

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN
MEETING MINUTES – REGULAR MEETING
MONDAY, February 27, 2017 6:00 PM
TOWN HALL – JUDGE WELSH ROOM

Chairman Richter convened the open meeting at 6:00 pm noting the following:

Board of Selectmen attending: Chairman Raphael Richter, Members Thomas Donegan, Dr. Cheryl Andrews, and Robert Anthony.

Excused: Vice Chairman Erik Yingling.

Other attendees: Town Manager David Panagore, Asst. Town Manager David Gardner, Finance Director Josee Young, Board Secretary Elizabeth Paine

Recorder: Elizabeth Paine

Chairman Richter started the meeting off by reading the following statement from Town Council John W. Giorgio, Esq.:

“The auction did not proceed and the hearing was continued pending a new scheduling order to be issued by the Court.

The Court also issued an order from the bench ordering all of the bidders not to communicate with each other or any third parties regarding the sale of the property. In light of the Court’s order, I would request that you notify all members of the Board of Selectmen, the Housing Trust and any other Town official that they are prohibited by this order from engaging in any discussions concerning any aspect of the pending sale with any third party, including, without limitation, representatives of other bidders, members of the press, friends, family, or any acquaintances or constituents. The only exception to the Court’s order is that communications with the Bankruptcy Trustee is allowed, but I recommend that such communications only be conducted through counsel for the Town.

In order to avoid a disqualification of the Town’s bid or the potential of criminal prosecution of Town officials for violating a court order, it is imperative that all Town officials strictly comply with the Order. For example, If you are asked a question at a public meeting, if you are approached by anyone at the local market or on the street, if a member of the press attempts to engage any Town Official in a discussion, or any individual calls you, please understand that you are prohibited from discussing any aspect of the pending sale of the Harbor Hill property. If any other bidder or developer attempts to engage a Town official in a discussion regarding the bidding process, you are prohibited from engaging in that discussion as well.

I do not interpret the Court’s order as prohibiting members of either the Trust or the Board of Selectmen from discussing the bidding process during a properly posted executive session of either or both boards, but, of course, any such discussions in executive session may not be relayed to any third party outside of the executive session.”

Consent Agenda – Approval without objection required for the following items:

1. *MOVE that the Board of Selectmen vote to approve the Parade Application Permit submitted by Sean McCabe, 4 Sunset Avenue, #2, Jamaica Plain, MA 02130, on behalf of the 6th Annual Provincetown 10K Charity Road Race, to benefit Outer Cape Health Services, to be held on Sunday June 5, 2016, starting at 9:00 a.m. to 12:00 p.m.*
2. *MOVE that the Board of Selectmen vote, pursuant to MGL Chapter 44, section 53A, to establish a special gift fund account to receive donations for the Rose Dorothea Fund, the proceeds of which shall be used exclusively and for no other purpose for the restoration, maintenance and care of the full scale model of the Rose Dorothea, located on the second floor of the Provincetown Library, Rose Dorothea commemorative monument on Town Hall grounds and the Lipton Cup, to be expended without further appropriation by the Historical Commission under the supervision of the Town Manager and approval of the Board of Selectmen.*
3. *MOVE that the Board of Selectmen acknowledge and accept the gift of art given by the Craig Estate of the painting titled “God of the Sea” by Nancy Ellen Craig and send a letter of thanks to the Craig Estate.*

4. *MOVE that the Board of Selectmen vote, as Commissioners of the Library Gift Fund – (#1107), pursuant to MGL C44 § 53A, to approve the use of the funds in the Library Gift Fund (#1107) to pay \$405.00 for the attached invoices from Blackstone Audio, Inc.*

Without objection Chairman Richter waived the reading of the consent agenda and without objection it was approved unanimously by the BOS.

1. Public Hearings: -

A. Public Hearing: Petition to re-install street light on Pole #19/1 on Winthrop Street adjacent to 170 Commercial Street – Petition submitted by Gail Behrik and Margaret Reynolds.

Petitioners Margaret Reynolds, Gail Behrik and proponent Horris Stone were present at the meeting to represent the petition. The light was taken down during a period when the lights were being repaired. Ms. Reynolds felt that in her twenty years of residency, there was never a problem until 2 years ago when the light was taken. Ms. Behrik expressed that is a very well-traveled road, and the area is not being illuminated well enough and it has become a safety issues. Mr. Stone feels it is an endangerment to the public by not having the light. Richard Connelly, another resident of Winthrop Street, expressed concerns for public safety. Mr. Donegan asked Police Chief Golden to address the public safety and complaints that may have been received by the department. He also asked for the proponents to elaborate upon the level of illumination prior to the lights removal. Dr. Andrews wished to know if the neighbor addressed the owners of 170 Commercial Street to place a light in the lot. In opposition, Mr. Mathieson stated the light was removed pre-policy statement in November 11, 2014. On April 14, 2014, Mr. Mathieson Sherry Prada emailed Operated of Public Works asking light to be adjusted to shine away from his house. There was no notification given because there was a 6 month probation period. It is his opinion that putting three street lights on Winthrop Street would not stay in compliance with the currently policy on LED/CFL Lighting Policy.

Public Comment:

Letter in support from Janette Anderson & Elizabeth Barilaro. Letters in opposition from Christopher Mathieson

Dr. Andrews wonders if there is a way to give the light we need without shinning into homes. Dr. Andrews would prefer to defer the decision until there is more information on the visor to allow light to be directly down verses illuminating outwardly into peoples home. She would also like to look into having the condo association install a light in the parking lot.

Mr. Donegan feels the issue of illumination is the parking lot. The street light on the Pole #19/1 is not going to light the parking lot.

Mr. Anthony agrees the issue appears to be the parking lot illumination vs the street. He feels the Police Chief's answer of no recollection of any issues is to be valued.

Chairman Richter would like to have the town and the neighborhood approach the condo association about installing a light in their lot. He also presented a second pole #19/ 1 ½ as a second option. The pole would allow illumination without shinning into neighbor's home.

Dr. Andrews moved that the Board of Selectman continued the public hearing to April 24, 2017 to receive new information from staff.

Mr. Richter Seconded the motion.

VOTED

In Favor: 2
Opposed: 2 (TD & RA)
Absented: 0

Motion Failed

Mr. Donegan moved to close the public hearing.

Mr. Anthony seconded motion.

VOTED

In Favor: 3
Opposed: 1 (CA)
Absented: 0

B. Economic Development Permit 17-01 – 212 Bradford Street – East End Market by Michael MacIntyre (applicant/owner), o.b.o. PMR Realty LLC, to increase the assigned Title 5 flow to the property by 514 gallons per day to add 12 fast food restaurant seats and add four employee housing bedrooms.

Michael MacIntyre and Gary Pasnick, owners of the East End Market, would like to build four bedrooms with a community bathroom and kitchenette, presented their seasonal housing units. They have owned the market for four years, since the original opening of the market it has always had seating. The 12 seats were at the market at the time of purchase, the property was on septic system. When the septic system failed 4 years ago, they switched to the town sewage; the seats were not added into their gallon use. The property was given excess of gallons; it is more than the square foot of the retail but does not equal the 12 seats. They would want to fix the paperwork to match what is being used. They started this process back in March and since then the property has been listed for sale.

Public Comment:

- 23 letters in support from public were submitted prior to the hearing.
- Rik Ahlberg, an abutter and customer, feels that the market has become a neighborhood hub and feels that allowing the market to receive the gallons to build seasonal housing and would be a good precedent.
- Sheila McGuinness supports that there has been seating for many years and applauds Michael for building housing for their employees.
- Rachel White can attest to the fact that there was always a counter and food at the market since the opening.
- Christopher Mathieson is supportive of the business plan and building of employee housing.

Selectman Comment:

Mr. Donegan: Terrific model of a year round business example. He would like to see the permit continued with the new owner to protect the employee housing.

Dr. Andrews: A lot of potential with the Economic Development. When the property gets sold, the new owner would not be entitled to the new gallons if they decided to convert the home into a residential home. It arises the question of how to handle septic gallon uses given.

Mr. Donegan moved that the Board of Selectmen vote to approve Economic Development Permit 16-01 for 212 Bradford Street, by Michael MacIntyre, applicant/owner on behalf of PMR Realty LLC, property owners, based on findings that the proposed use is consistent with the criteria set forth in Selectmen's Policy 2009-02-09, specifically:

- **Support year-round incomes and/or**
- **Support an extended employment season and/or**
- **Create or enhance employment opportunities, and**
- **Create seasonal or year-round employee/business owner housing above and associated with existing businesses throughout the Commercial District subject to the attached permit with conditions to provide notice, a certificate of compliance with generally the approved use for a new buyer upon any transfer of sale.**

Mr. Anthony seconded the motion.

VOTED

In Favor: 4
Opposed: 0
Absented: 0

C. Proposed Police Station recommended location at 16 Jerome Smith Road.

Presentation given by Richard Waldo, DPW Director. There were 6 opinions that have been reduced to 5. The 1st opinion of renovating existing at a cost of 8.4 million dollars. 2nd opinion is to tear down and re-build at the existing site, would cost 9.2 million. 3rd and 4th opinion, again is using the currently location, and acquiring land from abutters. Would cost 10.5 and 11.5 million dollars respectively. 5th opinion would be to utilize VFW site at a cost of 8.65 million. 6th option of building on undeveloped parcels at 16 Jerome Smith Road, at a cost of 8.62 million. When asked to reduce the site options down to 1, option 6. Mr. Anthony and Mr. Donegan wanted clarification on what was included in the 8.6 million, did it include the cost of reconstruction of Shake Painter Road. Mr. Waldo the cost includes all the soft cost of the Police Building and on site construction. Shank Painter Road is already on the planning board to reconstruct the road and the reconfiguring of the intersection. If this site is chosen, it will be between 1-2 years before ground can be broken.

Public Comment:

Letters in opposition from Sherry Dranch and Dennis Minsky.

Sherry Dranch, part of the Conservation Trust, supports the Greenway in town as much as possible, feels that Shank Painter Road does not have enough open space. Building the police station at 16 Jerome Smith Road site would increase traffic along this already busy road.

Rachel White believes this to be an ongoing issue; thought there was an issue at the existing site, due to flood zone. Dead issue and the town needs to move onto a new location. Where would the current skate park be moved to still allow the children to have use of the park?

Mr. Waldo: flood zone is an issue, but the new building could be constructed to comply with the flood zone in that area.

Mr. Donegan read into the record a letter written by Dennis Minsky which can be found in the agenda package.

Selectman Comment:

Dr. Andrews: While the conversations have gone on for a long time period of time, it has not been in front of the Board of Selectmen for very long. If we look at numbers only, we go with option 6. While the cost is higher, the option of land acquisition is mostly to appeal to keep the image of our environment. What is the value to keep the green way? Since the 1980's our police and fire have been in the same neighbor, there is an appeal in that. Disappointed in not discussing Mr. O'Malley's property, and is willing to go for a higher amount at town meeting to allow the possibility of using the current location.

Mr. Anthony: What is the cost factor of using the current station and utilizing the medical center if it is available, and reconstructing the station?

Mr. Waldo: All the costs are an estimate of what the cost will be. We have an estimate for site acquisition, temporary housing cost, and re-construction of the current site.

Mr. Donegan: The problem is difficult because there is a lot of pro and cons for each site. If we move the location to the South and West, and eliminate the sweep, it would appease the conservation. He feels there is enough restate to move things around to allow the green way to be configured to appease both. Mr. Waldo, while saying it was possible, would not make a decision or be willing to make a decision without the input of other department heads.

Chairman Richter: Supports 16 Jerome Smith Road as the best site. He feels it provides the maximum benefit to the residents. Using the VFW site, it limits the use of other community purposes. At current site, while interesting, there are too many uncertainties. He prefers to focus on the two locations at Jerome Smith Road; the former VFW parcel and the parking lot at 16 Jerome. As far as the Skate Park there are other locations that could be utilized in town that is similar in activity where the Skate Park could be moved to. He would like to see after 5-6 years of discussion, it needs to be placed on the town warrant. Chairman Richter does not support a project for more than 10 million. He would like to give the

voters an option and not just a dollar amount.

Dr. Andrews: Cost does not include the road cost improvement to the “sweep”. She would like to have towns meeting be a part of the decision making of where the police station would be built. She would be willing to compromise at 9.7 million, if Chairman Richter does not feel comfortable with 10 million. She is not supporting 16 Jerome Smith Street.

Chairman Richter: The selectmen have already endorsed a road construction project. While it is a few years off, it addresses the concerns of Shank Painter and the road as a whole and not just the intersection.

Mr. Anthony would like to know which site would then be presented at town meeting.

Mr. Donegan it is not just the current costs but what will be down the pike. The current site can be used for a better purpose in the future. He wants to go to town meeting with what the staff feels is the best option.

Mr. Donegan moved that the Board of Selectmen vote approve the proposed site for the Police Station at 16 Jerome Smith Road.

Mr. Anthony seconded the motion.

VOTED

In Favor: 3
Opposed: 1 (CA)
Absented: 0

Mr. Donegan moved that the Board of Selectmen vote to approve the Capital Improvement Program Article for the 2017 Spring Town Meeting in the amount of \$8,625,000.

Mr. Anthony seconded the motion.

VOTED

In Favor: 3
Opposed: 1 (CA)
Absented: 0

Chairman Richter moved the Board of Selectman ask the Town Manager to look at alternate sites for relocation of the skate park and report back to the Board at March 13, 2017

Anthony seconded the motion.

VOTED

In favor: 3
Opposed: 0
Absented: 1 (CA)

2. Public Statements:

Rik Ahlberg, Board of Creative Commons, excited to be able to partner with the DPW and are in the midst of designs of the site. Have some concern about the aggressive timeline in which the town is going to plant the trees. He would like to collaborate with the town to postpone the planting of the trees to find a better solution than the one being presented.

Rachel White needs some enlightenment about being a sanctuary town. She thinks she read somewhere that the town decided not to vote being a sanctuary town.

3. Selectmen's Statements:

- **Robert Anthony** - None
- **Erik Yingling** – Excused - None
- **Thomas Donegan**- Would like to thank all the people who were in Boston today and to thank his colleagues for attending the bar relief rally.
- **Cheryl Andrews** – Would like to mention the rally, personally thank all the staff and Chairman Richter. Very inspiring. Missed meeting in December when the Board met with VSB about the five-year plan. As long as a member disclosed their involvement and it would allow them to be a part of the conversation. How would you like to approach questions to the Library Board? Would Chairman Richter or any other Board member like to attend?
- **Raphael Richter** – Thank you to all who attended the rally, and the police department for all their involvement.

4. Joint meeting/Presentations: None

5. Appointments: None

6. Requests:

A. Presentation of tree planting plan for 46 Bradford Street

Margret, founder of Trees Provincetown and Richard Waldo, presented the of tree planting plan for 46 Bradford Street. On November 28, 2016 the Board of Selectmen approved the Tree Warden's request to remove an American Elm tree from a parcel of land at 46 Bradford Street (Old Community Center). The tree was determined to be a public safety hazard by a certified arborist. The Board requested that the Tree Warden return with a plan to plant 1 or 2 trees on the parcel as replacement. Working with Trees Provincetown, a local non-profit organization with a mission to enhance the quality of life of Provincetown through tree-related community service we are proposing to plant two (2) 4" caliper Littleleaf Linden trees at the entrance of the old community center. The trees would be planted symmetrically in front of the building and be at a sufficient distance away from overhead utility lines. A sketch of the proposed area can be seen on the attached drawing. Because the trees will be planted with the Board's consent within 20 feet of a public way (Bradford Street), they will be deemed to be "public shade trees" under MGL c. 87, subject to the jurisdiction of the Tree Warden.

Trees Provincetown is willing to pay for the trees (\$650 each) and for the services of a professional landscaper as well as a certified arborist to properly plant the replacement trees. The group had presented 3 options to the Tree Warden (as attached) and after discussion we feel the best option would be the Linden variety. We would like to plant these trees on or before Arbor Day (April 28th). A fully matured tree can be seen in the attached picture. Chairman Richter and Mr. Waldo discussed the new location of the two trees compared to where the American Elms had been. Ms. Andrews addressed traffic route when trees are planted. Mr. Donegan wished to thank Trees Provincetown for willing to pay for the cost of the tree. Everyone expressed their desires that all parties would work together.

Mr. Donegan move that the Board of Selectmen vote to approve planting two (2) trees on the Old Community Center land at 46 Bradford Street as replacement to the diseased American Elm removed by Selectmen vote on November 28, 2016.

Mr. Anthony seconded the motion.

VOTED

In Favor: 4
Opposed: 0
Absented: 0

7. Town Manager / Assistant Town Manager:

A. Approve language of articles for the April Town Meeting and vote to insert them forthwith

Assistant Town Manager presented the 7 articles that would be brought before the town at Special Town Meeting on Monday April 3, 2017. The Board and Mr. Gardner discussed changes that they wish to see made to the articles.

Mr. Donegan moved that the Board of Selectman vote to insert Articles #1-7, for the April 3, 2017, Annual and Special Town Meeting as presented by the Town Manager into the April 3, 2017, Annual & Special Town Meeting Warrants forthwith.

Mr. Anthony seconded the motion.

VOTED

In Favor: 4
Opposed: 0
Absented: 0

Mr. Gardner discussed the order of the articles and their placement with the Board. The Board, Assistant Town Manager Gardner, Finance Director Young and Town Manager Panagore, discussed each article, analyzed the wording of article and suggested edits where needed. On Article 11, Chairman Richter wanted to know funding source for 1 – 18. All but 1 of the CIP is funded by free cash. Article 16 brought forth discussion about whether or not to include, in the Town Warrant. Chairman Richter wants to allow the town meeting to vote on this. Mr. Donegan wishes to remove Article 31, Chairman Richter agreed. Ms. Andrews suggested giving out a handout with all of the consent articles, other Board members agreed.

Mr. Donegan moved that the Board of Selectman vote to insert Articles #1-#51 with the except of 31 for the April 3, 2017, Annual and Special Town Meeting as presented by the Town Manager into the April 3, 2017, Annual Town Meeting Warrants forthwith.

Mr. Anthony seconded.

VOTED

In Favor: 4
Opposed: 0
Absented: 0

B. Policy discussion as to whether the Selectmen would like to consider any additional Registered Marijuana Dispensaries until such time as the Department of Public Health acts on the three pending requests

Chairman Richter placed this one the agenda to discuss with the other Board members as to whether or not they should continue considering the applications until the Department of Public Health has acted on the three current requests.

Mr. Donegan agreed. Without a local participant, we got more than we need.

Mr. Donegan moved that the Board of Selectmen vote to not consider any additional registered marijuana dispensing from persons outside of Provincetown until such time that the department of public health act on some or all of the three pending requests.

Mr. Anthony seconded the motion.

VOTED

In Favor: 3
Opposed: 1 (CA)
Absented: 0

C. Ratify the Collective Bargaining Agreement with the New England Police Benevolent Association Inc. Local 67 and 68

Mr. Donegan moved that the Board of Selectmen vote to ratify the collective bargaining agreement with the New England Police Benevolent Association Inc. Local 67 & 68.

Mr. Anthony seconded the motion.

VOTED

In Favor: 4
Opposed: 0
Absented: 0

D. Town Manager Update:

1. Review Mid-Year Reports from the Town Manager regarding progress on goals (RR/DP)

Mr. Panagore hopes that moving forward the Town Manager's office and the Board of Selectmen's goals will be the same as time proceeds forward.

2. Update on Harbor Hill Acquisition/Bid.

Statement given at the start of the meeting by Chairman Richter

E. Other: Other matters that may legally come before the Board not reasonably anticipated by the Chair 48 hours before the meeting. Votes may be taken.

8. Minutes:

MOTION: Move that the Board of Selectmen approve the minutes of: January 3, 2017 (Special), with changes so noted; January 4, 2017 (Budget), with changes as noted; January 9, 2017 (Regular), as with changes as noted and February 16, 2017 (Regular), with changes as noted.

Mr. Donegan moved that the Board of Selectmen approve the minutes of January 3, 2017 (Special), January 4, 2017 (Budget), January 9, 2017 (Regular) and February 16, 2017 (Regular), with changes as noted.

Mr. Anthony seconded the motion.

VOTED

In Favor: 4
Opposed: 0
Absented: 0

9. Closing Statements/Administrative Updates:

- **Tom Donegan** – None
- **Cheryl Andrews** – None
- **Robert Anthony** – None
- **Erik Yingling** – None
- **Raphael Richter** – None

A. Thank you letter to Victor Seltsam, who resigned from the Harbor Committee effective February 13, 2017.

B. Thank you letter to Robert Littlefield, who resigned from the Zoning Board of Appeals, effective February 17, 2017.

Without objection the meeting was adjourned at 9:46 pm.

Minutes transcribed by: Elizabeth Paine