

**TOWN OF PROVINCETOWN - BOARD OF SELECTMEN
REGULAR MEETING
TUESDAY, October 14, 2014 6:00pm
TOWN HALL – JUDGE WELSH ROOM**

Chairman Donegan convened the meeting at 6:00 PM, noting the following:

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

Other attendees: Acting Town Manager David Gardner, Finance Director Dan Hoort

Recorder: Dan Hoort

Without objection Selectman Donegan waived the reading of the consent agenda and without objection the Selectmen approved the consent agenda.

Consent Agenda

A) Parade Application Permit submitted by Erin Atwood on behalf of the Provincetown Business Guild for the Annual Santa Speedo Run to be held Saturday, December 6, 2014 starting 9:00 am and ending at 9:30 am.

B) Parade Application Permit submitted by Amy Huizdak on behalf of the Provincetown 5k Pilgrim Trot to be held Thursday, November 27, 2014 starting 9:00 am and ending at 10:00 am.

1. PUBLIC HEARINGS

None

2. PUBLIC STATEMENTS

Julia Perry spoke as chair of the Charter Enforcement Commission. The warrant contains two items that affect the town's charter. Both are in article 6. The Commission will hold a public hearing on the warrant articles on Wednesday, October 15th. Those unable to attend may send an e-mail to Doug Johnstone no later than 3pm on October 15th.

Mary Jo Avellar spoke to the 37% increase in utility rates that is coming.

Provincetown should be pursuing alternative energy so we can be independent from NStar. The second issue is regarding the water rules. Restaurants in town are serving water to patrons without being asked.

The redundant source from Truro does not abrogate our responsibility to conserve water. She sees people washing their cars all the time.

She believes the Selectmen need to sit down with the Water & Sewer Board to discuss water conservation and follow the rules.

The redundant supply doesn't mean anything; we can only take so many gallons of water from Truro.

Alex Brown stated that the Harbormaster dropped heavy moorings for the Charles Morgan in his traps. When the boat left his traps were gone. He did have words with the Harbormaster which did not go well. He talked to the Acting Town Manager who attempted to intervene, but the report given me was filled with inaccuracies. He went down to the Harbormaster with corrections and asked that the Harbormaster look into it. Alex let David know of the corrections and then left it alone. He checked in with the Harbormaster's office and nothing ever happened.

The Division of Marine Fisheries told him his only recourse was to file in small claims court. He wants to hear something this month or he will file in small claims court in

Orleans. All he is asking is to have his traps replaced. It doesn't sound like much, but every little bit adds up.

As to Mary Jo's comments - being a fish dealer and carting items back and forth in his truck; he is allowed by state law, as a part of the hazmat regulations, to wash out the back of his truck.

Pat Franceze as a citizen of Provincetown and an abutter she is appalled that there is an unlicensed business for breeding and raising rabbits for slaughter occupying two of the horse stalls at what use to be the Nelson's Riding Stables.

No one in the neighborhood has been informed of this business. The Health Department does not inspect these businesses, but rather does a census.

She is appalled at Ted Malone's office. Someone along the line dropped the ball. As a citizen she was asking the right questions, but was getting different answers each time she posed the question.

This rabbit business has no place in Provincetown. This goes against everything we stand forward as a town concerned about animal welfare. She asked that this rabbit business be shut down and that town by-laws and restrictions be set in place to prohibit the raising and slaughtering of animals on a commercial basis; no matter the size, in Provincetown. Ruth Anne Cowing is the beacon of light in this town on this action. She is the one person who wanted to help our neighborhood and our town in this manner. She has been forthcoming and done her due diligence.

She requests that an independent review of this be taken after this matter is done. There must be something in the laws of this town that regulates these matters.

Selectman Andrews moved to take item 5 out of order. 2nd by Raphael Richter. Motion passed unanimously.

Agenda Item 5. BOARD OF SELECTMEN APPOINTMENTS

Suzanne Harding, applicant for a position on the Open Space Committee, was interviewed.

Selectman Yingling moved that the Board of Selectmen vote to appoint Suzanne Harding as an Alternate member of the Open Space Committee with a term to expire on June 30, 2017. 2nd by Selectman Richter. Motion passed 5-0-0

3. SELECTMAN STATEMENTS

Selectman Yingling

EY asked about the status of the fishing gear.

DG responded that he had not been involved with this issue for two months so has no information, but has asked for an update.

EY asked to be kept informed.

EY thanked all the ladies for coming back to Provincetown for the 30th Anniversary of Women's Week. Congratulations to Women's Innkeepers and Char Priolo.

EY is looking forward to budget season and discussing Capital Expenditures. He wanted to let the public know that the Town is in good shape financially and is concerned we may engage in artificial austerity. Decisions by all staff will be made with thoughtful consideration of each project.

Selectman Andrews

Thanked the FinCom for all of the hard work they are doing. We met with them from 4:30 – 6pm today. She was glad to hear the FinCom's support for year-round rental housing for our workforce.

A member of the public commented on the water supply. CA's recollection is that our annual withdrawal permit, as set by the state, did not change with the addition of the redundant source. Our duty to stay within that withdrawal permit is the same as it has been in the past. She is just as committed as she always was in staying in compliance. If she sees any change in our water usage data she will be sure to meet with the Water and Sewer Board.

We received an e-mail from a resident who was concerned about folks living on the beach downtown. She would ask the police chief through the Acting Town Manager for a report.

DG responded that the police chief would be here in about 20 minutes and would address it.

Selectman Anthony

Told CA that he is also looking forward to the budget season. He asked DG if he could do a follow-up on the public statement with regards to the rabbits and see what is happening there. DG stated that he was aware of the situation, but does not have a follow-up today. He has requested a response from the Health Department and will relay the information as soon as he gets it.

Selectman Richter

Congratulations to the Tennessee Williams Festival.

Thank you to Chief Golden for his work on the Wounded Warriors project.

Thanks for the support on my marriage last weekend.

Thank you for the support for his and Eric's Grandmother Barbara on her 90th birthday. The support was overwhelming.

Selectman Richter read the letter regarding the median clearing:

October 14, 2014

Massachusetts DOT District 5
ATTN: Mary-Joe Perry
1000 County St
Taunton, MA 02780

To whom it may concern:

The Provincetown Board of Selectmen write to express our displeasure and sadness over the destruction of much of the tree cover on the Route 6 median in the Up Cape region.

While Provincetown is a long distance from the location where the clear cutting occurred, the effects of this action can be felt all over the peninsula. Driving to the Cape can be difficult, but one of the few solaces for residents and visitors alike is the rural beauty of the Route 6 corridor. Very few other highways in our state are as beautiful as the section of the highway that remains uncut, and very few are as ugly and sad looking as the area recently destroyed.

We respect that safety may have played a role in this decision, but we cannot see how a full clear cutting was necessary to maintain safety. If anything, as demonstrated by a recent accident involving a vehicle crossing the median, the full clearing makes the roadway less safe.

Recent media articles suggest that MASS DOT and the contractor are placing blame on each other for these actions. Regardless of whatever agency is ultimately responsible, we implore the MASS DOT to take responsibility for fixing the mistake, including replanting the median before the 2015 tourist season begins, and creating protocols to be sure this never happens again on any state road.

Respectfully,

The letter was revised to include all five BOS signatures and approved 4-0-1 with Selectman Andrews abstaining because the item was not listed on our agenda.

Selectman Donegan

Regarding regionalization we have set a number of meetings with Truro that keep getting canceled. We will continue to work on scheduling those meetings. He was at the Provincetown Yacht Club's laying up supper last night and was reminded just what an asset our harbor is and how underutilized it is. We have a lot of opportunities to make Provincetown more attractive both to residents and visitors alike and he is looking forward to working with the Harbor Committee on some of those items.

We've had an outstanding shoulder season. A number of businesses have commented on the season. We've had a whole host of events bringing people to town that otherwise might not have come. It feels like a particularly good use of the Visitor Services Board's Fund.

Thursday in Orleans is an affordable housing symposium sponsored by State Senator Wolf, State Senator Peake and Representative Turner. It will be at the Orleans Middle School from 4pm-6pm. TD will be attending and extended an invitation to all those who have an interest in affordable housing to attend as well. You can register through the offices of Sarah Peake or Daniel Wolf.

I've had the opportunity to represent Provincetown on the Cape Light Compact Board. It is amazing at the talent that exists.

Rates will go up as the world markets change, but he can tell us that there are a number of dedicated people involved who have made sure that we are in a lot better shape than some other municipalities in Massachusetts. He is very pleased to be the Provincetown representative to the Board.

He asked when does the new BOS secretary will start.

DB responded October 20th.

TD would like to see the 2nd homeowner letters combined into a single word document and distributed to the BOS. People would be able to view them if put on the town's web site.

DG said he would put them in a PDF file and on the Town Web Site, possibly the assessor's web page.

4. JOINT MEETINGS

None

6. REQUESTS

A. Discussion on proposed Power Sales Agreement with the Cape & Vineyard Electric Coop regarding Net Metering Credits to the Town of Provincetown

Austin Brandt, Provincetown Energy Manager and Liz Argo, Special Projects Coordinator for the Cape and Vineyard Electric Cooperative presented a report and requested the BOS to vote to approve an amendment to the PV Net Metering Power Sales Agreement (PSA) between the Town of Provincetown and the Cape & Vineyard Electric Cooperative for the purchase of power production from Distributed Generation Projects and to direct the Town Manager to execute subject to review to

form by Town Counsel. They also asked the BOS to vote to approve a Wind Net Metering Power Sales Agreement (PSA) between the Town of Provincetown and the Cape & Vineyard Electric Cooperative for the purchase of power production from Distributed Generation Projects and direct the Town Manager to execute subject to review to form by Town Counsel. Report is attached.

Selectman Andrews asked for clarification of the Harwich (for example) excess.

Ms. Argo said that means the solar installation in Harwich generates more KWH than is needed by Harwich municipal buildings.

TD asked about the school building roof which is currently in the design phase.

Would that solar be part of the program?

Ms. Argo said the MSBA does not usually include solar.

TD wanted to make sure nothing we do tonight would prevent us from further installations.

TD mentioned a citizen requested we put more solar in town with canopy solar over a bike path and perhaps over a parking lot.

LA said it can be very expensive to have canopy solutions.

TD requested that Mr. Brandt keep the Selectmen informed if the costs become more reasonable.

CA asked about Chatham and Orleans. Why did Orleans withdraw and Chatham lower their request?

LA said in Orleans their FinCom was not a fan of solar power and couldn't make the commitment by the deadline. Chatham lowered their request by 100,000, the reason is not known.

CA asked if this was a staff recommendation.

DG said this is a recommendation that will help us to get to the renewable energy goal as being a green community.

CA asked if there was a risk to this agreement. Do we have to pay for energy even if we do not use it?

Ms. Argo said yes, you would pay for a fixed amount of energy, but the risk of the town paying for energy it is not using is very small.

Selectman Richter moved that the Board of Selectmen vote to approve an amendment to the PV Net Metering Power Sales Agreement (PSA) between the Town of Provincetown and the Cape & Vineyard Electric Cooperative for the purchase of power production from Distributed Generation Projects and direct the town manager to execute subject to review to form by Town Counsel.

2nd by Selectman Anthony. Motion passed 5-0-0

Selectman Richter moved that the Board of Selectmen vote to approve a Wind Net Metering Power Sales Agreement (PSA) between the Town of Provincetown and the Cape & Vineyard Electric Cooperative for the purchase of power production from Distributed Generation Projects and direct the town manager to execute subject to review to form by Town Counsel.

2nd by Selectman Anthony. Motion passed 5-0-0

Acting town manager Gardner said they would like direction from the Selectman as to what their goal is.

Selectman Donegan said he would like to go as high as possible. The other Selectmen were in agreement. David Gardner stated he was comfortable with this number, 820,012.

Selectman Richter moved to recommend the town target 820,012 kwh.

2nd by Selectman Anthony. Motion passed 5-0-0

B. Monthly Police Report - September 2014

Acting police chief Golden reported on the police activity for September. All information in the report is available in the daily logs on the police web site. Report is attached.

Selectman Anthony asked about building checks, are they town owned property only.

Chief Golden stated in general, yes they are town owned properties, but they will check on short-term properties.

Chief Golden also mentioned the interaction with the rabbit farm. The animal control officer was horrified by the rabbit farm complaint. The business is in compliance, but from a domestic enforcement stance their hands are tied.

Selectman Anthony asked about the next step.

Chief Golden stated there is nothing the police department can do from an enforcement aspect.

Selectman Andrews asked about the four dog bites; were they in homes or outdoors?

Chief Golden stated they were all outdoors, three calls were dogs biting humans, and one was a dog biting another dog.

Selectman Donegan asked about the post office beach and the enforcement of town bylaws regarding the homeless population.

Chief Golden said he has only one complaint. There is a homeless population in this community. The community has relocated the homeless population a number of times. If we weren't talking about human beings we would just clean it up. He struggles with the balance of enforcement and what is humane. If we remove them we are just relocating them somewhere else.

Selectman Andrews asked how many individuals we are talking about.

Chief Golden said between two and seven.

Selectman Richter said he has heard about the complaint, but doesn't view it as a major issue. There is no great answer for us as a community. Moving the problem around resolves nothing.

Selectman Donegan said this reflects a system of having no social services available locally. We are left with a problem that ignoring it may also be inhumane. He is not sure of the answer. It's a symptom of a greater problem.

Selectman Andrews said she sees the problem as a health issue with no sanitation facilities. She's not feeling good about walking away from it with no resolution. Perhaps we need a 'porta-potty'.

Selectman Donegan would like to see more input from social service professionals before we move forward.

Selectman Yingling is not in favor of taking any action, but would rather show compassion. The issue will resolve itself as the cold forces them to move. He doesn't agree with a porta-potty as it may encourage others to move to the space. Selectmen agreed that this should be a future agenda item and the town manager and chief of police recommend which social services representatives should be invited to advise the Selectmen.

Selectman Donegan asked about false alarms and if we charged for responding to false alarms.

Chief Golden said we respond to the first three and charge according to the bylaws for the fourth occurrence and any after that. Chief Golden had a short discussion with the Board regarding Article 14. Upgrading electrical in that building will be a nightmare and he is not sure he can occupy the building at the same time. He did not make a recommendation on the Article.

The Chair called for a 5 minute recess at this time. Chairman Donegan called board back into session at 8:20pm.

7.

Town Manager

A. October 27, 2014 Special Town Meeting Recommendations

Board members asked if we could meet on Planning & Charter Articles before Town Meeting but after their Public Hearings. TD suggested Board of Selectmen have a meeting before Town Meeting to consider any articles we don't vote on tonight.

Selectman Yingling moved to recommend article 1. 2nd by Selectman Richter. Motion passed 5-0-0

Selectman Yingling moved to recommend article 2. 2nd by Selectman Richter. Motion passed 5-0-0

Selectman Yingling moved to recommend article 3. 2nd by Selectman Richter.

TD stated that FinCom voted not to recommend.

RA said it's a perfectly good building, we have no idea what will go on that property. Demolishing it at this time would be counter-productive.

EY said it's going to be a large municipal project and the current highest and best use is parking.

CA said given the small amount of money, it's not worth having a long argument over it. Staff has said the condition is not worth saving.

David Gardner said the building could be occupied but only if the town budgeted to maintain it, which we have not.

Dan Hoort stated that staff had included a maintenance line last year and Fincom recommended the budget line be removed and the water and electric be turned off.

RR doesn't see any real sense of it being used for something so he's in favor of demolition.

TD hasn't heard a good possible use for the building. None of them will lead to the highest and best use which he believes is housing.

Motion passed 4-1-0 (RA)

Selectman Yingling moved to recommend article 4. 2nd by Selectman Richter.

Motion passed 5-0-0

Selectman Richter moved to recommend article 5. 2nd by Selectman Anthony.

David Gardner stated that to date, the owner has not accepted an offer from the Town. Property was appraised by Town at 1.45M. The idea here is to get a \$500,000 grant from state and use \$1.2M in Land Bank Funds.

Selectman Andrews asked about the balance in the Land Bank if it were rolled into the CPA. Could those funds be used for housing in that case?

Finance Director Hoort said he would check on it.

EY was concerned that the offer was for more than the appraised value.

TD said he would vote yes on it no matter on the answer.

RR agreed and said this opportunity will not come up very often in the future. He doesn't see housing as a possibility for this site.

Motion passed 5-0-0

Selectman Andrews moved to recommend Article 6, seconded by Selectman Yingling

EY : I don't think the hearing will change my mind. We need to retain the help we have, and have more flexibility.

RR : to incent the TM to live here is a goal, but he feels its clear that we would have a larger pool of candidates without this restriction. Especially section 2 we have an employee we'd like to bring into compliance.

Would prefer this not to be in the charter.

TD suspects that the question will be divided . He supports removing it for section 2 but not section one. We need to compensate the Manager so the Manager can live in town and he suspects he is not alone on that. Would we be willing to divide the question so we can make our recommendation on each section separately?

Selectman Donegan moved to recommend article 6, section 1 independently 2nd by Selectman Richter. Motion passed 4-1-0 (Tom Donegan)

Selectman Richter moved to recommend article 6, section 2. 2nd by Selectman Donegan. Motion passed 5-0-0

Selectman Richter moved to recommend Article 7, 2nd by Selectman Yingling. Motion passed 5-0-0

Selectman Richter moved to recommend Article 8, 2nd by Selectman Anthony. Motion passed 5-0-0

Selectman Richter moved to recommend Article 9, 2nd by Selectman Anthony.
RR would like to see Licensing Violations set even higher than \$300.
DG mentioned that M.G.L. limits it to a maximum of \$300.
Motion passed 5-0-0

Selectmen postponed recommendation on Article 10 pending a report on the Planning Board Hearing.

TD mentioned the Planning Board is having a hearing on Monday, October 20th.

RR wanted to understand how many changes were driven by complaints vs some being found in another bylaw. He will attend the Planning Board hearing.

EY suggested a Planning Board member come and talk to the Selectmen at the 5pm meeting right before Town Meeting.

Selectmen postponed recommendation on Article 11 pending a report on the Planning Board Hearing.

Selectmen postponed recommendation on Article 12 pending a report on the Planning Board Hearing.

Acting town manager Gardner stated there are two or three containers that would be outlawed as sheds, but as a temporary storage container they are currently allowed.

Selectman Yingling moved to indefinitely postpone Article 13. 2nd by Selectman Richter.

Discussion ensued on the arguments the FinCom was making for this. Dan Hoort explained that this is an effort to tie up free cash, in order to limit our borrowing.

TD stated he will support the motion but appreciates the spirit of the idea and stated that it is advisory at best.

Motion passed 4-0-1 (RA)

Selectman Richter moved to indefinitely postpone Article 14. 2nd by Selectman Yingling.

RR said this \$200,000 seems like a shot in the dark. He doesn't think it's the right time and would like to see it postponed.

RA said \$200,000 is not going to do it. Chief Golden has said that he wants to protect the building. We need to come up with the right numbers.

TD said this article provokes us into action, but it doesn't do what we need. We need to determine what we need to do to protect the building and people. We need to have an agenda item coming up and decide what we are going to do with the building. The Selectmen have to decide that, we can't delegate that responsibility.

Motion passes. 5-0

Selectman Yingling moved to indefinitely postpone Article 15. 2nd by Selectman Andrews

Selectman Donegan stated that this is actually a charter change even though its not written that way. He thinks the RFP is a good idea, but the rest of it is a little binding. It doesn't make sense why the Historic District and Licensing chair would be involved in this. They should be involved in the historic and licensing issues.

TD and BA are waiting for the article to be re-written in a more limited form.

Motion passed 3-0-2 (TD, RA)

B. Town Manager Search Update

TD gave an update on the reasons that town manager candidate Reinhard declined the position. The options now are to look back at the last round's semifinalist or to re-open the recruitment process. There are a number of avenues we can explore and TD wanted to hear from everyone and then make a motion.

RA said he feels Provincetown is at a crossroads and it's important that we re-advertise and get a professional consultant that does what we ask of him and have him bring the best candidates to us. We need to treat this as a business and hire a consultant to lead us. What happened with the screening committee convoluted the whole thing. We have this opportunity and we should take advantage of it.

CA said we just had a process, we interviewed three candidates and she would be happy to make a motion that we open contract negotiations with Michelle Jarusiewicz. We are blessed to have someone of her caliber to apply. She has a vast number of years of experience and knowledge of this town.

EY was disappointed that negotiations fell through. He's not sure we could have gotten him. He thinks the search committee and consultants did do their job and brought forward three very qualified candidates. Michelle knows the town and community very well. She's been a housing specialist for 30 years. Walking around town and talking with people he has gotten positive feedback about Michelle. It sends a strong message if we promote from within town. He thinks she is able to do the job and will work hard.

RR doesn't exactly agree with his two prior colleagues in some ways but in other ways he completely agrees with them. Michelle would do a good job, but we are at a crossroads. Not getting the prior candidate made him realize that we should try to get a candidate with his type of experience. The process was uninspiring, especially with the recruiter who did not seem to have much enthusiasm. Given the need to implement drastically different ideas requires a drastically different leader.

TD wants to aggressively recruit for qualified candidates. He does not see any need to hurry the process; but to make a deliberative, careful choice after having taken all the right steps.

CA noted that at no time did the search committee come to the BOS and say anything negative about the consultant. Their job was to come to the BOS and state their disapproval and make recommendation to fire the consultant, if they were unhappy.

Selectman Yingling moved that the town enter into contract negotiations with Michelle Jarusiewicz for the position of Town Manager. 2nd by Selectman Andrews.

Discussion: EY was disappointed that the arrangement fell through with Reinhard. He does feel that Michelle is an ideal candidate because she knows town government; she knows the process, she knows the community and they are behind her. He thinks starting over is not going to get a better pool of candidates and going through another five month process seems bad. To indefinitely ask staff to do 2 or 2 ½ jobs is not good.

TD stated that ultimately that may be what we need to do; but he wants to make sure that the process is fair and credible. He thinks that without an aggressive search and recruitment we won't know that. He will vote against Erik's motion. EY stated that to keep in mind when making this vote that everyone is on record as saying that Michelle is the strong number two choice.

CA she is my number one choice and continues to be. She has not been the Housing Specialist for 30 years. She has been Harbormaster, Assistant Town Manager, and a number of other jobs in this town since CA has been here. She wanted to hear an alternative from those who don't support this motion, as the BOS will be asking DG to stay on and do this job longer.

TD stated that would be dealt with as we go forward.

Motion failed 2-3-0 (TD, RA, RR)

Selectman Donegan moved that the Town of Provincetown submit through staff an RFP for a Town Manager search firm. 2nd by Selectman Anthony.

EY is against this because he does not really see that drawing this out another five months as being of any help. We have already told the market what we are going to pay and we may get a worse pool of applicants.

RR says that it is not extending it indefinitely but acknowledging that the process that we went through did not achieve our goal and objective. Being a BOS and wanting to see some of the big goals that are before us accomplished, he is not against taking another 3-5 months, even 7 months if needed as an issue.

Motion passed 3-2-0 (EY, CA)

C. Public Records Request Review

TD we've had a series of public document requests. We can now release many of the e-mails. He has worked with Town Counsel and David Gardner to create a draft public policy statement for staff and counsel to use.

CA said she read the town counsel memo that referenced the documents coming in, in multiple sub-folders. She could not go through the e-mails because the sub-folders were not included in the disks. She can't address the issue tonight until she

has been able to review the e-mails and talk to counsel about why they should be withheld.

RA asked if everything was now in subfolders in the new disk

DG said yes.

RR said he has not yet had the time to give it the attention it deserves. We need the time to review this material.

TD respects that. Today was the deadline for responding. There may be some emails that counsel says we can release because they are no longer confidential or the reason for withholding them no longer exists.

CA asked if we could ask town counsel to release those.

TD thinks getting this appealed to the Secretary of the Commonwealth will require Town Counsel to write a very lengthy brief and could be very expensive.

RR stated that our goal is to do a good job in reviewing these and hopes that everyone knows what the BOS is doing tonight.

TD said we will need to schedule another meeting to review the e-mails after we have had more time.

We will schedule an executive session meeting on Thursday, October 23rd at 5pm.

No motion was made.

D. Town Manager Follow-up

None

E. Other

None

8. BOARD OF SELECTMEN MINUTES

None

9. CLOSING STATEMENTS

Selectman Yingling

None

Selectman Andrews

None

Selectman Anthony

None

Selectman Richter

None

Selectman Donegan

None

10. EXECUTIVE SESSION

None

Meeting adjourned without objection at 10:06pm