

**TOWN OF PROVINCETOWN - BOARD OF SELECTMEN  
RESCHEDULED REGULAR MEETING - MONDAY – SEPTEMBER 16, 2013 6 PM  
TOWN HALL – JUDGE WELSH ROOM**

Chairman Austin Knight convened the meeting at 6:22 PM, noting the following:

Board of Selectmen attending: Austin Knight, Elaine Anderson, David McChesney, Erik Yingling and Tom Donegan.

Other attendees: Town Manager Sharon Lynn, Assistant Town Manager David Gardner and Finance Director Dan Hoort

Recorder: Assistant Town Manager David Gardner

The following are meeting minutes, in brief:

**1. PUBLIC HEARINGS - None**

**2. PUBLIC STATEMENTS**

Laura Kelly – I am asking a request to pass a resolution banning pesticide spraying by NSTAR.

Dr. Brian O’Melly – request the Selectmen pass a resolution banning pesticide spraying by NSTAR.

Catherine Russo – we should join with other towns to support NSTAR banning of pesticide spraying.

**3. SELECTMEN STATEMENTS**

David McChesney – none.

Erik Yingling – We should commit to banning pesticide spraying. Want to remind everyone to participate in the Mass Memories Road Show on September 28, 2013.

Tom Donegan – NSTAR should get the message if we have unanimous support for a resolution to ban spraying. Housing Summit should be scheduled soon. Thank all who came out to speak last week during the special meeting regarding the Police Chief.

Elaine Anderson – Support the ban on pesticide spraying. Thank all those who came to the special meeting and special thanks to those who helped to relocate our Selectmen meeting at the last minute.

Austin Knight - Wounded Warriors Day is Thursday, we expect the warriors to arrive around 1pm. Hoping for a broad spectrum of support from the community.

**4 JOINT MEETING/PRESENTATIONS – SOLID WASTE PRESENTATIONS**

Town Counsel present.

1) Tom Cipolla, Business Manager, Covanta Semass – Current contract expires at the end of 2014. Energy from Waste facility. Currently maintains a 90 – 92% waste to energy rate.  
Proposal: 10 year contact/5 year mutual option extension; \$65.00/ton tip fee; 2.5% annual escalation; Community Outreach Funding: \$0.25/ton for each ton MSW delivered to be used for recycling efforts and education.  
Value added additional services benefit to communities \$11.00/ton to \$16.50/ton

2) Dan Balboni, Sales and Marketing Manager, ABC Disposal – Zero Waste Solutions facility - Advanced Recycling Facility. The most environmentally friendly method for managing solid waste; higher recycling rate, solar powered facility. The full production of Eco-Tac fuel briquettes is already sold. Anticipate having a 90 – 95% recycling rate.  
Proposal: \$60/ton; 5 or 10 year terms with 2, 3, 4 or 5 year options. No minimum or maximum tonnage, can provide transportation; town maintains right to market recyclables.

Town Counsel has been working with the Solid Waste Advisory Committee to develop the contacts with both the companies present today. Both contracts are legally comparable. We need additional information from both companies. Awaiting the rail haul price from Covanta. New Bedford Waste should receive DEP permit prior to making a decision.

**5. BOARD OF SELECTMEN APPOINTMENTS** - None.

**6A INTENTION TO ALTER THE LAYOUT OF ATLANTIC AVENUE**

Property owner Dan McCurdy present. Request the Selectmen vote to alter the layout and refer to the Fall Special Town Meeting.

**MOTION:** Move that the Board of Selectmen vote its intention to alter the layout of a portion of Atlantic Avenue as a public way to exclude from the layout of said way the parcel of land shown as “Discontinued Portion” on a plan entitled “Plan of Land in Provincetown Showing a Portion of Atlantic Avenue,” dated March 4, 2013, prepared by Slade Associates, Inc., and to forward the proposed alteration as shown on the plan to the Planning Board for its comments and recommendations pursuant to G.L. c. 41, §81I.

**Motion by:** Erik Yingling **Seconded By:** David McChesney Yea 5 Nay 0

**6B EMERGENCY SHELTER WIND RETROFIT GRANT REVISION**

Brian Carlson, Beth Singer and Tony Brackett all present.

The existing Hazard Mitigation Grant as it has been proposed and awarded for retrofitting the High School and the Veterans Memorial Community Center with high-wind protection needs to be modified. The total project costs are over the allocated grant amount thus necessitating this request for modification. A modification to the grant would mean reducing the scope of the project to just the VMCC building being outfitted with manual high-wind protection shutters which would be installed 48/72 hours before the event.

**MOTION:** MOVE that the Board of Selectmen vote to proceed with Alternative 2 as presented, which directs town staff to amend the FEMA grant and move forward with

improvements to the VMCC building.

**Motion by: Elaine Anderson Seconded By: David McChesney Yea 5 Nay 0**

#### **7A OPEN MEETING LAW COMPLAINT**

**MOTION:** Move that the Board of Selectmen vote to acknowledge receipt of four complaints from Mr. Bernard Brahm received on August 20, 2013, August 21, 2013, August 22, 2013 and August 23, 2013.

**Motion by: Tom Donegan Seconded By: Erik Yingling Yea 5 Nay 0**

*Complaint 1 received August 20, 2013, Request for Minutes of December 13, 2010 –*

**MOTION:** Move that the Board of Selectmen vote that this matter be resolved as follows:

(A) Although the revised Open Meeting Law requires additional specificity with respect to the form of the meeting notice and votes to enter executive session, the meeting notice at issue for the December 13, 2010 meeting is nearly three years old. The Open Meeting Law requires that any complaint with respect to a violation be raised within 30 days of the purported violation, or 30 days from the date that the violation could have reasonably been discovered. The notice for the meeting and the open session meeting minutes have been available to the public for nearly three years. Any violation of the specificity requirement was required to have been raised within 30 days of the availability of the same. Such portion of the complaint was filed too late and no further action is required.

(B) With respect to providing a copy of the requested minutes, the minutes had not yet been reviewed by the Board; the requested minutes have since been reviewed and where it appears that disclosure of the minutes with respect to the matters listed under Item 1 would no longer jeopardize the Board's negotiating or litigation position with respect thereto, such portion of the executive minutes may be disclosed; by this vote, the Board authorizes such disclosure of such portion of the minutes and requests that such portion be posted on the Town's website; provided, further, however, that the minutes with respect to the second matter addressed in such minutes continue to be withheld;

(C) In contrast to the allegations concerning the Board's re-entry into open session following its December 12, 2010 executive meeting, the Board adjourned the meeting at issue. However, a new, separately posted meeting was held thereafter. Where such action does not violate the Open Meeting Law, no further action is necessary with respect to the same.

(D) Finally, although the Board is not required to revise its meeting notice of December 13, 2010 to provide further specificity in the meeting notice, in the interests of transparency, the Board by this vote hereby revises the notice in accordance with the revised notice prepared by Town Counsel for such purposes.

**Motion by: Tom Donegan Seconded By: Elaine Anderson Yea 5 Nay 0**

*Complaint 2 received August 21, 2013, Request for Executive Session minutes of April 9, 2012*

**MOTION:** Move that the Board of Selectmen vote that this matter be resolved as follows:

(A) With respect to providing a copy of the requested minutes, the minutes had not yet been reviewed by the Board; the requested minutes have since been reviewed and where it appears that disclosure of the minutes would no longer jeopardize the Board's negotiating or litigation

position, such minutes may be disclosed; by this vote, the Board authorizes such disclosure and requests that the minutes be posted on the Town's website.

(B) Finally, in contrast to the allegations concerning the Board's re-entry into open session following its April 9, 2012 executive meeting, the Board adjourned the meeting at issue. However, a new, separately posted meeting was held thereafter. Where such action does not violate the Open Meeting Law, no further action is necessary with respect to the same

**Motion by: Elaine Anderson Seconded By: David McChesney Yea 5 Nay 0**

*Complaint 3 received August 22, 2013, June 11, 2012 minutes*

**MOTION:** Move that the Board of Selectmen vote that this matter be resolved as follows:

(A) In stark contrast to the allegations in Mr. Braham's complaint concerning the form of the June 11, 2012 meeting notice and related minutes, the Board voted at its August 13, 2012 meeting to revise the June 11, 2012 meeting notice and meeting minutes to refer to each matter discussed in executive session; where such allegation is without merit, no further remedial action is required;

(B) In reviewing this complaint, it was discovered that the revised meeting notice has not been posted on-line; while there is no obligation under the Open Meeting Law to maintain an on-line minute archive, the Town does in fact maintain the same; it is the Town's intent to include all released minutes on the website, and further, by this vote, asks that the revised meeting notice be posted on the website as soon as possible.

**Motion by: David McChesney Seconded By: Tom Donegan Yea 5 Nay 0**

*Complaint 4 received August 23, 2013, November 14, 2011 Vote to Enter Executive Session*

**MOTION:** Move that the Board of Selectmen vote that this matter be resolved as follows:

(A) In stark contrast to the allegation in Mr. Braham's complaint that the Board failed to revise the record of its November 14, 2011 vote to enter executive session, the Board voted at its June 24, 2013 meeting to revise the open session minutes of the November 14, 2011 meeting to set forth all the reasons for which it entered executive session, as well as to provide additional specificity with respect to the cited purposes; such action occurred well over 30 days ago at a public meeting, and therefore, in addition to being incorrect, the complaint was also filed too late for purposes of the law; where such allegation is without merit and filed too late in any event, no further remedial action is required;

(B) In reviewing this complaint, it was discovered that the revised minutes of the November 14, 2011 open session have not been posted on-line; while there is no obligation under the Open Meeting Law to maintain an on line minute archive, the Town does in fact maintain the same; it is the Town's intent to include the revised minutes on the website, and, by this vote, asks that the revised meeting minutes be posted on the website as soon as possible.

**Motion by: David McChesney Seconded By: Tom Donegan Yea 5 Nay 0**

**MOTION:** Move that the Board of Selectmen further vote to authorize Town Counsel to send a response to the Attorney General and the Complainant consistent with this opinion, and to outline the investment of financial, personnel, and time resources that the Town has made, and continues to make, with respect to informing boards and staff of the requirements of the law, providing for training with respect to the law, drafting meeting notices and minutes, and responding to complaints.

**Motion by: David McChesney Seconded By: Elaine Anderson Yea 5 Nay 0**

**7B INSERT WARRANT ARTICLES FOR OCTOBER 21, 2013 SPECIAL TOWN MEETING**

The Warrants closes on Friday, September 20, 2013 at 11 A.M

**MOTION: Move that the Board of Selectmen vote to approve Articles #1-13 excluding #12, for the October 21, 2013, Special Town Meeting as presented by the Town Manager and to insert said articles into the October 21, 2013, Special Town Meeting Warrant forthwith.**

**Motion by: Elaine Anderson Seconded By: David McChesney Yea 5 Nay 0**

**7C TOWN MANAGER FOLLOW-UP**

Seek joint meeting with Community Housing Council on September 30, 2013 to discuss planning for Housing Summit.

Article on Library appeared in Publishers Weekly Magazine.

Position of Board of Selectmen secretary will be interviewed on Thursday at 1:30 pm. Tom Donegan and Austin Knight will constitute a screening subcommittee pursuant to Executive Session Clause 8.

**7D OTHER - None**

**8. MINUTES OF BOARD OF SELECTMEN'S MEETINGS - None**

**9. CLOSING STATEMENTS**

David McChesney – none

Erik Yingling – none

Tom Donegan – none

Elaine Anderson – none

Austin Knight – none

Motion to adjourn by Elaine Anderson at 9:21 PM.

Minutes transcribed by: David Gardner