

**Wellfleet Board of Selectmen  
Minutes of the Meeting of October 9, 2012  
Council On Aging Building, 7:00 p.m.**

**Present:** John Morrissey, Dennis Murphy, Paul Pilcher; Interim Town Administrator Tim King.

**Regrets:** Berta Bruinooge

Acting Chair Paul Pilcher called the meeting to order at 7:00 p.m., explaining that Chair Berta Bruinooge was away on vacation and that they all wished her well during her time away.

**Announcements, Open Session and Public Comment:**

- Paul Pilcher welcomed back Jerry Houk. There was applause from the audience.
- Jerry Houk thanked all the people who sent cards and well wishes while he was recuperating from his illness. Houk offered a special thanks to the 'wonderful' and 'first class' Wellfleet rescue squad, especially Joseph Cappello and the team of EMTs working with him.
- Pilcher announced two informational meeting regarding the Wellfleet rental subsidy/loan program. The content will be the same at both meetings: Wednesday, October 17, 2012 at 7:00 p.m. at the Public Library and Saturday, October 20, 2012 at 10:00 a.m. at the Senior Center.
- John Riehl, Chair of the Natural Resources Advisory Board (NRAB), announced that the State of Wellfleet Harbor Conference<sup>1</sup> would be held on Saturday, November 3, 2012 from 8:30 a.m. to 2:00 p.m. at the Wellfleet Elementary School Cafeteria. This year will be the 10<sup>th</sup> anniversary of the conference.
- Fire Chief Dan Silverman announced the resignation of Wellfleet Firefighter/Paramedic Eric Elliot, who will be taking a job in Harwich. Silverman thanked Elliott for his years of service to the Town.

**Appointments**

**Motion 12-0343:** Houk moved to change the appointment of Edmund Doyle from an alternate member to a regular member of the Energy Committee with a term ending June 30, 2015. Murphy seconded the motion and it passed 4-0.

**Request to use Chapter 90 Funds for sidewalk extension on Holbrook Avenue**

Planning Board member Alfred Pickard requested the use of Chapter 90 funds to pay for engineering reports or the construction of a sidewalk extension on Holbrook Avenue. Tim King said that Chapter 90 funds can be used to construct sidewalks but the amount of money allocated to pay for the current sidewalk construction project on Bank and Commercial Streets at Town Meeting in April 2012 did not include Holbrook Avenue and cannot be used for that purpose. King asked DPW Director Mark Vincent if he had additional funds in his budget to pay for a sidewalk extension and Vincent replied in a written statement<sup>2</sup> that all funds were allocated to paving maintenance. Pilcher asked King if he could investigate the engineering cost of the extension. King estimates the engineering cost would be under \$5,000 and that the ensuing plans would be reviewed by the Conservation Commission.

**Motion 12-0344:** Murphy moved to direct Tim King to have Environmental Partners Group, Inc. move forward with a preliminary engineering study on a sidewalk extension on Holbrook Avenue provided the cost is less than \$5,000. Houk seconded the motion and it passed 5-0.

**Public Hearing(s) [7:17]**

*John Morrissey recused himself from the hearing.*

Acting Chair Paul Pilcher opened by stating that this was an informal hearing to consider new evidence presented by Karl Barrio and his lawyer Craig Nickerson. Nickerson was directed to speak first, followed by witnesses who previously offered testimony, the Shellfish Constable and then members of the public who had something specific to contribute to the evidence being reviewed. All questions would go through Pilcher as acting Chair. At the conclusion of the hearing, the Selectmen could exercise three options: 1. Take no action and let the March 27, 2012 decision remain intact; 2. Schedule further hearings; 3. Consider restoring Barrio's shellfish grant and license.

Mr. Nickerson raised several objections in a written Offer of Proof requested by Pilcher<sup>3</sup>. Nickerson stated that the tone of the March 27, 2012 public hearing was ‘unexpected’ as there was no previous notice that a vote would be taken to revoke Mr. Barrio’s license at that time, thus the current request to return before the Selectmen with evidence. After reviewing the Offer of Proof point-by-point, Nickerson read an affidavit<sup>4</sup> from investigator Arthur Parker, hired by Nickerson, who interviewed witness Ronald Butilier and claimed that Butilier refuted his original statement that he had seen Karl Barrio remove oysters from a cage on the shoreline belonging to William ‘Chopper’ Young, Jr.

Next, Kristin Barrio, Karl’s wife, read a statement proclaiming her husband’s innocence, stating what she perceived to be a number of inconsistencies with the accounts presented at the March 27, 2012 public hearing and asked the Selectmen not to take away her husband’s livelihood. Pilcher asked Mrs. Barrio why she did not take Chopper’s call when he phoned that evening to clear up the situation. Mrs. Barrio stated that she wanted to stay ‘out of the fray’ but knows for a fact that her husband is innocent of the charges. Barrio also spoke in his own defense and said that he never reached into the cages, that there was no further investigation by the Wellfleet Police Department and that any evidence presented is hearsay.

Ronald Butilier was called to speak before the Selectmen. He reiterated his statement but acquiesced that he was too far away to actually state with certainty that he saw Mr. Barrio taking oysters out of the cages. William ‘Chopper’ Young spoke next to the Selectmen. He does not believe that eyewitness Max Nolan, who was the closest eyewitness to Barrio at the time of the incident, would have lied. Young did think that Barrio’s punishment was harsh. Shellfish Constable Andrew Koch read Section 10 of Shellfish Regulations, stating that the Selectmen can revoke a permit or license due to a pattern of abuse. Koch said that Barrio’s record demonstrates a pattern of abuse and that Barrio has more infractions than any other shellfisherman in Wellfleet. Koch stands by the March 27, 2012 revocation of Barrio’s two shellfish grant licenses #85A and #85A-A and his 2012 Commercial Shellfish Permit, No. 6, issued on 12/15/11.

There were three comments from the audience: Judy Bourne said that Barrio had worked for her for four years and that Barrio was an honest and honorable man. Nate Johnson brought up the issue of trust within the shellfishing community, stating that even if Chopper’s gear was off his grant, it is still his gear and no one has the right to touch it. Jennifer Flanagan urged the Selectmen to review the evidence, as some testimony appears to be hearsay.

Pilcher closed public comment and the Selectmen discussed the merits of the evidence and testimony they had heard during the public hearing. Murphy said that no one can say with absolute certainty that they saw Barrio’s hand in the cage. Houk thought the punishment was too severe and wants to review all of the transcripts and evidence before he makes a decision. Pilcher stated that he sees no reason to overturn the decision of March 27, 2012 as Barrio has demonstrated a pattern of abuse. Pilcher then made a motion to take no action at this time. Murphy said that he had received a call from Jerry Moles from the Division of Marine Fisheries at 6:30 p.m. that evening and that Moles has asked to introduce additional evidence. Murphy asked for that evidence in writing and requested that the Board entertain this information from Moles before they make a decision and vote.

**Motion 12-0345:** Houk moved to continue the Barrio public hearing until the October 23, 2012 Board of Selectmen meeting pending the receipt of the letter from Mr. Moles of the Division of Marine Fisheries. Murphy seconded the motion and it passed 3-0.

**Recess called from 8:12 p.m. to 8:18 p.m.**

## **Business**

**Wellfleet Firemen’s Relief Association request for an Assessment Center for Fire Chief finalists and an offer of financial assistance:** Curtis Gelatt spoke on behalf of the Wellfleet Firemen’s Relief Association and told the Selectmen that the group had voted to offer \$2,500 toward an Assessment Center for the finalists in

the Fire Chief search<sup>5</sup>. The Selectmen discussed the issue and decided that they would like to move forward with their original decision to not have an Assessment Center as part of the search process. The Board thanked the Wellfleet Firemen's Relief Associations offer of help. No motion was taken.

**Approval of Bank St./Commercial St. Paving and Sidewalk Construction Project Contract:** Murphy said that he reviewed the contract<sup>6</sup> and it was 'good.'

**Motion 12-0346:** Murphy moved to approve Bank St./Commercial St. Paving and Sidewalk Construction Project Contract as written. Morrissey seconded the motion and it passed 4-0.

**Request for Assessor's explanation of possible property tax exemptions**

**Motion 12-0347:** Pilcher moved to request that Wellfleet Assessor Nancy Vail to come back to Board of Selectmen with a report with all property exemption options in ninety days. Murphy seconded the motion and it passed 4-0.

**Proposed committee liaison role for Wellfleet Non-Resident Taxpayers Association members:** Wellfleet Non-Resident Taxpayer Association (NRTPA) President Marion Palley asked Pilcher if their members could be appointed as liaisons to other Wellfleet committees to participate without having a vote. Morrissey said that no policy needs to be in place as all meetings are open to public. Pilcher thinks it is important that the NRTPA be involved with committees in a more official capacity. From the audience, Janet Morrissey suggested that the NRTPA come forward with a list of committees that they wish to join and they Selectmen could formulate a plan at that time. The Selectmen agreed to the idea and asked that the topic be placed on the Selectmen's agenda on December 11, 2012.

**Public Tennis Court maintenance and long-term plan:** Recreation Director Becky Rosenberg said that the Town tennis courts were very popular over the summer and made record revenues, as they are the only public courts in the region. But the tennis courts need a complete renovation. Rosenberg reviewed a fact sheet stating why the courts needed to be resurfaced and how much it would cost<sup>7</sup>. \$500 has already been collected toward the project through fundraising efforts. Murphy asked King to request that the DPW take a soil sample, explaining that a new fence and any other construction on the courts would be based on a soil analysis by an engineer. Bid specs can be set on basic engineering plan. Pilcher asked to see a comprehensive business plan from Recreation Department with estimates of revenue and detailed explanations of why new courts are worth the investment. Murphy does not want the Town of Wellfleet to undercut other tennis businesses in the area.

**Recreation Department Audit Report:** Becky Rosenberg stated that she reviewed the best practices as laid out by the Town auditors<sup>8</sup>, although she did not give a reconciliation report the findings back weekly to King. Rosenberg said she wrote all of the receipts by hand because of computer issues and that the auditors were okay with the practice. She is working with the Barnstable County IT Department to come up with an online registration tool.

**Proposed Wellfleet Committee Chair Meeting:** Pilcher said that the Planning Board has requested that all of the Town regulatory Boards come together to discuss common issues.

*Jerry Houk departed the meeting at 9:00 p.m.*

**Future Concerns**

- The Selectmen will discuss BOS goals and specific plans for future discussions
- The Building and Needs Assessment Committee will report to the BOS at their October 23, 2012 meeting to ask for a directive on building maintenance
- The BOS would like to create a list of questions to review at the November 13, 2012 BOS meeting on student population trends. Tim King will invite the schools to the November 27, 2012 BOS meeting to answer the Selectmen's questions.

### **Town Administrator's Report**

Interim Town Administrator Tim King reviewed his bi-weekly report<sup>9</sup> King praised the diligent work of the Town Accountant; setting the tax rate early, going through a Town audit and readying the budget.

### **Future Concerns**

Morrissey would like a better understanding of the status of the Friends of Our Recreation and asked that it be placed on a future Board of Selectmen meeting. Recreation Director Becky Rosenberg said the group was in the midst of reorganization.

### **Correspondence and Vacancy Report**

The Correspondence Report of October 9, 2012 was reviewed by Dennis Murphy and submitted to the BOS<sup>10</sup>.

### **Minutes**

**Motion 12-0348:** Pilcher moved to approve the Minutes of September 11, 2012 and September 25, 2012 as printed. Morrissey seconded the motion and it passed 4-0.

### **Adjournment**

**Motion 12-0349:** Murphy moved to adjourn the meeting. Morrissey seconded the motion and it passed 4-0. The meeting was adjourned at 9:08 p.m.

Respectfully submitted,

Amy Voll, Executive Assistant

<sup>1</sup> State of the Harbor Conference Agenda

<sup>2</sup> October 9, 2012 email from Mark Vincent to Tim King re: Chapter 90 Funds

<sup>3</sup> September 20, 2012 Offer of Proof for Karl Barrio from the office of Craig Nickerson, Esq.

<sup>4</sup> June 21, 2012 affidavit of Arthur Parker interview with Ronald Butilier

<sup>5</sup> October 4, 2012 offer of assistance letter from the Wellfleet Firemen's Relief Association

<sup>6</sup> Bank St./Commercial St. Paving and Sidewalk Construction Project Contract

<sup>7</sup> Tennis Court Resurfacing Facts one-sheet

<sup>8</sup> May 25, 2012 Cash/Check Payments and Turnovers to the Treasurer – Recreation Department

<sup>9</sup> October 9, 2012 Tim King Town Administrator's Report

<sup>10</sup> October 9, 2012 Correspondence Report