

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

REGULAR MEETING – September 10, 2001

JUDGE WELSH HEARING ROOM

Chairman Elizabeth Steele-Jeffers opened the meeting 6:00 PM noting the following attendees:

Board of Selectmen members: Elizabeth Steele-Jeffers, Mary-Jo Avellar, Michele Couture.

Excused Absence: David Atkinson, Cheryl Andrews during discussion of Agenda Item 1A: Joint Public Hearing with Cape End Manor Board of Directors: New Cape End Manor Nursing Home/Care Campus on MassHighway Layout East of Mt. Gilboa

Other Attendees: Keith A. Bergman – Town Manager, Mark Latour – Assistant Manager

Recorder: Doug Johnstone, Secretary to the Town Manager

The following are meeting minutes, in brief.

1A Public Hearing: Joint Public Hearing with Cape End Manor Board of Directors: Proposal for Cape End Manor Care Campus

New Cape End Manor Nursing Home/Care Campus on MassHighway Layout East of Mt. Gilboa Water Tank

Chairman Elizabeth Steele-Jeffers opened the Public Hearing and read the Public Hearing Notice. Chairman Steele-Jeffers introduced Town Manager Keith A. Bergman, who conducted a presentation of the issue, aided in his report by Dennis Anderson, Interim Cape End Manor CEO/Director of Nursing, and David Guertin, Director of Public Works.

Chairman Steele-Jeffers opened the meeting to questions related to the presentation from the public. The following is a roster of people addressing questions to the Board of Selectmen and Town Hall staff, a summary of their question(s), and Board of Selectmen/Staff response, if applicable:

Roe Callahan – Is 72 beds the right number to make this a financially viable alternative?

Dennis Anderson replies: Study shows 72 beds needed. In the Tri-Town area total numbers did increase. Also, RFP process will ask companies to prove the need for services.

Dennis Allee – What portion of project is on Town land, what portion on State land? How will project effect water resource on Mt. Gilboa? Where does money come from for Assisted Living facility?

David Guertin replies: Project area is equally split between Town land and State land. The project will not impact the Town's water resources due to extremely poor quality of water found at the Mt. Gilboa site.

Dennis Anderson replies: Assisted Living funds will come from grants, among other resources.

Jim McCullough – How much water will be needed for the facility? Will new units added go against current permits?

David Guertin replies: 100,000 – 150,000 gallons is the current usage at the existing Cape End Manor facility.

Keith Bergman replies: If new facility is built it will require zoning changes and will not affect existing permits.

Barbara Rushmore – Urges that access to the proposed facility occur much further east off Route 6A near the railroad right-of-way and that any additional access to Route 6 have some kind of chain/barrier due to concern for increased traffic accidents with new facility entrance directly off Route 6.

Celine Gandolfo – Has a stoplight or third lane been considered on Route 6 as part of the new facility plan? Is any of my land being considered for use as entry access?

David Guertin replies: A stoplight is not being considered, but rather a transition lane to ease traffic flow.

Keith Bergman replies: The Town would not be using any land other than the Mt. Gilboa access road.

Rachel White – What happens to license if company pulls out?

Dennis Anderson replies: The 501c3 transfer becomes theirs (the company) and cannot be secured.

Dr. O'Malley comment: A covenant could be placed in the license transfer to protect Town interests.

Anne Lord – Can local residents be assured space in the new facility? How many beds in the Assisted Living facility? Will an environmental impact study be conducted?

Dennis Anderson replies: Deed restriction could be to prioritize Town residents. RFP process would include this question. There are 40 beds planned for the Assisted Living facility. An environmental impact study is part of the approval process.

Sarah Peake – What are the current number of Cape End Manor employees and how will new facility effect employment? Will employees keep current jobs?

Dennis Anderson replies: Currently there are 70 personnel at the Cape End Manor, the equivalent of 55 FTE's or 1.2 FTE's per bed. New facility will need to employ roughly 100 – 120 FTE's. It is anticipated that there will be a transfer of existing staff.

Donna Cooper - What is the current Cape End Manor census? Does the building plan only include a nursing home? Are there any plans for the remaining acreage on the property?

Dennis Anderson replies: The average census at the Cape End Manor is 49 patients per year.

David Guertin replies: All services are included in the plans presented, not just the nursing home facility. There are no plans for development of the additional acreage on the property.

Tim Bright – If business venture fails, what happens to land?

Keith Bergman replies: There is a potential for a “reverter clause” but he does not recommend this because public bidding laws, hence lower building costs, would not apply to the project.

Peter Souza – How can the Town justify cutting and paving over vegetation? Why hasn't more consideration been given to Site Y?

David Guertin replies: Water treatment allows Site Y to be a valuable water resource.

Robin Evans – If the population of the area is aging, why isn't the Cape End Manor full? Has Truro/Wellfleet been consulted?

Keith Bergman replies: Condition of current facility discourages use. Current Cape End Manor cannot compete with newer facilities. Also, the Tri-Town, regional aspect of project is significant. Counterparts have been invited into the process, but joint funding between towns is not likely.

Elizabeth Steele-Jeffers Replies: In previous Lower Cape Selectmen's meeting, philosophical interest was expressed to site a nursing home in their towns.

Elizabeth Patrick – Layout seems generous. Are all entities interested in the project non-profits? Why hasn't Outer Cape Health Services developed these services?

Dennis Anderson replies: All companies expressed interest in the non-profit concept. Some companies,

however, are for profit management companies that would oversee a non-profit entity.

Mary-Jo Avellar replies: As a Board member of Outer Cape Health, I can state that Outer Cape Health's Mission is to provide primary health care. There are numerous Federal and State requirements to additional services that Outer Cape Health would not be able to meet at present.

There were no more questions pertaining to the presentation. Chairperson Elizabeth Steele-Jeffers stated for the record that roughly 300 signatures were received in support of the Cape End Manor move to the Mt. Gilboa site, and roughly 125 -130 signatures received that were not in support of the proposed Mt. Gilboa site. Chairperson Steele-Jeffers stated that these signatures would be included in the meeting minutes.

Chairperson Steele-Jeffers opened the Public Hearing for general comments. A roster of speakers, with a summary of their statements, follows:

Sarah Peake – Congratulations on an excellent proposal.

Sheila Benzer – Site Y does have room for both desalinization/water treatment and a new Manor. Use of Site Y will save more trees and vegetation and be closer to Town.

Mary Ellen Hobsen – Commended Cape End Manor for deficiency-free rating. Claimed Roush & Associates deficiency rating compares unfavorably. Wanted to know if Town residents will be turned away due to inability to pay. Concerned about environmental/zoning issues.

Tim Bright – Stated proposal is an insult and a devastation to what is there now. Natural beauty of the Town is in jeopardy.

Irene Rabinowitz – Present proposal offers solutions not available at current Cape End Manor site. Also, proposal allows Cape End Manor to stay in Town.

Dennis Allee – Submitted revised version of draft given to the Board of Selectmen prior to the meeting. Concerned about isolation of new location and numerous zoning issues involved. Concerned that quality of care will suffer in a profit-motivated environment. Asks if alternatives have been thoroughly investigated. Suggested Tides Motel property as a potential site worth investigating.

Anne Lord – Commends work that has been done. Asked if any consideration had been given to building in phases as need/growth dictates. Stated that she was not in favor of the site due to loss of trees/green space.

Estherann Czyoski – Expressed zoning concerns. Felt that statements made at tonight's Public Hearing that we did not have enough open space were inaccurate in that she feels there is plenty of open space available.

Celine Gandolfo – Encouraged Board of Selectmen to keep the search for a site open. Proposed Tides Motel property that would present fewer problems and less cost when construction issues are factored into the equation. Money saved from construction of new site could be spent on land acquisition.

Alice Foley – Proposal lifts the financial burden off the Town and resolves the deficit issue.

Donna Cooper – Not convinced that the Cape End Manor needs to stay in Town. Recommends transferring the license and getting out of the nursing home business.

Fernando Trajo – Views proposal as an expansion move. Land is a treasure for all Town citizens and visitors. Felt zoning changes are unfair to residents.

Susan Wasson – Unfortunate that issue is pitting environmental issues against senior citizens. Asked Board of Selectmen to revisit issue to address the environmental concerns.

K. Margy Perry – Expressed the sentiment that seniors are our greatest treasure.

Jane Donahue – Concerned about increased traffic dangers on Route 6A with new proposal. Also questioned if there is a labor force to meet employment needs of expanded facility.

Peter Souza – Concerned that he would not be able to access new facility due to insufficient funds. Asked Board of Selectmen to re-examine Site Y because the land there is already compromised and saves existing green space.

Lorraine Harris – Read excerpts from daughters letter already submitted to the Board of Selectmen. Speaking for herself, she expressed her concern that there was not a hospital close enough to the new facility.

Chris Kennedy – Conservationist familiar with Mt. Gilboa area stated that the area is an unusual moist woodland that may contain vernal pools. Stated that there are endangered species present at the site as well. Cited Truro and Martha's Vineyard studies on cost of service that show this may be a costly expense for the Town.

Ann Hulick – Registered Nurse concerned that Town is solving one problem and creating others. Felt residents would not be able to afford the new facility due to the need of the entity to make money in order to stay in business. Concerned that if Cape End Manor Care Campus does not meet population goals that the rates will increase in order to make up any deficit.

Chairperson Steele-Jeffers declared a 10 minute recess at 9:00 pm.

Chairperson Steele-Jeffers resumed the meeting at 9:10 pm and announced that a Public Hearing would be scheduled for Monday, October 1, 2001 at 6 pm to continue the discussion of the siting of the proposed Cape End Manor Care Campus, and to provide answers to questions raised in tonight's Public Hearing. Chairman Steele-Jeffers then resumed the Public Hearing and invited additional general comments from the public.

Austin Knight – Felt that the Town has a small labor force and little available housing and wondered where the additional labor will come from to staff the new facility. Questioned increasing the labor load without providing additional housing for the increased workload and suggested that perhaps local siting is not the answer.

Patrick Manning – Elderly a valuable resource. Affordable Assisted Living a good alternative.

Chairman Steele-Jeffers closed the general comments section of the Public Hearing and invited questions and/or comments from the Cape End Manor Board of Directors. A summary of Cape End Manor and Board of Selectmen Board member comments follows:

Patrick Patrick – Highlighted that existing facility is not full due to competition. Determined to have a facility where Town residents will not be turned away due to inability to pay. Expressed disappointment in choice of Mt. Gilboa. Interested in Site Y, even land on Harry Kemp Way. Asked the following questions that Chairperson Steele-Jeffers said would be addressed at the October 1, 2001 Public Hearing in order for staff to have time to supply sufficient information: The building plan shows 1.5 acres, what accounts for the remaining 2.5 acres included in proposal? How big is the desalinization plant that has been mentioned? What is the water quality at Mt. Gilboa? What is the acreage at Area E and Site Y?

Marilyn Downey – Wants to make sure that the elderly are taken care of and believes this proposal to be the answer. Stated that the Town needs to have rehabilitation services available.

Robert Cabral – Felt that the Manor needed to remain in Town. If the option is Mt. Gilboa or no Manor, then he is in favor of Mt. Gilboa. He stated, however, that more time is needed to investigate alternatives, because he believes Mt. Gilboa is not the best location.

Janet Whelan – Stated that Provincetown has done a "stupendous" job in managing the Cape End Manor and felt that the facility should stay in Town due to the experience acquired in running a deficiency-free institution.

Michele Couture – Stated that figures discussed by those opposing the new facility needed to be substantiated. Felt that Mt. Gilboa proposal was well researched and wants to see the Cape End Manor remain in Town.

Mary-Jo Avellar – Stated the Mt. Gilboa site was not her first choice for relocation of the Manor, but if it is a choice of Mt. Gilboa or losing the Manor, then she supports the Mt. Gilboa location. Requested that staff re-examine Site Y as an alternative.

Elizabeth Steele-Jeffers – Expressed her belief that public sentiment still seems to favor keeping the Manor in Provincetown. Stated that there are presently two doctors at the Manor so felt that questions raised about adequate access to primary healthcare should not be an issue. Believed that the Tides Motel property mentioned at the hearing was not a viable alternative due to the cost of the property. Stated that there were many questions raised, including quality of patient care, Town resident access to the new facility, and the available labor force that will need to be addressed and responded to at the October 1, 2001 Public Hearing. Requested that staff conduct an analysis of Site Y, specifically, and other locations and present these findings at the October 1, 2001 Public Hearing.

Chairperson Steele-Jeffers closed the Joint Public Hearing with the Cape End Manor Board of Directors at 9:50 pm.

Selectman Cheryl Andrews joined the meeting.

1B Public Hearing: Transfer of Ownership Interest in MacMillan Pier Float Space 1W License – Edward J. Salvador

Proposed transfer of ownership interest in the MacMillan Pier Float Space 1W License from Edward J. Salvador to The Salvador Corporation, a Massachusetts Business Corporation of which Edward J. Salvador is the sole shareholder.

Chairman Steele-Jeffers opened the Public Hearing to comments from the public.

Attorney Edward Patten representing Mr. Edward Salvador – Presented Board of Selectmen with a Certificate of Legal Existence that shows that the Salvador Corporation lawfully exists and is in good standing with the Commonwealth of Massachusetts. He also presented an affidavit signed by Mr. Edward Salvador certifying that he is the sole shareholder of the Salvador Corporation. Attorney Patten also highlighted a memo already distributed to the Board of Selectmen from the Town Treasurer stating that Mr. Edward Salvador owes no taxes or fees to Provincetown, and a memo from Police Chief Anthony that Mr. Edward Salvador is a member of the community in good standing.

There were no further comments from the public.

MOTION: Move that the Board of Selectmen vote in accordance with Special Condition No. 7 of the Chapter 91 License for MacMillan Pier issued October 23, 1995, to approve the proposed transfer of ownership interest in the MacMillan Pier Float Space 1W License from Edward J. Salvador to The Salvador Corporation, a Massachusetts Business Corporation of which Edward J. Salvador is the sole shareholder.

**Motion by: Mary-Jo Avellar Seconded by: Cheryl Andrews
Yea 4 Nay 0**

Chairperson Steele-Jeffers closed the Public Hearing for Agenda Item 1B at 10:00 pm.

MOTION: Move that the Board of Selectmen vote to take out of order Agenda Items 4A and 4B before Public Statements since they are items that will take a small amount of time and people have been waiting to address these particular agenda items.

Motion by: Michele Couture Seconded by: Cheryl Andrews Yea 4 Nay 0

4A REQUEST: FINE ARTS WORK CENTER

Loan Agreement for Town-owned Art during Fall Arts Festival

MOTION: *Move that the Board of Selectmen vote to authorize execution of a loan agreement with the Fine Arts Work Center for the loan of Town-owned art to said organization during the Fall Arts Festival, as approved by the Art Commission.*

Motion by: Michele Couture **Seconded by:** Cheryl Andrews Yea 4 Nay 0

4B **REQUEST: RED CROSS**

Generator at Emergency Shelter Site

MOTION: *Move that the Board of Selectmen vote to set aside \$13,075 for the purchase of a back-up generator for permanent use at the Regional Emergency Center at the Veteran's Memorial Elementary School in Provincetown.*

Motion by: Michele Couture **Seconded by:** Elizabeth Steele-Jeffers
Yea 3 Nay 0 Abstain 1 (Cheryl Andrews)

2. **PUBLIC STATEMENTS**

There were no public statements.

3. **SELECTMEN'S STATEMENTS**

MOTION: *Move that the Board of Selectmen vote to combine Selectmen's Statements with Closing Statements and place at the end of the agenda.*

Motion by: Elizabeth Steele-Jeffers **Seconded by:** Michele Couture
Yea 4 Nay 0

5A. **CAPE COD NATIONAL SEASHORE**

Monthly Issues Update

MOTION: *Move that the Board of Selectmen vote, pursuant to Interior Secretary Gale Norton's request of August 22, 2001, to recommend the appointments of Keith A. Bergman and Alix L.L. Ritchie as primary and alternate members of the Cape Cod National Seashore Advisory Commission.*

Motion by: Mary-Jo Avellar **Seconded by:** Cheryl Andrews Yea 4 Nay 0

MOTION: *Move that the Board of Selectmen vote to send a letter to Mrs. Miriam Collinson inquiring whether she intends to follow through with the purchase and sales agreement of 4,800 square feet of the Transfer Station Access Road, authorized by Article 18 of the April 3, 2000 Special Town Meeting.*

Motion by: Mary-Jo Avellar **Seconded by:** Cheryl Andrews Yea 4 Nay 0

6. **BOARD OF SELECTMEN APPOINTMENTS**

MOTION: *Move that the Board of Selectmen vote to appoint Mary Ann Powers as a Regular Member of the Beautification Committee with a Term Expiration date of December 31, 2002.*

Motion by: Cheryl Andrews **Seconded by:** Mary-Jo Avellar Yea 4 Nay 0

MOTION: *Move that the Board of Selectmen vote to appoint Jack Joyce as a Regular Member of the Harbor Committee with a Term Expiration date of June 30, 2002.*

Motion by: Cheryl Andrews **Seconded by:** Mary-Jo Avellar
Yea 3 Nay 0 Abstain 1 (Michele Couture)

11. CLOSING STATEMENTS

Elizabeth Steele-Jeffers

Awaiting follow-up on motion made at Board of Selectmen's Meeting on August 27, 2001 regarding the street performer in front of Town Hall. Cheryl – Do we have the right in the street performer by-law to limit permit to manner and place, etc.? Keith – Yes. Cheryl - Some how it does not seem to happen this way once they get their permit. The issue would be does the change have to wait for the new language in the by-law, and if it does, does the newer language allow a change, for example, in the middle of the season? If the Police Chief issues a permit and then discovers a problem, can we change the permit in mid-season? We need to know what we can do, as opposed to nothing, and then we also need to know if it can be changed in the middle of the season. Elizabeth – Is permit information accessible to Summer police officers so they are aware of who can do what on the street? Cheryl – Isn't this information written on the permit itself that performers need to have on them while they are performing? Keith – The by-law itself limits the time, place and manner by saying it is every public way except within x feet of certain buildings during business hours, but it does not go the next step in the current by-law, which I think is the direction it is proposed to be headed, of having a procedure by which you could then designate particular areas as being off-limits to all street performers.

Helped give out awards at the Swim for Life and accepted the David Asher Award on behalf of the Provincetown Rescue Squad because the Rescue Squad was engaged in a rescue and could not receive the award themselves. I would like to know who would be the appropriate person to give the award to at the Rescue Squad.

Do we still have our Drug Hotline? Keith – I will investigate.

Citizen's concern regarding high speed of traffic on Allerton.

When people have permits to construct a development, are they required to construct the affordable housing units first? Keith – The permits issued to date do not address the issue. I do not recall if new zoning changes had addressed that issue or not. Cheryl – We could propose to give preference to those who agree to develop affordable housing units first.

Strongly support the memo from Stephan Nofield and Judith Oset regarding the proposed Town Board Symposium and hope that we conduct this symposium soon.

MOTION: Move that the Board of Selectmen vote to place a copy of the Provincetown AIDS Support Group letter from Executive Director Jim Pipilas be placed in employee Jackie Wilhoite and Michael Andrews Personnel files for the help that they provided to the PASG .

Motion by: Elizabeth Steele-Jeffers Seconded by: Mary-Jo Avellar

Yea 4 Nay 0

Selectman Mary-Jo Avellar left the meeting.

Letter from Mark Schiffman to Marine Superintendent Chad DeLima regarding treatment of pier guard referred to Town Manager to address.

Selectman Mary-Jo Avellar returned to the meeting.

MOTION: Move that the Board of Selectmen vote to expand it's one agenda item of September 17, 2001, which is supposed to be the design of the pump station, to include an update from Metcalf & Eddy on their discussions with sewer hook-up citizens.

Motion by: Elizabeth Steele-Jeffers Seconded by: Michele Couture

Yea 4 Nay 0

Mary-Jo Avellar

Feels Cape Cod National Seashore maintaining fees through Columbus Day Weekend without continuing to provide lifeguards is outrageous.

MOTION: Move that the Board of Selectmen vote to send a letter to the Superintendent of the Cape Cod National Seashore and Chief Ranger Kevin Fitzgerald objecting to their plan to charge the public to use beaches through Columbus Day Weekend when there will be no lifeguards on duty.

Motion by: Mary-Jo Avellar Seconded by: Cheryl Andrews Yea 4 Nay 0

Michael J. Piore complaint letter regarding sewer hook-up referred to Town staff.

MMA Registrations due. Elizabeth – Please return your completed registration forms to my folder. Mary-Jo Avellar submitted her registration to Chairman Steele-Jeffers.

Michele Couture

Commended Department of Public Works' efforts over Labor Day Weekend in regards to trash pick-up, especially in the Lopes Square area.

Questioned memo received regarding violators of zoning laws. One violator on the list, Roots, is a corporation, according to Judith Oset, and therefore does not come under the jurisdiction of the Licensing Board, and basically, they can ignore violation and pay a minimal fine. Is there something that we can introduce in the Town Meeting, perhaps a new zoning by-law, that stipulates if you are a corporation and you violate a licensing or zoning ordinance that you receive more than a minimal fine? Mary-Jo – Corporations are only exempted from the transient vendor statute, but they are not exempted from complying with zoning regulations. Cheryl – Isn't this particular case (Roots) an outside display issue, and don't you have to have a special permit in order to have an outside display? Why can't they void the special permit? Michele – Roots doesn't appear to have a special permit for outside display and seems content to absorb the minimal fines as a cost of conducting business. Isn't there something we can do to correct situations like this from occurring? Cheryl – Do violators even pay the fines? Mark Latour – Generally the Department of Regulatory Management does not follow-up on these violations. Cheryl – The first question is: has (Roots) paid the fines? Secondly, even if (Roots) has paid the fine(s), they are not in compliance, so what is the next step?

Selectman Cheryl Andrews left the meeting.

Annoyed that information/figures discussed by opponents of the Cape End Manor siting at tonight's Public Hearing were unsubstantiated. Commended staff for the work that went into the Cape End Manor/Care Campus presentation.

Selectmen Cheryl Andrews returned to the meeting.

Cheryl Andrews

Praised the Department of Public Works for painting of fire plugs.

Questioned Adult Entertainment issue. Did we ever make a motion telling staff that we wanted new language in place for a Fall Town Meeting? I assumed it was clear but discussions with the department indicate otherwise. Elizabeth – I recall a discussion in Executive Session in a previous meeting regarding this issue. Keith – That language was in a motion I proposed that the Board of Selectmen did not pass. I had prepared a motion to have the Board of Selectmen vote its intent to bring language to a future Town Meeting and that was deleted from the motion. It was decided to simply release the minutes, and there was no further discussion on the issue. So it would be appropriate to direct staff on this issue.

MOTION: *Move that the Board of Selectmen vote to direct administration to develop language to amend/alter/replace existing adult entertainment by-law such that the intent is maintained, but that a distinction is made between adult entertainment, theater with nudity, and cabaret with nudity, so that all are not grouped under adult entertainment as it presently stands.*

Motion by: Cheryl Andrews **Seconded by:** Mary-Jo Avellar

Yea 2 Nay 1 (Michele Couture) Abstain – 1 (Elizabeth Steele-Jeffers)

8. STRATEGY WITH RESPECT TO LITIGATION

There were no items for discussion.

Motion to adjourn by Mary-Jo Avellar, seconded by Elizabeth Steele-Jeffers at 10:45 pm.

Minutes transcribed by: Doug Johnstone, Secretary to the Town Manager
September 12, 2001