



**Wellfleet Board of Selectmen  
Minutes of the Meeting of October 13, 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.

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

**Open Session and Public Comment**

Donovan announced that there will be a Pre-Town Meeting at the Wellfleet Library at 7pm, sponsored by the Wellfleet Community Forum.

Sue Rohrbach from Senator O'Leary's office addressed the meeting and provided updates on the current work in Senator O'Leary's office.

**Public Hearing(s) [7:30]**

**Extend Seasonal Package Store License**

Request from Collamini, Inc. d/b/a Wellfleet Wine Cellar & Spirits to extend the Seasonal Package Store License through December 31, 2009.

**MOTION 09-0227:** Wood moved to approve the request from Collamini, Inc. d/b/a Wellfleet Wine Cellar & Spirits to extend the Seasonal Package Store License through December 31, 2009.

Houk asked whether the petitioners would apply for a yearround license if it was available. The petitioners said they would.

**MOTION 09-0228:** Houk moved approve the request and that the board allow the petitioners to stay open until January 15, 2010.

May seconded, and the motion carried 5-0.

**Application for Shellfish Grant**

Application from Anne and Joel Fox for a .2 acre shellfish grant at Mayo Beach [continued from 9/22/09].

Houk expressed concern about why this isn't being granted, given there were other extensions of grants in the area. He noted that there seems to be personal animosity influencing the process, which should not be allowed.

Joel Fox handed out a map to illustrate the grant request.

Attorney Ben Zehnder representing Jim Rose, asked to address the board. He explained the history of the relationship between grant holders. Houk interrupted and

said that the history of the relationship and events in the past are not before the board at this time.

Zehnder explained that he is not trying to sling mud, but asking the board for fairness.

Fox explained that he was granted a license in November 2004, but that license was revoked while he was out of town and without going through the proper process.

Donovan asked Shellfish Constable, Andy Koch, to come up and explain what happened in this situation. Koch explained that new bottom was never applied for or approved in 2004 and Fox was away when the mistake was discovered. He explained that if you extend the boundaries of your lines without going through the proper channels, you lose your grant. He notified Fox that he needed to move his balls back within the boundaries of his approved grant and stop using the extended area.

Wood asked Koch to clarify that the extension of Fox's grant in 2004 was never approved by the Division of Marine Fisheries, the Army Corps of Engineers, or the Wellfleet Conservation Commission, the three steps required in the process of obtaining a new shellfish grant. Koch said that these steps were not followed and this was the reason that he asked Fox to stop using the extended area. Any new bottom requires approval by these three groups in addition to the Town's approval.

**MOTION 09-0229:** Houk moved to approve the application from Anne and Joel Fox for a .2 acre shellfish grant at Mayo Beach.

Wildes-Beebe seconded.

Houk and Wildes-Beebe voted in favor, May and Donovan voted against, and Wood abstained. Since this is a 2-2 vote, there is no action on the item.

### **Two Day Beer and Wine License**

**MOTION 09-0230:** Houk moved to approve the application from Berta Bruinooge, Wellfleet Chamber of Commerce Scholarship Fund, Inc., for a two day beer and wine license at the Wellfleet Senior Center on Friday, October 23, 2009 from 6:00pm to 11:00pm, and Saturday, October 24, 2009 from 6:00pm to 11:00pm for its annual Silent and Live Auctions, respectively.

May seconded, and the motion carried 5-0.

### **Marina Rules and Regulations**

Discussion on proposed amendments of the Wellfleet Marina Rules and Regulations.

May and Wildes-Beebe recused themselves from the discussion.

Harbormaster Michael Flanagan thanked the Marina Advisory Committee for their contributions to the proposed amendments. Flanagan then reviewed the proposed changes to the Marina Rules and Regulations line by line.

Donovan explained that we will take questions and comments from the board members first, and then from the public.

Houk asked about the fee for parking, given the recent fee review task requested by the Town Administrator. Flanagan explained that all monetary values have been removed from the Marina Rules and Regulations and will be printed in a separate fee schedule, eliminating the need to amend the Rules and Regulations every time fees are changed.

Wood asked about the specification of Chapter 91 versus Chapter 102 with regard to the Harbormaster's powers and responsibilities. Wood feels that Chapter 91's language gives far greater discretion to the Harbormaster than Chapter 102's language.

Flanagan explained that Chapter 102 is somewhat archaic and that it was felt that Chapter 91 was more relevant and desirable.

Donovan asked about the process for making the proposed changes to the Marina Rules and Regulations. Flanagan referred the question to Marina Advisory Committee member, Ned Hitchcock, who reviewed the revision process in detail. The last time the Marina Rules and Regulations were amended was 2002. Hitchcock also noted that the distinction Wood attempted to draw between Chapters 91 and 102 language regarding the Harbormaster's powers and responsibilities is a distinction without a difference.

Donovan suggested using the powers and responsibilities as outlined in Provincetown's regulations.

Donovan said that he does not believe that increasing the allowable boat size is desirable. He also asked about the liability waiver that each slip owner is asked to sign, and suggested that the insurance requirement and waiver is essentially meaningless as written.

Marina Advisory Committee member Alice Iacuesa explained the Marina Advisory Committee's comparison process to other towns with regard to the insurance issue, and admitted that most boards and committees in Wellfleet were not able to review the proposed changes and provide comment prior to the public hearing tonight.

Wood asked why they are asking to change the rules regarding boat length now, as opposed to doing it in the past. Ned Hitchcock explained that since the L-Pier was repaired in 1998, it is now able to accommodate a boat of up to 100 feet in length, though he admits that boats of that size are clearly not desirable.

Audience member David Ziemba Jr. explained that the change from gross to net tonnage in the rules is misleading and wrong, and there is already not enough room at the L-Pier to unload and take fuel without having to wait for other boats to move out of the way, so that increasing the allowable boat size is going to cause problems.

Flanagan explained that Mr. Ziemba is mistaken about the definition of gross and net tonnage, and provided an explanation of the difference.

Audience member Ben Zehnder explained that the insurance requirement is crucial, and that it makes no sense to allow boat owners to sign a liability waiver instead of providing insurance. He added that the size limit at the L-Pier must be set after a thorough

engineering analysis. He believes that Wellfleet needs to have the ability to have reasonably-sized draggers in the harbor, and should not force these types of fisherman out of the Wellfleet Marina forever.

Houk commended the Marina Advisory Committee and the Harbormaster for their efforts and also pointed out that Wellfleet is not Provincetown. Provincetown's harbor is able to accommodate much larger boats for a variety of reasons and characteristics which it does not share with Wellfleet.

Shellfish Advisory Committee member Helen Miranda Wilson explained that many owners of old wooden boats cannot get insurance, and that this issue was discussed at great length at the meetings of the Marina Advisory Committee. The insurance waiver is necessary if Wellfleet is going to continue to allow older wooden boats in its marina, which she feels that many will agree is desirable.

Audience member Brent Valli explained that smaller, non-commercial boats also have a hard time getting insurance. Also, he asked about the winter moorings and what the specific rules and requirements will be for those so that there will be no destruction as a result of boats thrashing around in storms.

Donovan suggests that we conclude this hearing with no decision and return the document to the Marina Advisory Committee for further revision after comparison and consultation with the regulations of Provincetown.

Wood also asked for additional definitions, e.g., gross and net tonnage, and boat length.

**MOTION 09-0231:** Donovan moved to close the hearing without action, and to send the Marina Rules and Regulations back to Marina Advisory Committee for further study, and to have the Shellfish Advisory Committee and the Natural Resources Advisory Board have a chance to review and comment on the document.

Wood seconded, and the motion carried 3-0.

### **Appointments**

**MOTION 09-0232:** May moved to approve the appointment of William Sullivan to fill the Regular member vacancy left by the resignation of Andrew Brown from the Energy Committee.

Wood seconded, and the motion carried 5-0.

**MOTION 09-0233:** May moved to approve the appointment of Stephen Burke to fill an Associate member position on the Energy Committee.

Houk seconded, and the motion carried 5-0.

**MOTION 09-0234:** Wood moved to approve the appointment of Gigi Ledkovsky to the Cultural Council.

May seconded, and the motion carried 5-0.

**MOTION 09-0235:** Wood moved to approve the appointment of Kathleen (Katie) Hickey to the Cultural Council.

May seconded, and the motion carried 5-0.

Donovan announced the request for nomination of Eastham Selectman, Aimee J. Eckman to serve as the representative from the towns of Eastham, Orleans, Provincetown, Truro, Wellfleet (Sub-Region C) to the Metropolitan Planning Organization. Sieloff explained that this does not require a motion here tonight, as there will be a ballot process for the Selectmen to vote on the representative.

### **Use of Town Property**

Rex Peterson explained that there is some urgency because the Wellfleet Preservation Hall needs to go before the Conservation Commission again for modification of the work limit line prior to the start of construction at the beginning of the year, and the Conservation Commission does not want to vote on this until the Selectmen have approved this use.

Houk noted that the request is for 24 hour use, but asked that it be conditioned to conform to the relevant bylaws for hours of work allowable on the site.

**MOTION 09-0236:** Wood moved to conditionally approve of use of Town property at 335 Main Street for a staging area 24 hours per day from 1/1/10 to completion, pending sign-offs by necessary departments and conditioned to conform to the relevant bylaws for hours of work.

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

### **Review of Wellfleet Water System Expansion Project – Contract No. 1: Change Order #1 for Additional Hydrants, Valves and Piping as requested by the Fire Department**

Fire Chief Dan Silverman was present to answer any questions the board may have on the change order for additional and replacement hydrants. He explained that there were insurance benefits that will become available to homeowners and the Town once the hydrants are installed and functioning. These benefits will take some time to achieve, but they have the potential to be significant.

**MOTION 09-0237:** Wood moved to approve the Change Order #1 for additional hydrants, valves and piping as requested by the Fire Department.

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

**Review of letter of request from the Town of Wellfleet to the CCNS to install cable gates at the southwest and northeast ends of the sand road adjacent to the power lines**

Donovan explained that this motion would permit the Town Administrator to send a letter to the CCNS requesting installation of two cable gates. Sieloff explained that the main reason for this request is to create a non-vehicle zone of protection around our wellfield in the area. There is a dog-walking area nearby, but Sieloff explained that this area is not affected by the new cable gates.

Audience member Ben Zehnder explained that there has been historic access to the area that it appears will now be blocked off, which he objected to.

Wildes-Beebe explained that this area has also been historically used for a dumping ground and other activities not including just looking at nature.

**MOTION 09-0238:** Wildes-Beebe moved to approve the letter. No one seconded. Donovan noted the reluctance of the board and the questions from the audience, and asked for additional time to review this request and make a decision. Wood asked for a better (clearer) map of the area in question.

**Review of request from CDP to place an insert in the fall tax bills to advertise the availability of the current Housing Rehab grant program and a new Childcare Assistance grant program**

**MOTION 09-0239:** Wildes-Beebe moved to approve the placement of an insert in the fall tax bills to advertise the availability of the current Housing Rehab grant program and a new Childcare Assistance grant program.

May seconded, and the motion carried 5-0.

**Vote to proclaim the month of October to be “Domestic Violence Awareness Month” in Wellfleet**

Donovan explained that this request from the Outer Cape Committee Against Domestic Abuse, and that this issue is a real problem in our area. Police Chief Richard Rosenthal reported to Donovan that there were 25 domestic abuse calls in Wellfleet in the last month, illustrating the seriousness of the problem.

**MOTION 09-0240:** Wood moved to approve the proclamation that October be “Domestic Violence Awareness Month” in Wellfleet.

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

**Board of Selectmen recommendations on Articles on Special Town Meeting Warrant**

**Article 1:** Sieloff explained that there is only one minor transfer for approximately \$225.00 for the printing of brochures for the Recycling Committee. In this case, the bill came in just after the allowable time for it to be applied to the FY2009 budget, and now requires a transfer in order to be paid.

**MOTION 09-0241:** Donovan moved to recommend the transfer in Article 1.

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

**Article 2:** To begin the process for a utility-scale wind turbine for Wellfleet by the Sea.

**MOTION 09-0242:** Wood moved to recommend with the caveat that he is really looking forward to the presentation by the Energy Committee at Town Meeting to further explain the project.

Donovan asked about the choice of site for the project and the issue of noise for residents of this area. May indicated that part of what is being voted on is a comprehensive noise study, so that issue is being fully addressed.

May seconded, and the motion carried 5-0.

**Article 3:** To repair Lt. Island Road from Route 6 to Cat Boat Road.

Wood expressed that there are many questions about the total cost of the project, why this road was chosen versus others in town, and what the benefits are for doing this now as opposed to later. May agreed that he feels he does not have enough information about this project to vote to recommend it.

Zehnder asked about the timing of this Article for the fall Town Meeting, and asked about any effect a delay would have on the funding. He said it is unusual to have Articles on the Warrant without dollar amounts, and it doesn't seem like it has been adequately explained to the voters.

**MOTION 09-0243:** Houk moved to not make a decision on Article 3 to repair Lt. Island Road from Route 6 to Cat Boat Road until the Board of Selectmen's meeting planned for 6:00pm before the Special Town Meeting on October 26, 2009.

Wood seconded, and the motion carried 5-0.

**Article 4:** Local option .75% additional tax on meals in lieu of state funds from elsewhere.

Sieloff urged the support of the board as a realistic response to the situation around us. Many Cape towns have already faced serious budget shortfalls, and are looking at potential overrides of as much as \$2.3M. Our goal is not to look to an override, and these additional taxes permit us to look for alternative revenues to raising property tax and other fees.

Wood noted that no surrounding towns to Wellfleet have this tax, and believes that Wellfleet will be at a disadvantage to the other towns on the Cape if this tax passes.

May asked whether any other Cape towns that have adopted this tax. Sieloff explained that currently no Cape towns except Nantucket have adopted the tax, but that many towns are looking to Wellfleet for its response to this proposal. According to the DOR, 36 communities have adopted this tax statewide.

Houk reiterated the need to reduce the waste and spending in the budget before the looking to raising taxes of any kind. He noted that several business owners he spoke to have expressed their strong opposition to this tax.

Wildes-Beebe explained that many towns on the Cape are in a much worse position than Wellfleet, and that we can only cut so much before we ask for reductions in salary and services that the Town provides. She explained that this is more of a user fee on people who choose to go out to dinner, and she is going to support it despite the fact that many people will disagree with her.

Donovan also said that he will support this tax for a variety of reasons. There are several restaurants in town that do very well despite not having any parking whatsoever. These businesses benefit greatly from the use of Town parking lots and yet businesses contribute only a small portion to the revenue of the Town. He noted, too, that there are many new, relatively expensive restaurants in town that do quite well. People are not fleeing town because of the expensive restaurants. We need to seriously consider these alternatives to raising the real estate tax.

Zehnder noted that Wellfleet has really become a restaurant town, and the people opening these restaurants are young, vibrant, and future leaders of the town. They feel that this tax unfairly targets them, their customers, and their workers.

**MOTION 09-0244:** Donovan moved to recommend Article 4 for .75% additional tax on meals.

Wildes-Beebe seconded, but the motion did not carry 3-2. (May, Wood, and Houk opposed.)

**Article 5:** Local option 2% additional tax on rooms, from 4% to 6%.

**MOTION 09-0245:** Wildes-Beebe moved to recommend Article 5 for 2% additional tax on rooms.

Wood seconded, and the motion carried 3-2. (May and Houk opposed.)

**Article 6:** Creation of a Water Enterprise Fund

Sieloff explained that the Board of Water Commissioners will make a presentation at the Pre-Town Meeting on Oct. 19<sup>th</sup>.

**MOTION 09-0246:** Wood moved to recommend Article 6 for the creation of a Water Enterprise Fund.

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



**Article 7: Sale of Town-owned parcels of land**

Assistant Town Administrator Rex Peterson introduced a document from the custodian of the properties, Town Clerk Dawn Rickman, explaining that these properties are no longer needed by the Town for municipal purposes and can, therefore, be sold.

**MOTION 09-0247:** Wood moved to recommend Article 7 for the sale of unnecessary parcels of Town-owned land.

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

**Article 8: Tax Collector's Demand Fee of \$15.00**

**MOTION 09-0248:** Wood moved to recommend Article 8 for a \$15.00 demand fee to be applied to overdue tax bills.

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

**Article 9: Transfer \$30,000 from CPA Fund to Housing Now**

**MOTION 09-0249:** Wood moved to recommend Article 9 to transfer \$30,000 from CPA Fund to Housing Now.

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

**Article 10: Animal Control Bylaw for Vicious Dogs**

**MOTION 09-0250:** Wildes-Beebe moved to recommend Article 10 for the creation of an Animal Control Bylaw for vicious dogs.

Wood seconded, and the motion carried 5-0.

**Article 11: Repeal of Town's breed-specific bylaw**

**MOTION 09-0251:** Wood moved to recommend Article 11 to repeal the Town's breed-specific bylaw concerning pit bulls.

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

**Article 12: Demolition Delay Bylaw**

**MOTION 09-0252:** Wood moved to recommend Article 12 to amend the Demolition Delay Bylaw as requested by the Historic Review Board.

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

**Article 13:** Disposal of Town property valued at over \$500.

**MOTION 09-0253:** Wood moved to recommend Article 13 for the disposal of three items of Town property valued over \$500;

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

**Article 14:** Transfer of a portion of land abutting the Wellfleet Senior Center to OCHS

Question from audience about the location choice – Why this location in woods near Senior Center rather than modifying their current location or even the old IGA building location?

Wildes-Beebe explained the deep history of the decision regarding OCHS and noted that over 60% of OCHS's clients at the Wellfleet site are over the age of 60.

The board noted that this would just begin a process that could allow a transfer to OCHS, but a proviso would be added that if OCHS changes from non-profit to profit, they would have to compensate the Town further.

Another audience member noted that OCHS is historically slow to move and that he would like to see a date for action added to the article. Donovan suggested that the audience member write an amendment to this article that could be made from the floor at Town Meeting. The audience member agreed that he would be willing to craft an amendment to be made from the floor at Town Meeting.

**MOTION 09-0254:** Wood moved to recommend Article 14 for the transfer of a portion of land abutting the Wellfleet Senior Center to OCHS.

Donovan seconded, and the motion carried 5-0.

#### **Minutes of 9/22/09**

**MOTION 09-0255:** Wood moved to approve the minutes of September 22, 2009.

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

#### **Minutes of 9/29/09**

**MOTION 09-0256:** Wood moved to approve the minutes of September 29, 2009.

May seconded, and the motion carried 3-0. (Houk and Wildes-Beebe did not vote as they were not at the 9/29/09 meeting.)

**Announcements**

Houk announced that Representative Sarah Peake has asked for support of the update of the state's Bottle Bill. HB 3515 attempts to include all the kinds of containers that did not exist when the original law passed 25 years ago.

**MOTION 09-0257:** Houk moved to support HB 3515 and to send a letter of support to all relevant boards, and to the offices of Representative Sarah Peake and Senator O'Leary.

Wood seconded, and the motion carried 5-0.

**Adjournment**

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

**MOTION 09-0258:** Wood moved to go into Executive Session and not return to open meeting.

Donovan seconded.

Houk, May, Donovan, Wood and Wildes-Beebe each said, yes, and the regular meeting was adjourned at 9:46p.m.

Respectfully submitted,  
Susan Cox, Executive Assistant