



## Board of Selectmen

**The Wellfleet Board of Selectmen will hold a public meeting on Tuesday, October 27, 2015 at 7:00 p.m. at the Wellfleet Senior Center, 715 Old Kings Highway, Wellfleet, MA 02667.**

*It is anticipated that the meeting will be recorded by the Town. Anyone else desiring to record the meeting may do so only after notifying the chair and may not interfere with the conduct of the meeting in doing so.*

- I. Announcements, Open Session and Public Comment [7:00]** *Note: Public comments must be brief. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comment.*
- II. Public Hearing(s) [7:05]**
  - A. Application received on September 28, 2015 from Chaps & Wags, Inc. dba The Wagner at Duck Creek, 70 East Main Street, Wellfleet, MA, Leon Wagner and Erica Chapman, Managers, to transfer the Seasonal All Alcoholic Inn license from Sweet Seasons, Inc. Licenses/Appointments/Reappointments/Use of Town Property
- III. Licenses - NONE**
- IV. Appointments/Reappointments**
  - A. G. Fred Vanderschmidt to Waste Water Committee with term ending 06/30/2018
- V. Use of Town Property - NONE**
- VI. Business**
  - A. Eversource litigation on right-of-way spraying. (*Continued discussion from 10/13/15*)
  - B. Approval of Housing Partnership request to submit a buy down program application to Department of Housing and Community Development [McIlroy]
  - C. Discussion of possible Selectmen's comments on Local Initiative Program application by Habitat for Humanity (*Continued from 10/13/15*)
  - D. Discussion of procurement policy for season long uses of Town property [TA]
  - E. Possible revocation of Board of Selectmen's policy on Award of Shellfish Grants (Policy 1988-04) [TA]
  - F. Discussion of possible amendment(s) to Board of Selectmen policy on Bicycle Races (Policy 1998-01) [TA]
  - G. Discussion of possible Board comments on MassDOT's Capital Plan (*continued from 10/13/15*) [Pilcher]
  - H. Request to approve dual representation by town counsel with the Town of Truro in connection with Herring River restoration project draft memorandum of understanding III. [TA]
  - I. BOS vote authorizing the TA to sign contracts on the Town's behalf [TA]
- VII. Town Administrator's Report**
- VIII. Future Concerns**
- IX. Correspondence and Vacancy Report**
- X. Minutes [October 13, 2015 and October 15, 2015]**
- XI. Adjournment**

TOWN OF WELLFLEET  
PUBLIC HEARING

In accordance with M.G.L. Chapter 138, notice is hereby given that the Board of Selectmen will hold a public hearing on Tuesday, October 27, 2015 at 7:05 p.m. in the Wellfleet Council on Aging, 715 Old King's Highway, to consider the following:

- Application received September 28, 2015, from Chaps & Wags, Inc., dba The Wagner at Duck Creek, 70 East Main Street, Wellfleet, MA, Leon Wagner and Erica Chapman, Managers, to transfer the Seasonal, all alcoholic Inn License from Sweet Seasons, Inc.

WELLFLEET BOARD OF SELECTMEN

RECEIVED  
TOWN OF WELLFLEET  
2015 SEP 28 AM 9:38

BOARD OF SELECTMEN  
TOWN OF WELLFLEET

APPLICATION PROCESSING FORM FOR LIQUOR LICENSE

Applicant: Chap & Wags, Inc. dba The Wagner at Duck Creek

Leon Wagner and Erica Chapman, Managers

Address: 70 East Main Street (The Inn at Duck Creek)

Date Received: September 28, 2015

Application for: (check one)

- ☐ Restaurant - all alcohol
- ☐ Restaurant - beer & wine
- ☐ Package Store - all alcohol
- ☐ Package Store - beer & wine
- ☒ **Innholder - all alcohol**
- ☐ Innholder - beer & wine
- ☐ New License
- ☒ **Transfer of License**
- ☐ Transfer of Stock
- ☐ New Officers/Directors/Stockholders
- ☐ Change in Description of Premises
- ☐ Seasonal to Annual
- ☐ Change of Manager
- ☐ Change of Hours

Tax: M. Dubois Date: 9/29/15 Comments: \_\_\_\_\_

Police: [Signature] Date: 10/1/15 Comments: OK

Fire: [Signature] Date: 10/1/15 Comments: OK

Health: [Signature] Date: 10/6/15 Comments: OK

Zoning: 26S Date: 10.2.15 Comments: Annual Inspection Rec'd



*The Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
239 Causeway Street  
Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

Print Form

**RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION  
MONETARY TRANSMITTAL FORM**

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL  
LICENSING AUTHORITY.

ECRT CODE: RETA

CHECK PAYABLE TO ABCC OR COMMONWEALTH OF MA: \$200.00

(CHECK MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL)

CHECK NUMBER

IF USED EPAY, CONFIRMATION NUMBER

A.B.C.C. LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

LICENSEE NAME

ADDRESS

CITY/TOWN

Chap & Wags, Inc.

70 Main Street

Wellfleet

STATE MA

ZIP CODE

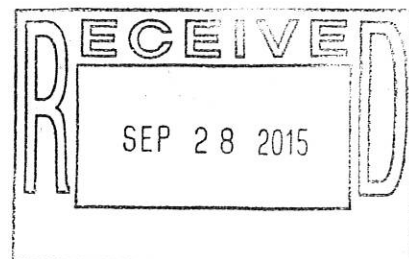
02667

**TRANSACTION TYPE (Please check all relevant transactions):**

- |  |   |   |   |
|--|---|---|---|
| <input type="checkbox"/> Alteration of Licensed Premises | <input type="checkbox"/> Cordials/Liqueurs Permit       | <input type="checkbox"/> New Officer/Director | <input checked="" type="checkbox"/> Transfer of License |
| <input type="checkbox"/> Change Corporate Name           | <input type="checkbox"/> Issuance of Stock              | <input type="checkbox"/> New Stockholder      | <input type="checkbox"/> Transfer of Stock              |
| <input type="checkbox"/> Change of License Type          | <input type="checkbox"/> Management/Operating Agreement | <input type="checkbox"/> Pledge of Stock      | <input type="checkbox"/> Wine & Malt to All Alcohol     |
| <input type="checkbox"/> Change of Location              | <input type="checkbox"/> More than (3) \$15             | <input type="checkbox"/> Pledge of License    | <input type="checkbox"/> 6-Day to 7-Day License         |
| <input type="checkbox"/> Change of Manager               | <input type="checkbox"/> New License                    | <input type="checkbox"/> Seasonal to Annual   |   |
| <input type="checkbox"/> Other                           |   |   |   |

THE LOCAL LICENSING AUTHORITY MUST MAIL THIS TRANSMITTAL FORM ALONG WITH THE  
CHECK, COMPLETED APPLICATION, AND SUPPORTING DOCUMENTS TO:

**ALCOHOLIC BEVERAGES CONTROL COMMISSION  
P. O. BOX 3396  
BOSTON, MA 02241-3396**





# APPLICATION FOR RETAIL ALCOHOLIC BEVERAGE LICENSE

City/Town

Wellfleet

## 1. LICENSEE INFORMATION:

A. Legal Name/Entity of Applicant:(Corporation, LLC or Individual) Chap & Wags, Inc.

B. Business Name (if different) : The Wagner at Duck Creek

C. Manager of Record: Leon Wagner

D. ABCC License Number (for existing licenses only) : 134800008

E. Address of Licensed Premises: 70 East Main Street

City/Town: Wellfleet

State: MA

Zip: 02667

F. Business Phone:

G. Cell Phone: 508-942-8185

H. Email: leo.wags@gmail.com

I. Website:

J. Mailing address (if different from E.):

City/Town:

State:

Zip:

## 2. TRANSACTION:

- ☐ New License ☐ New Officer/Director ☐ Transfer of Stock ☐ Issuance of Stock ☐ Pledge of Stock  
☒ Transfer of License ☐ New Stockholder ☐ Management/Operating Agreement ☐ Pledge of License

The following transactions must be processed as new licenses:

- ☐ Seasonal to Annual ☐ (6) Day to (7)-Day License ☐ Wine & Malt to All Alcohol

**IMPORTANT ATTACHMENTS (1):** The applicant must attach a vote of the entity authorizing all requested transactions, including the appointment of a Manager of Record or principal representative.

## 3. TYPE OF LICENSE:

- ☐ \$12 Restaurant ☒ \$12 Hotel ☐ \$12 Club ☐ \$12 Veterans Club ☐ \$12 Continuing Care Retirement Community  
☐ \$12 General On-Premises ☐ \$12 Tavern (No Sundays) ☐ \$15 Package Store

## 4. LICENSE CATEGORY:

- ☒ All Alcoholic Beverages ☐ Wines & Malt Beverages ☐ Wines ☐ Malt  
☐ Wine & Malt Beverages with Cordials/Liqueurs Permit

## 5. LICENSE CLASS:

- ☐ Annual ☒ Seasonal



Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street, First Floor  
Boston, MA 02114

PETITION FOR TRANSFER OF OWNERSHIP, TRANSFER OF STOCK, NEW OFFICER(S),  
DIRECTOR(S), STOCKHOLDER(S) AND LLC MANAGER(S)

134800008

ABCC License Number

Wellfleet

City/Town

The licensee A. Sweet Seasons, Inc. and the proposed transferee B. Chap & Wags, Inc. respectfully petition the Licensing Authorities to approve the following transfer of ownership. Any Corporation, LLC or Association, Partnership, Individual, Sole Proprietor Listed in box (A.) must submit a certificate of good standing from the Massachusetts Department of Revenue (DOR).

Is the PRESENT licensee a Corporation/LLC listed in box (A.), duly registered under the laws of the Commonwealth of Massachusetts?

☒ Yes ☐ No If YES, please list the officers, directors and stockholders, their residences, and shares owned by each.

Name	Title	Address	Stock or % Owned
Judith M. Pihl	President/Director	East Main Street, Wellfleet, MA 02667	50%
Robert P. Morrill	Treasurer/Director	East Main Street, Wellfleet, MA 02667	50%

Is the PROPOSED transferee a Corporation/LLC listed in box (B.), duly registered under the laws of the Commonwealth of Massachusetts?

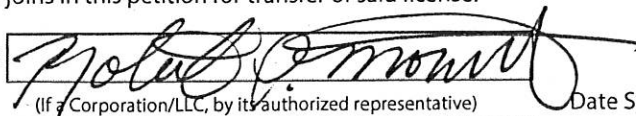
☒ Yes ☐ No

TO: (Place an \* before the name of each DIRECTOR/LLC Manager.)

Name	Title	Address	Stock or % Owned
*Leon E. Wagner, III	Vice President/Director	45 Back Drive, Wellfleet, MA 02667	50%
*Erica J. Chapman	President/Director	45 Back Drive, Wellfleet, MA 02667	50%

The above named proposed transferee hereby joins in this petition for transfer of said license.

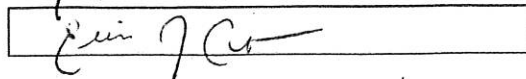
SIGNATURE OF LAST-APPROVED LICENSEE:

  
(If a Corporation/LLC, by its authorized representative)

Date Signed

9/25/15

SIGNATURE OF PROPOSED TRANSFEREE:



**6. CONTACT PERSON CONCERNING THIS APPLICATION (ATTORNEY IF APPLICABLE)**

NAME: David V. Lawler

ADDRESS: 540 Main Street, Suite 8

CITY/TOWN: Hyannis STATE: MA ZIP CODE: 02601

CONTACT PHONE NUMBER: 508-778-0303 FAX NUMBER: 508-778-4600

EMAIL: dlawler.atty@verizon.net

**7. DESCRIPTION OF PREMISES:**

Please provide a complete description of the premises. Please note that this must be identical to the description on the Form 43. **Your description MUST include: number of floors, number of rooms on each floor, any outdoor areas to be included in licensed area, and total square footage.** i.e.: "Three story building, first floor to be licensed, 3 rooms, 1 entrance 2 exits (3200 sq ft); outdoor patio (1200 sq ft); Basement for storage (1200 sq ft). Total sq ft = 5600."

Inn consisting of a main tavern with the 1920 square foot first floor including storage areas and restrooms and attached 300 square foot kitchen; first floor function hall consisting of three rooms and lobby with a total combined area of 1940 square feet; ground level function hall is one room totaling 1056 square feet; front captains room of 200 square feet, patio of 221 square feet; back deck is 400 square feet and side grounds for small receptions area of 600 square feet; grounds in front of pond for outdoor events- 2000 square feet.

Total Square Footage: 8637 Number of Entrances: 2 Number of Exits: 4

Occupancy Number: 166 Seating Capacity: 80

IMPORTANT ATTACHMENTS (2): The applicant must attach a floor plan with dimensions and square footage for each floor & room.

**8. OCCUPANCY OF PREMISES:**

By what right does the applicant have possession and/or legal occupancy of the premises? Own

IMPORTANT ATTACHMENTS (3): The applicant must submit a copy of the final lease or documents evidencing a legal right to occupy the premises.

Other:

Landlord is a(n): Please Select Other:

Name: Phone:

Address: City/Town: State: Zip:

Initial Lease Term: Beginning Date Ending Date

Renewal Term: Options/Extensions at: Years Each

Rent: Per Year Rent: Per Month

Do the terms of the lease or other arrangement require payments to the Landlord based on a percentage of the alcohol sales?  
Yes ☐ No ☐

If Yes, Landlord Entity must be listed in Question # 10 of this application.

If the principals of the applicant corporation or LLC have created a separate corporation or LLC to hold the real estate, the applicant must still provide a lease between the two entities.

**9. LICENSE STRUCTURE:**

The Applicant is a(n):

Corporation

Other :

If the applicant is a Corporation or LLC, complete the following:

Date of Incorporation/Organization:

6/5/2015

State of Incorporation/Organization: Massachusetts

Is the Corporation publicly traded? Yes ☐ No ☒**10. INTERESTS IN THIS LICENSE:**

List all individuals involved in the entity (e.g. corporate stockholders, directors, officers and LLC members and managers) and any person or entity with a direct or indirect, beneficial or financial interest in this license.

**IMPORTANT ATTACHMENTS (4):**A. All individuals or entities listed below are required to complete a Personal Information Form.B. All shareholders, LLC members or other individuals with any ownership in this license must complete a CORI Release Form (unless they are a landlord entity)

Name	All Titles and Positions	Specific % Owned	Other Beneficial Interest
Leon E. Wagner, III	Manger/Vice Pres., Director	50%	
Erica J. Chapman	Manager/Pres., Treasurer, Di	50%	

\*If additional space is needed, please use last page.

**11. EXISTING INTEREST IN OTHER LICENSES:**

Does any individual listed in §10 have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages? Yes ☐ No ☒ If yes, list said interest below:

Name	License Type	Licensee Name & Address
	Please Select	
	Please Select	
	Please Select	
	Please Select	
	Please Select	
	Please Select	

\*If additional space is needed, please use last page.

**12. PREVIOUSLY HELD INTERESTS IN OTHER LICENSES:**

Has any individual listed in §10 who has a direct or indirect beneficial interest in this license ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held? Yes ☐ No ☒ If yes, list said interest below:

Name	Licensee Name & Address	Date	Reason Terminated
			Please Select
			Please Select
			Please Select

**13. DISCLOSURE OF LICENSE DISCIPLINARY ACTION:**

Have any of the disclosed licenses to sell alcoholic beverages listed in §11 and/or §12 ever been suspended, revoked or cancelled? Yes ☐ No ☒ If yes, list said interest below:

Date	License	Reason of Suspension, Revocation or Cancellation

**14. CITIZENSHIP AND RESIDENCY REQUIREMENTS FOR A (§15) PACKAGE STORE LICENSE ONLY :****A.) For Individual(s):**

1. Are you a U.S. Citizen? Yes ☐ No ☐
2. Are you a Massachusetts Residents? Yes ☐ No ☐

**B.) For Corporation(s) and LLC(s) :**

1. Are all Directors/LLC Managers U.S. Citizens? Yes ☐ No ☐
2. Are a majority of Directors/LLC Managers Massachusetts Residents? Yes ☐ No ☐
3. Is the License Manager a U.S. Citizen? Yes ☐ No ☐

**C.) For Individual(s), Shareholder(s), Member(s), Director(s) and Officer(s):**

- 1.. Are all Individual(s), Shareholders, Members, Directors, LLC Managers and Officers involved at least twenty-one (21) years old? Yes ☐ No ☐

**15. CITIZENSHIP AND RESIDENCY REQUIREMENTS FOR (§12) RESTAURANT, HOTEL, CLUB, GENERAL ON PREMISE, TAVERN, VETERANS CLUB LICENSE ONLY:****A.) For Individual(s):**

1. Are you a U.S. Citizen? Yes ☐ No ☐

**B.) For Corporation(s) and LLC(s) :**

1. Are a majority of Directors/LLC Managers **NOT** U.S. Citizen(s)? Yes ☐ No ☒
2. Is the License Manager or Principal Representative a U.S. Citizen? Yes ☒ No ☐

**C.) For Individual(s), Shareholder(s), Member(s), Director(s) and Officer(s):**

- 1.. Are all Individual(s), Shareholders, Members, Directors, LLC Managers and Officers involved at least twenty-one (21) years old? Yes ☐ No ☐

**16. COSTS ASSOCIATED WITH LICENSE TRANSACTION:**

A. Purchase Price for Real Property:

B. Purchase Price for Business Assets:

C. Costs of Renovations/Construction:

D. Initial Start-Up Costs:

E. Purchase Price for Inventory:

F. Other: (Specify)

**G: TOTAL COST**

\$2,625,000.00

**H. TOTAL CASH**

\$262,500.00

**I. TOTAL AMOUNT FINANCED**

\$2,362,500.00

**IMPORTANT ATTACHMENTS (5):** Any individual, LLC, corporate entity, etc. providing funds of \$50,000 or greater towards this transaction, must provide proof of the source of said funds. Proof may consist of three consecutive months of bank statements with a minimum balance of the amount described, a letter from your financial institution stating there are sufficient funds to cover the amount described, loan documentation, or other documentation.

The amounts listed in subsections (H) and (I) must total the amount reflected in (G).

**17. PROVIDE A DETAILED EXPLANATION OF THE FORM(S) AND SOURCE(S) OF FUNDING FOR THE COSTS IDENTIFIED ABOVE (INCLUDE LOANS, MORTGAGES, LINES OF CREDIT, NOTES, PERSONAL FUNDS, GIFTS):**

Personal funds of \$262,500.00 plus financing of \$2,362,500.00

\*If additional space is needed, please use last page.

**18. LIST EACH LENDER AND LOAN AMOUNT(S) FROM WHICH "TOTAL AMOUNT FINANCED" NOTED IN SUB-SECTIONS 16(I) WILL DERIVE:**

A.

Name	Dollar Amount	Type of Financing
Small Business Administration	\$2,362,500.00	commercial lending

\*If additional space is needed, please use last page.

B. Does any individual or entity listed in §17 or §18 as a source of financing have a direct or indirect, beneficial or financial interest in this license or any other license(s) granted under Chapter 138? Yes ☒ No ☐

If yes, please describe:

Leon Wagner and Erica Chapman- providing \$262,500.00 of their own money





**TOWN OF WELLFLEET**  
**APPLICATION FOR TOWN BOARDS & COMMITTEES MEMBERSHIP**

Wellfleet depends on its citizens to carry out many of our government's activities. Your community needs your help. *Please volunteer.*

FILL OUT THE FORM BELOW and mail it to:

Wellfleet Selectmen's Office, Town Hall, 300 Main Street, Wellfleet, MA 02667

☐ Name G. Fred Vanderschmidt

Date October 19, 2015

Mailing Address P.O. Box 972

Wellfleet, MA 02667

Phone (Home) 508-349-0904 Phone (Business) 617-447-0485

E-mail: Fred@capecod.net

☐ Please describe briefly any work experience, including volunteer service, that you feel would be useful to the Town:

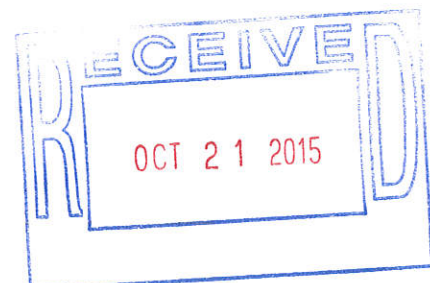
- ✓ 35 year Wellfleet resident
- ✓ Government operations executive with a proven record managing difficult operations and delivering a high value, just in time, service to the public
- ✓ Experienced in complex government operations and programs
- ✓ Experienced in contracting, project management, grants management, budgeting, and operational/strategic planning

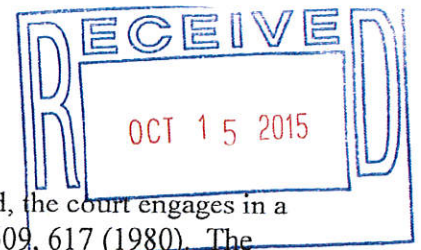
☐ Please add any other information that you think may be useful, including education or other formal training, specialized courses, professional licenses or certifications, etc

- ✓ Mechanical/structural engineer
- ✓ Senior government executive delivering and managing disaster programs averaging over \$500 million dollars yearly
- ✓ Led the design, engineering, construction and management thousands of community infrastructure projects.
- ✓ Government grants operations, administration and management subject matter expert

Committees/Boards of Interest:

1. Waste-Water Committee





In determining whether a preliminary injunction should be granted, the court engages in a balancing test. See *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). The Supreme Judicial Court set forth the prevailing standard as follows:

“[W]hen asked to grant a preliminary injunction, the judge initially evaluates in combination the moving party’s claim of injury and chance of success on the merits. If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party . . . . Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue.”

*GTE Products Corp. v. Stewart*, 414 Mass. 721, 722-723 (1993) (quoting *Packaging Indus. Group*, 380 Mass. at 617); see also *LeClair v. Town of Norwell*, 430 Mass. 328, 331 (1999) and *Boston Police Patrolmen’s Assn. v. Police Dept. of Boston*, 446 Mass. 46, 49-50 (2006) (“When a private party seeks a preliminary injunction, the moving party is required to show that an irreparable injury would occur without immediate injunctive relief.”).

The plaintiffs, abutters to utility Rights-of-Way held by Eversource Energy Service Co., Inc. (Eversource), seek to enjoin Eversource and its subcontractors from application of herbicides on or proximate to the plaintiffs’ land. The plaintiffs bring a four-count claim against the defendants for negligence, nuisance, breach of contract, and violation of Chapter 93A. The plaintiffs argue that Eversource has not received approval for such herbicide application from the Massachusetts Department of Agricultural Resources (MDAR), as required by 333 Code Mass. Regs. 11.00. Further, the plaintiffs claim that Eversource has failed to notify local town officials and publish public notices about the herbicide application, as required by G. L. c. 132B, § 6B(a). Finally, the plaintiffs claim that Eversource has or will apply herbicides, specifically glyphosate and triclopyr, that are “identified as a Potential Ground Water Contaminant pursuant to 333 CMR 12.00 to a right-of-way”, in contravention to 333 Code Mass. Regs. 11.03(10).


Eversource claims that all herbicide application on Rights-of-Way is proceeding pursuant to plans properly approved the MDAR. At hearing, Eversource submitted documentary evidence of MDAR approval of the company’s “2015 Yearly Operational Plan for Cape Cod and Martha’s Vineyard (Barnstable and Dukes Counties) (YOP) for the use of herbicide on Rights-of-Way list within the YOP”. In its approval letter, MDAR specifically noted the agency’s determination that the YOP “satisfies the requirements set forth in M.G.L. c. 132B and 333 CMR 11.00”. Eversource has also submitted documentary evidence of notice to town officials, and publication of a public notice in the Cape Cod Times.

The plaintiffs claim that they risk irreparable harm in the absence of an injunction, because the presence of these herbicides on or near their property and in the ground water results in physical injury, medical expenses, emotional suffering, environmental clean up costs, property value diminution, decreased use and enjoyment of property, and increased difficulty in sale of property. However, at this time, the court has received no medical documentation of the claimed health risks to the plaintiffs. Eversource claims that a delay in implementation of the YOP risks harm to the utility’s power lines and interruption of electrical transmission during adverse weather events. Further, Eversource has indicated that they will not apply herbicides on or near the property of plaintiffs Richardson, Johnson or Greene.

Thus, after hearing and review of the parties' submissions, employing the "balancing" test enunciated in *Packaging Indus. Group*, and considering the plaintiffs' likelihood of success on the merits, the risk of irreparable harm to the plaintiffs and the potential for irreparable harm to be suffered by Eversource if an injunction is issued, this court concludes that the scales tip in favor of the defendants regarding the requested injunctive relief.

For the above stated reasons, the plaintiffs' Motion for Preliminary Injunction is respectfully **DENIED**.

Dated: October 6, 2015



Robert C. Rufo  
Justice of the Superior Court

A true copy, Attest:   
Clerk





Wellfleet Local Housing Partnership  
Wellfleet Housing Authority  
Town Hall - 300 Main Street  
Wellfleet, MA 02667  
508-349-0349

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Ms. Janice Lesniak  
Program Coordinator, Local Initiative Program  
Department of Housing and Community Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114

October 27, 2015

RE: Wellfleet BuyDown Program, Local Action Unit Application

Dear Janice:

Attached please find the Local Initiative Program, Local Action Unit application and supporting materials for the Wellfleet Housing BuyDown Program. Included:

- Local Action Unit (LAU) Application
- Documentation of Municipal Action - CPC funding
- Regulatory Agreement – not attached. As this is a BuyDown Program, when a unit is selected, unit specific information will be provided to DHCD as part of "Requesting Unit Approval" and once DHCD has approved the Unit, DHCD will provide the LIP Deed Rider. Attached is the LIP Deed Rider
- Documentation of Project Sponsor's Legal Authority
- MEPA ENF Certification Form - not required, as this is not new construction
- Affirmative Fair Housing Marketing Plan (AFHMP)

Wellfleet has previously run BuyDown programs with CPC funds, but the program had been available to households earning up to 100% of median income so Wellfleet had not sought inclusion on the DHCD SHI. We are now looking at a unit targeted to a household earning at/below 80% of area median income, so would have prepared the attached materials for DHCD review and approval. Please call if you have any questions.

We are eager to start the program and open our Affirmative Fair Housing Marketing this fall, so would appreciate your prompt action.

Sincerely,  
  
Gary Sorkin,  
Chairman, Local Housing Partnership

Sincerely,  
  
Elaine McIlroy,  
Chairman, Wellfleet Housing Authority

# **LOCAL INITIATIVE PROGRAM APPLICATION FOR LOCAL ACTION UNITS**

## **Introduction**

The Local Initiative Program (LIP) is a state housing initiative administered by the Department of Housing and Community Development (DHCD) to encourage communities to produce affordable housing for low- and moderate-income households.

The program provides technical and other non-financial assistance to cities or towns seeking to increase the supply of housing for households at or below 80% of the area median income. LIP-approved units are entered into the subsidized housing inventory (SHI) pursuant to Chapter 40B.

Local Action Units (LAUs) are created through local municipal action *other than* comprehensive permits; for example, through special permits, inclusionary zoning, conveyance of public land, utilization of Community Preservation Act (CPA) funds, etc.

The Department shall certify units submitted as Local Action Units if they meet the requirements of 760 CMR 56.00 and the Local Initiative Program Guidelines, which are part of the Comprehensive Permit Guidelines and can be found on the **DHCD website at [www.mass.gov/dhcd](http://www.mass.gov/dhcd)**

To apply, a community must submit a complete, signed copy of this application to:

**Department of Housing and Community Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114**

**Attention: Janice Lesniak, LIP Program Coordinator**

**Telephone: (617) 573-1327**

**Email: [Janice.Lesniak@state.ma.us](mailto:Janice.Lesniak@state.ma.us)**

## Community Support Narrative, Project Description, and Documentation

Please provide a description of the project, including a summary of the project's history and the ways in which the community fulfilled the local action requirement. see attached "Wellfleet Housing BuyDown Program Guide" for project description. This is a local action program as the funds for program are from Community Preservation (see attached award letter).

## Signatures of Support for the Local Action Units Application

### Chief Executive Officer:

*defined as the mayor in a city and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter*

Signature:

Print Name: Paul Pilcher, Chair, Board of Selectmen

Date:

### Chair, Wellfleet Housing Authority: (as applicable)

Signature

Print Name: Elaine McIlroy,  
Chair, Wellfleet Housing Authority

Date:

### Chair, Local Housing Partnership: (as applicable)

Signature

Print Name: Gary Sorkin,  
Chair, Local Housing Partnership

Date:



## Municipal Contact Information

**Chief Executive Officer:**Name Paul Pilcher, Chair, Board of SelectmenAddress 300 Main Street, Wellfleet, MA 02667Phone 508-349-0300Email paulpilcher@comcast.net**Town Administrator/Manager:**Name Harry Terkanian, Town AdministratorAddress 300 Main Street, Wellfleet, MA 02667Phone 508-349-0300Email harry.terkanian@wellfleet-ma.gov**City/Town Planner:**

Name:

Address

Phone \_\_\_\_\_

Email \_\_\_\_\_

**Town Counsel:**Name Elizabeth LaneKopelman and Paige, P.C.Address 101 Arch Street, Boston, MA 02110Phone 1-800-548-3522

Email \_\_\_\_\_

**Chair, Local Housing Partnership (if any):**Name Gary Sorkin, ChairAddress 300 Main Street, Wellfleet, MA 02667Phone 508-349-7547Email garysorkin21@gmail.com**Community Contact Person:**Name Elaine McIlroy, Chair, Wellfleet Housing AuthorityAddress 300 Main Street, Wellfleet, MA 02667Phone 508-349-0300Email emcilroy@comcast.net

## The Project

Developer: Wellfleet Housing Authority

Telephone: Gary Sorkin, 508-349-7547

Email: garysorkin21@gmail.com

Project Site: scattered, tbd

Address:

Is your municipality utilizing any HOME or CDBG funding for this project? Yes ☐ No ☒

Local tax rate per thousand \$ 6.78 for Fiscal Year 2015

Site Characteristics: proposed or existing buildings by design, ownership type, and size.

<u>Project Style</u>	<u>Total Number of Units</u>	<u>Number of Units Proposed for Local Action Units Certification</u>
Detached Single-family house	<u>1</u>	<u>1</u>
Rowhouse/townhouse	<u>          </u>	
Duplex	<u>          </u>	
Multifamily house (3+ family)	<u>          </u>	
Multifamily rental building	<u>          </u>	
Other (specify)	<u>          </u>	

### Unit Composition

Type of Unit:	# of Units	# of BRs	# of Baths	Gross Square Feet	Livable Square Feet	Proposed Sale Prices/ Rent	Proposed Condo Fee
Condo Ownership Fee Simple Ownership Rental	1	TBD	TBD	TBD	TBD		
Affordable:							
Market:							

**Please attach the following documents to your application:**

1. Documentation of municipal action (e.g., copy of special permit, CPA funds, land donation, etc.)

- CPC award and Town Meeting approval letter
- Wellfleet Housing Authority Meeting approval minutes
- Wellfleet Local Housing Partnership approval minutes
- Wellfleet Board of Selectmen approval minutes

2. Long-Term Use Restrictions (request documents before submission):

**For ownership projects**, this is the Regulatory Agreement for Ownership Developments, redlined to reflect any proposed changes, and/or the model deed rider.

**For rental projects**, this is the Regulatory Agreement for Rental Developments, redlined to reflect any proposed changes.

**For HOME-funded projects**, this is the HOME covenant/deed restriction. When attaching a HOME deed restriction to a unit, the universal deed rider cannot be used.

3. Documents of Project Sponsor's (developer's) legal existence and authority to sign the Regulatory Agreement:

- appropriate certificates of Organization/Registration and Good Standing from the Secretary of State's Office
- mortgagee consents to the Regulatory Agreement
- Trustee certificates or authorization for signer/s to execute all documents

4. For Condominium Projects Only: The Condominium master deed with schedule of undivided interest in the common areas in percentages set forth in the condominium master deed

5. For Rental Projects Only: A copy of the Local Housing Authority's current Utility Allowances

6. MEPA (Massachusetts Environmental Policy Act) environmental notification form (ENF)--for new construction only (request form before submission)

7. Affirmative Fair Marketing and Lottery Plan, including:

- ads and flyers with HUD Equal Housing Opportunity logo
- informational materials for lottery applicants
- eligibility requirements
- lottery application and financial forms
- lottery and resident selection procedures
- request for local preference and demonstration of need for the preference
- measures to ensure affirmative fair marketing, including outreach methods and venue list
- name of Lottery Agent with contact information

See Section III of the Comprehensive Permit Guidelines at [www.mass.gov/dhcd](http://www.mass.gov/dhcd) and search for **LIP 40B Guidelines** for more information.

**PLEASE** contact our office if you have any questions: 617-573-1327.

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## Wellfleet Housing BuyDown PROGRAM GUIDE

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**In A Nutshell:** The Wellfleet Housing BuyDown Program is a program for low-to-moderate income homebuyers (see grid below for income qualification levels). The program provides a \$125,000 subsidy towards purchasing a Wellfleet home, lowering the price to you and making the home affordable. With this subsidy, the low-to-moderate income homebuyer will be able to affordably purchase a lower end market-rate Wellfleet home. In exchange for the subsidy, the home will be forever affordable, meaning that when you go to sell it, there will be restrictions on the amount you can sell it for.

**Buyer Qualification:** To qualify, your annual household income must be at or below 80% of Barnstable County Median Income\*

2015 Barnstable MSA Income Limits; see <a href="http://www.huduser.org">www.huduser.org</a>						
Household size	1 person	2 persons	3 persons	4 persons	5 persons	6 persons
80% Income Limits	\$46,100	\$52,650	\$59,250	\$65,800	\$71,100	\$76,350

\*other requirements may apply

**Affordable Purchase Price:** The maximum affordable home prices are listed below by home size. This is the price you would pay, so it is the home price less the Wellfleet BuyDown Subsidy and any other subsidy you may get. It is also the price at which the home will be deed restricted. Affordable Home prices may be below these, but cannot be higher.

MAXIMUM AFFORDABLE PRICES*, based on DHCD Housing Calculations				
Home Size	1 bedroom	2 bedroom	3 Bedroom	4 Bedroom
Affordability to 80% AMI	\$181,250	\$203,750	\$226,250	\$244,500

\*This is the maximum price before adding the BuyDown subsidy

**Minimum Price:** The minimum affordable purchase price is \$175,000. To participate you will need to be able to secure a mortgage for an affordable purchase price of \$175,000 or more.

**The Process:**

1. Submit an Application to the Lottery  
(including a mortgage pre-approval for a purchase price of at least \$175,000)
2. Get Selected in the Lottery
3. Start Home Shopping
4. Buy Your Home/ Move In
5. Rehab, if Needed

If you are approved, you will receive a subsidy towards your home purchase – up to \$125,000. You will pay at or below the affordable price, but not less than the minimum (see previous page for prices). Homes must meet program construction standards and cannot already be a deed restricted affordable unit. The program is intended for single family homes, but a condo unit might be approved on a case-by-case basis. You will “shop” for homes as any home-shopper would; by working with a real estate broker, or by calling the seller and/or seller broker and arranging to view homes. You decide which one, if any, you want to buy. If you decide to purchase a home, there will be additional inspections to ensure the home meets all program standards and is priced appropriately. There will be a professional home inspection and a professional appraisal. If it is determined there is needed rehabilitation or construction, the program will work with you to negotiate and/or to plan for the needed repairs. You will have assistance throughout the “shopping” and purchase process (and MUST get all documents approved before you sign them!). You will be responsible for working with your lender to get a mortgage. The subsidy funds will be available to you at closing.

**DETAILS, DETAILS, DETAILS:**

**Application:** As well as income limits, there are other eligibility requirements. You must be a first-time homebuyer (exceptions apply) and cannot have assets worth more than \$75,000. Please see the application materials for more information and details.

**Mortgage:** As part of your application, you are required to submit a “pre-approval” letter from a lending institution for a sale price of at least \$175,000. The loan must have a fixed rate (current, fair market), can have no more than 2 points, you must provide a down-payment of at least 3%, and you cannot pay more than 38% of your monthly household income for your loan (see applications for more info).

**Homebuyer Education:** It is STRONGLY recommended that you take a Massachusetts Homeownership Collaborative approved Home Buyer Education Course. The Community Development Partnership (CDP) in Eastham offers this class, usually in the fall. Please see [www.capecdp.org](http://www.capecdp.org) or call 508-240-7873. Housing Assistance Corporation (HAC) in Hyannis also offers classes ([www.haconcape.org](http://www.haconcape.org); 508-771-5400).

**Construction Standards:** The home you pick to purchase should meet Program construction standards. The program looks at a five year horizon and requires that any construction work (other than routine maintenance) that might be reasonably anticipated as needed in this time frame be either complete by Seller before home purchase, or the cost of the repair needs to be accounted for in the purchase price and a repair plan in place. The concept is to make sure you are not saddled with extraordinary home costs (like a new roof or a new furnace) in the first five years of homeownership.

**Maximum on Rehab:** While any home could possibly be rehabbed to meet high construction standards, to limit risk the Program will not look at homes that require more than \$25,000 in rehab (exceptions may be made on a case-by-case basis).

**Shopping Time:** Once you have been selected, you will have four months to house hunt and get a signed Purchase & Sale Agreement. Extensions may be granted on a case-by-case basis.

**Offer:** Before making an Offer on a home, you must meet with the Program Manager. The Program Manager will view the home, and the Program Attorney must approve the Offer.

**Other Documents/Approvals:** You are required to hire your own attorney, and there is also a Program Attorney. The Program Attorney's role is to look out for the best interest of the program. The Program Attorney MUST review all documents before you sign them (this is critical).

**Transaction and Closing Costs:** You will pay for all costs associated with your loan ("closing costs") or you can use the Wellfleet BuyDown subsidy funds. You will also be responsible for paying for the home inspections and any necessary testing. These funds must come from you the buyer, but the costs of these may be reimbursed to you at closing as part of the subsidy funds. Note: reimbursement is just once and at the time you actually purchase the home (closing). If you start on the purchase process for a home, incur expense, but then you do not end up purchasing that home, you will not be reimbursed for those costs.

**Program Inspections/Appraisal:** The program reserves the right to hire independent professionals to assess the home if it is determined to be appropriate. This could include home inspection, any necessary testing and/or an appraisal.

**Closing:** At closing, the seller will sell the home to you and a deed rider, ensuring the home will always be affordable, is recorded. The Program Attorney will review all documents. Please review the attached Deed Rider and Disclosure Statement. The Program Manager will also review this with you.

**Post Closing Rehab:** If your selected home needed rehab that the seller did not do, this is done post-closing. An escrow account with funds will be established.





# TOWN OF WELFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667  
Tel (508) 349-0300 Fax (508) 349-0305  
[www.wellfleetma.org](http://www.wellfleetma.org)

To: Board of Selectmen  
From: Harry Sarkis Terkanian, Town Administrator  
Subject: Seasonal Use of Town Property  
Date: October 14, 2015  
CC:

---

At the October 13, 2015 Board of Selectmen's meeting the Board considered, but did not act on two requests for use of Town property. Both of the requests were for activities which spanned several weeks during the summer. The Board's expressed a preference for a more formal process for evaluating such season long requests and for a more competitive economic process for establishing fees for such uses. The Board directed the Town Administrator to report back to it with a proposal for managing, evaluating and approving requests.

The scope of the inquiry is limited to season long requests. Requests for a single day event, such as a wedding, would continue to be handled as at present.

Background: Currently requests to use Town property follow either of two distinct processes.

Food concessions on town property have been awarded based on an invitation to bid process where responses were evaluated and awards made to the responsive and responsible bidder who offered the most attractive financial proposal to the Town. During calendar 2015 concessions were awarded for locations at Newcomb Hollow Beach, Maguire's Landing and Baker Field. Whitecrest Beach was also offered as possible site but no sufficient bids were received.

All other uses follow a use of Town property process in which the applicant files an application with the Board of Selectmen and, after review by certain department heads, the Board votes to allow or deny the request, may establish a fee and may impose conditions on use. Uses processed in this way include single day events (e. g. a wedding) but also include season long uses such as yoga programs, surfing lessons, etc. (Note: in 2015 one food concession followed this process because the request was received too late to complete an invitation to bid process.)

Goals: A proposed program should address the following:

1. Insure fair access to commercial opportunities. Approvals based on first come first served rolling approval process necessarily favor those with local knowledge and the incumbents.
2. Insure that facilities are not over subscribed. In particular, the capacity to host programs at Town beaches is not unlimited so care must be taken not to approve more uses than can be accommodated by the particular property.
3. Insure that the Town receives fair compensation for the use of Town property by a competitive process.

Current Properties and their 2015 authorized season long uses:

1. Newcomb Hollow. Food concession only awarded by competitive bid.
2. Cahoon Hollow. No concessions due to the size of the Town parking area.
3. Whitecrest Beach. No acceptable bids were received for a food concession.
4. Maguire's Landing. Food Concession awarded by competitive bid.
5. Baker Field: Food concession awarded by competitive bid.
6. Marina. Food concession awarded by use of Town property process due to lateness of request.
7. <list other beach uses>

Legal: Procurement of goods and services, including the leasing of real property, is governed by General Laws, chapter 30B. However, leases valued at less than \$35,000 need not follow the chapter 30B process. The Town is only required to use any process that meets sound business practices. Procurement by means of an request for proposals or by an invitation for bids satisfies this requirement. (As does the current practice due to the small lease payments involved.)

Existing policy. The Board's existing policy is specified in the Board's Policy on Use of Town Property & Fees, policy 1989-01.

Proposal:

Adopt a definition of a seasonal use as a means of determining whether to apply the proposed procurement processes. One possible definition is to define subject uses as ones which encompass a period longer than four weeks, measured by the beginning and end dates (without regard to the total number of days used). Another could be to define subject uses as ones which propose use of Town property for more than seven days during any calendar year.

Food Concessions. Continue to award food concessions based on an invitation for bids similar to the one used in 2015. Current locations are three of the ocean beaches, Baker Field and the Marina. The 2015 procurement documents should be reviewed and revised as necessary to reflect experiences learned during the 2015 season and to respect any regulations which may be adopted by the Board of Selectmen regulating mobile food vendors. Consideration should be given to whether sites should be added or removed from the 2015 list.

Other uses. Include all seasonal use activities which propose fee based activity on Town property. Determine which properties (principally beaches) would be available for such uses. Determine the maximum number which would be permitted on each property. Establish minimum criteria (e. g. minimum fee, insurance, thrash cleanup and access to parking). Approve a basic agreement to govern the use. Determine a due date for responses and issue a request for proposals du on that date.

In addition to public notice of the procurements, in both cases incumbents who have performed in acceptable fashion should be notified of the procurement.

Exceptions. Programs undertaken to supplement or enhance town programs such as those offered under the aegis of the Recreation Department.

BOARD OF SELECTMEN  
Policy for Award of Shellfish Grants  
DATE: November 9, 1988  
1988-4

Reaffirmed: January 16, 2001  
Reaffirmed: March 9, 2004

1. Grants will be awarded only to Wellfleet residents and under other conditions specified in Section VI of the Shellfish Regulations.
2. Size of Grants  
As a general principle, this resource shall be administered to enable the maximum feasible number of Wellfleet citizens to derive income through shellfish farming and cultivation.
3. Access
  - a. There will be permitted and designated access to all grants awarded. The method or methods of access to each grant shall be precisely specified in the text of the shellfish grant license (lease) granted by the Board of Selectmen.
  - b. Vehicle access will only be specified in situations in which:
    - 1) Town roads and Town landings are used.
    - 2) Owners of private roads to be used have no objection.
    - 3) The specific route of entry from the roadway onto the beach and flats is approved by the Conservation Commission.
  - c. Access by foot and/or boat shall be designated in all cases in which vehicle access is not permitted.
  - d. Where grants are awarded, there should be a provision for expansion.
  - e. Enforcement: Access provisions will be enforced by the Board of Selectmen through its agents (Shellfish Constable, Police Department, Harbormaster) by its power under the Town Charter and general law.

BOARD OF SELECTMEN  
Policy on Bicycle Races  
Original Date: June 1, 1998  
1998-1

Reaffirmed: July 23, 2001  
Revised: January 27, 2009

In order to insure that proper safety precautions are taken before any bicycle race or for that matter any race using Town roads or State roads in Wellfleet, the sponsors of the race must receive permission from the Police Department. The Police Department will use its own judgement as to the requirements the road race sponsor will have to meet.

Prior to the race, the Board of Selectmen will be notified by the Police Department of the date, time and place of the race as well as any precautions which will be made for the event at a regularly scheduled Board of Selectmen public meeting.



**KOPELMAN AND PAIGE, P.C.**

*The Leader in Public Sector Law*

HST 10/16/15  
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2015 OCT 16 PM 1:07

101 Arch Street  
Boston, MA 02110  
T: 617.556.0007  
F: 617.654.1735  
www.k-plaw.com

October 14, 2015

**Gregg J. Corbo**  
gcorbo@k-plaw.com

Hon. Paul S. Pilcher and  
Members of the Board of Selectmen  
Wellfleet Town Hall  
300 Main Street  
Wellfleet, MA 02667

Re: Determination and Consent Pursuant to Massachusetts Rules of Professional Conduct,  
Rule 1.7 -- Representation of the Towns of Wellfleet and Truro in Connection with  
Memorandum of Understanding Regarding the Herring River Restoration.

Dear Members of the Board of Selectmen:

We have received requests from both the Town of Wellfleet and the Town of Truro, to review a proposed Memorandum of Understanding ("MOU") between Wellfleet, Truro and the National Park Service, acting through the Superintendent of the Cape Cod National Seashore. Given that both Wellfleet and Truro have requested Kopelman and Paige to review the MOU, our intent is to undertake review of this agreement on behalf of both communities, and provide the same comments to both communities, simultaneously.

With respect to the firm's ability to represent either town in the review of the proposed MOU, however, our relationship with each of the communities may create an interest that requires disclosure pursuant to the Rules of Professional Conduct applicable to members of the Massachusetts Bar. The Rules of Professional Conduct also require us to obtain the "informed consent" of both communities, after disclosure of adequate information and explanation about the risks of, and alternatives to, the proposed simultaneous representation before we can undertake such representation. In addition, while the State Ethics Commission has determined Kopelman and Paige, P.C. and its individual attorneys are not "municipal employees" pursuant to the Conflict of Interest Law, we provide this letter to dispel any appearance of conflict on the firm's behalf in this matter.

MULTIPLE REPRESENTATION DISCLOSURE

The representation of multiple clients is regulated under the Massachusetts Rules of Professional Conduct. The relevant provision, Rule 1.7, states that an attorney may not represent multiple clients if doing so involves a concurrent conflict of interest. The standard for determining whether a concurrent conflict of interest exists is: (1) will the representation of one client be directly adverse to another client; or (2) is there a significant risk that the representation of one or more clients will be materially limited by our responsibilities to another client, a former

Hon. Paul S. Pilcher and  
Members of the Board of Selectmen  
October 14, 2015  
Page 2

client, a third person, or our own personal interest. Even where a concurrent conflict of interest exists, we may still undertake the simultaneous representation if: we reasonably believe that we will be able to provide competent and diligent representation to each client; there is no legal prohibition on the simultaneous representation; the simultaneous representation does not involve the assertion of a claim by one client, against another, in a single piece of litigation or other proceeding before a tribunal; and each client gives informed consent, confirmed in writing.

I do not believe that our role as town counsel to Wellfleet and Truro, including any guidance we may provide to each of the towns relative to the MOU, creates a concurrent conflict of interest. Furthermore, even if a concurrent conflict of interest is present, I do not believe that our ability to provide competent and diligent representation to the Town of Wellfleet will be affected by our representation of Truro as town counsel, either generally, or with specific reference to the proposed MOU.

Reviewing the MOU on behalf of the two communities simultaneously will result in a cost savings to each town individually. The provision of uniform commentary on the proposed MOU to both towns, at the same time, will also ensure that both communities are on the same footing when it comes to considering whether or not to enter into the agreement.

Please note, however, that joint representation implicates our obligations as Town Counsel to each town, including confidentiality and the attorney-client privilege. As a result, if your single community does not agree to particular terms or conditions in the proposed agreement, we would not be able to negotiate on your behalf with the other community for language revisions, except through a general communication to both communities. In addition, should the towns ultimately enter into the MOU, if the communities becomes adverse to one another in connection with the implementation of that agreement in the future, we may be limited or precluded by the Rules of Professional Conduct from representing the towns against one another in relation to the agreement. I simply wanted to alert you to that possibility.

#### DETERMINATION

It is my belief that the firm's simultaneous representation of Wellfleet and Truro, for the purposes and under the conditions described in this letter, does not constitute a concurrent conflict of interest. It is my further belief that even if a concurrent conflict of interest exists, our ability to provide competent and diligent representation to the Town of Wellfleet will not be negatively impacted by our simultaneous representation of Truro as town counsel. It is, however, for you to determine, as the Appointing Authority, whether the representation described herein will not impair the integrity of this firm's services to Wellfleet, either generally, or with respect to review of the proposed MOU.



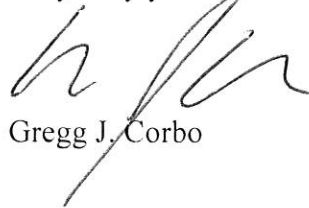
**KOPELMAN AND PAIGE, P.C.**

Hon. Paul S. Pilcher and  
Members of the Board of Selectmen  
October 14, 2015  
Page 3

Therefore, I request that you, as the Appointing Authority for Town Counsel, consent to Kopelman and Paige, P.C.'s representation of the Town of Wellfleet in the review of the proposed MOU, as outlined in this letter, notwithstanding that the firm also serves as counsel to Truro. Should you so consent, I ask that you sign the enclosed acknowledgment of consent, as required by the Rules of Professional Conduct. Please sign the two originals provided, return one copy to me, and retain one copy for your records.

Thank you for your consideration. Please do not hesitate contact me with any questions you have in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregg J. Corbo", written over a horizontal line.

Gregg J. Corbo

GJC/BAG/eon

Enc. Massachusetts Rule of Professional Conduct 1.7  
Acknowledgment of Consent

531973/WELL/0001

DETERMINATION

It is determined, pursuant to Rule 1.7 of the Massachusetts Rules of Professional Conduct, that the Town of Wellfleet Board of Selectmen consents to Kopelman and Paige, P.C., reviewing the Memorandum of Understanding for the Herring River Restoration Project, as disclosed in a letter to the Board dated October 14, 2015 on behalf of the Town of Truro, notwithstanding that Kopelman and Paige, P.C., also serves as Town Counsel and represents the Town of Wellfleet.

TOWN OF WELLFLEET

BOARD OF SELECTMEN,

\_\_\_\_\_  
Paul Pilcher, Chair

\_\_\_\_\_  
Dennis Murphy, Vice Chair

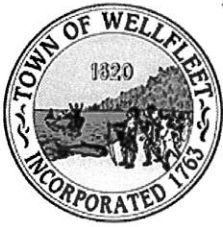
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Helen Miranda Wilson, Clerk

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Berta Bruinooge

\_\_\_\_\_  
Jerry Houk

Date: \_\_\_\_\_

532134/WELL/0001



# TOWN OF WELFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667  
Tel (508) 349-0300 Fax (508) 349-0305  
[www.wellfleetma.org](http://www.wellfleetma.org)

To: Board of Selectmen  
From: Harry Sarkis Terkanian, Town Administrator  
Subject: Authorization for the Town Administrator to Execute Contracts  
Date: October 21, 2015  
CC:

---

Currently Wellfleet's General Bylaws, Article III, Section 1 require that all contracts be executed by the Board of Selectmen:

All deeds, conveyances, leases, discharges or mortgages, bonds, agreements, contracts or other instruments which shall be given by the Town and which to be valid in law require to be signed, sealed and acknowledged shall, unless other provision is or may be made by law or special vote of a Town Meeting, be signed and acknowledged by the Selectmen in behalf of the Town and shall be sealed by the Town Clerk with the common seal of the Town.

The issue arises because there a lot of documents which I routinely sign, such as purchase orders, that technically are contracts. The one that prompted this memorandum is the Mass. Cultural Council funding for the Wellfleet Cultural Council. It is in the form of a contract between the Commonwealth and the Town by which the Town agrees to spend the allocated funds in compliance with the Commonwealth's regulations. The contract includes a certification by the Town Clerk that the individual signing is an authorized officer of the Town. The Selectmen have previously authorized the Town Administrator to sign specific contracts. While no one has taken issue with my authority to sign contracts on the Town's behalf in the past, it seems prudent to address the question before it does become and issue.



## TOWN OF WELFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667  
Tel (508) 349-0300 Fax (508) 349-0305  
www.wellfleetma.org

To: Board of Selectmen  
From: Harry Sarkis Terkanian, Town Administrator  
Subject: Town Administrator's Report  
Date: October 23, 2015

This report is for the period October 9, 2015 through October 22, 2015.

- 1 Procurement:
  - a. Police Station Renovation. Owner's Project Manager proposals were received on September 30, 2015. The Designer Selection committee met on October 19, 2015 and selected three firms for interviews. Interviews have been scheduled for October 28, 2015.
- 2 OPEB investment. Waiting for the treasurer's recommendations. Will follow up with the acting treasurer.
- 3 Additional Meetings.
  - a. October 8, 2015. Cape Cod Managers Association meeting.
  - b. October 9, 2015. Met with Elaine McIlroy about the Housing Partnership Buy Down application to Dept. of Housing and Community Development.
  - c. October 14, 2015. Met with NOAA representatives and Friends of the Herring River.
  - d. October 14, 2015. Attended Cape Cod Tech Building Committee meeting.
  - e. October 19, 2015. Met with Elaine McIlroy to discuss possible Housing Authority support for Housing Court for Barnstable County.
  - f. October 19, 2015. Attended Personnel Board meeting on personnel manual.
  - g. October 19, 2015. Attended Designer Selection Committee meeting to review proposals for owner's project manager services for the police station renovation.
  - h. October 20, 2015. Met with Don Paladino on Herring River Restoration issues.
  - i. October 21, 2015. Attended the Planning Board meeting to discuss the Cumberland Farms decision.
  - j. October 22, 2015. Met with Tom Cole to review TV installation at the COA.
- 4 Citizen Complaints.
  - a. October 9, 2015. Maria Ecke telephone complaints about repaving and use of Somerset Ave. This is a private issue between property owners and I have informed her that the Town does not anticipate taking any action to resolve a private dispute.

TOWN ADMINISTRATOR'S REPORT TO THE SELECTMEN

- b. October 13, 2015. Met with Mark Gabriel regarding signage on Amy's Way. October 22, 2015 met with Fire Chief and Assistant DPW Director on the same issue.
- 5 Personnel Matters:
- a. Employee performance reviews. I have completed 14 of 17 direct reports. Three remain to be completed. One (acting Treasurer) will not be reviewed.
  - b. Personnel Manual. The Personnel Board has completed a draft of a personnel manual for the Town of Wellfleet. Previous drafts have been circulated to department heads and to employees for review. The next step is review and possible approval by the Selectmen.
  - c. Administrative actions (appointments are subject to disapproval by majority vote of the Board of Selectmen within 14 days; Charter section 5-4-1): NONE
  - d. Town Treasurer. I am proceeding with the hiring of Rosemary Moriarty as Town Treasurer and have sent her a conditional offer of employment.
  - e. Current employment vacancies (Charter 5-3-2 (i)):
    - i. Building – Building Inspector is part time.
    - ii. Treasurer – vacant, acting treasurer has been hired.

## ***Town of Wellfleet Committee Vacancies***

Date: October 23, 2015  
To: Harry Terkanian  
From: Jeanne Maclauchlan  
Re: Appointments to Town Boards

The following provides the appointing authority with a comprehensive view of vacant positions on each Town Board. Each identifies the amount and type of positions that are vacant, the authority for making the appointment, the length of the term and the number of applications requesting consideration to fill a vacancy.

### **Barnstable Human Rights Commission (1 Wellfleet Representative)**

Vacant Positions	Appointing Authority	Length of Term
1 Position	Board of Selectmen	3 years
Requesting Appointment: No applications on file		

### **Bike & Walkways Committee (5 Members)**

Vacant Positions	Appointing Authority	Length of Term
2 Positions	Board of Selectmen	3 years
Requesting Appointment: No applications on file		

### **Board of Health (5 members)**

Vacant Positions	Appointing Authority	Length of Term
1 Position	Board of Selectmen	3 years
Requesting Appointment: <b>One application on file</b>		

### **Building and Needs Assessment Committee (5 Members)**

Vacant Positions	Appointing Authority	Length of Term
2 Positions	Board of Selectmen	3 years
Requesting Appointment: No applications on file		

### **Cable Advisory Committee (5 Members)**

Vacant Positions	Appointing Authority	Length of Term
2 Positions	Board of Selectmen	1 year
Requesting Appointment: No applications on file		

### **Cape Light Compact Governing Board (2 Members)**

Vacant Positions	Appointing Authority	Length of Term
1 Alternate Position	Board of Selectmen	to be determined by BOS
Requesting Appointment: No applications on file		

### **Commission on Disabilities (up to 7 Members)**

Vacant Positions	Appointing Authority	Length of Term
4 Positions	Board of Selectmen	3 years
Requesting Appointment: No applications on file		



**Cultural Council** (no more than 22 members)

Vacant Positions	Appointing Authority	Length of Term
11 positions	Board of Selectmen	3 years

Requesting Appointment: No applications on file

**Energy Committee** (11 members total)

Vacant Positions	Appointing Authority	Length of Term
2 regular Positions	Board of Selectmen	3 years
2 Alternate Positions		

Requesting Appointment: No applications on file

**Finance Committee** (9 members, 2 alternate)

Vacant Positions	Appointing Authority	Length of Term
1 Alternate Position	Town Moderator	3 years

Requesting Appointment: No applications on file

**Herring Warden** (1 Warden, 1 Assistant Warden)

Vacant Positions	Appointing Authority	Length of Term
1 Assistant Position	Board of Selectmen	3 years

Requesting Appointment: No applications on file

**Historical Commission** (7 Members)

Vacant Positions	Appointing Authority	Length of Term
1 Position	Board of Selectmen	3 years

Requesting Appointment: No applications on file

**Recreation Committee** (5 members)

Vacant Positions	Appointing Authority	Length of Term
1 Position	Board of Selectmen	3 years

Requesting Appointment: No applications on file

**Recycling Committee** (Up to 11 Members)

Vacant Positions	Appointing Authority	Length of Term
1 Position	Board of Selectmen	3 years

Requesting Appointment: No applications on file

**Shellfish Advisory Board** (7 Members, 2 Alternates)

Vacant Positions	Appointing Authority	Length of Term
1 Position	Board of Selectmen	3 years
1 Alternate Position		

Requesting Appointment: No applications on file

**Taxation Aid Committee** (4 Members)

Vacant Positions	Appointing Authority	Length of Term
1 Position	Board of Selectmen	3 years

Requesting Appointment: No applications on file



DRAFT

**Wellfleet Board of Selectmen  
Minutes of October 13, 2015  
Wellfleet Senior Center**

**Present:** Selectmen Paul Pilcher, Dennis Murphy, Berta Bruinooge, Helen Miranda Wilson;  
Town Administrator Harry Sarkis Terkanian and Assistant Town Administrator Brian Carlson

**Regrets:** Jerry Houk

Chairman Paul Pilcher called the meeting to order at 7:00 pm.

**Announcements, Open Session and Public Comment**

- Pilcher thanked all for their support and encouragement for the recovery of his partner and expressed how happy he was to be back.
- Wilson announced that the Pilgrim Nuclear Power Plant is scheduled to close by June, 2019 and thanked Sarah Hutchings for serving on the Bike and Walkways Committee and Paula Erickson for serving on the Cultural Council.
- Police Chief Ronald Fisette announced that October is proclaimed as a domestic violence prevention month and in honor of it there will be an event called the Silent Witness on October 29, from 2pm to 6 pm at the Library.

**Use of Town Property**

1. Request of Della Spring Cushing to use Mayo beach on Tuesdays & Thursdays, 8:30am - 9:45 am in July and August 2016 for meditation & yoga classes. \$20 application fee paid; event fee TBD.
2. Request of Olaf Valli to use Whitecrest beach for surf and paddle board lessons from April 1 to December 31, 2016; \$20 application fee paid, event fee TBD.

Terkanian presented his recommendation and the proposed Use of Town Property agreement<sup>1</sup> for season long use of Town property requests. Pilcher recommended advertising and RFP for such season-long uses in order to give equal opportunity to other businesses and suggested postponing decision on these two requests. Wilson suggested having an advertised deadline for applications of this nature, but did not support the RFP idea. Bruinooge agreed with Wilson. Pilcher directed the TA to come up with a proposal and priority deadline for applications of similar nature.

**Public Hearing(s)**

Pilcher opened the public hearing at 7:10 pm.

Shellfish Constable Andrew Koch presented maps<sup>2</sup> of the shellfish grants and recommended to transfer shellfish grant license #852 and #852A from Bradford Morse, William Barrio and Diane Brunt to Bradford Morse, William Barrio, Diane Brunt and Curtis Graham.

**MOTION 215-342:** Wilson moved and Bruinooge seconded approve the transfer shellfish grant license #852 and #852A from Bradford Morse, William Barrio and Diane Brunt to Bradford Morse, William Barrio, Diane Brunt and Curtis Graham. The motion passed 4-0.

**Hearing to consider the possible suspension of Daniel Morton's commercial shellfish permit**

Constable Koch gave detailed background information about the unpermitted taking of shellfish at Chipman's Cove by Daniel Morton and recommended two weeks suspension of Morton's commercial shellfish license based on repeated violations and verbal warning. Deputy Shellfish Constable Christopher Manula said that they also witnessed Morton's violation. Morton agreed with the Constable's statements and admitted that he was wrong, but his intentions were to move the oysters and apologized. Terkanian said that the Selectmen have the enforcement portion of the shellfish regulations in front of them. Pilcher closed the hearing at 7:22 pm. Bruinooge said that this is very concerning because all commercial shellfishermen are aware that Chipman's Cove is closed for the summer months and agreed with the suspension.

**MOTION 215-343:** Wilson moved and Bruinooge seconded to suspend Morton's shellfish license for 14 days per the regulations. The motion passed 4-0.

**Business**

**Eversource litigation on right of way spraying**

Laura Kelley, Director of Protect Our Cape Cod Aquifer (POCCA), presented the case filed against EverSource for their intent to spray vegetation management chemicals and requested the support of the Selectmen on behalf of the Town. She said that several abutters with the help of a pro bono attorney had filed a law suit against EverSource. She talked about the dangers of Roundup and Glyphosate based on World Health Organization research. Pilcher wanted to know if other towns have agreed to join the litigation. Kelley thanked the selectmen for their consideration. Wilson wanted to know if there will be any cost associated with this case. Kelley explained that help with court filing fees would be appreciated, but the retained attorney and her services are pro bono. Murphy wanted to know the status of the injunction. Kelley gave details about the judge's decision. People in the audience voiced concerns about the fact that there is only one aquifer and wanted to know who will be responsible if the water got polluted, and because of these concerns they urged the Selectmen to join this case. Kelley thanked the public for speaking up and said that action should be taken before it is too late. Pilcher requested to see the supporting documents for the case including the injunction and the letter from the lawyer. The rest of the selectmen unanimously agreed that more information should be provided before deciding on a position.

**Review of the Board's vote to delay by one year enforcement of the Policy on Paved Private Road Maintenance**

DPW director Mark Vincent briefly talked about the provision of the policy on Paved Private Road Maintenance and addressed concerns raised by Wilson. No action was taken by the Board.

**Report by the Shellfish Constable on grant inspections**

Constable Koch was available to answer question on shellfish grant inspections. Wilson requested to have a trip to see how shellfish grants are inspected. Koch said that inspections are conducted every day and added that he had prepared a contract<sup>3</sup> about the gear left on flats over the winter and gave it to the Selectmen. The Selectmen and the Shellfish Constable will have an additional meeting on this subject.

**Determination of the maximum useful life of fire department equipment**

Terkanian presented Bond Counsel's request for determination of the maximum useful life of the replacement equipment of the engine and the pumper. He presented the Fire Chief's memos for Engine 94 replacement and Pumper.

**MOTION 215-344:** Murphy moved to determine that the maximum useful life for Engine 94 replacement and Pumper is 20 years. Bruinooge seconded and the motion passed 4-0.

**Review of October 3, 2015 Community Policing meeting**

Wilson summarized the Community Policing meeting that took place on October 3. Terkanian gave his observations of the meeting low attendance. Terkanian said that the meeting failed to define what community policing is and according to him the process was not complete. Ray Squire said that as a representative to the group Citizens Committed to Community Policing (CCCP) he would like to continue the process in order to increase communications and solve issues with the Police. According to him those were not addressed and another training session will be needed in order to complete the process. He spoke highly about the new Police recruits. Ray agreed with the fact that there was not a large community attendance. Police Chief Fisette also went over his impressions of the meeting and said that he and Terkanian are in communication with CCCP for the next session. Martha Gordon invited everyone to attend the next CCCP meeting on October 26 at the Library. No action was taken by the Selectmen.

**Review and comment on Treasurer's proposed cash control policy**

Terkanian presented the proposed and revised by the Acting Treasurer Dawn Rickman Cash Control Policy and explained how the policy was generated. He said that no adoption was required by the Board, but the policy is open for discussion. Pilcher suggested having the money turned on weekly, rather than bi-weekly bases. No action was taken by the Selectmen, because the policy requires the Treasurer's approval.

**Discussion of possible appointment of a Charter Review Committee**

Terkanian presented his recommendation about the need for appointing a Charter Review Committee to address changes that have taken place since the last Charter Revision in 2003. He went over specific concerns as presented in his memo<sup>4</sup> on the subject. The Town Moderator Daniel Silverman gave his position about appointing Charter Review Committee and recommended having the Charter reviewed once every ten years. The Board had a consensus on having this placed on the 2016 ATM warrant.

**Acceptance by the board of selectmen of General Laws chapter 166, section 32A**

Terkanian presented MGL Chapter 166, section 32A.

**MOTION 215-345:** Bruinooge moved and Wilson seconded to accept MGL Chapter 166, Section 32A. The motion passed 4-0.

**Purchase of Town property inquiry from Susan Peters, Map 29, Parcel 498**

Wilson gave a background about the request of Susan Peters for Map 29, Parcel 498.

**MOTION 215-346:** Wilson moved and Bruinooge seconded to initiate the process for disposition of the Town-owned land Map 29, Parcel 498. Terkanian recommended deferring action until final determination of possible need by the Housing Authority. Bruinooge rescinded her second, and Wilson withdrew the motion. Murphy wanted to know if this needs to go to a bid. Terkanian said that there have been instances where Town property has been sold to a specific abutter when dealing with specific problem. No action was taken.



**Review Local Initiative Program application by Habitat for Humanity for proposed affordable housing project at Old Kings Highway**

Assistant Town Administrator Brian Carlson briefed the Selectmen on the Local Initiative Program (LIP) application by Habitat for Humanity.

**MOTION 215-347:** Murphy moved and Wilson seconded to approve the LIP application. Discussion ensued. Terkanian said that there is no need for a motion, because the Habitat for Humanity is looking for comments and suggestions, not approval. The Selectmen directed Carlson to prepare supporting comments for their meeting on October 27, 2015. No vote was taken.

**Contract award for re roofing of Town Hall**

Terkanian presented the DPW Director's recommendation<sup>5</sup> for re-roofing of Town Hall project to be awarded to Plan B Construction Company.

**MOTION 215-348:** Murphy moved and Bruinooge seconded to award the contract for re roofing of Town Hall to Plan B Construction Company. The motion passed 4-0.

**Approval of Change Order #1 for Route 6/Main Street Intersection Improvement**

Terkanian presented Change Order #1<sup>6</sup> for additional services and said that additional funding will be needed. Wilson expressed her concerns for the amount of money for this small change. Bruinooge said that based on her attendance of the meetings the direction has been clear that sidewalks should be only one side of the road. Terkanian explained that this is as a result of MassDOT requirements for sidewalks on both sides of a road, but due to the nature of the intersection this was not possible, resulting in the change order.

**MOTION 215-349:** Murphy moved and Bruinooge seconded to approve Change Order #1 for Route 6/Main Street MassDOT Project 607397 Intersection Improvement. The motion passed 3-1 (Wilson).

**MassDOT Capital Plan**

Terkanian said that an additional meeting has been scheduled for November 5, 2015 at Tilden Arts Center at Cape Cod Community College. Pilcher proposed that all Selectmen bring a list of suggestions for the next meeting and expressed willingness to attend the MassDOT meeting.

**Town Administrator's Report**

Terkanian presented his report and added:

1. There will be an additional BOS meeting on October 15, 2015 to interview the finalist for the Treasurer's vacancy.
2. Additional MassDOT meeting has been scheduled on November 5, 2015 at 6:30 pm at Tilden Arts Center at Cape Cod Community College
3. ATA Carlson attended FEMA training certification. Town of Wellfleet participation in FEMA's community Rating System will entitle residents to 10-15% reduction in flood insurance premiums when the process is completed in about 18 months.
4. The estimated cost for the October 2, 2015 Community Policing session is about \$6,100.

Wilson had a question on item 8 of Terkanian's report - DPW paving project and said that if sections of the road are going to be closed there is a need for a vote by the Selectmen to authorize the closures. Murphy wanted to know if there was a priority list for re-paving. Pilcher suggested having a motion to avoid delays in already scheduled paving.

## DRAFT

**MOTION 215-350:** Wilson moved to approve road closings for Chequessett Neck Road and Ocean View Drive for re paving as set forth in TA report item 8. Bruinooge seconded the motion. Murphy clarified that closure of the road will be partial. The motion passed 4-0.

Bruinooge expressed how pleased she was with the two grants received from the Commonwealth's Sustainable Materials Recovery Program and Barnstable County Cooperative Extension Service.

### **Future Concerns**

1. Terkanian said that the Wellfleet Partnership By-Down application is available at BOS office review and will be on the October 27, 2015 agenda.
2. Terkanian asked for Selectmen's direction on a notice received for the 32 Annual Cape-Wide bike run in terms of who will be processing the request - the Police or the Board with a Use of Town Property application. The Selectmen agreed to direct the Police Chief to deal with this. Pilcher suggested revisiting the BOS Policy on Bicycle Races in the future.
3. Bruinooge said that she would not be able to attend the October 27 meeting.

### **Correspondence<sup>7</sup> and Vacancy<sup>8</sup> Report**

#### **Minutes**

**MOTION 215-351:** Wilson moved and Murphy seconded to approve the minutes of September 22<sup>9</sup>, 2015. The motion passed 3-0-1 (Pilcher abstained).

**MOTION 215-352:** Wilson moved and Murphy seconded to approve the minutes<sup>10</sup> of and October 6, 2015. The motion passed 3-0-1 (Pilcher abstained).

#### **Adjournment**

**MOTION 215-353:** Wilson moved and Murphy seconded to adjourn the meeting at 9:14 pm. The motion passed 4-0.

Respectfully submitted,

Michaela Miteva  
Executive Assistant

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<sup>1</sup> Proposed Use of Town Property Agreement for season-long uses

<sup>2</sup> Maps of shellfish grant license #852 Draft and #852A

<sup>3</sup> Draft contract for gear left on shellfish flats over the winter by Andrew Koch

<sup>4</sup> TA memo on Charter Review Committee

<sup>5</sup> Mark Vincent's recommendation for awarding the Town Hall re roofing project

<sup>6</sup> Change Order #1 for Route 6/Main Street MassDOT Project 607397 Intersection Improvement

<sup>7</sup> Correspondence report of October 9, 2015

<sup>8</sup> Vacancy report of October 8, 2015

<sup>9</sup> Draft minutes of September 22, 2016

<sup>10</sup> Draft minutes of October 6, 2015





DRAFT

**Wellfleet Board of Selectmen  
Minutes of October 15, 2015  
Wellfleet Senior Center**

**Present:** Selectmen Paul Pilcher, Dennis Murphy, Berta Bruinooge, Helen Miranda Wilson; Jerry Houk; Town Administrator Harry Sarkis Terkanian and Assistant Town Administrator Brian Carlson

Chairman Paul Pilcher called the meeting to order at 4:30 pm.

**Business - Interview with applicant for Town Treasurer Rosemary Moriarty**

Town Administrator Harry Terkanian reviewed the recruitment process conducted by the Treasurer Screening Committee for the Town Treasurer's vacancy and introduced the finalist Rosemary Moriarty. He assured the Board that references have been checked, and said that in addition he had also talked to two people who have not been given for references. Terkanian stressed the fact that this position will evolve to Treasurer/Collector when the current Collector retires. Moriarty talked about her knowledge of Wellfleet and addressed Selectmen's questions about how she would adapt to the existing flow at Town Hall, investment strategies, how she came up with her current career choice and ways for dealing with conflict situations.

**MOTION 215-354:** Pilcher moved to appoint Rosemary Moriarty as Wellfleet Town Treasurer effective upon successful conclusion of contract negotiations, a pre employment physical, acceptable credit and background check and the ability to be bonded as treasurer. Murphy seconded and the motion passed 5-0.

Terkanian went over the logistics of the hiring process. Wilson thanked Rickman for her dedicated service.

**Executive session and Adjournment**

**MOTION 215-355:** Pilcher read the purpose of the Executive Session: *To discuss strategy with respect to litigation (Cumberland Farms v. Zoning Board of Appeals)* and stated that discussing this in open session may have detrimental effect, and that the Board will enter into executive session and not reconvene in open session. The motion passed by a roll call vote where each Pilcher, Murphy, Wilson, Houk and Bruinooge saying "Aye". The public meeting closed at 4:53 pm.

Respectfully submitted,

Michaela Miteva  
Executive Assistant

**Public Records Documents:**\_\_\_\_\_

Rosemary Moriarty's resume, cover letter and employment application