned at 9:35p.m.

Respectfully submitted,
Susan Cox, Executive Assistant