

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

REGULAR MEETING – MONDAY, OCTOBER 27, 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

Recorder: Secretary to Board of Selectmen Vernon Porter

The following are meeting minutes, in brief.

Cheryl Andrews left the room due a conflict of interest. Her father is a resident at the CEM.

1A CAPE END MANOR D.O.N. UPDATE

Joint Meeting with Cape United Elderly

Chairman Avellar welcomed Susan Bowes, Betty Bacon and Laura Young from the Cape United Elderly.

Dennis Anderson gave a brief overview. Discussion ensued. No motions made. Members of the Cape United Elderly were very impressed with the CEM and its future prospects.

1B CAPE END MANOR UPDATE

Joint Meeting with CEM Board of Directors

Board of Selectmen, Chairman Avellar opened the meeting by welcoming the CEM Board of Directors and CEM Chairman Downey acknowledged the presence of all her board members for this joint session.

CEM BOD present: Rev. Henry Dahl, Janet Whelan, Marilyn Downey, Patrick Patrick, Robert Cabral, Sandy Dobyn and Katherine Margie Perry. Also: CEM, CEO Dennis Anderson and Administrator Eileen Thomas.

Discussion ensued.

MOTION: *Move that the Board of Selectmen vote to have the Town Manager ask the engineers to come up with a temporary plan for the Cape End Manor septic and request to be placed on the Board of Health agenda as soon as possible.*

Motion by: Michele Couture **Seconded by:** Sarah Peake Yea 4 Nay 0

Motion by: Patrick Patrick **Seconded by:** Katherine Perry Yea 7 Nay 0

MOTION: *Move that the Board of Selectmen and the Cape End Manor Board of Directors vote, pursuant to MGL Chapter 39, section 23B, clause 6, to go into executive session for the purpose of considering the purchase or value of real property; and to reconvene in open session thereafter. [Roll call vote]*

Richard Olson - Yes Michele Couture - Yes Mary-Jo Avellar - Yes Sarah Peake - Yes
Rev. Henry Dahl - Yes Janet Whelan - Yes Marilyn Downey - Yes Patrick Patrick - Yes
Robert Cabral - Yes Sandy Dobyn - Yes Katherine 'Margie' Perry - Yes

Motion by: Michele Couture **Seconded by:** Richard Olson Yea 11 Nay 0

2. PUBLIC STATEMENTS

Barbara Rushmore - Re: Cell Towers. Suggest that we fight the law and not allow it to happen in Provincetown. Urge the Board of Selectmen to re-visit this matter and negotiate.

Celine Gandolfo - Re: Cell Phones. Read statement into record. (See attachment #1)

Elizabeth Patrick - Read letter into record on behalf of Salvatore & Josephine Del Deo. (See attachment #2)

Elizabeth Patrick - Read statement into records re: Cell Phones. (See attachment #3)

Patrick Patrick - Against having Nextel in a residential area - next to his home and hopes that the Board of Selectmen will cooperate in protecting the residence of the town.

Kathie Meads - Hope that the Board of Selectmen will consider early retirement with conditions. Read statement into record re: Early Retirement Incentive Program. (See attachment #4)

3. SELECTMEN'S STATEMENTS

Cheryl Andrews

Ted Malone - Conwell St. Sidewalk. Please have staff provide a design to Ted. The Cape Cod Commission study on Conwell Street improvements should be a useful guide.

Sunday Globe - is doing a timely series on the fishing industry ... if anyone needs a copy I have them.

Ferry Accident - Staten Island - Suggest that we share with PPPC concerns and hope that our operations will comply with all regulations.

MOTION: Move that the Board of Selectmen vote to sent a note to the PPPC Board Of Directors and share our concerns about this accident and ask them to consider a short note to all our ferry operators for next summer with regards to compliance with that regulation.

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

To: Keith Bergman: Cape Cod Commission's involvement re: Construction of Cell Tower at the Burn Dump. If we were to see construction of a cell tower at our Burn Dump would that need to go to the Cape Cod Commission? Answer: Yes. You had identified as the next steps that AT&T were to come back here first with its proposed design before we submit it to the Cape Cod Commission. Staff and Town Counsel have been negotiation for weeks on alternative drafts of the lease agreement.

For those of you who spoke during Public Statements on your thoughts on Nextel's application, I will simply say; number 1, I think you give too much credit to Town Counsel. My experience has been that they do a pretty good job answering our question from various sides of an issue and not necessarily tell us what to do. This Board is capable of listening to Town Counsel and then making up our own mind.

Volunteer appreciation date. Are we going to have one this year? Have we got a date or a plan for some kind of short get together? Keith: I will get back to you with a date, we have not picked one as of yet.

Thank you to Kathie Meads for sharing her personal situation with us. I don't know how I will vote when we get there. I give you a lot of credit for telling us your personal story.

Michele Couture

Mary-Jo Avellar left the room due to conflict. Her husband is Asst. Harbormaster.

Do we have a boat yet? And if not - why? We're we supposed to get it three weeks ago? Keith - I have no such assurance. We signed a contract and awarded the bid. I will get an answer from the Marine Superintendent tomorrow.

Mary-Jo Avellar returned.

Money for John Goodrich for the budget sessions - where does that come from? Keith - It comes from my budget.

Thanks to Gary Delius and Chief Meyers for their letter to Verizon. (MJA - that was on my list as well. Certainly was not happy with the answer about not being able to provide redundant service.)

Early Retirement - Why is it just being brought up tonight? Kathie Meads question as to why it is just being brought before us now is a good question. Keith - we are going to be visiting this matter in a few minutes.

Richard Olson

Nextel - First to say and make very clear that although certain of us may be lawyers, when we sit on the Board of Selectmen we do not make decisions as lawyers. That was stated in one of the early statements. Nor do we accept the “direction of Town Counsel”, as stated. We weigh counsel’s advice, but make our own decision. On the health issue you can say what you like about how the technology is not yet fully understood - we may get more bad news down the road, etc., but it is perfectly clear that the health of the people who are concerned about it is being affected even before the cell towers go into operation. It is a very unfortunate by-product of this whole controversy that people are so upset that it has physical consequences. I wish the news were better on the subject.

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Sarah Peake

I would just add to that topic that this Board has sent a letter to our Congressional delegation expressing our concerns regarding Federal Telecommunications Act pointing out that studies that were conducted years ago by their very definition would be outdated now; and encouraging the opening of hearings on the safety affects of the radio frequency emissions. We have not received a response from any of our Congressional delegation but certainly this Board heard your concerns regarding that . We exercise our fiduciary responsibilities and think long and hard about specific outcomes and strategies about specific lawsuits. We do understand and hear you about the health and I think that all of us in this room would agree that there is a very big disconnect between what the town voters at Provincetown Town Meeting has expressed their desire to be relative to Telecommunications and what the Federal Telecommunications Act mandates. Ms. Del Deo, in her letter, very eloquently talked about it - in effect excerpts local zoning authority - and it was written with that intention. So working within those confines, I just echo what my colleagues said, that we thought long and hard about this and have exercised our best judgment, on behalf of the community. And I think that any and all of us have been willing all along to discuss this with people who have been involved to the extent that we can. Again, it is an awkward situation. We cannot discuss anything that is discussed in executive session. I hope that we have been forthright in explaining what our individual reasons for voting for or not voting. It is a very difficult topic.

New Technology - Back in September, I brought forth a letter during Selectmen Statements letter from the Massachusetts Technology Collaborative regarding a seminar that was going to be held for local officials and we voted to send Mark Latour to that meeting. Do we know if he went, and if so, can we get a report from him?

Mary-Jo Avellar

Observation on a matter, which I am unable to vote but I noticed with interest the proposed fees the PPPC is suggesting to be adopted at a Public Hearing on November 6th. It is exactly as I predicted. Fees will be doubled and I think it is outrageous.

Notice from National Park Service on their next steps in defining the Dune Shacks management of which I think is totally unacceptable. They are talking about bringing in a third party to determine whether or not dune shack dwellers are cultural resource. (Sarah Peake - At our last meeting, I agreed to do a letter to the NPS on behalf of the Board of Selectmen expressing our concerns about this and asking that we be involved in the public process and asking them what exactly the public process would be. Will it happen, how will it happen and please notify us as we want to send our representatives. I have not done that yet and will do it this weekend.)

Letter received from Jean & Neil Herowitz concerning their particular problem with not being able to hook in, not being able to get a plan, not being able to sell their property which has been under agreement since August.

Nextel - You (people in audience) all know how I feel and totally agree with you. I cannot discuss anything that went on in Executive Sessions. And as a matter of information - Town Counsel is hired by the Town Manager.

MOTION: Move that the Board of Selectmen vote to send a letter to Congressman Delahunt, Senator Kennedy and Senator Kerry asking them if they received our letter of July 29, 2003 and what is their plan of action.

Motion by: Mary-Jo Avellar .. Seconded by: Cheryl Andrews Yea 5 Nay 0

To Kathie Meads - I voted for early retirement last year and I'm going to vote for it again this year.

41 **PARADE PERMIT: HALLOWEEN PARADE**

MOTION: Move that the Board of Selectmen vote to approve Parade application submitted by Recreation Director Dennis Clark, on behalf of the Provincetown Recreation Department to hold their Annual Kids Halloween Parade on Friday, October 31, 2003 starting at 3:30 PM and ending by 4:30 PM.

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

42 **PARADE PERMIT: WORLD AIDS DAY CANDLELIGHT PROCESSION**

MOTION: Move that the Board of Selectmen vote to approve Parade application submitted by Mark W. Baker on behalf of the Provincetown Aids Support Group, Inc. (d/b/a ASGCC) to hold a World Aids Day Candlelight Procession/Remembrance on Monday, December 1, 2003 starting at 4:00 PM and ending by 5:15 PM

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

5A **FISCAL UPDATE**

First Quarter Review of fiscal year 2004

Discussion ensued. No motions made.

5B **DEPARTMENT OF MUNICIPAL FINANCE**

Early Retirement Incentive Program [C. 46, §116, St. 2003]

MOTION: Move that the Board of Selectmen vote table this item.

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

MOTION: Move that the Board of Selectmen vote not to adopt the Early Retirement Incentive Program established by Section 116 of Chapter 46 of the Acts of 2003.

**Motion by: Sarah Peake Seconded by: Michele Couture
Yea 4 Nay 1 (Mary-Jo Avellar)**

6A **MCDBG GRANT CLOSE-OUTS**

MOTION: Move that the Board of Selectmen vote to close out the following grants under the Massachusetts Community Development Block Grant program: Community Development Fund 2000 and 2002.

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

7. **MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST**

MOTION: *Move that the Board of Selectmen vote to authorize the Town Treasurer to borrow the amount of \$94,930.00 from the Massachusetts Water Pollution Abatement Trust for a period of 20 years, at 0% interest payable at maturity to the Massachusetts Water Pollution Abatement Trust.*

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

8. **MID-YEAR REVIEWS**

Town Manager, Secretary to the Board of Selectmen

MOTION: *Move that the Board of Selectmen vote to establish November 10,2002 as the deadline for submission to the Chairman of members' mid-year reviews of the Town Manager and the Selectmen's Secretary.*

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

9. **MINUTES OF BOARD OF SELECTMEN MEETING**

MOTION: *Move that the Board of Selectmen vote to approve the minutes of October 14, 2003 (Regular Mtg.) as printed.*

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

10. **CLOSING STATEMENTS**

Sarah Peake - None **Cheryl Andrews** - None **Michele Couture** - None

Richard Olson - None **Mary-Jo Avellar** - None

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

Minutes transcribed by: Vernon Porter, Secretary
October 28, 2003