

**BOARD OF SELECTMEN
REGULAR MEETING MINUTES
JUNE 30, 2014**

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

Also Present: Stephen Lombard, Business Manager

Chairman Vieira opened the meeting at 6:00 p.m.

Appreciation:

Chairman Vieira, on behalf of the Board of Selectmen and the Town, voiced his appreciation to Steve Lombard for his time and efforts this past year as well as to the former Town Administrator Jack Healey.

Citation RE: Clayton M. Harrison, Board of Appeals:

The Board presented Clayton M. Harrison with a citation for his 48 years of service and dedication to the Town of Westport as a member of the Zoning Board of Appeals. The Selectman also gave Mr. Harrison a citation from the Massachusetts House of Representatives. State Representative Paul Schmid was unable to attend due to the House still being in session for the last day of the fiscal year. State Senator Michael Rodrigues was also absent due to the same reason. He would be privately presenting Mr. Harrison with a citation from the State Senate.

Jim Connell RE: Internship Program:

Mr. Connell did not attend the meeting.

Action Items:

1. Selectman Spirlet made a motion to approve and sign the permission form for NStar Electric for tree and tree debris removal. The motion was seconded by Selectman Ouellette and was voted unanimously.
2. Selectman Ouellette made a motion to approve the Mutual Aid Agreement between the Westport and Tiverton Police Departments. The motion was seconded by Selectman Dutra, Selectman Spirlet

questioned if there would be a problem across state lines. He was reassured there would not be with Chairman Vieira noting that the Fire Department had mutual aid agreements in place with Little Compton and Tiverton. The motion was voted unanimously.

3. On a motion by Selectman Dutra, which was seconded by Selectman Sullivan, the Board unanimously approved the One Day Liquor License for the Holy Ghost Feast at the Holy Ghost Club scheduled for Sunday, July 13th.

5. Selectman Dutra made a motion to approve the *End of Year Budget Transfer Request for Fiscal Year 2014* from the Shellfish Department to transfer \$2,000 from Expenses into Personal Services. Selectman Ouellette seconded the motion – voted unanimously.

6. Selectman Spirlet made a motion to approve the One Day Wine and Malt License for the Westport Fisherman's Association's Fishing Tournament Award Ceremony & Reception scheduled for Saturday, July 19th at 241 East Beach Road. The motion, which was seconded by Selectman Ouellette, was voted unanimously.

7. Selectman Dutra made a motion to sign the amendment with Tibbetts Engineering Corp. for batch plant and/or paving installation observation services. Selectman Sullivan seconded the motion – voted unanimously.

8. On a motion by Selectman Dutra, which was seconded by Selectman Ouellette, the Board voted unanimously to approve the recommendation from Lieutenant John Bell regarding the request from the Elephant Rock Beach Club to allow parking on Atlantic Avenue for their annual Sandcastles and Sundaes event scheduled for July 26th from noon to 4:00 p.m.

9. Chairman Vieira mentioned that the mileage reimbursement policy hadn't been updated since 1988 and that certain things had to be clarified as to when the Town would reimburse for mileage. After some discussion, Selectman Spirlet made a motion to ask the new Town Administrator, Timothy King, for a recommendation for revising this policy. The motion was seconded by Selectman Ouellette and was unanimously approved.

Appointments:

1. Selectman Dutra motioned to appoint William Gifford to the Long Term Planning Town Building Evaluation Committee. Selectman Sullivan seconded the motion – voted unanimously.

2. Selectman Sullivan made a motion to appoint Roger Menard as an Associate member of the Zoning Board of Appeals. The motion was seconded by Selectman Spirlet and was unanimously approved.

3. On a motion by Selectman Sullivan, seconded by Selectman Spirlet, the Board voted unanimously to reappoint Karl Daxland to the Energy Committee.

4. Selectman Dutra made a motion to appoint Commission on Disability members Michael Ouimet, John Pelletier and Elaine Ostroff to the ADA Transition Plan Committee and appoint Rose Rego as a

regular member of the Commission on Disability. Selectman Ouellette seconded the motion, which was voted unanimously.

5. Selectman Ouellette motioned to reappoint Jarrod Levesque as a Reserve Police Officer. The motion, which was seconded by Selectman Sullivan was unanimously approved.

Approval of June 3, 2014 Regular Meeting Minutes:

Selectman Dutra made a motion to postpone approval of the June 2, 2014 Regular Meeting Minutes until the next Selectmen's meeting. The motion was seconded by Selectman Ouellette and was voted unanimously.

Correspondence – Action Required:

1. Selectman Spirlet made a motion to approve the request from the Westport Education Foundation and the Friends of the Westport Council on Aging for their 4th Annual Community Walk-a-Thon subject to Lieutenant John Bell's recommendations. The motion was seconded by Selectman Ouellette and was approved with Selectmen Vieira, Spirlet, Ouellette and Sullivan voting yes and Selectman Dutra abstaining.

3. On a motion by Selectman Ouellette, seconded by Selectman Dutra, the Board voted unanimously to approve the request from Mark Roy and Donna Leary for permission to hold their wedding ceremony at East Beach on August 2nd at noon subject to a Police Department review and recommendation.

David Jenkins, Town Counsel RE: Review of Memorandum of Understanding and Potential Agreement:

Meeting with the Board was Town Counsel David Jenkins. Chairman Vieira read into the record the questions that Selectman Sullivan had put together from the last Selectmen's meeting and had sent to Attorney Jenkins for a response. Attorney Jenkins began by stating that Kopelman and Paige did not have any opinion on the relative merits of the project. The first question was whether or not the Town's Highway Surveyor could be compelled to do repairs with sea shells as opposed to asphalt or whatever? His opinion was that the Highway Surveyor under M.G.L. c.41, §62, has exclusive control of the ordinary repair of the public ways without being subjected to the authority of the Selectmen and that the Surveyor has ultimate control over the repairs of the roadway. If he decides it's to be concrete or asphalt, he would have final authority. Selectman Ouellette questioned why they were calling it a repair when it was new construction. Town Counsel replied that as far as he knew the road was washed out and needed to be repaired and under the general authority of the statute that would be considered repair to the roadway. The second question Mr. Sullivan asked was if the Town's General By-Law, Article VII which states that a street presented for acceptance after 1959 must have a minimum width and satisfy a minimum standard of construction, impact the proposal under consideration? In Town Counsel's opinion the By-Law impacts only a petition to Town Meeting to request that a way be accepted as a public way so if the relevant portions of Beach Avenue have already been accepted then this requirement does not apply. He recommended that the status of the acceptance of Beach Avenue be confirmed. The third question that was asked was if Chapter 90 funds be used to pay for a gravel road? Attorney Jenkins responded that

Chapter 90 funds may be used for the construction, maintenance and repair of a public way without regard to asphalt or gravel. Selectman Sullivan's fourth question was whether Chapter 90 funds could be used to do work on the portion of the turn-around not owned by the Town? Town Counsel stated that Chapter 90 funds could not be used for any construction, maintenance or repair for any access way or portion of a way that is not public. Question 5 was if the Selectmen could change the status of an accepted road? Attorney Jenkins opinion was that the Selectmen could not eliminate the public status of a public way without Town Meeting approval of the discontinuance under M.G.L. c.82, §24 and that the vote of a discontinuance could give rise to a claim and a potential award of damages against the Town under M.G.L. c.82 §24 and M.G.L. c.79 as M.G.L. c.82 §24 expressly provides that any person sustaining damage to his property by discontinuance of a Town way shall be entitled to recover same under M.G.L. c.79. He strongly recommended that if this procedure was used that the Town obtain the necessary indemnification and bonding protection called for under M.G.L. c.82 §24 and that an effort be made to obtain releases from each potentially impacted property owner. He further opined that the Board does have the authority under, M.G.L. c.82, §32A, to follow a specific procedure that allows for the discontinuance of maintenance of a public way. Attorney Jenkins then outlined the procedure: the Selectmen must schedule a public hearing to discontinue the maintenance of a public way; notice of the public hearing must be sent by registered mail, return receipt requested to all property owners abutting an affected road; notice of the public hearing must be published in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing and posting the notice of the meeting in a conspicuous place in the Town Clerk's office for a period of not less than 14 days before the date of the hearing; at the hearing the Selectmen shall determine whether the public way has become abandoned and necessity no longer requires for it to be maintained in a condition reasonably safe and convenient for travel; if they make this determination then they can declare that the Town will no longer be bound to keep the way in repair; the declaration takes effect once it is filed with the Town Clerk provided there is sufficient notice to warn the public that the way is no longer maintained and is posted at both ends of the way. The appellate courts have stated expressly that a discontinuance of a public way under M.G.L. c.82, §24 is distinct from the discontinuance of maintenance under M.G.L. c.82, §32A. Question 6 was does the Board of Selectmen have the authority to enter into the proposed MOU? He noted that the document they were talking about actually was a Memorandum of Agreement. Town Counsel went on to say that there were provisions within the proposed agreement that would be subject to further action before the Town could be bound. The provision regarding future ordinary repairs to the improved portion of Beach Avenue would require the agreement of the Highway Surveyor; public expenditures of any kind would be subject to appropriation of the necessary funds by Town Meeting; the ordering that no traffic could occur over the unimproved portion of Beach Avenue would be beyond the Selectmen's and Town's control; and the Board could not oppose the boardwalk. Attorney Jenkins recommended that the Selectmen agree that they would not oppose a specific plan and that the agreement not to oppose be limited in time as the dune may change if a major storm damage were to occur and other unforeseen circumstances could result. Also, the current members of the Board of Selectmen would not be in a position to agree to unspecified actions by a future board. Selectman Sullivan's seventh question asked does the MOU commit resources or contradict authority of the Conservation Commission? Attorney Jenkins responded that any construction or activity that fall under the jurisdiction of the Conservation Commission must undergo scrutiny by the Commission and would include the proposed construction of the turn around at the end of the improved portion of Beach Avenue and the rebuilding of a dune and beach replenishment as well as the raising of the improved portion of Beach Avenue and the restoration of Pond Meadow. Question 8 was does the Board of Selectmen have authority to enter into a lease to use private property? Town Counsel response was that in his opinion, under M.G.L. c.40, §14, the thirty year lease is the equivalent of a purchase of land that requires Town Meeting approval. The Board of Selectmen would then have the authority to enter into a lease for a nominal consideration, however, if Town funds are to be used to

improve the private property, then a formal easement for public access be provided so that the public purpose of the expenditure is clear. Both the lease and the acquisition of an easement and the appropriation of funds would require Town Meeting approval. In addition, if the fair market value of what is to be acquired is less than \$25,000, then the Town needs to exercise sound business practices in entering into the lease and an appraisal of the fair market value must be obtained. If the fair market value is over \$25,000, the uniqueness determination procedure available under M.G.L. c.30B, §16(e) may be considered and used as appropriate. Also, a lease for more than seven years must be recorded under M.G.L. c.182, §4 in order to be valid. The ninth question asked could the Board of Selectmen enter into a MOU contract to allow the Town to reduce the size of a Town road? Attorney Jenkins opined that the Board could agree to initiate the necessary processes to alter or discontinue a public way under M.G.L. c. 82 or to discontinue maintenance of a public way, however, the Selectmen could not bind a future Town Meeting, nor could they bind themselves to a particular vote at a future hearing that will be required. Question 10 asked if the Town needed to change the status of the eastern portion of the road so that it wasn't being abandoned? Town Counsel replied the actual action would be simply discontinuance of maintenance and the underlying right of public access would not be extinguished. The eleventh question asked if the Town could require beach passes for parking on Beach Avenue? Attorney Jenkins responded that the Town could require beach passes for vehicles parking on a public way by adopting And publishing appropriate rules and orders under M.G.L. C.40, §22. Question 12 asked would the Town's beach pass policy violate the Land Trust rights since they have property that are intended to be accessible to the public for passive recreation? The question was answered by Attorney Jenkins stating that if land adjacent to a public way was intended to be accessible to the public for passive recreation, then the persons using the land must park lawfully if the choose to access the land. The thirteenth question asked doe the MOU obligate the Town to enforce the law or commit the Town to action above and beyond that the Town bears for other roads? Town Counsel said that in his opinion the MOU contemplates the Town immediately terminating vehicular access to the unimproved portion of Beach Avenue and since that action was not within the Tow's control, he recommended that the MOU be revised in this regard. The agreement further commits the Town as a matter of contract to the enforcement of the criminal laws which conflicts with the Town's general duties regarding the enforcement of statutes (M.G.L. c.258a, §10(j)). Question 14 asked if the Town restored the dune over the eastern section of the road and built a boardwalk and for some reason wanted to go back to a gravel road there, would the Town be allowed to? Attorney Jenkins opined that is the eastern section of Beach Avenue was discontinued by a vote of Town Meeting then the fee to the underlying discontinued way could be retained by the Town and used for the dune purpose or it could be granted to abutting landowners and they could agree to use the land for a dune and then seek and obtain the necessary relief to install the dune. Any subsequent effort to reinstall a way would require relief to remove the dune and confirmation that all necessary rights and permits to install the graveled way have been obtained. Selectman Sullivan's question 15 was what was the likelihood that the Town could put a hammerhead turn at Town Avenue? Town Counsel responded that the ability to place a hammerhead turn at Town Avenue would require the Town to have sufficient ownership rights to accomplish this work and whether it could obtain any necessary vote of Town Meeting if a public way layout is to be altered or discontinued and whether all other necessary relief has been obtained (i.e. Conservation Commission, Board of Selectmen and potentially the Planning Board). At the eastern terminus of Beach Avenue is the Knubble which is federal property owned and operated by the US Coast Guard. Question 16 asked if the Town could create a turn around on the federal property? Attorney Jenkins opinion was that the Town could not use federal property without permission and to make sure that all necessary relief was obtained in advance as well. Question 17 – does the Town have sufficient escape clauses? Town Counsel stated that the agreement did not contain any escape clauses. Selectmen Sullivan's last question – 18 – what payment mechanism could be used to collect private funds to be put towards maintenance costs? Town Counsel responded that the Town could set up a revolving fund and place specific sources of monies into the fund, which would require Town Meeting approval or the Town

could set up a gift account so that the funds could be spent without further appropriation by Town Meeting. Chairman Vieira asked the Board if they had any questions for Town Counsel. Selectman Sullivan noted that there were changes that needed to be made to the MOU and after reading the opinion the Selectmen would have to get approval from the Highway Surveyor. Highway Surveyor Chris Gonsalves spoke out by saying that Beach Avenue should be tarred all the way to Town Avenue and the rest of the road should be maintained to the Knubble. Selectman Spirlet stated that the Board should vote to tar all the way up to the Knubble. Selectman Dutra disagreed by saying that based on what they heard tonight from Attorney Jenkins, he didn't think the Board was bound to pave Beach Avenue. Chairman Vieira responded that the Town was not bound to do so but that the majority of the Board was going against the direction of the Highway Surveyor. Selectman Dutra then said that the Board had the power to award contracts and that even though they could not tell the Highway Surveyor what to do, they could refuse to sign a contract. There was more discussion on the issue with Selectman Dutra emphasizing that he would not reconsider the motion that he made at the previous meeting because he did not believe that the Selectmen were bound to award the bid for Beach Avenue. Selectman Sullivan made a motion requesting that Town Counsel investigate the definition of "ordinary repair of a way". The motion, was seconded by Selectman Dutra and was passed with Selectmen Ouellette, Dutra and Sullivan voting yes and Selectmen Vieira and Spirlet voting no.

Comcast License RE: Discussion:

Town Counsel David Jenkins stated that he forgot this item was on the agenda and had not discussed it with Attorney Bill Hewig who was on vacation. He requested that the Selectman postpone the discussion until their next meeting. The Board agreed to place it on their July 14th agenda.

Tibbetts Engineering Corp. RE: Recommendation on Bids:

Selectman Dutra made a motion, as per the decision of the Board of Selectmen's meeting on June 24, 2014 not to pave Beach Avenue, to approve Tibbett's Engineering Corp's recommendation for the Town to make a project award for Base Bid work only and funding availability and to award the contract for Town roadway improvements (East Beach Road, Riverview Drive and Beach Avenue) to the Base Bid low bidder Narragansett Improvement Co., in the amount of \$203,265.00 and that the bid bonds for the two bidders be retained until a contract award. The motion was seconded by Selectman Ouellette and was voted unanimously.

Steve Fors, Town Moderator RE: Discussion of Town Meeting:

Mr. Fors did not appear for his appointment with the Selectmen.

Ralph Souza, Building Commissioner RE: Building Department Operational Plan:

The Board, Steve Lombard and Ralph Souza reviewed the memo concerning the operation of the Building Department which Mr. Souza had agreed to and signed. Mr. Souza discussed the hiring of a new part-time clerk and part-time Assistant Building Inspector and a new complaint form on which he would

record all complaints in writing, address them with the person against whom the complaint is lodged against and record how the issue was resolved. There was discussion regarding the section of the memo dealing with his recommendation on the reappointment of the Plumbing and Gas Inspector. Selectman Sullivan noted that he would not vote to reappoint the individual unless the Board meets with that person to review the complaints against him in executive session or in open session, if he so chooses, because he (Selectman Sullivan) was not satisfied with what had happened so far. Chairman Vieira asked if the Board was comfortable with the operation piece of the memo separate from the reappointment of the Plumbing and Gas Inspector. Selectman Dutra then made a motion to accept the Building Commissioner's recommendations and findings with respect to the Assistant Building Inspector, the part-time employee and complaints to the Building Department. Selectman Ouellette seconded the motion, which was voted unanimously.

Fall River Plumbing Inspector Freddie Lima spoke in defense of Robert Labonte noting that it was a thankless job and that inspectors must reject plans and enforce codes. Selectman Ouellette stated that he would abstain from the discussion because he was a licensed plumber and Mr. Labonte oversees his work. Mr. Ouellette then left the table and sat in the audience. Selectman Spirlet also said that he had some issues with the Plumbing and Gas Inspector and would like to have a hearing. Town Counsel David Jenkins explained that there were a couple of issues - was the individual entitled to due process and the notice of the hearing. He explained that he did not think the Plumbing Inspector had that right because he serves as an at will employee and the Selectmen can simply let his term expire when it is time for reappointment. Attorney Jenkins continued by saying that the Board could meet with the individual in executive session if they wanted to and that he would prepare a hearing notice. He stated that a 48 hour notice was required. The Selectmen were in agreement that they would hold a hearing on July 14th.

Business Manager Report:

Mr. Lombard informed the Board that a representative from the Department of Revenue would be at Town Hall on July 14th to begin their review of the Town's finances. The representative would be meeting with former Town Administrator Jack Healey, former Business Manager Steve Lombard, Board of Selectmen Chairman Tony Vieira, Town Administrator Timothy King, Town Accountant Terry Provencal and Finance Committee Chairman Buzzy Baron. He mentioned that if any of the other Selectmen would like to meet with the representative to let him know.

Mr. Lombard thanked all the board members and Town employees that he worked with for the past year.

Other Business:

Chairman Vieira asked Ms. Bouchard to check with the Planning Board staff about a tight tank with a manhole cover on Tickle Road from Briggs Landing to see what the plan was on that and also the liability for the Town if the drainage is going to be in the tight tank and who will be responsible for pumping it out and was funding set aside for that purpose.

Selectman Ouellette had a question regarding dog waste on Beach Avenue and wondered if the dog waste receptacles that were located at the Head of Westport could also be placed there. Chairman Vieira thought that the Beach Committee had addressed the dog issues in that area of Town as well as other areas of Town. He noted that people have to be individually responsible.

Selectman Ouellette cautioned residents to be extremely careful when using fireworks on the upcoming July 4th weekend because of the dry conditions.

Selectman Spirlet noted that the Westport River Watershed Alliance had held their Annual River Day the past weekend and when they left the place was spotless and everyone enjoyed it. He mentioned that he had one safety issue pertaining to going north on Drift Road on the east side there are these boulders and cars park there and the majority of the time the cars are in the street and you can't get two cars by. He went on to say that if the boulders were rolled in 3 or 4 feet you would have one parking place right along the edge of that. Gerry Coutinho reported that the Landing Commission has been discussing this issue and would probably change it to angle parking.

Executive Session:

Selectmen Antone Vieira, Richard Spirlet, Steven Ouellette, Craig Dutra and Michael Sullivan on a roll call vote, voted to enter into executive session at 8:30 p.m. under Massachusetts General Laws Chapter 30A, Section 21, to approve the Executive Session Minutes of May 19, 2014 and to discuss strategy related to union contract negotiations. The vote was Selectmen Vieira, Spirlet, Ouellette, Dutra and Sullivan in favor.

Open Session & Adjournment:

On a motion by Selectmen Dutra, which was seconded by Selectman Ouellette, the Board voted unanimously to return to open session and adjourn the meeting at 9:46 p.m.

Respectfully submitted,

Denise Bouchard
Secretary to the Board of Selectmen

APPROVED: _____
R. Michael Sullivan, Clerk