



**Wellfleet Board of Selectmen
Minutes of the Meeting of October 27, 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

Wood announced that he, the Town Administrator Paul Sieloff, and the Assistant Town Administrator Rex Peterson have been discussing the winter restaurant closing schedule for yearround restaurants, and that a meeting will be held later this week with restaurant owners to stagger their closings throughout the winter so that they are not all closed at the same time. Houk said that Joe Wanco said that The Lighthouse has announced that it will be open yearround.

Houk commented that there were only 319 people that came out to vote at the Senior Center today by the time he was there at 6:00pm, which he felt is a disappointing turnout for an important election.

Donovan asked Sieloff about the vote on Lieutenant Island Road Article last night at the Special Town Meeting. Sieloff explained that Town Counsel reviewed the amended motion and it was determined that it was legally insufficient and, therefore, the motion was ineffective. Sieloff said that there were issues with the borrowing provisions and the "raise and appropriate" language used in the amended motion. Sieloff and Town Counsel tried to see if it was salvageable, and spoke to the Moderator about revisiting the motion, but more than one hour had passed. Sieloff said that he would be having discussions with the Finance Committee about revisiting the issue for ATM in April.

Finance Committee member Robert Kelley apologized for any problems that his amended motion has caused. Kelley explained that he used the language from the Warrant as a model in crafting the amended motion, and that the lack of information in the Warrant made it very difficult to know what to include in the amended motion. Kelley agreed that the Warrant language gave the board the maximum flexibility, but did not provide enough information to craft a legally-effective amended motion.

Donovan and Wildes-Beebe stressed that there is nothing for Kelley to apologize for, as the process and discussion at Town Meeting was instructive and they appreciated his efforts.

Public Hearing(s) [7:30]

Appeal from Ernest H. Rose

Appeal from Ernest H. Rose under Rule 31(b) of the Wellfleet Marina Rules and Regulations regarding vessel, *Ginny Lu*.

May and Wildes-Beebe recused themselves from the discussion.

Donovan explained that the process for this hearing will be to hear from Mr. Rose and his attorney, and then the board would ask questions and hear comments from the public.

Mr. Rose asked about the status of the revised Marina Rules and Regulations. Donovan explained that, at the public hearing a few weeks ago, the board recommended that the Marina Advisory Committee continue to work on the Rules and Regulations and to get input from the Natural Resources Advisory Board and the Shellfish Advisory Board. He asked the Marina Advisory Committee for an update on the process.

Marina Advisory Committee chair, Bob Gross, explained that the Marina Advisory Committee met last week and discussed the changes, particularly with regard to the insurance requirement. Gross explained that, in particular, the \$500K coverage requirement was reduced to "at least \$300K" and the section about a waiver was eliminated altogether.

Attorney John Padgette representing Mr. Rose asked about changing the size limit of boats at the L-Pier. Gross explained that the draft of the regulations had 75 feet and there was no change to that. The Marina Advisory Committee felt that this was adequate and should not change.

Padgette asked that, since this is an appeal hearing, but the Marina Advisory Committee is still considering the changes to the regulations, he would request that the appeal hearing postponed until the revised regulations are finalized.

Donovan explained that there is another requirement that the vessel be actively engaged in commercial fishing, and that the *Ginny Lu* was in violation of that requirement also because it is not currently a working fishing vessel.

Mr. Rose explained that the *Ginny Lu* was a "work in progress" and that it takes considerable time and money to get a boat of this size in working order. He assured the board that he is making every effort to get his boat repaired and operational as a working sea clam boat.

Audience member Brent Valli read a letter that he received from the Harbormaster outlining the reasons why he was denied a slip at the L-Pier.

Mr. Rose offered his version of the history of the situation at the L-Pier and Mr. Valli's use of the L-Pier.

Donovan explained that this board is concerned with enforcement of rules and regulations throughout the Town. Over the summer, there were many general complaints lodged by citizens about lack of enforcement, and specific complaints about this particular situation at the Marina. He explained that the Board of Selectmen later met and instructed the Town Administrator to enforce the Rules and Regulations at the Marina as written. A letter was sent by the Harbormaster to Mr. Rose explaining that the *Ginny Lu* was in violation of the Marina Rules and Regulations. Mr. Rose explained that the enforcement is selective, since there were two boats at issue and only one boat – his – was singled out by the Harbormaster. He explained that his boat is a "work in progress," that it is a fishing boat, but there was a change in plans. He had gotten a

captain for the boat, but captain fell through, and he is actively looking for another captain for the boat.

Wood asked Mr. Rose how did this whole thing start? How did his boat get there? Mr. Rose explained that one of his sons had a boat that caught fire, and Mr. Rose said he would help him get this boat working and would turn it over to him after five years of captaining it. The *Ginny Lu* was bought in Alabama, and brought here for that purpose, but that the boat needed to be repaired and modified for sea clamming.

Attorney Padgette asked if the fact that this boat is a "work in progress" would be taken into consideration, and if the board is asking for something specific stating a completion date. Donovan reiterated that the boat needs to be a working fishing boat in order to be allowed to have a slip at the Marina.

Mr. Rose explained that, prior to purchasing the *Ginny Lu*, he asked the Harbormaster about bringing that boat to Wellfleet, and the Harbormaster gave him permission to bring the boat into Wellfleet Harbor.

Given Mr. Rose's answer, Wood believes that the Town is at least partially responsible for allowing Mr. Rose to bring this oversize boat into Wellfleet Harbor. Wood believes that there is no harm in waiting until Marina Advisory Committee has finished the process of revising the Marina Rules and Regulations to make a decision on the *Ginny Lu*.

MOTION 09-0259: Wood made a motion that the boat be allowed to stay until June 1, 2010. He explained that this would give adequate time to finalize the revised Marina Rules and Regulations, and Mr. Rose could continue his efforts to repair his boat and get it operational. If the boat is still in violation of the revised Marina Rules and Regulations at that time, the boat would have to be removed from the L-Pier.

Mr. Ziemba explained that this boat is too big for the south side of the L-pier and that the law suit is to get the Harbormaster to do his job. He said that as soon as the *Ginny Lu* came into the harbor, the Harbormaster looked the other way and allowed it, despite its being oversize. He explained that an amended complaint was served today concerning the vessel *Second Effort*, and will be amended again to include the *Ginny Lu* again.

A discussion took place revealing a disagreement about the fishing vessel fuel location at the L-Pier.

An audience member asked the board how long it was going to allow any vessel to sit at the docks while it is getting ready to be used.

Bob Gross explained that the proposed revisions include mention of the length of time allowed and the type of activity required.

Valli explained that he has complained about this boat before in 2006. Donovan said that the 2006 complaint is not before the board at this time.

David Ziemba Jr. said that the Harbormaster made a mistake in allowing the *Ginny Lu* in Wellfleet Harbor, and the rules should be enforced now.

Houk explained that the fact that Mr. Rose brought the boat here because of the advice of the Harbormaster does seem to be a problem.

Marina Advisory Committee member Alice Iacuesa explained that they have added the wording "actively involved" in pleasure, commercial or sport fishing and suggested that if the board wanted to wait, these things might be easily resolved once the revised Marina Rules and Regulations are finalized.

Wood explained that when something happens in the Town, it is ultimately the fault of the board and he apologized to everyone for the trouble that this situation has caused. Wood stressed that importance of the fair enforcement of the Marina Rules and Regulations. Wood suggested that, in fairness to Mr. Rose, by June 1, 2010, the boat must be gone if it was still in violation of the Marina Rules and Regulations.

MOTION 09-0260: Donovan advised and moved that there must be some clear evidence that this boat is going to be engaged in commercial fishing in the near future. Although it is established that Mr. Rose has made many efforts to get this thing underway, there must be some evidence that this boat will imminently be engaged in commercial fishing.

Mr. Rose explained that this is a time-consuming and costly venture and assured the board that he is actively moving forward in a sincere effort. Donovan wanted some specific information about the boat's date of readiness. Mr. Rose explained that the boat is being modified from a shrimp boat to a clam boat and that the repairs are in progress and he is actively looking for a captain. He has paid his dockage fees and maintained his licenses, and he is reluctant to give up his spot at the L-pier and remove his boat until he is ordered to do so.

Wood explained that the rules as they stand are quite clear, and if nothing changes to bring the boat into compliance, the boat should be removed by June 1, 2010.

MOTION 09-0261: Wood moved that the boat should be removed by June 1, 2010 if it is not actively engaged in fishing and regulations are not revised so as to allow a boat of this size in the marina.

Donovan seconded, and the motion carried 2-1.

Houk asked to explain his vote. Houk said he believed that the Town is on shaky ground legally, that the Marina is under the Harbormaster's control, and he is not sure that the Town has done the correct thing, given that the Marina is under the jurisdiction of the Harbormaster.

Donovan explained that Town Counsel has assured the Town that this is not the case, that the Harbormaster is an employee of the Town and under the direction of the Town Administrator.

Donovan commented that he has also been reviewing the Harbor Management Plan, and suggested that the Town consider getting some outside advice on the improved management of the Marina.

Bob Gross explained that the Department of Revenue (DOR) report has already been done and going out to get another report may not be the way to go. The Marina

Advisory Committee has worked diligently with the Harbormaster, as well as the DOR in preparing their report. Donovan suggested that independent consultants often have valuable suggestions to improve the work of various departments, and this is something the Town should look into.

Alice Iacuesa asked about what plans are there for the recommendations in the DOR report. Donovan explained that the report and its recommendations will be discussed in the near future.

Appointments

MOTION 09-0262: Houk moved to appoint Town Clerk/Treasurer, Dawn Rickman, to be the Town of Wellfleet's designated liaison to the State Ethics Commission as required by the recent changes to G.L. c. 268A and c. 268B, the state's conflict of interest law.

Wood seconded, and the motion carried 5-0.

Board and Committee Vacancies

Donovan explained that he was asked by Council on Aging Board to specifically mention the vacancies on this board. Donovan noted that he reviewed the latest board and committee vacancy report and feels that if it is too hard to get people to serve on these boards and committees that we may want to reexamine the role and usefulness of some of them.

Also, the 335 Main Street Committee needs to have representatives from other boards and committees. Donovan asked Rex Peterson about the urgency of the needs of this committee. Peterson indicated that this is currently in a holding pattern, but would be activated in the near future.

Other vacancies include:

Beach Study Committee
 Marina Advisory Committee
 Building Needs and Assessment Committee
 Cable Advisory Committee
 Citizens Economic Development Committee
 Coastal and Pond Access Committee
 Commission on Disabilities
 Conservation Commission
 Council on Aging Board
 Cultural Council
 Finance Committee (has 1 vacancy remaining after last night's nominations by the Moderator)
 Historical Commission
 Local Housing Partnership
 Shellfish Advisory Committee

Look on Town website and bulletin board for application and meeting schedules.

Donovan reiterated that the charges need to be reviewed periodically to make sure that the boards and committees are doing relevant work. At a future BOS meeting, the board

should review the charges of the boards and committees and make changes where necessary.

Minutes of 10/13/09

MOTION 09-0263: Wood moved to approve the minutes of October 13, 2009.

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

Future Agendas

Wood suggested a Special Town Meeting post-mortem with the Town Moderator

Adjournment

MOTION 09-0264: Wood moved to adjourn the meeting.

Donovan seconded, and the meeting was adjourned at 8:30pm.

Respectfully submitted,

Susan Cox, Executive Assistant