

**BOARD OF SELECTMEN  
REGULAR MEETING MINUTES  
MONDAY, MAY 18, 2015**

**Members Present:** Craig J. Dutra, Chairman  
Antone C. Vieira Jr.  
Richard M. Spirlet  
Steve Ouellette, Clerk

**Also present:** Timothy J. King, Town Administrator

**Absent:** R. Michael Sullivan, Vice Chairman

Chairman Dutra called the Board of Selectmen meeting to order at 6:00 P.M. in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance by all present.

**Pledge of Allegiance**

**Chairman's Announcement** - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

**Public and Board Member Comment** – None.

**Acknowledgments & Recognitions** – None.

**Town Administrator Report** (no votes taken on any of the following items)

**Town Hall, Highway Garage and Police Station – Water** – Mr. King reported that on Wednesday, the well pump broke down; the three buildings were without water or working toilets for most of the day until the pump was repaired; all is working order now.

**Town Buildings – Phone System** – Mr. King stated that on Tuesday, Verizon was working on the phone system but on Thursday, all incoming calls started being recorded and no incoming calls were being received; most of the Town buildings were affected. On Friday morning, the problem was still not resolved. As of late Friday afternoon, Verizon was able to correct the problem; this was not an internal problem, it was a Verizon problem.

**Head of Westport Lease** – Mr. King presented a draft lease that is being negotiated between the Landing Commission and the Westport River Watershed Coalition and the most recent environmental testing report for the property. Mr. King stated that no action is required at this time. Mr. King stated the Landing Commission and the Watershed will be meeting on this tomorrow. Mr. Spirlet stated during that meeting, both parties attorneys will be reviewing the ground lease and then it will go to the Town's Attorney for review.

**Westport Middle School Supplemental Testing** – Mr. King presented a report from Campbell Environmental Engineers for the supplemental testing and summarized it for the Board. A complete report is available in the Selectmen's Office for viewing. Mr. Vieira asked if this was just related to the Middle School system or the piece that the Environmental Group was going to do on behalf of the BOS. Mr. King stated this is what the Board requested for the Middle School. Mr. Vieira stated, this must be just a small piece of what is being sent to the Board because he thought this would be like a second opinion to see what options were available from the Environmental group, not just the cost of additional testing. Mr. King stated he would followup with Mr. Campbell. Mr. Dutra stated at our last meeting we created a transition committee and we really should appoint representatives to that committee because he believed this should be before them.

**Middle School 319 Project** – Mr. King stated he received an email from Malcolm Harper of MADEP denying the request to re-balance the match for the Middle School 319 Project. Mr. King stated he has sent letters to Senator Rodrigues and Representative Schmid requesting intervention on this matter.

Annual Appointments 2015 – Mr. King reminded the Board that Annual Appointments will be scheduled for the June 15<sup>th</sup> meeting.

Road Paving Projects – Mr. King stated the bids for the summer paving projects are out; the bids are due on May 22<sup>nd</sup> and a possible contract award will be made by the BOS at the June 1<sup>st</sup> meeting. Mr. Vieira stated we have additional funds for road paving. Mr. King stated those additional road paving funds were to be used for the reconstruction of Charlotte White Road. Mr. Vieira stated he just wanted to caution, that those pieces will need official bids. Mr. King stated there will be.

Police Station Feasibility Study – Mr. King stated that Reinhardt Associates have submitted a draft Existing Station Evaluation, which has been submitted to the Police Station Building Committee for their review and comment. A hard copy of the report is available in the BOS Office for review.

Knubble Dune Restoration Project – Mr. King provided an email from Buzzards Bay Coalition regarding the work and schedule for CLE's work on this project.

Time and Attendance Upgrade – Mr. King stated the time and attendance recorder is still undergoing beta testing during the most recent two-week pay period; the Highway Department expected to go live today but the changes in the few remaining items have not been completed by the vendor. Mr. Spirlet requested to have the representative from the company in to the next BOS Meeting to explain the delay; it was presented that this would be up and running in less than a month; here we are three months out and still nothing; there are only a few employees at the Highway Department, it is not like a hugh amount of employees.

Roselli, Clark & Associates – Town Auditor – Mr. King stated that Mr. Roselli has agreed to a one-year contract to do the FY'15 audit. Mr. King said shortly, he will be drafting an RFP for an audit service procurement for a three-year engagement beginning in FY'16.

Charter – Cable TV – Mr. King presented Charter's 2014 Annual Financial Report.

Council on Aging – Director's Report - Mr. King stated he has provided the Board with the April and May monthly reports of the COA Director.

**Public Hearing – RE: An application request for a Repair License for Integrated Street Performance, to be located at 800-B American Legion Highway, Westport, MA with a vehicle limit of 14 vehicles. Owners: Mao Lin and Jacob Contois.**

The public hearing was opened at 6:00 PM with the reading of the Public Hearing Notice. Present: Mao Lin and Jacob Contois. No abutters were present. The Board reviewed the application. Mr. Contois stated they would be doing auto repairs and are looking for a 14-car limit. Mr. Ouellette asked Mr. Gilbert Souza if he would be overseeing this property. Mr. Souza responded yes. **Motion** made by Mr. Ouellette to approve a Repair License for Integrated Street Performance with a vehicle limit of 14. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan). The public hearing is closed at 6:03 PM.

**Public Hearing – RE: An application request from Westport Rivers, Inc., 417 Hix Bridge Road, Westport, MA for an Entertainment License (Indoor & Outdoor Live and Recorded, Amplified and Non-Amplified) – Robert Russell, Applicant.**

The public hearing was opened at 6:15 PM with the reading of the Public Hearing Notice. Present: Robert Russell and Attorney Brian Corey, representing Mr. Russell. Abutters present: Ed Howe – 27 Horseneck Road (represented by Attorney Daniel Perry), Susan Szekely – 395 Hix Bridge Road, Greg Knowles – Westport Point, Jason Wentworth – 30 Spinnaker Way, Sarah Costable – 701 Pine Hill Road, Pam Pimental – 33 Cornell Road, Stewart Davidson – 442 Hix Bridge Road. Attorney Corey began his presentation by explaining agriculture in Massachusetts. The MA Dept. of Agriculture over the past 15-18 years, has put a big push on agriculture/tourism; throughout the state, there are hundreds of farms located and zoned as agricultural entities who have restaurants, function halls, stores,

distilleries, wineries, breweries, bed & breakfasts and other accommodations; all of these commercial activities are seen by the MA Dept. of Agriculture as being incidental to the original agricultural purpose; all of these commercial activities/functions are allowed pursuant to MGL Ch. 40A, Section 13 along with MGL Ch. 128, Section 25. Atty. Corey stated Mr. Souza has been provided with examples of each of the commercial activities/functions that are ongoing on agricultural properties. Massachusetts further defines agricultural activity, with a level of agricultural activity needed to promote or to sustain this exemption, a wide reaching exemption to the local zoning regulations as being a minimum of 25% of the resources sold on the property; 25% of the gross sales must come from the sale of the primary agricultural product grown upon the property, for example ice cream being sold, which is made from the milk produced on the farm or a BBQ restaurant that is selling the chicken, beef or pork raised on the farm or whether it be a vineyard or brewery that sells the end product (alcoholic beverage) of what is being grown; the remainder of the volume of income may come from other sources. In this instance, Westport Rivers and Buzzards Bay derives almost 94% of their income from the grapes and barley and hops grown upon their property. These are true agricultural activities. These are working farms. Atty. Corey stated his client was not looking for a concert venue; he is asking for responsible use and promotion of the property. In order to promote the sale of wine and beer, people must be invited in and that is the point of agricultural/tourism as defined by the State of MA; this is to get people to visit the farm. Only recently, questions have arisen as to whether this is appropriate; last August, those questions were attempted to be answered by his clients at a meeting with various Town Department Heads (including Police, Fire, BOH, Town Administrator); as a result of that meeting, Mr. Russell instituted a couple of different things such as limiting the numbers of vehicles that could come onto the property for a concert. The Summer Music Concert Series became too popular and parking became a problem; seeing this problem and hearing the concerns, the Russell Family adopted the policy that only online reservations would be honored for the concerts and limited to 300 vehicles, if no reservations are made, those people will not be allowed on the property and the concerts will be ending between 8:00 and 9:00 PM. Last year, the Russells began monitoring the noise (ambient noise) along the perimeter of the property. The most concern was along the south side of the property closest to an abutting farm; the noise level was monitored approximately 150 ft. from the property line and approximately 600 ft. from the closest habitable structure on the adjacent property; as a result of that, during the concert series, the loudest decibel reading was 68, which is equivalent to a quiet auto at low speed; 60 is a normal conversation that could be heard from 3 ft. away. Atty. Corey stated that under the law, people are entitled to quiet use of their property; people are allowed to enjoy their property, they are not entitled to silence. Atty. Corey stated further testing involved using the noise from their tractor running in the same location as the concerts, which proved to be 72, louder than the concert. Atty. Corey stated his clients want to be good neighbors and good businessmen, this is very important to the Russells. Atty. Corey stated that we must remember that farms are not just open space, they are living, breathing businesses and the Commonwealth of MA has chosen to recognize that. Atty. Corey stated that in the legal opinion rendered by Atty. Blake, K&P, it addresses residential ideas with not one agricultural case cited; he did not address MGL Ch. 40A, Section 3; the intent has never been for the winery or the brewery to become a concert venue; these are 2-3 hour events used to bring the community together and to sell the products they produce. Atty. Corey stated there is no public gathering place in Town, no Town Green and very little by way of public family events places; Westport Rivers has become that place and Atty. Corey stated that he hoped the Board of Selectmen would hope that more farms become those places instead of just growing hay and taking advantage of tax breaks and begin growing community spirit because that is what has happened at the brewery and Westport Rivers. Atty. Corey stated his clients tonight are asking that the Board of Selectmen approve both Entertainment Licenses, although his clients feel that they are not necessarily needed under state law, we are asking you tonight to vote for the family farm, in favor of innovative agricultural

operations and in favor of what Westport Rivers has had in one shape or form since 1996. Atty. Corey stated that there has not been one complaint with the Police Dept. since 1999; his clients have worked with the BOS on a no-parking zone, with the Police Dept. for details and working with their staff. Atty. Corey stated there is noise, yes; there are families enjoying this, yes; is this a rock 'n' roll style event, no; it is simply a sales and marketing tool allowed under State Law for farms. At this time, Mr. Dutra stated the ground rules would be that discussion would be limited to the Board and then commentary from members of the audience. Mr. Vieira stated he agreed with comments made by Attorney Corey; this business has been in operation since 1996 and we recognize that business can't be done like it was in 1996; there have been local and state initiatives for agriculture; he understands that they are reaching to the community to bring them together and to sell his product; he stated he also understood the neighbors concerns about impact and that is trying to be addressed; he saw no issue to deny an Entertainment License for this purpose. Mr. Spirlet stated he has heard that the Police will be involved, especially for parking to keep the area open for residents who live there; they are doing all they can do with problems that have arisen; there have been other venues in other towns that have been really, really troublesome, which is not the case here; so, until we have some issues that are getting out of hand and a recommendation from the Police Dept., Mr. Spirlet stated he is not against this because this business (farm) has to try to make money and it promotes Westport. Mr. Dutra asked if Ralph Souza, Building Commissioner was present. Mr. King stated he was not. Mr. Dutra stated he was very disappointed because Mr. Souza wrote a letter to Town Counsel, he received an opinion from Town Counsel, and should be guiding these discussions; so it is highly inappropriate that he is not here. Mr. Dutra stated let the record show that this Board is not satisfied with his lack of attention to this matter which has drawn a lot of people here tonight and that Town Counsel's opinion was based solely on his recommendations and he does not show up for this hearing. Attorney Daniel Perry stated he was representing the Howe Family and two families that own property immediately adjacent to the winery property. Attorney Perry stated he appreciated that the Board and Community thinks that Westport Winery is a desirable facility and produces a lot of benefits for the Town but this evenings hearing should be about whether the Board is going to follow the rules and the rules are pretty clear; Atty. Corey threw out a lot of stuff but the 25% that is in the statute is what percentage the product has to be to be a farm-stand, it is not the standard for having a concert with a 1,000 people on a farm. Mr. Dutra asked for documentation of 1,000 people on the farm attending a concert. Atty. Perry stated there is no documentation, it is his client's estimate. Atty. Perry stated regardless, the issue is a large number of people attending a concert in a residential zone; there is a use category called "Amusements and Assembly" whereby a Special Permit, you can have these kinds of activities in a residential zone. Atty. Perry asked for an opinion from Town Counsel and one was issued. Atty. Perry stated by law, the Board could not issue an Entertainment License that is in violation of zoning bylaws; so, is the Board going to issue this license because of the community support for it even if it is against the law. Mr. Dutra stated he spoke to Town Counsel and the issue comes down to incidental use of the property or the primary use of the property; what is before the Board is an Entertainment License; can we grant the license civilly or based on what has been done in the past and grant the license based on event. Mr. Dutra asked for input from both attorneys. Discussion then ensued regarding both attorneys input regarding each of their clients. Mr. Howe stated there has been concerts for nine years; they started small, maybe 100-200 cars and mostly acoustical music. Mr. Howe stated he has called Mr. Russell and they have tried to work together but now the events have grown; also, he has never been shown any noise testing results. Mr. Howe stated that every Friday and Saturday, he can't plan a family picnic in his yard due to the noise; some people have gotten drunk and there is yelling; he stated he is opposed to something that has taken over the neighborhood. Mr. Howe stated this is now a major operation. Mr. Dutra stated he did not believe that the Building Inspector described this as incidental to Town Counsel. Discussion again continued. Mr. Vieira stated for the last couple of years, the success of the

events have grown; the parking is being addressed; as for noise being an issue, there is noise such as when the Town's Fair is going on; we are talking about incidentals. We have to look at what is the best practices for agri-tourism and promote buy local. Mr. Vieira stated the Russell's were not happy about the parking so they are cutting back in that area; let's test that for a year; yes, there are different opinions but we need to build a consensus; the two farmers have worked together over the years and we need to build a business model. Mr. Vieira stated he had heard enough and was prepared to make a motion. Mr. Dutra called for a motion on the floor.

**Motion** made by Mr. Vieira to approve of an Entertainment License for Westport Rivers for this year with the condition of limiting the vehicle parking to 300 vehicles. Second by Mr. Spirlet.

Discussion ensued. Mr. Spirlet stated the concerts are stopping at 9:00 PM – no music; the only noise will be people talking, this is fair to the neighbors; if there are issues in the future, we will address them. Mr. Dutra stated that last August, there was an email exchange for addressing this issue within one year. At this time, Mr. Dutra called upon anyone wishing to speak on this matter. Speaking in favor were Susan Szekely, Jason Wentworth, Sarah Costable, Pam Pimental. Not in favor were Mr. Howe and Greg Knowles, who felt it was a zoning issue. In favor of the Russell's but has a problem with the parking was Stewart Davidson. Mr. Dutra stated to clarify, the Board is dissatisfied that the Building Inspector did not show up for this hearing and established the facts that led to an opinion from Town Counsel, which has been disputed by the opponent's attorneys; but members of this Board have read the contents of the legal opinion and feel that Town Counsel was given bad information; also, an agreement was made last August, between the Town, the Russell's and the neighbors to monitor the activities of the concert series, which gives the neighbors standing in the negotiations and discussions with the parties so that legitimate concerns regarding traffic congestion, noise, etc. are continued to be addressed and honored by this Board. Mr. Dutra asked for a friendly amendment of these two principles into the motion. Mr. Vieira agreed to the amendments; Mr. Spirlet agreed also to the amendments. The Board voted 4 in favor, 1-absent (Sullivan).

**Public Hearing – RE: An application request from Buzzards Bay Brewing, 98 Horseneck Road, Westport, MA for an Entertainment License (Indoor & Outdoor Live and Recorded, Amplified and Non-Amplified) – Robert Russell, Applicant.**

The public hearing was opened at 7:00 PM with the reading of the Public Hearing Notice. Present: Robert Russell and Attorney Brian Corey, representing Mr. Russell. **Motion** made by Mr. Vieira to approve of an Entertainment License for Buzzards Bay Brewing for this year with the conditions: vehicle parking limit of 300 vehicles and the continuance of the monitoring agreement for noise and traffic. Second by Mr. Spirlet. The Board voted 4 in favor, 1-absent (Sullivan). The public hearing is closed at 7:05 PM.

**Beverly Bisch, COA Director – RE: Request for permission to post and hire for the position of Outreach Worker.**

Mr. King stated a position that is an outreach worker has become vacant and the request is to fill that vacancy. This position is funded by a grant. **Motion** made by Mr. Ouellette to approve, with the stipulation that the position is funded by a grant. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan).

**Action Items**

1. **Motion** made by Mr. Vieira to approve of the new Special Farmers' Market Liquor License form and to approve of a Special Farmer's Market License for Westport Rivers Vineyard & Winery at Westport Town Farm-Westport Farmers Market, 830 Drift Road, effective each Saturday from June 13, 2015 to October 3, 2015 from 8:30 AM to 1:00 PM. Second by Mr. Spirlet. The Board

voted 4 in favor, 1-absent (Sullivan).

2. **Motion** made by Mr. Spirlet to approve of the new Auction License for Alcoholic Beverages form. Second by Mr. Ouellette. The Board voted 4 in favor, 1-absent (Sullivan).
3. **Motion** made by Mr. Vieira to accept the following donations to the COA. Second by Mr. Spirlet. The Board voted 4 in favor, 1-absent (Sullivan). \$15.00 from Norman & Lynette Ouellette; \$50.00 from Bonnie & Kevin Candeias; \$100.00 from Alfred & Thelma Candeias; \$75.00 from Marianne & Gary Vivian; \$50.00 from Jane Young; \$50.00 from Raymond Elias; \$25.00 from Gail Silvia; and \$150.00 from Roberta Capuano, Thomas Heffernan and Dutch & Piper and \$25.00 from James & Evelyn Cambra (all for best use).
4. **Motion** made by Mr. Vieira to approve of the fifth amendment to the Memorandum of Agreement for Remediation Recoverable Grant with the Massachusetts Development Agency. Second by Mr. Ouellette. The Board voted 4 in favor, 1-absent (Sullivan).
5. **Motion** made by Mr. Vieira to approve the carry-over of 10 vacation days for Leone F. Farias, Principal Clerk of the Conservation Commission. Second by Mr. Spirlet. The Board voted 4 in favor, 1-absent (Sullivan).
6. **Motion** made by Mr. Ouellette to place the Thank-You letter received from Dan LeBlanc, Interim VSO, in his personnel file. Second by Mr. Spirlet. The Board voted 4 in favor, 1-absent (Sullivan).
7. **Motion** made by Mr. Ouellette to table a notice from MEMA and the Dept. of Conservation & Recreation regarding funding from FEMA Hazard Mitigation Grant Program. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan).

#### **Appointments**

1. **Motion** made by Mr. Ouellette to table this request until confirmation is received from the individuals involved, that they agree to the change of member status. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan).
2. **Motion** made by Mr. Vieira to appoint Timothy King, Town Administrator as the Collective Bargaining Representative to the Greater Fall River Regional School District Community Negotiating Committee. Second by Mr. Spirlet. The Board voted 4 in favor, 1-absent (Sullivan).

#### **Minutes**

**Motion** made by Mr. Ouellette to approve the Regular Meeting Minutes of April 21, 2015. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan).

**Motion** made by Mr. Ouellette to approve the Regular Meeting Minutes of May 4, 2015. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan).

**Motion** made by Mr. Ouellette to approve the Meeting Minutes of Annual & Special Town Meeting of May 5, 2015. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan).

**Motion** made by Mr. Ouellette to approve the Meeting Minutes of Annual & Special Town Meeting of May 7, 2015. Second by Mr. Vieira. The Board voted 4 in favor, 1-absent (Sullivan).

**Selectmen Liaison Committee Reports** – None.

**Question and Answer Period** – None.

**Board Members Suggestions for Future Agenda Discussion / Action** – None.

**Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting** – None.

#### **Other Business**

1. Mr. Spirlet reminded everyone of the Memorial Day Ceremonies and then reviewed the schedule.
2. Mr. Ouellette reminded everyone of Special Town Meeting on 5/19/15 at the Westport High School.
3. Mr. Ouellette announced that Leonard Flynn, SRPEDD, passed away; his service will be held in

Mansfield on Tuesday. Mr. Flynn was a long-serving member. If anyone is interested, please call SRPEDD for the details.

4. Mr. Vieira stated that under the Q&A, Warren Messier wanted to make sure that the BOS received the testing results of Lincoln Avenue, noting that when Lincoln Avenue was built, it was built to spec when originally built and that the BOS had that documentation. Mr. Messier was concerned over that for tomorrow night. Mr. Vieira stated there is still concern from the Highway Dept. presently but it was built to spec back then. Mr. Dutra stated he remembered seeing it.
5. Mr. Vieira stated the Travel Reimbursement Policy is unclear where people start their travel; we do not address where the travel begins. Discussion ensued. Mr. King stated he will look into this for the next agenda.
6. Mr. Dutra stated he wanted to know why the Building Commissioner was not in attendance tonight; he sought a legal opinion from Town Counsel and he was not here to clarify what he was looking for. Mr. King will follow up.
7. Mr. Vieira stated this Board voted 5-0 to provide the Highway Surveyor with a bonus and to his knowledge, we have gone through a number of months now and it still has not happened; are we working with the Town Accountant on this, because at this point, it is almost insubordination. Mr. Dutra stated he spoke with the Town Accountant and ordered her to do this; basically, Mr. Dutra stated he told her that she had a vote of the Board and an email from Town Counsel. Mr. Dutra asked Mr. King if he was expecting this Board to incur a legal bill to do this? Mr. King stated we did; he requested the legal opinion from Town Counsel and he received it. Mr. Dutra stated the legal opinion cost money and the Town Accountant's job is to save us money, not cost us money. Mr. Vieira stated in that regard, last year, we argued the Assessor's position and there is still no sign-off from the Assessor's or paperwork on FLSA exemption, no professional employee time-sheet; why is the Town Accountant still submitting to us without the proper documentation. Mr. Vieira stated it is the same thing, we voted on having the proper documentation and obtained a legal opinion back in March, but the check was still issued. Mr. Dutra stated you can't pick and chose to follow one but not the other. **Motion** made by Mr. Vieira to support the Chairman on his recommendation of the Highway Surveyor bonus and, if it is not acted upon, it is asked that the Town Accountant appear before the Board at their next meeting and that policies are gone through at that meeting. Second by Mr. Spirlet. Discussion ensued. The Board voted 4 in favor, 1-absent (Sullivan).
8. Mr. Vieira mentioned that the Westport Grange recognized their senior member, Mr. Beaulieu, for his service at the grange. Mr. Beaulieu will be turning 99 years old tomorrow. Mr. Ouellette asked where the Boston Cane was.

**Executive Session** – No Executive Session was held.

### **7:30 PM**

**Motion** made by Mr. Ouellette to adjourn the Board of Selectmen Meeting. Second by Mr. Spirlet. The Board voted 4 in favor, 1-absent (Sullivan).

### **Adjournment.**

Respectfully submitted,

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Diane Pelland, Administrative Asst/Confidential Clerk to the Board of Selectmen

**APPROVED:** \_\_\_\_\_  
Steven J. Ouellette, Clerk