Board of Selectmen
Minutes of March 6, 2012
Bourne Veteran's Building
Buzzards Bay MA 02532

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Town Administrator Tom Guerino

Don Pickard, Chairman
John Ford, Vice Chairman
Earl Baldwin
Peter Meier

List of documents:

At 5:45 pm, Baldwin MOVED and SECONDED by Ford to go into Executive Session to discuss Police Patrolman and non-union personnel re: Town Administrator Contract and then to reconvene into open session. Roll call: Pickard – yes; Ford – yes; Baldwin – yes.

Meeting called to order
7:18 pm by Chm. Pickard.

Note this meeting is being televised and recorded. If anyone is the audience is recording or videotaping, there is a need to acknowledge such at this time.

Moment of Silence/Salute the Flag

Town Administrator's Contract – Atty. Bob Troy
The Selectmen and the Town Administrator have reached an agreement in principal on a contract effective 7/1/12; terms were put in writing in which Atty. Troy is taking possession of and holding in escrow so appropriate confirmation can be made; and in the immediate future terms of contract will be made public.

Baldwin MOVED and SECONDED by Pickard the Selectmen authorize the Chair to execute the employment contract with TA Guerino. VOTE 2-1 (Ford in opposition). *Meier not available for vote at this time.*

Public comment (non-agenda items)
Kelly Morey requesting the Courtyard's Entertainment license with original restrictions put back on. TA Guerino will put on a future agenda meeting for Selectmen vote on Ms. Morley's request for purposes of a potential hearing. TA Guerino to put on the Selectmen's 3/20/12 regular meeting.

Approval of Minutes

Meier MOVED and SECONDED by Baldwin to approve and encumber executive minutes 2/21/12 as submitted. VOTE 4-0.

Meier MOVED and SECONDED by Ford to approve minutes of 2/21/12 as submitted. VOTE 4-0.

Correspondence
Meier read correspondence into record. All correspondence is on file in the Town Administrator's office.

Item L – candlelight vigil request and fundraiser David Waguespack on 3/9/12 from 6:30 – 9:30 pm at the Buzzards Bay Park. This item is included in the Selectmen's 3/6/12 correspondence.

Item F – work on a private way. Looking to do a betterment. Ford said some towns have a fund. TA Guerino added that Bourne will sometimes undertake minor repairs or if people can't get through a roadway. Bourne hasn't accepted any new roads since the early 1980's. The Board will need to make determination whether to bring forward to the voters or not at a Town Meeting.

Item I – MMA letter. The MMA will be back in December for a year- round victualer license with proper wording on the application due to Commonwealth.

Vote authorizing the increase in spending limits of the revolving fund for the Recreation Department and the Library
Meier MOVED and SECONDED by Ford to increase the spending limits of the revolving fund for the Recreation Department to $75,000 and the Library to $20,000. VOTE 4-0.

Second Reading of Financial Policies
Meier MOVED and SECONDED by Ford to go into Third Reading for the Town Financial Policies on 3/20/12. VOTE 4-0.

Licenses/Appointments

a. **Bourne Liquors, Inc. d/b/a Luke's Liquor 'N More**

Chm. Pickard opened hearing 7:29 pm and read notice of said hearing published in the Bourne Enterprise dated 2/17/12. The unit will consist of two sale areas ; L-shaped cooler approximately 23'x53' and 11'x30'; one office, 2 rest rooms; one main customer entrance/exit; one customer entrance/exit to recycling area; back room with one main delivery door and two pass doors for deliveries and entrance/exit from the store.

Ford MOVED and SECONDED by Meier to recess liquor hearing (to discuss and vote on Recreation Department and Library revolving fund increases; Second reading of Financial Policies). VOTE 4-0.

Meier MOVED and SECONDED by Ford to reconvene in open session. VOTE 4-0.

Atty. Paul Covelle representing the petitioners. All stockholders and directors, including property owner representative Fred McFadden present tonight. Paperwork has been received and filled out. No abutter notification required.

Application reveals extensive remodeling. The store proposed is to be in current location and in an adjacent store; not the old A&P grocery store.

Discussion
Bill Gibbons – is not in favor of enlarging the liquor store.

John Currey – is not in favor of enlarging the liquor store and not necessary.

Dale Richter – encourages alternate businesses be in the Town of Bourne in the proposed location.

Jay Potter – is not in favor of enlarging the liquor store.

Kay Donovan – is not in favor of enlarging the liquor store and the town has enough liquor stores.

Marcel Martineau – is not in favor of enlarging the liquor store, including another liquor store.

Ford – asked Atty. Covelle if the transfer of license contingent of the enlargement of the store. Yes. Ford also asked what the new owner will be doing with the enlarged space for the public.

Mr. Chamberlain - in general the business for selling liquor is changing; stores are increasing in size. There will be more and more products available with no way to inventory or display full-product lines. They will sell more items in volume; provide a better experience for the consuming public; and provide a better pricing level for consumer.

Fred McFadden - represents the landlord owner of the property. Reminded the Board the owners invested a lot of money on the property and take pride in the property.

Ford – asked when Stop & Shop's lease expires, which was said to not be for a long time. Chm. Pickard reminded the discussion to be kept to the specific topic at hand.

Chm. Pickard for the record, received private petitions stating there is no need for expansion to the store.

Jay Potter – feels the need for a grocery store. Chm. Pickard acknowledged that Mr. Potter has already forwarded a letter and spoke earlier tonight; and no discussion on grocery store.
Chris Cheverie – this is an opportunity to bring to the town a liquor store with a variety and to provide services they need. There has been confusion of taking over the grocery store space.

Atty. Covelle – a study was done which is relevant today; 50% of packaged alcohol beverage came over the bridge are brought in vehicles. The gap has narrowed and competition is good for the public. This business will not put other stores out of business.

TA Guerino, for the record, said there are no certified signatures, but is in receipt of several petition forms that have come to the Selectmen's office for a total of 1,092 signatories in opposition.

No further public comment.

Ford MOVED and SECONDED by Meier to close public hearing. VOTE 4-0.

Meier - in his opinion, the expansion is not in the town's best interest.

Baldwin – believes a large liquor store doesn't warrant the increased traffic aggravation for the public with the expansion.

Ford – in favor of the transfer of the liquor license and is in favor of the expansion and that competition is good.

Chm. Pickard – doesn't feel traffic is an issue like Baldwin stated, but feels there is a saturation issue and believes there is no need to have a 14,000 sq. ft. building.

Meier MOVED and SECONDED by Pickard to deny Monument Wine & Spirit's, Inc. request of a transfer of ownership from Monument Wine & Spirits, Inc. Christopher J. Cheverie, Mgr. to Bourne Liquors, Inc., d/b/a Luke's Liquor 'N More, Michael J. Patterson, Mgr. and to increase the size of the premise to be licensed to 14,024 sq. ft. (formerly 4,850 sq. ft.) license per routing slip. VOTE 3-1 (Ford in opposition).

b. Super Sub Deli – Common Victualer License

Application approved for Common Victualer License.

c. Weary Traveler's Club

Mr. Roach, Accountant and David Robinson, Acting Manager

Decision of the Department of Unemployment Insurance for the Weary Traveler's Club is based on information that Mr. Robinson's predecessors didn't file documentation. Mr. Roach filed all paperwork and sent in one good-faith payment. He is requesting an additional 30-days moving forward.

TA Guerino to put on the 4/17/11 agenda.

d. MMA – One Day Liquor

Ford MOVED and SECONDED by Meier to approve request of the Commonwealth of MA and MMA for one day liquor - all alcoholic for a Saint Patrick's Dinner Event on 3/10/12 from 6:00 pm – 10:00 pm. VOTE 4-0.

e. T Wheels – Class II Car Dealers License

Meier MOVED and SECONDED by Ford to approve T Wheels request for Class II Car Dealers License per routing slip (BOH; Assessors). VOTE 4-0.

Cable TV Contract – Peter Epstein

Atty. Epstein gave a brief overview. The Cable Advisory Committee negotiated the annual funding in the amount of 3% of Comcast gross revenue for the studio at the high school. Comcast is not going to keep running the studio. The recent change to close a studio was made in Mashpee; Mashpee will be doing its own programming. Comcast will continue to run the studio in Bourne through 6/13/12 at which time either the town or an independent company will assume. Renovations will be paid annually; Comcast agreed not to pass through subscribers and has never seen Comcast do so.

The office transition is through 9/30/12. Comcast took the position that it didn't want to continue to operate the office; Bourne cannot force them to run the office.

The advance of $75,000 on the first years' 3% of the gross revenues are re-payable over 4 quarters with no interest. The extra money for equipment and renovations, will be re-paid.

10-year license. Federal law requires communities to start 3 years prior. There was concern with Bourne's renewal as other towns already signed a contract prior to Bourne. Bourne will be in the same timeframe as the other towns.

Committee didn't work hard enough for the best interest for the town. Out of Falmouth, Marion, Mashpee, Sandwich and Bourne, Bourne had the lowest number of office transactions. In the end, the committee was willing to let the office continue through the end of their lease (9/30/12); in the license the requirement is that Comcast will continue to operate the office in Bourne or in a continuous community. The contract doesn't require them to close, but rather allows them to close the office.

Meier – seems like boiler plate agreement and the town had a lot of limitation. It seems Bourne had no bargaining power to keep the retail store open for elderly residents. What options can the Board negotiate. Atty. Eptstein said two things cannot be negotiated: a) Bourne cannot force what programming they carry; and b) Comcast rates. Comcast has the right to deregulate. Meir asked if the committee could continue discussion and if got into a situation where they did deny the contract. Atty. Epstein said it could have been more serious if the parties hunkered down; he doesn't feel the committee wanted the town to be in this position.

Meier – asked what are the ramifications to Bourne if we go without a contract. The original contract was denied initially due to the timeframe. Selectmen are complying with procedure of Federal Regulations. If the town doesn't want to go forward, it will have to go back to the drawing board with Comcast. Meier asked if Comcast would shut the system down. Atty. Epstein responded no, but the question to ask would be if the town would be getting a more favorable deal. The committee worked hard and he and the committee thought what they were doing was the best for the community. Atty. Epstein suspects it wouldn't be much of a different deal. Regarding the office, he feels Comcast wouldn't do anything different. Comcast can follow Federal Law; Selectmen would have to explain why they denied the contract. It is a frustrating, ineffective, and an expensive process in the end which will not yield much. The contract is about getting the best deal for 7,500 subscribers. He doesn't recommend going to court with Comcast.

Ford – asked if Comcast will continue to run the studio during that period of time. Comcast will continue to comply with obligations in the previous license and continue the studio.

TA Guerino – asked if the town goes back to the table, will the $200,000 for capital equipment still be available. Atty. Epstein suspects it will come off the table;

Does the town need an article in the STM to accept monies from Comcast to be apportioned back to the non-profit. The answer is no.

Meier – asked about on-line streaming. The new contract cannot deal with communication issues. Telecommunications is not a cable issue;

Other competitors. There was some discussion with Verizon. Verizon stopped franchising. Verizon is the only competitor around;

Is it reasonable for Bourne to get into the business. It is a market financial decision. Several communities that have franchise - Norwood, Braintree, Shrewsbury, Russell but all had existing light department companies and all they had to do was apply for the franchise. Atty. Epstein feels this more of a risk for what the town would gain.

Ford – 3% that goes to the rate payers differently. It is the gross on every cable service revenue, excluding telephone and internet;

Bourne 10-year contract vs. 5/6-year. 10-year is the maximum term under State law. Federal Law says you have to start two years prior and not much will change in 5 years. In 7 years, you have to start again (other communities several months ahead of Bourne). 10-year contract is a reasonable amount of time;

Did Bourne get a better contract than other contracts on the Cape. Yes, for the funding received; the town could get more, but the community would have to pay for it.

TA Guerino – Bourne is well within its ability to run the non-profit piece.

Meier – can a non-profit company operate in a public building. Yes.

TA Guerino requested Atty. Epstein contact Comcast to see if they would consider the contract on the studio an additional 60 days (through 8/15/12) to give the non-profit organization a chance to get started. Atty. Epstein suggested that if Comcast did agreed, is there a date the Selectmen would sign the contract. TA Guerino said the date would be 3/20/12.

Jim Mulvey – requested the committee be disbanded (Chm. Pickard reminded Mr. Mulvey it already has been). As far as the contract, bargaining it wasn't and doesn't approach bargaining in any conceivable way. Money is for equipment only, not rent, maintenance, etc. Concerns if the town loses the studio and Comcast will obligate the town for monies (TA Guerino said he is checking with Mrs. O'Keefe). What is the legal responsibility for the town with regard to bargaining conditions for a non-existent private company.

Chm. Pickard – thanked Atty. Epstein for his work.

TA Guerino – the town didn't have the ability to aggregate negotiations; Bourne was behind in years of the contract; while Bourne didn't get the benefit from county funding and the notion that the cable company was going to continue to run studios, have private community cable corporations, Bourne was not going to escape.

Jim Mulvey – raised the term "augment". TA Guerino doesn't see the town is responsible with the $200,000.

Atty. Epstein – the community cannot negotiate for a company that doesn't exist. Comcast, in the end, the issuing authority (Selectmen) or designee will be responsible for that. The $200,000 is more than enough to fund. It is difficult negotiating with big companies. The $20,000 per year is not part of the 3%.

Meier MOVED and SECONDED by Baldwin that the Selectmen sign agreement with Comcast for the period provided in the contract contingent upon report back from Atty. Epstein whether an extension is made on the studio through 8/15/12. VOTE 4-0.

Town Administrator Report
None.

Selectmen business
None.

Other Selectmen's business
None.

Adjourn
Meier MOVED and SECONDED by Baldwin to adjourn. Meeting adjourned at 9:05 pm. UNANIMOUS VOTE.

Respectfully submitted,
Lisa Groezinger, sec.