

**TOWN OF PROVINCETOWN - BOARD OF SELECTMEN  
REGULAR MEETING MINUTES  
MONDAY, NOVEMBER 09, 2015 6:00 p.m.  
TOWN HALL – JUDGE WELSH ROOM**

Chairman Tom Donegan convened the open meeting at 6:00 p.m. noting the following:

Board of Selectmen attending: Tom Donegan, Erik Yingling, Cheryl Andrews, Raphael Richter, and Robert Anthony.

Other attendees: Town Manager David Panagore; Asst. Town Manager David Gardner; Police Chief Jim Golden; DPW Director Richard Waldo; Asst. DPW Director Eric Larsen; Environmental Partners Group (EPG) Engineer James Fitzgerald; Cape Light Compact Administrator Maggie Downey; Harbormaster Rex McKinsey; Harbor Committee members John Santos, Susan Avellar, Laura Ludwig, & Victor Seltsam, and Scholarship Committee Chairman Robert Speiser.

Recorder: Loretta Dougherty

*Consent Agenda – Approval without objection required for the following items:*

A. *Approval of the Board of Selectmen's 2016 Meeting Calendar.*

**No motion made.**

B. *Treasurer's Transfer – Library Gift Fund – to pay for invoice(s) totaling \$881.83, for the Rose Dorothea Award event held on September 9, 2015.*

**MOTION:** Move that the Board of Selectmen vote, as Commissioners of the Town of Provincetown Gift Funds, pursuant to MGL C44 § 53A, to approve the use of \$881.83 from the Library Gift Fund to pay for the attached invoice(s).

C. *Parade Permit submitted by Bill Sykes, on behalf of the National MS Society – Greater New England Chapter for the MS Cape Cod Getaway, to be held on Sunday, June 26, 2016, from 8am to 2pm.*

**MOTION:** Move that the Board of Selectmen vote to approve the Parade Permit Application submitted by Bill Sykes, 13 River Street, Plymouth, MA 02360, on behalf of the National MS Society – Greater New England Chapter, 101A First Avenue, Suite 6, Waltham, MA 02451, to be held on Sunday, June 26, 2016, starting at 8AM to 2PM.

D. *Parade Permit submitted by Emily McGranachan, East Coast Regional Manager for Family Equality Council's 2016 Family Week Parade, to be held on Friday, July 29, 2016, from 3pm to 4pm.*

**MOTION:** Move that the Board of Selectmen vote to approve the Parade Permit Application submitted by Emily McGranachan, 225 Franklin Street, Suite 2660, Boston MA 02110, on behalf of the Family Equality Council, to be held on Friday, July 29, 2016, starting at 3PM to 4PM.

E. *Massachusetts Cultural Council contract to be signed by BOS Chairman Thomas Donegan, to transfer state funds to our local cultural council account, for the Provincetown Cultural Council, in the amount of \$4,400.00 for the period of July 1, 2015, through June 30, 2016.*

**MOTION:** MOVE that the Board of Selectmen vote to accept the 2016 Local Cultural Council funds contract from the Massachusetts Cultural Council, in the amount of \$4,400.00 for dates of service from July 1, 2015, through June 30, 2016, to be placed in the Town's cultural council account for the Provincetown Cultural Council.

F. *Approval of the Executive Office of Public Safety – State 911 Department Training and EM/Regulatory Compliance Grant, in the amount of \$14,285.71.*

**MOTION:** Move that the Board of Selectmen vote to authorize the Chief of Police to submit a State 911 Department Training and EM/Regulatory Compliance Grant to the Executive Office of Public Safety; in the amount of \$14,285.71, for reimbursement of overtime and allowable expenses incurred relating to the training and certification of enhanced 911 tele-communicators, as well as the Medical Director fee required for quality assurance of EMD according to 560 CMR 5.0.

G. *Appoint Selectman Erik Yingling as a Trustee of the OPEB Trust Fund with a term to expire on May 27, 2016.*

**MOTION:** Move that the Board of Selectmen vote to appoint Selectman Erik Yingling as a Trustee of the OPEB Trust Fund with a term to expire on May 27, 2016.

H. *Approve Affordable Housing Deed Restriction for 12 Standish Street for 15 years under the Regional CDBG Housing Rehab Program.*

**MOTION:** Move to approve the Affordable Housing Rental Restriction for 12 Standish Street, Provincetown, under the Regional MCDBG Housing Rehabilitation Program for a period of fifteen years and any and all other documents necessary or convenient to accomplish the foregoing.

**Tom asked that the reading of the consent agenda be waived.**

Cheryl asked to pull item A from the consent agenda. She wants to discuss the Traffic Hearing dates.

**Tom moved without objection the consent agenda be unanimously approved with the exception of Item A.**

Item A was pulled and placed on the Tuesday, November 10<sup>th</sup> agenda.

## 1. **Public Hearings:**

Raphael recused himself on the first two public hearings and left the room at approximately 6:05 p.m.

### A. **Economic Development Permit 15-04, 293 Commercial – Sweet Waves Yogurt. Jason Aubee (applicant), o.b.o. Hake Nominee Trust Stephen Boggess TTEE (property owner), to increase the assigned Title 5 flow to the property by 98 gallons per day to increase the number of fast food restaurant seats (20 seats x 20 gpd) from 2 to 7 (140 gpd minus existing credits for a total of 98 gpd).**

Erik read the Public Hearing Notice.

**Jason Aubee's** business has been open for one full season now. He applied last year for the increase in seating and gallons, but the town was very limited in capacity. He understands that the gallons are now available so he is applying again. The Town has given nothing but positive feedback to them since they opened their business. They are very supportive and conscious of having availability for handicapped access. He believes they are doing something different for the Town. People love Commercial Street, and they want to have them linger and enjoy the overall experience. It is a very calming, soothing, and friendly place for people and they want to add the seating so people can relax.

**David G.** stated that this is a relatively small request. There is a credit associated with this unit. Jason has received his zoning approval already. The property will accommodate the additional flow. The permit is being processed through the Board's criteria and the conditions are included in the documents as stated in the packet. The award is made on the proposed use which is for a restaurant.

**No public comments were made or correspondence received.**

Erik asked if more seats would help them extend their season or stay open all year round.

**Jason** stated they opened in April and the goal was to close on Columbus Day but the rain caused them to close early. Their seasonal target is April through October. More advanced weekends may be considered. The business does not support year round due to the product being sold. He employs eight seasonal workers.

Erik stated that the Board will have an agenda item to reevaluate the Economic Development Permit (EDP) form in the future.

**Cheryl** wants to have the EDP put off until the Board has discussed it further. She stated that this is a problem and she is drawing a line in the sand and does not want to continue. This is being complained about by some citizens.

**Robert** agrees that the Board should have a discussion on it, but since gallons have opened up he believes we can enhance economic development. He asked that the Board put it in perspective. He is not in favor of stalling any economic growth.

**Tom** asked to condition this for one year and have Jason come back next year.

Erik asked if Jason could make it through the shoulder season.

**Jason** stated if we have activities going through Thanksgiving, he has no problem staying open on weekends.

**MOTION: Move that the Board of Selectmen vote to approve Economic Development Permit 15-04 for 293 Commercial Street, Unit C, by Jason Aubee, applicant on behalf of Hake Nominee Trust Stephen Boggess, property owner, based on findings that the proposed use is consistent with the criteria set forth in Selectmen's Policy 2009-02-09, specifically:**

- ***Create or enhance employment opportunities, and***
- ***Help to diversify Provincetown's economic base, and***

**subject to the attached permit with conditions as revised with the following conditions added: The business be open for an extended season between April 1<sup>st</sup> and October 31<sup>st</sup>, and the permit shall be reconsidered after one year on or before December 2016.**

**Motion:** Erik Yingling

**Seconded:** Robert Anthony

**3/0/1 (Cheryl Andrews-Abstained; Raphael Richter-Recused) Motion passed.**

### B. **Economic Development Permit 15-05, 52 Ships Way – Brass Key Housing. Thomas Walter (applicant/owner), to increase the assigned Title 5 flow to the property by 330 gallons per day to increase the bedrooms (110 gpd) in the single family home from 3 to 6.**

Erik read the Public Hearing Notice.

**Elliott Marchurst** and **Thomas Walter** are asking for this increase as they employ 102 people and supply subsidized housing for as many as possible. This increase is so they can offer subsidized housing to more seasonal employees. The floor plan of the house will remain the same there is only an increase in the number of rooms that will be available for employees. They cannot afford to pay the fees and deposits that are required to house their seasonal workers.

**David G.** stated that this property is on the sewer. This is a unique EDP criteria under seasonal, year-round housing. We are trying to get property owners on Commercial Street to convert their upstairs into housing. This property is not in the commercial district, but it is clear that the applicant is a very large employer and staff feels that this will comply with the Board's findings. Additional gallons will be specifically used as proposed. There will be no non-employee weekly rentals and they will need to maintain an active rental certificate.

**No public comments were made or correspondence received.**

Erik is very much in favor of year-round housing and will support this application. The property is not getting any larger only

adding more bedrooms.

**Thomas** stated that within the footprint of the building we can make six legal bedrooms. They own a number of businesses in town and seasonal versus year-round properties change yearly based on what is needed. They operate their seasonal businesses for a long season and can never have enough housing. They charge \$100 per week and in the high season \$140 per week.

**Cheryl** has no background material on this type of EDP and asked about deed restrictions. She also asked what prevents someone from selling this property.

**David G.** stated that it would be sold as a legal three bedroom home not a legal six bedroom.

**Cheryl** she does not want to support this until we figure out how to do it properly. She does not want to see a property sold as having three bedrooms when there are six bedrooms available.

**MOTION: Move that the Board of Selectmen vote to approve Economic Development Permit 15-05 for 52 Ships Way, Brass Key Hospitality Group, LLC, by Thomas Walter, applicant/owner, based on findings that the proposed use is consistent with the criteria set forth in Selectmen's Policy 2009-02-09, specifically:**

- **Support year-round incomes and/or**
- **Create or enhance employment opportunities and/or**
- **Feature solutions to known barriers to year-round economic success e.g. Transportation, energy cost, water consumption, housing cost and/or**
- **Create seasonal or year-round employee/business owner housing above and associated with existing businesses throughout the Commercial District**

**subject to the attached permit with conditions as submitted.**

**Motion:** Erik Yingling

**Seconded:** Robert Anthony

**3/0/1 (Cheryl Andrews-Abstained; Raphael Richter-Recused) Motion passed.**

Raphael returned to the meeting at approximately 6:46 p.m.

### **C. Review and discussion of the preferred 30% design configuration for the Conwell Street Bicycle Improvements Project.**

**Erik** read the Public Hearing Notice.

**David P.** stated that this Public Hearing was requested by the Board. There was not an initial notice to the abutters but we will make sure that we do maximum outreach, in the future. He has recommended that there be more touch points between now and the final bid; this involves only the public right-of-way, no encroachments onto public property.

**Tom** stated that the abutters came to the Board and asked to have Conwell Street fixed.

**DPW Asst. Director Eric Larsen** and **James Fitzgerald** of Environmental Partners Group (EPG) appeared before the Board. James stated that he is here to listen to the Board's input. He gave a brief description of the existing conditions and then presented three proposed alternative design options for the Board's review. Alternative #1 proposes a 30-foot roadway in compliance with MassDOT requirements for a five-foot bicycle lane and a 10-foot vehicle travel lane in both directions. This alternative also provides for a sidewalk along the western side of the road where businesses are located. Alternatives #2 and #3 are of like design but without sidewalks.

**David G.** reminded the Board that this project goes back to the 2010 Integrated Bicycle Plan. We submitted a joint grant with the Cape Cod National Seashore Park for \$107,000 in 2011; it was approved in 2013, and in June we entered into the contract.

**James** has met with the Cape Cod Commission, and their Executive Director Paul Niedzwiecki has written a letter to the Board expressing their preference for design option Alternative #1.

**Roger Chauvette**, Bicycle Committee Chairman, believes this is a very nice fit and it is important for us to do this now. It is a safe way to have people coming into town. It also fits in with the rail trail to bring people back out to Beach Forest. The Bicycle Committee has not as yet voted on these particular plans.

#### **Public Comments:**

**John Santos** recommended the wider layout for the sidewalk. He stated that Cemetery Road is too narrow; no one wants it to be a one way. He believes the design needs a little more work. He stated that this is a complex issue, and there may be other alternatives that suit us better.

**Susan Avellar** is a bicyclist, walker, and driver in this area. She reminded the Board that there is a stop sign on the north side of Standish Street that empties into Cemetery Road, and a stop sign on the west side of Cemetery Road that empties into Alden Street. She stated that 95% of the people who are travelling just go through these stop signs. She just wanted the Board to be aware that the stop signs are not being used.

#### **No further public comments.**

**Erik** read the Cape Cod Commission's letter supporting Alternative #1.

**Eric Larsen** stated that the actual alignment of the road is the same in Alternatives #1 & #2.

**Cheryl** stated that she cannot make a decision tonight. The idea of the sidewalk makes it much more difficult to do.

**David P.** asked about curb cuts.

**James** stated that once they establish the diagrams they will look at the curb cut openings. They want to make sure they

leave wide enough curb cut openings so businesses are not adversely impacted. Semi-concrete sidewalks can be discussed (driveway aprons) as opposed to blacktop.

**Erik** likes Alternative #1. He wants pedestrians to have sidewalks. He asked if there would be room for trees or nature barriers.

**James** stated that there is not much space for that; not enough width for grass. He stated that any alternations to the landscaping would be replaced.

**Raphael** concurs that Alternative #1 is very good. He does agree with Cheryl about the sidewalks and wants to make sure that we are engaging the public.

**Robert** concurs that Alternative #1 is the best choice and sees it as a public safety issue. He does have concerns about bicycles crossing at the crest of the hill on Cemetery Road. A brief discussion was held about the inability to have a clear view on the top of the hill. Robert and Cheryl are concerned about the site view and the public safety issue.

**David P.** stated that this is a state highway, and they are following state highway rules. He stated that there will be two more sessions to go over the design phase. This is really just the concept phase. If a sidewalk and bike lanes make sense, he requests approval with the caveat for two design phase check-ins for input.

**MOTION: Move that the Board of Selectmen forward all public comments to the Dept. of Public Works and accept the staff's recommendation of the PREFERRED 30% Design configuration for the "Conwell Street Bicycle Improvements Project" with two (2) additional design phase check-ins and final approval by the Board of Selectmen.**

**Motion:** Raphael Richter

**Seconded:** Erik Yingling

**5/0/0 Motion passed.**

**David P.** wants to improve our relations with the state and when at Plymouth last week for the awarding of the grant to do Commercial Street, Housing and Economic Development Secretary Jay Ash and Governor Charlie Baker appeared very interested in Provincetown. On December 17<sup>th</sup> Secretary Ash will be visiting Provincetown. David P. is working with staff to prepare a presentation on housing, economic development and transportation.

2. **Public Statements:** None.

3. **Selectmen's Statements:** None.

4. **Joint meeting/Presentations:**

**A. Cape Light Compact 2016-2018 Energy Efficiency Plan and general update presentation – Maggie Downey.**

**Tom** disclosed that he is the Town's Representative to the Cape Light Compact (CLC).

CLC Administrator **Maggie Downey** gave the background on a 3-year energy efficiency plan. There is a strong public policy; all funds for energy efficiency stay on the Cape. Budgets went from \$5 million to \$40 million this year. They have very aggressive savings and budget goals. They have been meeting in small community groups since May to get input from the public about what they like, what is working and what they would like to see offered. Towns are entitled to an audit every year to make sure they are taking advantage of all the savings for both residential and businesses. She gave a brief description of the differences in services available to large and small businesses and non-profits and left the report for the Board to review.

**No action taken on this item.**

**B. Joint Meeting with the Harbor Committee regarding the houseboats in the Harbor and follow-up on kayak rack development.**

The Harbor Committee was called to order at 8:10 p.m. Members in attendance were John Santos, Susan Avellar, Laura Ludwig, and Victor Seltsam. Harbormaster Rex McKinsey was also in attendance.

**John** stated that he is part owner of a houseboat.

**Raphael** abstained on recommendation A.

**Rex McKinsey** acting as the Manager of McMillan Pier gave a brief definition of what houseboats are considered to be; They are vessels which are to be used for accommodations. Any vessel over 20 feet or 25 horsepower has to have insurance. He touched upon the need to reconsider at some point allowing jet skis into the harbor as we presently have to escort them out past the #3 marker in order for them to be used. The kayak racks are being set in place and the stickers will be going on sale. Charts of available racks will be put out. Rex will also be getting comparison costs for moorings from other towns to present to the Board at a Public Hearing.

**Cheryl** wants to postpone the Public Hearing portion. She asked for clarity on where houseboats fit in to item A. Houseboats are big; if a hurricane comes they can't be moved. It makes sense we would require insurance; should it be \$300,000 or \$500,000? She recommended tightening up the description.

**Erik** wants to look at an increase in the mooring fees. He wants to see the rates raised. He does not want to vote these on the CIP.

**Susan** stated that we are not providing the boaters any services such as does a marina.

**Tom** wants to see the breakdown of what services we are providing.

**MOTION: Move that the Board of Selectmen ask the Harbor Committee & Pier Manager to return to the Board with a full report on moorings in Provincetown Harbor including three years of historical data, current and past policies, and comparisons to other Cape towns.**

**Motion: Raphael Richter  
5/0/0 Motion passed.**

**Seconded: Robert Anthony**

A discussion was held with regards to recommendations A, B, C, and D and it was agreed that the Harbor Committee will package up a document and come back with some historical data on mooring fees and recommendations for increases. The Board was fine with recommendations A-C, with recommendation A 3-4-6 Insurance Requirements to be amended to correct the date from January 1, 2015 to January 1, 2016.

A second motion was made approving the expenditure from the Harbor Access Gift Fund as follows:

**MOTION: Approve an expenditure from the Harbor Access Gift Fund of an amount not to exceed \$15,000 for materials and labor to construct or purchase up to 5 additional kayak racks, as presented.**

**Motion: Cheryl Andrews  
5/0/0 Motion passed.**

**Seconded: Raphael Richter**

5. **Appointments:** None.

6. **Requests:**

Raphael asked to take 6B out of order and without objection 6B was taken before 6A.

**B. Town scholarships – Chairman Town Scholarship & John A. Francis Scholarship Committees Robert Speiser.**

Tom gave a brief overview of what has occurred with the two scholarship funds relative to some people being eligible and some people are not. The benefactors' wills have language in them so some people are benefiting and others are not.

Mr. Speiser had a meeting with two citizens who would not be eligible for scholarships. The rules changed from having to graduate from a Provincetown high school to finishing the highest grade possible which was the 8<sup>th</sup> grade. He asked the Board how they want to proceed.

Cheryl respects the intent of the wills, but asked to look at what makes sense as to where we are now. Any student who matriculates for four or more years is eligible. She asked for the Town Manager's advice.

Erik stated that it sounds like it would go beyond the intent.

Tom wanted a recommendation from the Committee so that we have more latitude with Town scholarships.

Raphael acknowledged that this is a tough, challenging situation, and is going to affect people for many years to come. There seems like there is not much we can do. It seems impossible that this third generation family all went to Provincetown schools and his daughter is not eligible. He asked to go over this with Town Counsel.

Mr. Speiser will have the Committee submit recommendations vetted by Town Counsel to the Board.

**No action was taken on this item.**

**A. Police Report for the month of October 2015 – Police Chief Jim Golden:**

Chief Golden gave a brief overview of the monthly police report for October 2015. The police report can be found in its entirety on the Police Department's web page.

Robert wanted to know if citations had been written on any alarm calls.

The Chief stated that seven had been written within the last 30 days.

Tom would like to see the four outer cape towns get together and talk about a program such as the Gloucester Police Dept. has put into place; the Police Assisted Addiction and Recovery Initiative (P.A.A.R.I.). He wants the public to understand that we are going forward with this, and let them know exactly what we are doing.

The Chief stated that Police Chiefs in Wellfleet, Truro, and Provincetown are holding meetings with Gosnold to provide field clinicians who will be available to come out for interventions. There is a protocol in place where a policeman can call a clinician and they will then go that night or the next day. There is national attention for Gloucester as they are referring those in need to facilities located in the states of Arizona and Florida. They have their own resources. This is not quite in reach for us at present.

**7. Town Manager / Assistant Town Manager:**

**A. Draft Selectmen's Policy Statement re: Town Grant Acceptance and Contract Authority:**

David P. pointed out that this policy has been discussed in the past. It defines which grants and contracts need to be approved by the Selectmen and which could be approved and signed off by the Town Manager. The General Bylaws grant contract and grant authority to either the Board of Selectmen or the Town Manager as Chief Procurement Officer, but it does not define under what circumstances it would be appropriate for either to act. A brief discussion was held and it was agreed that having this policy in place would allow the Town the ability to move forward through the grant and procurement process more quickly in certain circumstances. A copy of the Policy in its entirety may be found on the Town's website in the Board of Selectmen's agenda packet.

**MOTION: Move to approve Policy Statement 2015-11-09, as drafted.**

**Motion: Raphael Richter**  
5/0/0 Motion passed.

**Seconded: Erik Yingling**

**B. 2015 Special Town Meeting – Follow up:**

Tom asked about the Substance Abuse Consultant position.

David P. stated that the RFP should be going out around the first of March. He also reported the following:

- Condo Conversion Bylaw (new draft) will be brought before the Board for feedback at a Public Hearing;
- Residential Exemption is on the December 15<sup>th</sup> agenda as a Public Hearing, and
- A Business Calendar will be brought before the Board laying out a schedule from the budget all the way to Town Meeting. This will be our strategic roadmap in helping get everything done in a timely and efficient manner.

**C. Town Manager's Report – Administrative Update(s):**

David P. reported:

- Housing and Economic Development Secretary Jay Ash will be coming to Provincetown on December 17<sup>th</sup>;
- He is talking to NEA for grant possibilities;
- Goals for the next six months will be housing, economic development, operations, and transportation;
- He will be meeting with Town Planner Gloria McPherson and expects to have a schedule drawn up for the Local Comprehensive Planning Committee by the end of the month, and
- The Inclusionary Zoning Bylaw is being laid out and staff will be getting the proper input from boards and other interested parties. He will get back to the Board on the organizational pieces.

**D. Other:** None.

**8. Minutes:**

The Board reviewed the minutes and corrections were made to minutes of June 24, 2014 and November 10, 2014.

**MOTION: Move that the Board of Selectmen approve the minutes of June 24, 2014 (Special), as revised; November 10, 2014 (Regular), as revised; September 21, 2015 (Exec. Session–Open), as presented, and October 26, 2015 (Special), as presented.**

**Motion: Raphael Richter**

**Seconded: Erik Yingling**

5/0/0 Motion passed.

**9. Closing Statements/Administrative Updates:**

The Board reviewed letters that had been sent out.

- A. Thank you letter to Heath Gatlin who resigned from the Airport Commission.
- B. Thank you letter to Director John DeGutis, who retired from the Massachusetts Police Training Committee.
- C. Thank you letter to April Baxter who resigned from the Open Space Committee.
- D. Thank you letter to Ilona Royce Smithkin for the gift of her portrait of Grace Gouveia to the Town of Provincetown.
- E. Thank you letter to Rachel White for her service to the Town of Provincetown.
- F. Thank you letter to Donna Szeke who resigned from the Community Housing Council.

The Board motioned to go into Executive Session at approximately 9:58 p.m.

**MOTION: Move that the Board of Selectmen vote to go into Executive Session pursuant to MGL c30A, Section 21(a), Clauses 1, 2, 3, 5, 6, & 8 for the purposes of:**

**Clause 6** - To consider the purchase of, exchange, lease or value of real estate, if the chair declares (chair declared) that an open meeting may have a detrimental effect on the negotiating position of the public body. VFW (3 Jerome Smith Road) and related parcels. Old Community Center (46 Bradford Street). Votes may be taken.

**Clauses 1, 2, 3, 5, 6, & 8** – To consider the approval and/or release of BOS Executive Session minutes for August 18, 2014; April 27, 2015; September 14, 2015; September 21, 2015; October 5, 2015, and October 13, 2015. Votes may be taken.

and not to convene in open session thereafter.

**Motion: Erik Yingling**

**Seconded: Cheryl Andrews**

**(Roll Call Vote)**

**Tom Donegan: Yes**

**Erik Yingling: Yes**

**Cheryl Andrews: Yes**

**Raphael Richter: Yes**

**Robert Anthony: Yes**

**Yea: 5 Nay: 0 Motion passed**

The Board went into Executive Session at approximately 10:00 p.m.

Minutes transcribed by: Loretta Dougherty