



**Wellfleet Board of Selectmen
Minutes of January 10, 2017
Wellfleet Senior Center**

Present: Selectmen Dennis Murphy, Helen Miranda Wilson, Janet Reinhart; Berta Bruinooge, Jerry Houk; Town Administrator Dan Hoort, Assistant Town Administrator Brian Carlson;

Murphy called the meeting to order at 7 PM.

Announcements, Open Session and Public Comment [7:00]

- ☐ Murphy announced that there are three microphones available for the audience and encouraged the public to use them, to be better heard on TV.
- ☐ Hoort announced: 1. 2017 Annual Town Election nomination papers are available for pick-up at Town Clerk's office and online at the Town Clerk's web page; 2. February 2, 2017 at 6 PM at the Wellfleet Senior Center there will be a meeting with OCH to discuss a Mental Health/Substance Abuse Navigator for Truro, Wellfleet and Eastham.
- ☐ Jill Putnam said snow plowing for her road due to serious family medical conditions. Murphy said that an emergency vehicle can always be sent if needed, but he also encouraged Putnam to get the information to the Town Administrator and submit the request in writing. Houk suggested that the TA can be empowered to make a decision once the information is received. The rest of the selectmen agreed.
- ☐ William Young, Jr. said that his private road is not getting plowed any longer as well, and no notification has been sent to let him know of that. Murphy referred Young, Jr. to the Paved Private Road snowplowing policy.

Licenses: Common Victualers Business License Renewals

Murphy read the names of all businesses for common victualler's license renewals as listed on the agenda. According to Wilson Sunbird's application should be reviewed separately, because it is a food truck.

MOTION 217-176: Reinhart moved and Wilson seconded to approve the requests for Common Victualers Business License renewals for Blue Willow Fine Foods, Bookstore Restaurant, Ceraldi, Chequessett Yacht and Country Club, Emack & Bolio's, Finely JP's, Harbor Stage Company, Marconi Beach Restaurant, Maurice's Campground Inc., PB Boulangerie Bistro, Pearl Restaurant, The Wagner at Duck Creek, Wellfleet Cinemas, Wellfleet Donuts, Wellfleet Drive-In Flea Market, Wellfleet Miniature Golf, Dairy Bar and Grill, The Wicked Oyster. The motion passed 5-0.

MOTION 217-177: Wilson moved to approve the renewal of Common Victualler's business license for Sunbird. Bruinooge seconded. Discussion ensued. Wilson said that the Sunbird is a food truck and originally the Sunbird was permitted before the Food Truck regulations were enacted. Since then, the Board had adopted Food Truck Regulations. Wilson wanted to know why this business does not have to go through the same regulations as other food trucks. Reinhart said she thought the grandfathered license is the reason. Bruinooge agreed with Wilson. Murphy also agreed that the Sunbird is not a restaurant, and Town Counsel should advise on this matter. As a result of the discussion, Wilson amended her motion - to table the decision to the next meeting. Bruinooge seconded and the motion passed 5-0.

Licenses: Sunday Entertainment License Renewals

MOTION 217-178: Wilson moved and Reinhart seconded to approve the applications for Sunday Entertainment License renewals for Bookstore & Restaurant, Inc., PB Boulangerie Bistro, The Wagner at

Duck Creek, The Wicked Oyster with the reminder that all such business must insure compliance with Sections 14 and 24 of Article VII of the Town's General Bylaws. Bruinooge wanted to better understand how the noise by-laws will be handled. Houk said that the Board has the power to extend hours of operation, if so desired. The motion passed 5-0.

Licenses: Weekday Entertainment License Renewals

MOTION 217-179: Wilson moved to approve the request for renewal of Weekday Entertainment License for Bookstore & Restaurant, Inc., Finely JP's, Harbor Stage Company, PB Boulangerie Bistro, Pearl Restaurant, The Wagner at Duck Creek, Wellfleet Cinemas, Wellfleet Drive-In Flea Market, Wellfleet Miniature Golf Dairy Bar and Grill, The Wicked Oyster with the reminder that all such business must insure compliance with Sections 14 and 24 of Article VII of the Town's General Bylaws. The motion passed 5-0.

Licenses: Flea Market License Renewal

MOTION 217-180: Reinhart moved and Bruinooge seconded to approve Flea Market License Renewal for Wellfleet Drive-In Flea Market. The motion passed 5-0.

Licenses: Class II License Renewal

MOTION 217-181: Reinhart moved to vote to approve the Class II License for L&R Auto. Bruinooge seconded and the motion passed 5-0.

Appointments/Reappointments

Emily Beebe was present to answer Selectmen's questions. Wilson and Murphy felt honored to get Beebe's volunteer service. Houk congratulated Emily Beebe for Jacqui Beebe's appointment as Town Administrator for the Town of Eastham.

MOTION 217-182: Wilson moved and Bruinooge seconded to appoint Emily Beebe to the Bike and Walkways Committee with term ending June 30, 2019. The motion passed 5-0.

Use of Town Property: White Crest & Newcomb Hollow Beaches parking lots on May 13, 2017

Police Chief Ronald Fisette endorsed the use of Town property by Ragnar Events, LLC.

MOTION 217-183: Wilson moved and Bruinooge seconded to approve the request of Ragnar Events LLC to use White Crest Beach and Newcomb Hollow Beach parking lots on May 13, 2017 from 7:30 am to 5 pm as a baton exchange location for runners with a use fee of \$500; event organizer is required to furnish proof of liability insurance, be responsible for trash removal and portable toilets and provide the cost of police detail. The motion passed 5-0.

Use of Town Property: Long Pond and various roads for Sprint Triathlon on June 3, 2017

The Board discussed. Ron Fisette endorsed the event as one being very well organized in the past.

MOTION 217-184: Wilson moved to approve the request of WOMR/John Braden for Wellfleet Sprint Triathlon on June 3, 2017 from 8 am to 11 am to use: Long Pond for a quarter mile swim including the grassy area and parking lot; Long Pond Rd.; Lawrence Rd.; Gross Hill Rd.; Ocean View Dr.; and the WES parking lot; event organized to provide proof of liability insurance, be responsible for trash removal, pay for a police detail, portable toilets and life guards. Reinhart seconded and the motion passed 5-0.

Business: Wellfleet Harbor Mapping update/wrap-up

Mark Borrelli re-capped the Wellfleet Harbor Mapping Project. He went through the historic time-frame of the project since 2013. The total project cost of \$111,000; the Town's share of \$85,000, partially paid by an ATM appropriation and grants by SPAT and Friends of Herring River. He said that nearly 50% of the time

of the project scope was spent in Wellfleet. Wilson asked if we could have the NPS data included with our report and Borelli said yes. Wilson wanted to know if the “black mayonnaise” was sampled for. Borelli explained that “black mayonnaise” did not show up in the samples, because it is very fine grain and dissipates very fast. The audience had questions about when dredging could be done, and what will happen to the Harbor until then. Borelli said that before and after snapshots could be arranged with the Center for Coastal Studies. The Board thanked Borelli and the discussion concluded.

Business: Authorize the TA to sign construction supervision contract¹ and contract addendum² with Coastal Engineering for Tennis Court reconstruction project

MOTION 217-185: Bruinooge moved to vote to authorize the Town Administrator to sign construction supervision contract for \$6,700 and the contract addendum for \$6,870 with Coastal Engineering for the Tennis Court reconstruction project. Reinhart seconded and the motion passed 5-0.

Business: Authorize the TA to sign contract³ with John Ramsey, Principal Coastal Engineer of Applied Coastal Research and Engineering, Inc., for work with the Natural Resources Advisory Board and Dredging alternative. (Art 26, 2016 ATM) & Mayo Creek Restoration Project update

John Riehl, Chairman of the Natural Resources Advisory Board (NRAB) and Mayo Creek Restoration Committee (MCRC) explained the background on how the future need for dredging could be eliminated via several different measures. The NRAB has been interested in what impact Mayo Creek would have in the future maintenance dredging process. Riehl clarified that \$25,000 have been approved at Town Meeting for the purpose to study the impact. The selectmen discussed how future maintenance dredging could be handled in the future in collaboration with the County.

MOTION 217-186: Wilson moved and Reinhart seconded to vote to authorize the TA to sign the contract with John Ramsey, Principal Coastal Engineer of Applied Coastal Research and Engineering, Inc., for work with the Natural Resources Advisory Board for \$1,600. The motion passed 5-0.

Riehl added that 2.5 years ago the Board of Selectmen charged the formation of the MCRC and talked about challenges of the committee is facing in terms of the impact to ground water, drinking water wells and septic systems. He said that this will require a tidal gate, side dredging and assuring abutters that their drinking water wells will be safe. The MCRC had hired a hydrologist to investigate and determine the impact. The provided draft letter may be slightly modified, but Riehl asked for the Board’s support.

MOTION 217-187: Wilson moved and Bruinooge seconded to delegate signing the letter of support to the Chair of the Board of Selectmen. William Young, Jr. talked about the dangers of opening Mayo Creek and the potential negative impact. Riehl said that these questions will be looked and be answered by a hydrologist. The motion passed 5-0.

Business: Authorization to renew the LCCATV contract⁴

Larry Greely, President and Theresa Martin, Executive Director of Lower Cape Community Access TV requested renewal of the existing contract between the Town of Wellfleet and LCCATV. Wilson wanted to know if there are any deficiencies with this contract. Hoort confirmed that he had read the proposed contract and the previous contract and found them sufficient.

MOTION 217-188: Reinhart moved to vote to approve the request for three-year contract renewal with Lower Cape Community Access Television, Inc. Bruinooge seconded and the motion passed 5-0.

Business: Approval of Cemetery Gift Fund

Hoort introduced the idea for Cemetery Gift Fund. He explained that he is planning to create various gift funds to support activities of Town activities, because there are many people who love Wellfleet and are willing to donate, if there was a way to do so.

MOTION 217-189: Bruinooge moved to vote to approve a creation of a Cemetery Gift Fund. Wilson seconded and the motion carried 5-0.

Business: New development plans based on recent court ruling on Cumberland Farms vs ZBA

David Agger of 56 Cahoon Hollow Rd said that the current Formula Business Bylaw has not been successful and asked how the Town will address, limit and manage certain businesses and brick and mortar establishments from coming to Town. Murphy wanted to better understand Agger's concerns and if these concerns were about corporate structure or architectural appeal. Agger said that both of these were concerns for him. Reinhart explained that Town Counsel continues to look into this matter. Hoort clarified that the Board of Selectmen has not given up on finding solutions. Dan Silverman, Town Moderator said that the Town has a Local Comprehensive Plan and the citizens have been given the opportunity to participate. In addition, there are Planning Board and Zoning Board of Appeals (ZBA). He explained that all bylaw articles are voted by Town Meeting with a 2/3 majority vote required to pass those articles. He provided background information about the ZBA and Cumberland Farms issue, and how the ZBA was not legally represented during the initial hearings. He said that if the Town is going to have Zoning Bylaws and a Local Comprehensive Plan, the BOS needs to back those decisions up and should have provided legal support. Murphy said that as a Finance Committee member at the time, he was not aware of any request from the ZBA for legal representation. He referred to the K&P decree for this case and said that the Board has decided to not spend more funds, since \$97,000 have already been spent for this case, and Town Counsel has advised that the chances for success diminish with each additional appeal. He also confirmed the Board will seek ways to handle matters like this going forward. Wilson was hopeful that the new full time Building Inspector will be going to ZBA meetings to provide support to the Board. Roger Putnam, Chair of the ZBA clarified that the issues arose not during the original hearings, but afterwards when the Town did not want to spend funds on traffic study. He said that the Formula Business Bylaw has been revised under the recommendation of the Attorney General and this might have had an impact on the first court decision. Murphy closed the discussion by saying that the Board of Selectmen will do a little more in-depth analysis and come up with a solution with the help of Town Counsel. Jan Morrissey said that the Planning Board is puzzled on how to handle the Formula Business Bylaw, because the Town cannot discriminate based on corporate identity and name. Brent Harrold disagreed with the statement that the Formula Business Bylaw cannot be enforced and said that since it is the will of the residents, a solution should be found. Wilson agreed with Morrissey that businesses cannot be discriminated against and that there are six formula businesses in Town. The discussion concluded with no action taken, but with the agreement that the issue will continue to be looked at.

Business: Discussion on the new Marijuana Law⁵

Chief Fiset asked the Selectmen for their direction on the new Marijuana Law. He said that the Town will have an option to opt-out at Town Meeting or opt-in by not taking any action. He explained that there are no State regulations in place yet, but the Town has the option to not participate in allowing retail sale of Marijuana in Town. Reinhart said that there is a need for discussion and involving the voters. Murphy proposed moving this to another meeting and having a public hearing. Houk and Bruinooge felt that this should be on the warrant and give the voters the opportunity to decide. Wilson said that the Town has a good Medical Marijuana Dispensary bylaw and has issued eight liquor license permits. She felt that this should be a petitioned article. Bruinooge felt that it is premature to discuss this. Jan Morrissey wanted to know if legally it should be on the Town Meeting warrant or on an Election Warrant? No action was taken and the selectmen decided to table this matter until more information is available.

Town Administrator's Report⁶

Hoort presented his report and opened it for questions. Wilson expressed concerns about a violation of the Shellfishing Rules and Regulations that is still pending in the future concerns.

Topics for Future Discussion

- Wilson had two items for future discussion: 1. A letter received in December from Dick Elkin for the Cape Light Compact. She wanted to find out more about it; 2. Information about the possibility of fiber optics in Town.

Correspondence⁷ and Vacancy⁸ Report

Minutes [November 22, December 6, December 13 & December 19, 2016]

MOTION 217-190: Wilson and Reinhart seconded to approve the minutes⁹ of November 22, 2016 as amended by Wilson. The motion passed 5-0.

MOTION 217-191: Wilson moved and Reinhart seconded to approve the minutes¹⁰ of December 6, 2016 as amended by Wilson. The motion passed 5-0.

MOTION 217-192: Bruinooge moved and Wilson seconded to approve the minutes¹¹ of December 13 and the minutes¹² of December 19, 2016 as printed. The motion passed 5-0.

Adjournment and Executive Session

MOTION 217-193: Murphy moved and Wilson seconded to adjourn the public meeting at 9:07 pm and enter in executive session for the following reasons: 1. Pursuant to G.L. c. 30A, §21(a)(1), to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. 2. Pursuant to G.L. c. 30A, §21(a)(3), to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares. 3. Approval of and consideration to release 2016 Executive Session Minutes. Murphy stated that the Board will not reconvene in open session. The motion passed by a roll call vote where Bruinooge, Reinhart, Wilson, Murphy and Houk each said "Aye".

Respectfully submitted,

Michaela Miteva, Executive Assistant

Public Records Materials:

¹ Construction Supervision contract with Coastal Engineering for Tennis Court reconstruction project

² Contract Addendum with Coastal Engineering for Tennis Court reconstruction project

³ Contract with John Ramsey, Principal Coastal Engineer of Applied Coastal Research and Engineering, Inc.

⁴ LCCATV Contract Renewal Draft

⁵ Police Chief and K&P handouts and memo on the Marijuana Law in MA

⁶ Town Administrator's Report of January 5, 2017

⁷ Correspondence Report of January 10, 2017

⁸ Vacancy Report of January 4, 2017

⁹ Draft minutes of 11/22/16

¹⁰ Draft minutes of 12/6/16

¹¹ Draft minutes of 12/13/16

¹² Draft minutes of 12/19/16