

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

REGULAR MEETING – MONDAY, AUGUST 11, 2003

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 and Town Counsel John Giorgio.

Recorder: Secretary to Board of Selectmen Vernon Porter

The following are meeting minutes, in brief.

1A LITIGATION UPDATE

Town Counsel John W. Giorgio

MOTION: *Move that the Board of Selectmen vote to, pursuant to MGL C.39,§23B, clause 3, to go into executive session for the purpose of discussing strategy with respect to litigation; and to convene in open session thereafter. [Roll Call vote]*

Michele Couture - Yes

Sarah Peake - Yes

Mary-Jo Avellar - Yes

Richard Olson - Yes

Cheryl Andrews - Yes

Motion by: Sarah Peake

Seconded by: Richard Olson

Yea 5 Nay 0

1B TOWN COUNSEL - JOHN GIORGIO

Adult Entertainment Zoning By-law Amendments

Discussion ensued with the following action to be taken.

Cheryl Andrews: Ask that staff clearly prepare a report for the Planning Board. Not just a map of GIS. Would like a couple of specific properties with their addresses: - Provincetown Inn, Crown & Anchor, the existing Cook's Garage and if you want to add a few other known theatre spots - please do. And let's have clear legal opinion not only Town Counsel but from our Building Inspector as to this proposed by-law whether and under what conditions can they have this form of entertainment.

To Town Counsel - Look at adding 'theatre' as a permitted use or use by special permit and what the impacts will be.

Wait for report from Town Counsel at next meeting before voting on anything at this time.

MOTION: *Move that the Board of Selectmen vote reschedule this agenda item to their August 25, 2003 meeting.*

Motion by: Michele Couture

Seconded by: Richard Olson

Yea 5 Nay 0

1C TELECOMMUNICATIONS FACILITIES

Award 20-year lease to AT&T Wireless

MOTION: *Move that the Board of Selectmen vote to award and authorize the negotiation of a lease of twenty (20) years with high bidder AT&T Wireless for \$1,157,466, plus 50% minimum co-location share, for installation and operation of wireless telecommunications facilities at the Town-owned Wastewater Treatment Plant (WWT) site, pursuant to Article 19 of the April 7, 2003 Annual Town Meeting, subject to the proposed lessee obtaining all required permits therefore; and further to vote its intent, in the event that the lessee cannot obtain permits through the Cape Cod Commission DRI review process for the WWTP site, to award a lease to AT&T Wireless instead for the Mt. Gilboa Water Tank, pursuant to Article 29 of the*

Motion by: Michele Couture Seconded by: Richard Olson

Yea 4 Nay 1 (Mary-Jo Avellar)

2. PUBLIC STATEMENTS

Rick Murray - Ask that the Board of Selectmen through their wisdom could direct staff for the next Planning Board Meeting to make sure: 1) all definitions line up with any changes in the code usage; 2) special permits issued - they have 2 years to enact that permit or they have to reapply for that ... make sure the dates are correct; 3) should be a proper definition of 'theatre' in our by-laws; 4) use of theatre in our table to make sure everything lines up correctly; 5) GIS Map needs to be updated as there are some corrections that have to be made - so that the Planning Board has the proper information as to where these sites would be; 6) should be a list of all the schools, churches, meeting house, playgrounds - making sure that abutting properties - is it to the property line or is it to the structure? Knowing this information will save a lot of aggravation, time and money.

James Valarian, Attorney for Verizon Wireless - Verizon pursued Mt. Gilboa as it would satisfy their coverage needs for the Town. Suggested that the Board of Selectmen vote to accept Verizon's bid for Mt. Gilboa and vote tonight.

Celine Gandolfo - Likes the idea of a camouflage cell tower for visual effects. Also suggest that the Board of Selectmen think about the people and not just the money when it comes to cell towers. People want cell towers but not right on top of us.

Chuck Weberly, Real Estate Consultant for Verizon Wireless - Verizon did not bid on the Old Burn Dump because it felt it was not superior. It does not meet the public objectives that they have.

John Keene, Representing AT&T Wireless - Just wanted to say thank you for the Board's vote tonight in selecting AT&T Wireless.

Steve Borkowski - Chairman of the Art Commission - Re: Agenda Item 6. Due to resignation of a member there is a regular position open and the Commission would like to recommend that the Board of Selectmen appoint our current Alternate Member, Peter Siegel as a regular member and ask the other applicant to step into the position as an alternate.

3. SELECTMEN'S STATEMENTS

Cheryl Andrews

Wastewater Report that the Board of Selectmen was copied re: Wastewater - the taking of Septic. Report to Mr. Bergman from Mr. Guertin. Hope my colleagues will share with me the absolute outrage that I experienced learning about what happened at our Wasterwater Treatment Plant. I was on the BOH before we started the sewer project and along with a couple of my colleagues at the time felt that it was our personal business to live up to the promises we made to the citizens of Provincetown and we promised them we would build a sewer professionally and follow the rules. And when I receive a memo saying that we had now turned ourselves into a septage treatment plant, which to my mind, it breaks an amazing number of rules. We are not site assigned out there to my knowledge. We are not permitted for it and the hauler that went there and dumped the septage is not licensed to take it to our sewer plant. I was pretty upset. The last three days I've been pretty upset because I still can't believe that I am in the position that I'm in having to explain this to the town, the other haulers who were not given the opportunity to do the same. Explain it to the other property owners that had to wait and get their systems pumped out Monday when Tri-Town opens.

I have read this memo that Mr. Guertin sent in, probably about ten times trying to figure out what certain people were thinking - I haven't been able to figure that out. I do know how I feel about it. I'm made a number of phone calls to confirm whether my opinions on this matter were accurate and I have yet to have them challenged. I would like to say clearly to the public that this action was taken without the prior approval of the Board of Selectmen or the knowledge of the Board of Selectmen. And I would challenge any of my colleagues

if you hear anything you hear me say that you disagree with to speak up because people are asking me and I certainly would like to know how my colleagues feel about this. As to whether the dumping of this septage was authorized, it is my belief that there is no one in Provincetown who has the right to authorize it - period. In order to turn that plant into a septage treatment facility it has to be site assigned, it has to be permitted, the Board of Health has to issue permits to our haulers and there is a process for that. Also, I would like to be able to state to the public that this will not happen again and I will be looking at my colleagues to state that clearly. It certainly does not have my approval, never did - never will, unless the plant is licensed for that. One of the issues raised in Mr. Guertin's memo was his determination that there was some kind of need or some kind of septage disposal problem in Provincetown ... and I would share with my colleagues and the public that there is a process for that. Septic disposal is regulated by the Board of Health in Provincetown and if there is some kind of problem it goes immediately to the Health Agent and if there is an emergency then there is an emergency meeting of the BOH called and you deal with it. That didn't happen. I don't know whether it needs to happen. I don't have information in this memo explaining that it does. If it does, certainly there's a process if it does.

The other issue I need to raise is a fairness issue. We have more than one hauler in Provincetown and they are in a competitive business. The idea that our plant accepted 15,000 gallons of septage at no fee is just astounding to me. I presume there was a conversation between Mr. Guertin and Roderick's about a fee in the future. I was going to ask David that tonight but he is not here. Assuming that I got my facts straight on the number, which is 15K gallons, there should be a fee for that and minimally it should be comparable to Tri-Town fee. The reality is that while Roderick's had the pleasure of dumping their gallonage the others didn't.

MOTION: Move that the Board of Selectmen vote to request and require from our Town Manager a report to be generated within a week to the Board of Selectmen explaining exactly what happened on this matter; and what his position is on the matter; and what steps he has taken to make sure that this does not happen again.

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

MOTION: Move that the Board of Selectmen vote to require of Staff that the Growth Management By-law Report becomes a published report in our Town Report.

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

I think I've covered it all except to say that it's a little bit of a black eye for the sewer project and I hope it is the first one and the last one.

Michele Couture

Wastewater Report - I could not agree with Dr. Andrews more. I absolutely agree with everything she said. There was not a public health crisis. There was nothing that would have precipitated this action. I'm furious about it. I read the report and there was no justification for it. It is a policy decision not a staff decision. The citizens of Provincetown were outraged when this happened. They did not vote on a septage treatment plant. I certainly hope that this does not happen again. It was a really bad decision.

To the gentleman from Verizon - I have no intention of bringing that issue up tonight. I will not vote for it - I will not bring it up.

Read in the Cape Cod Times an article that says NSTAR is seeking a raise in rates?

MOTION: Move that the Board of Selectmen vote to send a letter to Department of Telecommunications opposing NSTAR's request for a rate increase.

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

Harbormaster's boat - what is status. Keith - we're waiting for the new Harbormaster to come on board.

July 2003 Water Pumpage Report - Not happy at how high it has gone up.

Congratulations on the North Unionfield site. I liked the photo.

Richard Olson

None.

Sarah Peake

MOTION: Move that the Board of Selectmen vote to issue a Proclamation to the Provincetown Business Guild in honor and recognition of their 25th Anniversary.

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

US Dept. of Interior letter (Vernon's date 8/7/03). What is the status of this? Keith - A meeting has been set up for this Friday in Boston with the Park Service Council. Will give you an update on this.

Letter from Joyce Bailey re: tax bills issued quarterly. We need to rededicate ourselves to issuing the tax bills on a quarterly basis. Send her a letter to thank her and explaining what tax bills will be coming out and when and for what year they are. (Mary-Jo Avellar to Sarah Peake - will you be in charge of that letter. Answer: Sure Richard Olson - I am asking Vernon, if I may interrupt - we do have a policy that any citizen letter gets an acknowledgement? - Answer: Yes.)

Disturbing email about the potential visit from the Stephen Bennett Ministries during Carnival Week. I guess he's coming here because our President indicated that he was mindful that we are all sinners, so he now feels that in response to the Presidents call to action that he needs to come to Provincetown to distribute bibles and CD of spiritual music. To Chief Meyer - my point in bringing this up is that I would ask you to respond to this. I know there are First Amendments issues again and don't know if his intentions are to wander the street and hand out materials the way people do for flyers for shows - and what, if anything, can be done to regulate that. Chief Meyer - I emailed him and immediately got a call from him and he plans to have 50 to a 100 people here from 12 to 5 pm on the 23rd. The plan is to have two people hand out bibles and spreading the word of love. Also, during one conversation with him it was mentioned that Reverend Phelps might come back. To Chief Meyer - so you will have a plan in place. Answer: Yes, and part of the group is also members of the 700 Club so we have Pat Robertson in the mix. Sarah Peake - This information needs to be passed on to the Faith community in town, the PBG, and the Chamber to make people aware. This is at the end of Carnival week.

So, Chief, you and Keith will keep us updated. Answer: Yes

MOTION: Move that the Board of Selectmen vote that when Executive Session with Town Counsel which involves "Strategy with Respect to Litigation" is on our agenda, it shall be scheduled for 6 p.m. with our regular meeting to commence at 7 p.m., whenever possible.

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

Mary-Jo Avellar

Want to publically mention the superlative effort by the Police Department and Officer Jodi Rapose in particular, in the apprehension of the alleged burglar.

CCNS - in the process of formulating one of those stakeholders' policies about managing the National Park. I would like to ask if we could get John Thomas on for the next agenda on 8/25/03.

To Keith - problem with Conservation Commission. I think the public business is not being properly cared for by the Town if we have a committee that is not able to function on timely matters or sensitive manner. I am bringing this up because the other members of my Board and I have all been contacted by different members of the public expressing their displeasure that we have a non-functioning Conservation Commission.

To the gentlemen from Verizon - We did not discuss it and are not prepared to discuss it tonight. It is not on the agenda.

MOTION: *Move that the Board of Selectmen vote to take that portion of Agenda Item 6 out of order which pertains to a regular appointment to the Art Commission.*

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

6. **BOARD OF SELECTMEN APPOINTMENTS**

MOTION: *Move that the Board of Selectmen vote to appoint Peter Siegel as a Regular Member of the Art Commission with an expiration date of December 31, 2005.*

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

4A **SURPLUS DECLARATION**

Parking Department Equipment

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 competitive quote, 450 Duncan mechanical parking meter mechanisms declared surplus by the Parking Department on August 5, 2003.*

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

4A1 **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 1993 Ford Model E350 Type 3 Econoline XL Rescue vehicle declared surplus by the Board of Fire Engineers on August 6, 2003.*

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

Michele Couture - It is my understanding that there is another rescue vehicle that is surplus that someone bought and is actually keeping it at the Fire Station on Shankpainter Road. Keith - I will look into that.

4B **SKATE PARK UPDATE**

Department of Public Works, Recreation Director

MOTION: *Move that the Board of Selectmen vote reschedule this agenda item to their August 25, 2003 meeting.*

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

4C **PROVINCETOWN THEATER FOUNDATION - TOURISM FUND**

Approval of grant Agreement

MOTION: *Move that the Board of Selectmen vote to approve the grant agreement for \$20,000 for the Provincetown Theater Foundation from the Tourism Fund as authorized by Article 30 at the 2003 Annual Town Meeting.*

Motion by: Michele Couture **Seconded by:** Richard Olson
Yea 3 Nay 2 (Cheryl Andrews / Mary-Jo Avellar)

4D **FIREWORKS**

FY 2005 Proposed Budget and Spending Plan

MOTION: *Move that the Board of Selectmen vote reschedule this agenda item to their August 25, 2003 meeting.*

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

5A **EO 418 GRANT AGREEMENT**

Community Development Planning Grant Funds \$33,600

MOTION: *Move that the Board of Selectmen vote to authorize execution of the grant agreement with the Department of Housing and Community Development for \$33,600 for Executive Order 418 Community Development Planning for the Town of Provincetown.*

Motion by: Michele Couture **Seconded by:** Richard Olson
Yea 3 Nay 2 (Cheryl Andrews / Mary-Jo Avellar)

5B **LCCCDC SUBCONTRACT**

Lower Cape Cod Community Development Corp./Business Development Center

MOTION: *Move that the Board of Selectmen vote to authorize the execution of a subcontract for \$210,000 with the Lower Cape Cod Community Development Corporation for the management and administration of the Business Development Center in accordance with the town's FY 2003 Massachusetts Community Development Block Grant Program through September 30, 2004.*

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

Mary-Jo Avellar out of room.

5C **BARNSTABLE COUNTY HEALTH**

Community Septic Management Loan Program Implementation

MOTION: *Move that the Board of Selectmen vote, pursuant to Article 1 of the April 7, 2003 Special Town Meeting, to authorize execution of an agreement with the Barnstable County Commissioners for continued implementation of the Community Septic Management Program by the Barnstable County Department of Health and the Environment.*

Motion by: Michele Couture **Seconded by:** Richard Olson **Yea 4 Nay 0**

Mary-Jo Avellar returned.

5D **MUNICIPAL RELIEF ACT - UPDATE**

Ferry Embarkation Fee, Parking Fines, etc.

MOTION: *Move that the Board of Selectmen, as the local appropriating authority under MGL C.59, §21C, vote pursuant to Section 129 of Chapter 46 of the Acts of 2003 to place on the ballot for the Tuesday, May 4, 2004 Annual Town Election the following question: "Shall the town of Provincetown accept the law that allows Provincetown to impose an embarkation fee of up to \$1 on certain passenger ferry trips, with such acceptance to take effect on July 1, 2004?"*

Motion by: Richard Olson **Seconded by:** Sarah Peake
Yea 4 Nay 1 (Michele Couture)

6. **APPOINTMENTS**

MOTION: *Move that the Board of Selectmen vote to appoint Michael Bunn as an Alternate Member of the Art Commission with an expiration date of December 31, 2004.*

Motion by: Cheryl Andrews

Seconded by: Michele Couture

Yea 4 Nay 0

7. MINUTES OF BOARD OF SELECTMEN MEETING

MOTION: *Move that the Board of Selectmen vote to approve the minutes of July 28, 2003 (Regular Mtg.) as printed.*

Motion by: Michele Couture

Seconded by: Sarah Peake

Yea 5 Nay 0

9. CLOSING STATEMENTS

Sarah Peake - None

Cheryl Andrews - None

Michele Couture - None

Mary-Jo Avellar - None

Richard Olson - None

Motion to adjourn by Michele Couture at 10:05 p.m.

Minutes transcribed by: Vernon Porter, Secretary
August 14, 2003