

**Wellfleet Board of Selectmen
Minutes of the Meeting of March 27, 2012
Wellfleet Public Library, 7:00 p.m.**

Present: Chair Ira Wood, Mark Borrelli, Berta Bruinooge, Jerry Houk, Paul Pilcher; Town Administrator Paul Sieloff.

Chair Ira Wood called the meeting to order at 7:00 p.m.

Announcements, Open Session and Public Comment: Dick Guernsey announced two upcoming Wellfleet Community Forums, both at 7:00 p.m. at the Wellfleet Library: Candidates Night will be held on April 7, 2012. There will be a pre-Town Meeting forum held on April 17, 2012 to discuss the Town Meeting Warrant.

Town Services Report: County Commissioners Mary Pat Flynn and Sheila Lyons presented a Town Services Report¹ for Wellfleet from Barnstable County. The County facilitated, among other services, seed money for OpenCape, an e-permitting grant award, studies on dispatch and safety regionalization, fire and rescue training, water quality monitoring, hazardous waste collection and the distribution of several grants for land and shellfish conservation. The County also provided resources to assist in wastewater management and transportation issues, housing, technical assistance and educational outreach. Through County efforts, Wellfleet received 200,000 seeds for oyster propagation and funding for Children's Cove.

PUBLIC HEARING: Wood opened the public hearings at 7:15 p.m.

Licenses

MOTION 12-0135: Borrelli moved to approve an Annual, All Alcohol Restaurant License for the Laughing Lobstah at 955 Route 6, Wellfleet with James Baptist as the proposed manager. Bruinooge seconded the motion and it passed 5-0.

Shellfish Grant Appeal, Renewal and Transfer

MOTION 12-0136: Houk moved to approve the application received February 8, 2012 from Margaret Jennings and Laymon Clark to transfer shellfish grant license #85-C and #85CA from Margaret Jennings and Laymon Clark to Margaret Jennings, Laymon Clark and Lee Clark. Andy Koch recommended the transfer. Pilcher seconded the motion and it passed 5-0.

MOTION 12-0137: Bruinooge moved to approve the application received February 10, 2012 from Robert and Barbara Olson to renew shellfish grant license #2000-3 ext for a seven year period. Andy Koch recommended the grant renewal. Houk seconded the motion and it passed 5-0.

MOTION 12-0138: Houk moved to approve the application received February 10, 2012 from Richard Blakeley to renew shellfish grant license #85-F for a ten year period. Andy Koch recommended the grant renewal. Pilcher seconded the motion and it passed 5-0.

MOTION 12-0139: Borrelli moved to approve the application received February 16, 2012 from James Falcone to renew shellfish grant license #04-03 for a ten year period. Andy Koch recommended the grant renewal. Bruinooge seconded the motion and it passed 5-0.

MOTION 12-0140: Houk moved to approve the application received February 21, 2012 from Paul Bonanno to renew shellfish grant license #2001-7 ext for a six year, four month period. Andy Koch recommended the grant renewal. Bruinooge seconded the motion and it passed 5-0.

MOTION 12-0141: Houk moved to approve the application received February 22, 2012 from Nate Johnson to renew shellfish grant license #05-01 for a ten year period. Andy Koch recommended the grant renewal. Bruinooge seconded the motion and it passed 5-0.

Penalties for Violation of the Town of Wellfleet Shellfishing Policy and Regulations: A public hearing was held to discuss penalties for violations by Karl Barrio of the Town of Wellfleet Shellfishing Policy and Regulations and G. L. c. 130, §63 and 67 occasioned by an alleged incident which took place at approximately 5:30 p.m. on February 10, 2012. According to a police report by Sergeant William E. Brazile filed by eyewitnesses Max Nolan and Ronald Butilier, Barrio was seen removing oysters from cages on William 'Chopper' Young, Jr.'s shellfish grant. Shellfish Constable Andy Koch relayed the events of the evening as reported to the Shellfish Constable's office by Young, the police department and the eyewitnesses. Wood formally entered the witness and police reports² into the record as well as copies of Barrio's shellfish grant licenses # 85A and #85A-A³, and 2012 Commercial Shellfish License⁴ into the record. Nolan gave his formal eyewitness testimony to the Selectmen and Sergeant Brazile confirmed the validity of the witness incident reports. Young, the owner of grant in question, said he contacted Barrio's wife Kristin to corroborate the story told by Barrio to Nolan, that he was only picking thirty oysters for his wife that evening, but Kristin would not speak to the issue. Young further investigated the story and confirmed that Barrio dropped off 40 bushels of oysters to a seller that evening. Nolan added that he had taken a video of the site in question on Young's grant early the following morning showing Barrio's tire tracks and foot steps clearly leading to Young's cages.

Barrio's lawyer, Craig Nickerson, submitted a tide chart listing a sunset at 5:10 p.m. on February 10, 2012⁵. According to laws of the Commonwealth, no person may take shellfish between one half hour after sunset and one half hour before sunrise. Nickerson pointed out discrepancies in the eyewitness accounts and said that the stories seemed to be different, also noting that Butilier was parked at a distance from Young's grant and it was dark, raising the issue of whether Butilier could see Barrio take oysters out of Young's cage, and further adding that evidence presented should be more than hearsay statements of Constable and grant owner, neither of whom were in town at the time of the incident.

Nickerson maintained that Barrio was shellfishing in the wild and not on Young's grant, nor was he taking oysters from Young's cage but rather checking out a rack that Barrio was thinking about buying from Young. Nickerson also presented photos taken by Clinton Austin⁶ within two weeks of the incident showing someone fishing to high water mark on Young's grant, stating that it was perfectly legal for him to do so. The photos also showed that some of Young's gear exceeded the grant boundary line. Young stated that he has since corrected the oversight.

Barrio reiterated Nickerson's statement and added that he was waiting in his car at the location in question for 30 minutes prior to the incident waiting for the tide to go down so he could check the racks and gather approximately thirty oysters in the wild for his wife.

Borrelli asked Koch if Barrio had any previous infractions⁷. Koch stated that Barrio's licenses had been revoked on two separate occasions for violating Wellfleet Shellfishing Policy and Regulations; once for a three month period and again for one year. Houk said that Barrio had been before the Board of Selectmen every few years with an issue relating to shellfishing violations. Koch read the regulations concerning the Board of Selectmen's authority to revoke shellfish licenses and permits where there is a pattern of abuse, and said that Barrio exhibited such a pattern of abuse. Koch stated that shellfishing in the Town is a privilege, not a right, and that Barrio should not have the privilege to continue making a living shellfishing in Wellfleet any more. Pilcher said that unless there is additional evidence, the Board should vote tonight. The Selectmen agreed that they believed the reports of the eyewitnesses and Houk added that Nolan and Butilier and would not have filed a police report without being certain of what they reported to the police that they witnessed. Pilcher concurred with Houk, adding that if the eyewitness statements were identical, it would raise suspicion that they were false, and Barrio's pattern of abuse should result in a revocation of his licenses.

MOTION 12-0142: Borrelli moved to take a ten minute recess at 8:10 p.m. for the Selectmen to read and review the documents submitted at the hearing on the Barrio case. Bruinooge seconded the motion and it passed 5-0. Wood called the meeting back to order at 8:20 p.m.

MOTION 12-0143: Borrelli moved to revoke Barrio's privilege to shellfish in the Town of Wellfleet (revoking his two shellfish grant licenses #85A and #85A-A and his 2012 Commercial Shellfish Permit, No. 6, issued on 12/15/11). Pilcher seconded the motion and it passed 5-0.

LICENSES

MOTION 12-0144: Bruinooge moved to approve a License for Weekday Entertainment for Sweet Seasons. Houk seconded the motion and it passed 5-0.

MOTION 12-0145: Bruinooge moved to approve a License for Seasonal All Alcohol License for Sol restaurant. Houk seconded the motion and it passed 5-0.

BUSINESS

Proposed Use of Town Property Fees: Sieloff reviewed the proposed fees as vetted by Town Counsel⁸. Wood said that these fees cannot be set outside of a public hearing but the Selectmen could approve any Use of Town Property subject to fees being discussed at the March 27, 2012 BOS meeting. Pilcher stated he would like to investigate charging a lower fee for a private versus public event. Bruinooge suggested starting the fee schedule on July 1, 2012 to coincide with the start of the fiscal year.

APPOINTMENTS

MOTION 12-0146: Pilcher moved to approve the following committee appointments and reappointments. Borrelli seconded the motion and it passed 5-0.

- Christine Bezio to the Recreation Committee with a term ending June 30, 2014
- Yvonne Barocas to the 250th Anniversary Committee with a term ending December 31, 2013
- Dina Harris Walker to the 250th Anniversary Committee with a term ending December 31, 2013
- Luke Chapman to the Citizens Economic Development Committee with a term ending June 30, 2013
- Kevin Scalley to the Recreation Committee with a term ending June 30, 2014

USE OF TOWN PROPERTY

MOTION 12-0147: Bruinooge moved to approve the following applications subject to a fee to be determined at a future public hearing at a Selectmen meeting. Borrelli seconded the motion and it passed 5-0:

- The application received from Jonathan Condon and Laurie Simpson, son of Wellfleet residents David and Ann Condon, to use of Duck Harbor Beach and parking lot on Saturday, May 19, 2012 from 9:00 a.m. to 1:00 p.m. for a wedding ceremony
- The application received on February 22, 2012 from Moe Barocas to use Indian Neck Beach and the parking area on June 16, 2012 from 4:30 p.m. to 5:30 p.m. for a wedding ceremony

MOTION 12-0148: Wood moved to approve the application without a fee received from Frank Szedlak, Jr. from the American Legion to use the front and side lawn of Town Hall on Monday, May 28, 2012 (Memorial Day) from 8:00 a.m. to 11:00 a.m. for a Memorial Day Service. Borrelli seconded the motion and it passed 5-0.

MOTION 12-0149: Pilcher moved to deny the application received from Jeremy M. Dalmer from the Essex Hawks Soccer Club to use a roped-off beach area (no specific designation given) of approximately 30x40

yards for a fee-based youth beach soccer league open all youth ages 9-14, with 20 players maximum at one time. Time frame: July 6 to August 9, 2012; Mon-Tues/Thurs-Fri 2:15-8:00 p.m.; Sat 2:30-5:15 p.m. and Sun 1:30-4:15 p.m. Borrelli seconded the motion to deny the application and it passed 5-0.

BUSINESS

Recommendations for 2012 Beach Fire Permitting and Enforcement: John Ryerson, representing the Wellfleet Beach Office, and Jennifer Flanagan and Kevin Rice from the special Beach Fire Advisory Board reviewed preliminary recommendations for 2012 beach fire permitting and enforcement⁹. Suggestions included the distribution of reflective flags to beach fire permit holders, increased fines for violators and the creation of two positions at the Beach Office to patrol for violators. Ryerson said that Beach Administrator Suzanne Grout Thomas asked to postpone further discussion until her return from medical leave. Wood asked the Advisory Board to fine-tune the proposal with input from Thomas and return for a public hearing.

Natural Resources Advisory Board (NRAB) Report on Town Waterways Access: John Riehl from the NRAB gave a report on coastal and pond access for the Town of Wellfleet after the NRAB was tasked with creating a work plan to give citizens access to ponds and other waterways in Wellfleet. Riehl reviewed three classifications in the report designed assure access: (1) No action needed; (2) Access points that needed signage to let people know how to enter; and (3) Missing pathways or paths in need of brush clearing, and the suggestion to obtain easements for pathways crossing private land. Riehl said the NRAB would be able to present a report in summer 2012 with suggested properties in need of easements for waterway access.

Proposed Road Clearing Bylaw Committee: Police Chief Fisette and Fire Chief Silverman requested the formation of an ad hoc study committee¹⁰ to craft a road clearing and maintenance bylaw for private roads to facilitate access for emergency and DPW vehicles for fire, EMS, police and plowing services, with the goal of bringing a proposed bylaw to Special Town Meeting in Fall 2012 or Annual Town Meeting in Spring 2013. Silverman recommended a committee with designees from Fire, Police, DPW, Administration, Planning Board, the Wellfleet Non-Resident Taxpayer's Association and the public at large. Wood said the Selectmen would form the committee and asked the Administration to draft a charge for the Selectmen.

BOS Goals Update: Disposition of Town-owned properties: The Selectmen reviewed a list of Town-owned properties compiled by the Assessor and Administration. Pilcher noted approximately 60 properties on the list that may be appropriate for candidates for disposition. Sieloff asked for guidance on the 'landing strip' property. Wood suggested postponing the discussion on the 'landing strip' to revisit the issue with the new Board of Selectmen after the Town elections. From the audience, Fire Chief Dan Silverman reminded the Selectmen to investigate implementing new rules for the disposition of real property.

Town Administrator's Report: Sieloff reported that the County was approved to receive an E-Permitting Grant. The Regional Energy Efficiency Grant was not awarded to the County but Sieloff is exploring alternate solutions for large HVAC replacement and other building envelope improvements. The 2012 Annual Town Meeting Warrant is complete and will be posted on March 28, 2012. Wellfleet's Water System, created by Environmental Partner's Group, won a silver award from the American Council on Engineering. There will be a press conference on Wastewater at the Cape Cod Commission on April 3, 2012.

Future Concerns: Paul Pilcher requested adding an item to the April 10, 2012 Selectmen agenda to discuss an approval process for placing signs on Town Property and asked if the Building Inspector should be at the meeting. Pilcher asked to bring back full BOS Goals Update list to the April 10, 2012 meeting for review.

Correspondence Report: Pilcher reviewed letters to the Selectmen in the Correspondence Report.

MINUTES

MOTION 12-0150: Bruinooge moved to approve the meeting Minutes from March 13, 2012. Pilcher seconded the motion and it passed 5-0.

ADJOURNMENT

MOTION 12-0151: Bruinooge moved to adjourn the meeting. Pilcher seconded the motion and it passed 5-0. The meeting was adjourned at 9:55 p.m.

¹ Wellfleet Town Services Report FY 2011

² Police and eyewitness reports from February 10, 2012 re: Karl Barrio

³ Copies of Karl Barrio Wellfleet Shellfish Licenses #85A and #85A-A

⁴ Karl Barrio 2012 Commercial Shellfish License

⁵ Boston Tide and Sunset Chart for February 10, 2012

⁶ Photos of Young's grant taken by Clinton Austin

⁷ Copies of the Shellfish Constable's Shellfish Regulation violation documents re: Karl Barrio

⁸ Memo from Sieloff re: Proposed Use of Town Property Fees

⁹ 2012 beach fire permitting and enforcement recommendations from the Beach Fire Advisory Board

¹⁰ Memo from Silverman, Fisetta and Vincent re: Road clearing bylaw study committee