

**BOARD OF SELECTMEN
REGULAR MEETING MINUTES
MONDAY
NOVEMBER 16, 2015**

Members Present: Craig J. Dutra, Chairman
R. Michael Sullivan, Vice Chairman
Richard M. Spirlet
Antone C. Vieira Jr.
Steve Ouellette, Clerk

Also Present: Timothy J. King, Town Administrator

Chairman Dutra called the Board of Selectmen meeting to order at 6:00 P.M. in the Westport High School Auditorium, 19 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

At this time, Mr. Dutra explained the unusual Board of Selectmen meeting for this evening. Mr. Dutra stated from 6:00 PM to 7:00 PM, the agenda is in an abbreviated fashion and at 7:00 PM, Mr. Dutra stated he would turn the Chair over to the Town Moderator to have a discussion about the various issues and points of view surrounding proposals regarding Beach Avenue. Mr. Dutra stated there are some items on today's agenda that may hinder that discussion and we may have items on our agenda that may prolong our discussion, so as Chairman of the Board, he will reserve the right and the power to interrupt, curtail and table conversation that may preempt or prolong the meeting. Mr. Dutra stated that if the Board gets through their agenda before 7:00 PM, there will be a recess until 7:00 PM so anyone aware of the second meeting, will have time to come here and be able to participate.

At this time, the Board recognized the passing of Antonio B. Gracia, Jr., a former Selectmen who served in the early '60's. Mr. Ouellette stated Mr. Gracia was a core person in Town and a pleasure to work with on the Lions Club; his family has a great commitment to the Town also and his legacy in Westport continues on with his children. Mr. Vieira stated Mr. Gracia served from 1960-1966 for two full terms as Selectman; he was a Veteran and 60-year member of the American Legion, and he was also the first Mechanical Engineer to graduate from New Bedford Technical Institute. Mr. Vieira stated Mr. Gracia's family (five daughters and one son) are still active in Town. Mr. Dutra called for a Moment of Silence for Mr. Gracia.

Acknowledgments & Recognitions – None.

Town Administrator Report

1. Veteran's Day Activity: Mr. King stated the Veteran's Day activities were well attended and pleasant even though the weather was a bit inclement. Kudos to Veterans Agent Brad Fish and Cemetery Foreman Andy Motta for their able assistance and for the excellent program by the various Veteran's Associations.
2. Energy Aggregation: Mr. King stated Commonwealth Edison was the low bidder for providing electricity to residents of communities that participated (including Westport) in the group bid.

Their price of \$.09490/kwh is a good one and could benefit many Westport residents and businesses. The pricing should be able to be effective by January 1, 2016 and good for 24 months; it is an automatic enrollment for everyone, there is nothing that has to be done to participate; a notice will be sent out for anyone who wants to opt out. Mr. Spirlet stated this is good for people who can't have solar. Mr. King stated anyone heating with electricity will benefit also.

3. Marine Services Director: Mr. King stated the Personnel Board approved the position of Marine Services Director. The position has been posted and advertised. This position was previously approved by the BOS and the Harbor Advisory and Shellfish Advisory recommended a salary of \$75,000. Mr. King stated the position is advertised at 10% less than the \$75,000, so the Board has the opportunity to offer it at that range with opportunities for increases after the probationary period.
4. TMDL Report from DEP: Mr. King stated that DEP approved an additional 30-day comment period. Mr. King stated that TMDL stood for Total Maximum Daily Load in regards to nitrogen loading. This will allow for comment from a couple of Town committees.
5. Landfill Solar Project: Mr. King stated there has been a modest setback in the solar project proposed at the town's old capped landfill. Town Counsel reviewed and found that Power Management bid the project out under MGL 25A when it should have been under MGL 32B. Power Management has revised the specs and it will be rebid shortly. Mr. Sullivan asked if the proposals received under the wrong Chapter/Section will remain confidential. Mr. King stated yes. Mr. Vieira asked what the basic difference was between the two laws. Mr. King stated under 25A, it allows municipalities to request proposals when a preferred power arrangement is being sought; if we were to purchase power under an agreement it would have been alright to use 25A but in this case, the Town will only be leasing out the land so 32B should have been used. Mr. Vieira asked that when the Town typically goes out for procurement, do we have Town Counsel review it before. Mr. King stated not when we are preparing the specifications and putting it out for proposal; we usually wait until we get the proposals in; there was an error by Power Management, they apologized and are putting it back out again.
6. Westport Solar Project Phase II: Mr. King stated that Power Management has been working with Tony Connors of the Energy Committee to identify several town properties that have the potential to be used for solar arrays. A copy of the several sites has been provided to the Board. Mr. King stated he would like the Board, at a future meeting, to comment on the potential sites. The Town will not be the owner of the solar array, the Town would be leasing the land only, similar to the landfill project; it will be a private company installing the solar arrays. Mr. Vieira asked if Power Management would be paying the cost of the rebidding. Mr. King stated yes.
7. FY 2017 Municipal Budget: Mr. King stated he is busy meeting with department heads and reviewing their FY'17 Budget submittals. He has met with almost all departments except for a couple of the larger ones; following these meetings, he will prepare his recommendations and meet again with those departments to review his recommendations before submitting the budgets for review by the BOS.
8. Westport School Feasibility Study – Status: Mr. King stated the School Building Committee has selected Dadelus Projects, Inc. as the preferred firm to provide OPM (Owner Project Manager) services for the Feasibility Study. The fee proposal is being negotiated before the selection report is submitted to MSBA. Mr. King stated that once MSBA gives their blessing of the selection of the OPM and fee proposal, then it comes back to the Town for approval. Mr. Dutra stated he understood this has slipped another month on the time-frame so he would encourage Mr. King to work with Dr. Dargon because there has been a couple of slip-ups on both ends that has moved this project back several months already, so he would like to keep this one on track. Mr. King stated he would.

9. COA Director's Report: Mr. King stated he has provided the Board with the COA Director's.
10. DPU Notice of Filing and Public Hearing: Mr. King stated the Board has been provided with notices of filing and public hearing by Liberty Utilities and Eversource on their 3-Year Energy Efficiency Plan. Mr. King stated the plan is available online for the Board or public to review.

At this time, Mr. Vieira stated it was mentioned last time that we were going to try to get an update in reference to a discussion of the Landing Commission about the DEP fine related to Boathouse Row and the fact that we were not notified as a Board; Mr. King was supposed to follow-up and have it on his report. Mr. King stated he failed to do that but it will be on for the next meeting.

Action Items

1. **Motion** made by Mr. Ouellette to appoint Robin Winters to the position of Library Aide I at the Westport Library, effective 11-19-15. Second by Mr. Sullivan. The Board voted unanimously in favor.
2. **Motion** made by Mr. Vieira to approve the release of Chapter 61A land for Virginia Merlier on Drift Road, Map 57, Lot 41A. Second by Mr. Spirlet. The Board voted unanimously in favor.
3. **Motion** made by Mr. Vieira to approve the request of the Town Clerk to insert language on the tax bills regarding the new procedure for obtaining a 2016 Beach Pass; agreed to by the Tax Collector. Second by Mr. Sullivan. The Board voted unanimously in favor.
4. Mr. Vieira stated he was not trying to preempt any discussion tonight, he was just seeking clarification of some bills from Kopelman & Paige. Mr. Vieira stated he submitted his questions last Thursday. Mr. Dutra called for an answer from Mr. Sullivan or Mr. King. Mr. Sullivan stated there was a meeting on September 14, 2015, present at the meeting were Mr. Sullivan, Mr. Dutra, Mr. King and Attorneys Jenkins and Eichman (one attorney charged for the meeting and the other did not). The charge is for 5 hours but the meeting was probably a couple of hours but travel, etc. is probably added in. The meeting was with a number of people in regards to Beach Avenue. Mr. Vieira stated he was fine with that, he just wanted clarification before he signed off on the bill. Mr. Spirlet asked if there any report or anyone taking notes. Mr. Dutra stated the output of that meeting was to create the framework of the MOU; we got the parties involved to agree to the fundamental elements of that. Mr. Spirlet stated when he saw this, he thought all of the Selectmen should have been notified and given the opportunity to attend if they chose to; if there was a quorum, a meeting could have been posted or any member at least could have attended just to listen. Mr. Vieira stated his other question was in regards to September 30, 2015, it was under another billing other than the cease & desist; his question was what was this about and why was Buzzards Bay piece included with Beach Avenue. Mr. Sullivan stated it was about his question on the motion and preparation for Town Meeting. Mr. Vieira stated it was not in regards to the cease & desist, it was more a motion situation. Mr. Sullivan stated it would not be in regards to the cease & desist, he has not had any contact with them on the cease & desist. Mr. Vieira stated as you can see in the billing, it refers to the draft DEP consent order and evaluate effect on Beach Avenue project. Mr. Sullivan stated this is not even a phone call, this is where we sent back a draft for review and some of those were your requests. Mr. Vieira stated his request was that we keep the Buzzards Bay Coalition's proposal separate from any discussion on the cease & desist order. Mr. Sullivan stated he thought that is what this item is. Mr. King stated this had to do with Attorney Eichman assisting Selectman Sullivan in preparing whatever action was needed for Town Meeting approval; the first component was whether it was a super majority or simple majority for Town Meeting approval for the discontinuance of Beach Avenue and at the same time, Attorney Eichman was aware that the Town was still negotiating with DEP regarding the consent agreement for the DEP cease & desist; Attorney Eichman had not read the draft consent agreement so it was forwarded to him by one of his

own attorneys in the firm (Attorney Goldrosen) so he was able to review that proposed consent agreement. Mr. Vieira stated we can move on; his only question here was that Kopelman & Paige has a number of attorneys that are not talking to each other and that they should do that on their dime, not the Town's and we had talked about the separation of Buzzards Bay Coalition's proposal and any discussion on the cease & desist, which goes back about 18 months ago, so that is why he was surprised to see it on the bill and paying for attorneys within our Town Counsel getting up to speed on this. Mr. Vieira stated he got his answer.

5A & C.

Mr. Dutra stated the discussion under Action Item #5, which he does not understand, because apparently the agenda has changed since he looked at it initially. Mr. Dutra stated the Board will now vote on the STM Warrant; it has been before us and we made our recommendations on the final version at the last meeting; we carried it forward to this meeting but Mr. Dutra stated he did not see any specific items that came from the Board's last meeting that needed to be carried forward except for a request from Mr. Vieira to change the order of the articles (5A), but other than that, Mr. Dutra stated he would entertain a motion to approve the Town Meeting Warrant.

Mr. Vieira asked Mr. Dutra if he could discuss the request. Mr. Dutra stated no because there is no motion before us.

Motion made by Mr. Sullivan to approve the Special Town Meeting warrant. Second by Mr. Ouellette.

Discussion: Mr. Vieira stated he asked that it be put on the agenda. Mr. Vieira stated he attended a meeting on a Saturday at the library; Selectman Sullivan was there also, where a number of Town residents asked if some consideration could be given to Article 11 – Beach Avenue Discontinuance; they asked if it could be moved up on the agenda. Mr. Vieira stated he told the folks there, that based on their request he would bring it before the Selectmen and see how they would respond to it and that is what he is doing.

Mr. Dutra responded, so people can leave Town Meeting early and not talk about anything else; so they can vote on their favorite article and walk out. Mr. Vieira stated well, that may be your opinion, sir. Mr. Dutra stated that is his opinion. Mr. Vieira stated Mr. Dutra was entitled to his opinion but the people have requested this. Mr. Dutra stated he is a big supporter of the Schools but he gets annoyed when all the school people walk out when the school warrant gets voted on; they leave. Mr. Dutra stated he gets annoyed when anyone leaves early. Mr. Dutra stated the order should not matter; people should want to come to Town Meeting to participate and they should; if they want to stay home, stay home and watch it on TV; Mr. Dutra stated this is his opinion.

Mr. Vieira stated he did not necessarily disagree with Mr. Dutra's opinion but he does respect Town residents who may not share Mr. Dutra's or his opinion but he told them he would bring it to the Board. Mr. Vieira stated Selectman Sullivan was at that meeting and Mr. Sullivan told them the only reason it was at the end was on his recommendation and that the Selectmen voted on it. Mr. Vieira stated he did not understand it that way, so out of courtesy to the people that were there, he told them he would bring it forward. Mr. Vieira stated he respected Mr. Dutra's opinion and he actually shares Mr. Dutra's opinion more than he thinks, but he still felt it was right to let other taxpayers opinions that raised this, an opportunity to come before this Board and ask for it; that is why he is doing this. Mr. Vieira stated they had no way to have a voice, that is why he brought it on.

Mr. Dutra asked if there were any other comments.

Mr. Sullivan stated the reason for this discussion is because he took responsibility at Tom's (Hancock's) meeting he conducted; the question was asked why the article is where it is. Mr. Sullivan stated the reason is because as Chair and Vice Chair, we have some discretion on the material that is presented to this Board for approval. Mr. Sullivan stated he put it towards the end; we reviewed that warrant article; we reviewed the whole set of articles; and we approved without

any discussion. Mr. Sullivan stated he would leave it as is, so he is motioning to approve the warrant as is.

Mr. Tom Hancock stated at one time, this article was #4, and after that time, other articles came in and instead of those articles going beyond #4, this article kept moving up the line and others were inserted earlier. Mr. Hancock asked why? Mr. Sullivan stated that as Selectmen members, they have discretion on how the agenda is set. Mr. Hancock stated he agreed. Mr. Sullivan stated he presented to the Board that way and they agreed. Mr. Dutra stated we also tend to cluster the financial articles together; a lot of the articles that came in after the fact were financial, so they were clustered together. Mr. Hancock asked Mr. Dutra, you don't consider Article 11 a financial article. Mr. Dutra responded he did not.

Mr. Dutra called for a vote on the motion: The Board voted unanimously to approve.

5B.

Mr. Vieira stated he asked to be put on the agenda and it is on the agenda under Part B – Article 11 Beach Avenue Discontinuance – Discussion on Town Counsel's opinion regarding procedure – Selectman Vieira.

Mr. Dutra stated we approved the article, so what do you want to discuss, I am confused. Mr. Vieira stated he don't know why Mr. Dutra would be confused, it is a pretty straight forward discussion on Town's Counsel's opinion regarding procedure. Mr. Vieira stated he passed it out and it is in our packets. Mr. Dutra stated he understood it was passed out and it is in the packets without the Chair's permission and starting this evening, any articles going before this Board will be need to be submitted to me at my personal email address and copied to Diane (Pelland); you cannot walk in and berate the staff to put your personal articles on at the last minute. Mr. Dutra stated that from now on, we are going to do business the way we have done business for years before I got here, with the Chair approving articles. Mr. Dutra stated to Mr. Vieira, yes you stuck this in at the last minute, so tell me what you want to do. Mr. Vieira stated that is unfair, he did not even go into the office, he did it last Wednesday by phone, and then asked the Board to consider by email; because then again, one of our Board members had been talking in public about a vote that was necessary at Town Meeting whether it be for a 2/3's vote or a simple majority. Mr. Vieira stated he referenced three different emails received from Town Counsel requiring a 2/3's vote and the appropriate language that would be suggesting, if we are going to be discontinuing any portion of Beach Avenue as a public way. Mr. Dutra asked Mr. Vieira what the nature of his request was; he was not understanding what Mr. Vieira was asking for. Mr. Vieira stated that when he sent the letter to Diane (Pelland), which was 11-08-15 and asked to be placed on the agenda, that Board consider the repeated opinion of Town Counsel and suggest that the Board pass the material on to the Town Moderator. Mr. Dutra clarified that what Mr. Vieira was asking for, is that we take the opinion of Town Counsel and forward it to the Town Moderator. Mr. Dutra asked if there was a motion to that effect.

Motion made by Mr. Vieira to forward the opinion of Town Counsel to the Town Moderator. Second by Mr. Sullivan.

Discussion: Mr. Sullivan stated it in all fairness, regardless of the timing of the request, Mr. Vieira pointed out a couple of things in some correspondence that it is suggested that a 2/3's vote is required at Town Meeting to accept the layout. Mr. Sullivan stated Mr. Vieira was exactly right, there is a step in the process that proposes the Beach Avenue project, whereby a newly created turn-around needs to be accepted, and that would happen in May. Mr. Vieira stated that he and Selectman Sullivan were on the same page in terms of this procedure. Mr. Vieira stated there has been some suggestion, characterizing on how I did this, which is not necessarily accurate just because the Chair said that; if anyone wants to check the record, they can find out how it was done; the characterization used by the Chair was inappropriate and actually not true. Mr. Sullivan stated he wanted to take responsibility for this, because this is a very complicated project and we will see

tonight when we talk about it, there is a lot of moving pieces and a lot of people that need to be involved, a lot of people donating land; it is very complicated and it is my fault, with all the correspondence that is related to all the aspects of this, were not properly distributed; he stated he could understand why it is confusing to people. Mr. Sullivan stated he understood and will take responsibility for not communicating 100%.

Mr. Dutra stated he read the request to share Town Counsel's opinion with the Town Moderator; it did not have to be discussed at this Board and we have spent a lot of time on this issue, it is complicated and we all have our strong opinions but we also have deferred a lot of discussion about things that are very important to this Town and a lot of things that could have been discussed in this Town; issues that could have been discussed in this Town, have not been discussed because of this issue. Mr. Dutra stated we are spending tonight, starting in 20 minutes, to give the Town an opportunity to talk about this and we are setting aside time on December 1st, to talk about it. Mr. Dutra stated he also thinks the Town needs to move on, we have a lot of things such as a budget that is challenging and a lot of projects in this Town, but this one has taken far too much time of this Board and far too many Boards away from their responsibilities dealing with this particular piece of land and a fairly concise list of issues. Mr. Dutra stated he knows this is not popular given the crowd that is here but that is how he feels.

Mr. Dutra called for a vote on the motion: The Board voted unanimously to approve.

Mr. Spirlet stated he had a comment on something stated by Mr. Dutra, that everything had to go through the Chair and sent to Diane (Pelland) by email; that was how it was done before. Mr. Spirlet stated when he was Chair for two years, and we are all elected, he never once stifled any Selectman from putting anything on the agenda, especially if the member thought it was important for this constituents, it was put on and we would discuss it in open meeting. Mr. Spirlet he felt this was wrong, it was only his personal opinion. Mr. Dutra asked if he has turned down anything from anyone as Chair. Mr. Dutra stated this is timing, organizing and setting the agenda up. Mr. Spirlet stated as long as it is on time and sent to Diane (Pelland), if you want to knock it, well. Mr. Dutra stated the new protocol is to send it to him and copy Diane (Pelland). Mr. Vieira stated to Mr. Dutra, whether he agrees or disagrees with this, he followed that and it was received last Wednesday; now, you are saying things that are not consistent with what was said before. Mr. Dutra stated he's doing this in context with the items for discussion this evening. Discussion ends.

One-Day Liquor Licenses – None.

Appointments and/or Resignations – None.

Discussion Items – None.

Minutes – None.

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. Ouellette stated as Mr. Vieira mentioned earlier, they attended the Veteran's event and it was well done. Mr. Dutra stated that VA Brad Fish did a great job with that event. Mr. Vieira complimented Chairman Dutra who spoke on behalf of the Board of Selectmen, he did a fine job at the Veteran's ceremony and he appreciated it.
2. Mr. Spirlet stated the Veterans Ceremony was not well attended back that was due to the fact of the weather but it was good that it was moved indoors; he wanted to publicly thank Kozy Nook Restaurant for their donation of coffee for the event.

6:45 PM - Motion made by Mr. Ouellette to recess until 7:00 PM. Second by Mr. Sullivan. The Board voted unanimously in favor.

7:00 PM Discussion of the Beach Avenue Discontinuance warrant article moderated by Town Moderator Steve Fors.

*There are no minutes for this portion of the meeting. Minutes Clerk was excused. A taping of the meeting is available for viewing.

Adjournment.

Respectfully submitted,

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

APPROVED:_____
Steven J. Ouellette, Clerk