

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

REGULAR MEETING – MONDAY, JANUARY 26, 2004

JUDGE WELSH HEARING ROOM

Chairman Mary-Jo Avellar opened the meeting at 6:00 PM noting the following attendees:

Board of Selectmen members: Mary-Jo Avellar, Cheryl Andrews, Michele Couture, Sarah Peake, Richard Olson

Other attendees: Town Manager Keith Bergman

Recorder: Secretary to Board of Selectmen Vernon Porter

The following are meeting minutes, in brief.

1A PUBLIC HEARING:

FY 2005 Capital Improvements Program Requests

MOTION: *Move that the Board of Selectmen wave the reading of the Public Hearing.*

Motion by: Cheryl Andrews **Seconded by:** Michele Couture Yea 5 Nay 0

MOTION: *Move that the Board of Selectmen vote to reschedule Item #20 School Construction additional funding of \$500,000 to the next regularly schedule meeting of the Board of Selectmen on February 9, 2004.*

Motion by: Cheryl Andrews **Seconded by:** Michele Couture Yea 5 Nay 0

MOTION: *Move that the Board of Selectmen vote, pursuant to Charter §9-2-3, to submit to the Finance Committee its recommended Capital Improvements Program for Fiscal Year 2005 as set forth the revised plan submitted by the Town Manager, with the following amendments (specify): 1) add \$50,000 to Stormwater Master Plan over five (5) years with a total recommended amount of \$1,587,418 (including \$750,000 in MCDBG grant).*

Motion by: Michele Couture **Seconded by:** Sarah Peake Yea 5 Nay 0

1B GROWTH MANAGEMENT

Continuation of Hearing Per Zoning By-law Article VIII, Section E (3)

MOTION: *Move that the Board of Selectmen accept this report as amended with final review by Selectmen Andrews.*

Motion by: Michele Couture **Seconded by:** Sarah Peake Yea 5 Nay 0

2. PUBLIC STATEMENTS

Ellen Freeman (479 Commercial Street) - Quite upset over the sewage back-up into her home; which has happened several times. Wayne Perry and Gary Williams stated that the problem was the back-flow valves and problems at the Central Pumping Station and that the town is responsibility for the clean up. Needs a permanent solution - and a guarantee that it will not happen again. Response is need immediately as raw sewage remains in their home and they cannot get anyone to clean it up.

3. SELECTMEN'S STATEMENTS

Richard Olson

What response is the Town going to be able to make to Ms. Freeman's problem?

Sandy Turner - NSTAR blew some fuses shutting our station down from a three phase to a one-phase

operation. Problems with SCADA System - someone forgot to program it to call an operator when the power went out. Damage done to pumps and electrical units. Problem with valve failures. So far 30 valves have been changed. Air-Vac the manufacturer of the valves is due in town by Wednesday.

Discussion ensued. Conclusion: Sarah Peake - It is the town's responsibility to get the problem fixed - today. The obligation is with us. And the town is the one to pursue Metcalf & Eddy and the homeowner does not have to get involved. Keith - Metcalf & Eddy are responsible for the system. Cheryl Andrews - It should be the town's responsibility, if it is proven that it is the town's problem, to get this private contractor to this women's house..

MOTION: Move that the Board of Selectmen vote that it is the policy of the Board of Selectmen that in a case where there is an accident in a private home, and the Department of Public Works is willing to concede that it is a town sewer problem and not a private property owner's problem, that it is the town's responsibility to secure a contractor to do the clean-up.

Motion by: Cheryl Andrews Seconded by: Sarah Peake Yea 5 Nay 0

Thank you to Dana Farris for supplying us with the Municipal Glossary.

Sarah Peake

Re 479 Commercial Street - We will be having conversations with Metcalf & Eddy and their design firm, as well, concerning this issue of back-flow valves and what the back up for that is.

Sandy Turner: Note that the backwater valve is for wastewater - and the back-flow valve is for water.)

Received email today from the Chairman of the BOD for the Council on Aging who was informing me that the sink in the kitchen backed-up and they could not serve lunch and had to cancel their cooking class.

MOTION: Move that the Board of Selectmen vote to ask staff for a report informing us of what the issues are with the septic system (kitchen situation) located at 26 Alden Street and the costs associated with whatever options are brought to us. This is to be presented in a report at the next regularly scheduled meeting of the Board of Selectmen.

Motion by: Sarah Peake Seconded by: Cheryl Andrews Yea 5 Nay 0

MOTION: Move that the Board of Selectmen vote to send a copy of the December 5, 2003 letter sent to State Representative Shirley Gomes and Senator Robert O'Leary asking that they support the legislation that implements the Goodridge, et al. v. Department of Public Health, et al. to the Boards of Selectmen of the other towns represented by Representative Gomes along with a request that they consider supporting the position of the Provincetown Board of Selectmen and conveying that support to State Representative Gomes and Senator Robert O'Leary.

Motion by: Sarah Peake Seconded by: Richard Olson Yea 5 Nay 0

Cheryl Andrews

To Ellen Freeman - I can't tell you more how upset I am about this situation. We not only have an obligation to you short term but we have an obligation to hear clearly what the long- term permanent solution is. In my view, you should not be at any more risk of disaster than any other property in this town. If for some reason, at the end of this, which should not take too long, these Engineers who have designed this thing can't assure me otherwise, there is going to be hell to pay. On behalf of the town, I extend to you a real apology.

Michele Couture

To dub tail what Cheryl was saying, I would really like to see a copy, in my hands, of a protocol for when these backup happen or when these problems happen. I want to know if someone calls any of us and says they cannot get a hold of so in so, I want a number in my hands and the protocol for situations. Any other

time to wait other than an immediate response is unacceptable. It's beyond outrageous. Metcalf & Eddy needs to take care of this situation. It's taking up town employee's time, aside from the fact that it is a health hazard.

Insurance Advisory Committee - would like to see if we can schedule a date to meet and discuss options and strategy for the coming year with an eye to possibly placing articles in the spring town meeting. Doug Johnson - John Fitzgerald is actually working on scheduling a meeting - sooner rather than later on topics that he has apparently discussed with you and the Town Manager. Michele - can you let me know when that is?

MOTION: *Move that the Board of Selectmen vote to schedule an agenda item for March 8, 2004 for the assessment and impact of the drainage infrastructure with the CDM Grant. (Sterns & Wheeler).*

Motion by: Michele Couture **Seconded by:** Richard Olson **Yea 5 Nay 0**

MOTION: *Move that the Board of Selectmen vote to send a letter of thanks to Howard Weiner for serving on the Zoning Board of Appeals.*

Motion by: Michele Couture **Seconded by:** Cheryl Andrews **Yea 5 Nay 0**

Mary-Jo Avellar

Attended a workshop at MMA on wind energy. Our Wastewater Treatment facility may be the right place to have wind energy. MTC consultants are coming in February to brief us on this matter. The Town of Hull is interested in having the Board of Selectmen visit their facility.

MOTION: *Move that the Board of Selectmen vote to contact the Hull Board of Selectmen to set up a time when we can tour their facility.*

Motion by: Mary-Jo Avellar **Seconded by:** Michele Couture **Yea 5 Nay 0**

As to Ellen Freeman's problem. If this is going to happen in the middle of January - I'm terrified of what is going to happen when they system is hooked up and going full steam on the 4th of July. We just cannot have this type of stuff happening. I don't care what Metcalf & Eddy has to do.

People are complaining about the finger piers sitting on MacMillian Pier. Is there anything we can do to have them removed from that area and put them someplace else - and the cost associated with having them moved.

4A TOWN CLERK

2003 Town Report Dedication

MOTION: *Move that the Board of Selectmen vote to dedicate the 2003 Annual Town Report to those current and former Town board members and employees who died during calendar year 2003, as contained in the list of names submitted by Town Clerk Douglas Johnstone.*

Motion by: Richard Olson **Seconded by:** Michele Couture **Yea 5 Nay 0**

4B REQUEST: LOCAL COMPREHENSIVE PLAN COMMITTEE

Proposed Zoning and General By-law Amendments

MOTION: *Move that the Board of Selectmen vote, pursuant to MGL C. 40A, § 5, to refer to the Planning Board proposed Zoning By-law and General By-law amendments P through Z, subject to approval as to form by Town Counsel.*

Motion by: Michele Couture **Seconded by:** Cheryl Andrews **Yea 5 Nay 0**

4C REQUEST: PROVINCETOWN HOUSING PARTNERSHIP

MOTION: *Move that the Board of Selectmen vote to accept and execute an Affordable Housing Deed Restriction with Edward Malone c/o Community Housing Resource, Inc, for one affordable (ownership) housing unit at 34 Conwell Street, as approved as to form by Town Counsel.*

Motion by: Cheryl Andrews **Seconded by:** Michele Couture Yea 5 Nay 0

4D **BOARD OF HEALTH**

Administrative Consent Order - 26 Alden Street - Failed Septic System

MOTION: *Move that the Board of Selectmen vote to enter into an administrative consent order with Board of Health relative to the failed septic system as 26 Alden Street, as authorized by vote of the Board of Health on January 8, 2004; and further to delete the second sentence in Item #4.*

Motion by: Sarah Peake **Seconded by:** Cheryl Andrews Yea 5 Nay 0

MOTION: *Move that the Board of Selectmen vote to take Agenda Item #6 out of order.*

Motion by: Michele Couture **Seconded by:** Cheryl Andrews Yea 5 Nay 0

7. **BOARD OF SELECTMEN APPOINTMENTS**

MOTION: *Move that the Board of Selectmen vote to appoint Alice Brock as a Regular member of the Harbor Committee with an expiration date of December 31, 2006*

Motion by: Mary-Jo Avellar **Seconded by:** Richard Olson Yea 5 Nay 0

4E **ASSESSOR**

Abandonment of Portions of Browne Street

MOTION: *Move that the Board of Selectmen vote to table this item until the next regularly scheduled meeting on February 8, 2004.*

Motion by: Michele Couture **Seconded by:** Richard Olson Yea 5 Nay 0

5A **COMMUNITY HOUSING**

Schedule Public Hearing for Monday, February 23, 2004 at 6 PM

MOTION: *Move that the Board of Selectmen vote as follows: (1) to schedule a public hearing for Monday, February 23, 2004 at 6 p.m. on initiatives for Community Housing proposed by the Affordable Housing Task Force; and (2) to adopt a policy statement relative to an Annual Community Housing Report, as proposed by the Town Manager.*

Motion by: Michele Couture **Seconded by:** Richard Olson Yea 5 Nay 0

5B **SCHEDULE PUBLIC HEARING**

FY 2004 Property Tax Rate Classification

MOTION: *Move that the Board of Selectmen vote, pursuant to MGL C.40,§56, to schedule a public hearing for Monday, March 9, 2004, for the purpose of determining the percentages of the local tax levy to be borne*

in Fiscal Year 2004 by each class of real and personal property: residential, open space, commercial, and industrial.

Motion by: Cheryl Andrews **Seconded by:** Sarah Peake Yea 5 Nay 0

5C **TOWN BOARD APPOINTMENTS: DISABILITY COMMISSION**

Selectmen's Approval of Town Manager Appointment.

MOTION: *Move that the Board of Selectmen vote, pursuant to MGL C.40,§8J, to approve the Town Manager's appointment of Town Clerk Douglas Johnstone as a regular member of the Disability Commission, for a term expiring December 31, 2004.*

Motion by: Michele Couture **Seconded by:** Cheryl Andrews Yea 5 Nay 0

5D **SURPLUS DECLARATION**

Fire Department Vehicle

MOTION: *Move that the Board of Selectmen vote, pursuant to Provincetown General By-laws §6-4-6, to authorize the Town Manager to dispose of, by sealed bid, a 1975 Young Custom Pumper, VIN # 748821, which vehicle was declared surplus by the Board of Fire Engineers on January 22, 2004.*

Motion by: Michele Couture **Seconded by:** Richard Olson Yea 5 Nay 0

6. **TREASURER'S TRANSFERS**

Skate Park Gift Fund

MOTION: *Move that the Board of Selectmen vote, as Commissioners of the Gift Funds, to approve the transfer of \$22,965.00 from the Skate Park Gift Fund for the payment of the attached invoice.*

Motion by: Michele Couture **Seconded by:** Sarah Peake Yea 5 Nay 0

8. **CLOSING STATEMENTS**

Richard Olson - None **Sarah Peake** - None **Cheryl Andrews** - None

Michele Couture - None **Mary-Jo Avellar** - None

9. **LITIGATION STRATEGY: GAS DOCK**

Town v. NYT Acquisition Corp.

MOTION: *Move that the Board of Selectmen vote, pursuant to MGL C. 28,§23B, clause 3, to go into executive session for the purpose of discussing strategy with respect to litigation; and not to convene in open session thereafter.*

Roll Call:

Sarah Peake - Yes **Cheryl Andrews** - Yes **Mary-Jo Avellar** - Yes

Richard Olson - Yes **Michele Couture** - Yes

Motion by: Cheryl Andrews **Seconded by:** Michele Couture Yea 5 Nay 0

The Board went into executive session at 9:08 p.m.

Minutes transcribed by: Vernon Porter, Secretary
January 28, 2004