Board of Selectmen
Minutes of August 21, 2012
Bourne Community Building
Bourne, MA 02532

TA Guerino

John Ford, Chairman
Don Pickard, Vice-Chairman
Peter Meier, Clerk
Earl Baldwin
Linda Zuern

Chm. Ford called meeting to order at 6:00 pm.

Baldwin MOVED and SECONDED by Meier to go into Executive Session to discuss contracts related to ISWM – Fire negotiation and then to return into public session. Vote: Zuern – yes; Pickard – yes; Meier – yes; Baldwin – yes; Ford – yes.

Members of the Press: Diana Barth, Bourne Enterprise and Paul Gately, Bourne Courier

List of documents

- DNR Director's Bassetts Island map and General Laws Chapter 102 dated 8/21/12 – 2 pages
- Cape & Vineyard Electric Cooperative report dated 8/21/12 – 8 pages
- Cape Light Compact Update report dated 8/21/12 – 5 pages

Meeting called to order
7:07 pm by Chm. Ford

Note this meeting is being televised and recorded. If anyone in the audience is recording or video-taping, they need to acknowledge such at this time

Moment of Silence/Salute the Flag

Public Comment
None requested.

Approval of minutes – regular: 8/7/12
Pickard MOVED and SECONDED by Meier to approve regular session minutes of 8/7/12 as amended. VOTE 5-0.

Jean Stanley – Housing Rehab
TA Guerino requested to defer to the next meeting.

Discussion/presentations regarding CVEC projects in Bourne – Maggie Downey and Paul O'Keefe
Ms. Downey, Assistant County Administrator for Barnstable County and appointee to the CVEC.

Brief background on CVEC which consists of 20 members. Bourne was chosen by CVEC to maximize benefits for its community due to a surge in solar projects and urgency due to Net-Metering Cap. Solar PV Round 2 is ground and roof mount installations.

CVEC RFP process was reviewed as well as project structure. Electrical contractor is Broadway Electric Company.

CVEC Bourne PV Projects:
- Sagamore Fire Station
- Bourne Community Center
- Bourne High School

The BMS project is still in flux as different roof sizes are being reviewed at this time. Total KW is 425.41, estimated annual electrical savings is $21,835.72. Over the life of the system (20 years) would be $686,785.42.

NStar to allocate Net Metering Credits. All three facilities will have their electric costs offset by the PV systems' net metering credits.

CVEC PV Solar Round 2 next steps and timetable:
- Contracts between entities and CVEC in process
- Vendor has begun interconnection and environmental permitting processes this summer
- Construction may begin on some roof installations in late fall.

Meier – asked about if any work would void roof warranties on the buildings. Ms. Downey said CVEC is in contact with the roofing company and working with them.

Meier – asked about the payback. Mr. Elrick (Energy Coordinator) answered a link for energy savings and production information will be emailed to the board.

Mr. Schofield – representing the Cape Light Compact and a member of the Energy Advisory Committee, discussed the BMS. He said one of the other issues holding back the project is the SRECs; Mr. Elrick is working to get the SRECs, which would give the town additional $15,000.

Zuern – asked about tax incentives. Ms. Downey said there are Federal incentives as well as incentives in the Green Communities Act through the Net-Metering credit.

Pickard – raised issue of transparency of CVEC and Cape Light Compact. Ms. Downey said there are no legal issues to prevent the beginning of the CVEC Solar work.

TA Guerino – with regard to the BMS roof, a company was hired to do infra red testing to find exactly where the leakage is in the roof. This is a minimally invasive test and will be done within a couple of weeks. Once said test is complete, the BMS will go out to bid before the end of the fall, working to move forward.

Mr. Gately – asked how big the panels are. TA Guerino said one panel is 3'x5'.

Mr. Mulvey – raised concern with the structural capability of the solar structures. Technology is evolving rapidly and wondered if technology of these panels will be outdated and need to replace with new development. He also raised issue of who owns the panels on a municipal building. Ms. Downey responded they use architects and engineers to work with the roof support of the panels. The panels are owned by Broadway Electric (which also has the liability contract) until purchased. As far as other issues raised, steps have been taken on the town's best interest and that it is protected. Bonds are set up to protect the town from the developer.

Mr. Kapsambelis – member of the EAC, asked about decommissioning. Ms. Downey said money has been set aside for the developer who is responsible for decommissioning.

Ms. Downey – handed out the Cape Light Compact update. Bob Schofield is representative to the Cape Light Compact. Brief overview is that 12,661 electric accounts in Bourne. CLC energy efficiency program serves all 12,661 customers. CLC is part of the MA state-wide energy efficiency plan. 764 Bourne customers saved over $415,000 by participating in CLC compact programs; municipal projects totaled $72,305 for investments at: BHS, Otis AFB, UCT, and MMA.

CLC working on the 2013-2015 Energy Efficiency Plan. Highlights briefly reviewed.

Upcoming Action Items – Finalize the 2013-2015 Energy Efficiency Plan, CLC Board to vote in September to engage auditor for both retrospective and prospective audits of all CLC Funds.

TA Guerino – asked if recreational areas were looked at and is there any LED or solar projects for lights and park areas. Ms. Downy said the CLC cannot use funds for repairable projects with regard to solar projects, however, an LED parking lot retro-fit kit is available. Field lights are not pursued as it becomes a safety issue, but she will get back to TA Guerino.

Meier – asked about the LED lights as far as brightness. Ms. Downey said a demonstration contract with the DPW for the town is to identify 7 streetlights. This is significant savings in money as the lights are a cooler, white light. The swap out cost is done through the program.

Zuern – asked how is the LED project subsidized. Ms. Downey said it funded from a surcharge on the monthly electric bill. Zuern has concern about mercury in the LED lights. Ms. Downey said only the CFLs have mercury and not the LED lights. Zuern asked how to care for CFLs that break in your house. Ms. Downy said to sweep and bag – do not use a vacuum.

Mr. Schofield – an audit proposal was done for 7/03 - 12/08 and a performer was done to see the result in those 5 years, costing the CLC $30,000. For an additional cost of $30,000, proposing a full audit in 2009 and 2011. This year, the CLC put in budget to do a full audit. Most of the money is from the energy audit and monitored by the DPU. He is asking the board tonight whether willing to spend $130,000 or a part of that $130,000 to construct these audits after the fact. He doesn't need an answer tonight. This money comes out of the reserves the CLC set up in case the Compact disappeared to cover costs.

Chm. Ford – asked about the independent audits. Ms. Downy said the accounts in 2009 and 2011 are to put the transparency between CVEC and CLC to bed. This is no cost to the town.

Chm. Ford- asked what a resident would save in electrical costs if they went with the CLC. Mr. Schofield estimated about $10 per month, but gets more significant with commercial accounts.

Zuern – asked about energy audit process. Ms. Downey said once a year an energy audit can be done at a home and makes a list of recommendations. Incentives are given to implement the recommendations, but are up to individual home owners whether or not to move forward. Zuern also asked about meters. Ms. Downey said this is a pilot project and eventually every home will have interactive smart meters.

Meier – Meridian Power contacted his neighborhood. Ms. Downey said there is competition, but the CLC has just put together a helpful fact sheet which she will forward to TA Guerino for consumers.

Mr. Mulvey – for clarification, the CLC energy audit is funded by surcharge of monthly bill.

TA Guerino – asked if it is necessary for this board to vote or will the CLC Board of Directors vote. Ms. Downey said the CLC Board members gave town representatives a choice to go back to their respective boards of selectmen; the directors tabled their votes and some members chose to go back to their selectmen (Mr. Schofield chose to do so and to act on this board's behalf).

Chm. Ford – asked why the audit system isn't started now. Ms. Downey said the CLC Board of Directors voted on when to do audits.

Bassett's Island – Tim Mullen
Events that took place the last Saturday in July 2012 reviewed as well as the Bass Ackwards Race timeline:

2009 - organized by the Kingman Yacht Club. Since the growth in 2009, sanitation required and clean-up.

2010 - the largest crowd; minor boating accidents and injuries at which Kingman pulled their permit and requested to continue the race on their own property.

2011 – crowd was a little rowdier but no serious accidents occurred; a younger crowd and less locals and boats recognized.

2012 - weather was unfavorable and weren't expecting a large crowd. 80% of people anchored between 18 and 30; some locals but predominately out-of-towners; underage drinking in which became violent with fist fights (none of the vessels or party goers were involved in the race and to only "party").

2013 - DNR, PD discussed at length and to deal with potential of a large crowd to recommend race organizers to cancel event for a year (give idea if people just showing up for a party). He proposes to close Red Brook Harbor, no anchorage to eliminate issues of this year. Looking for help from the local media ahead of time stating there will be no anchorage in Red Brook Harbor, there will be police presence, officers assigned to all patrol boats.

Mr. Mullen believes this is the most efficient and effective plan moving forward.

Zuern – asked about what is to stop people from coming on another date. Mr. Mullen said he is prepared and will staff appropriately. She also asked if one is fined on the waterway, does it affect your driver's license. Mr. Mullen said if convicted, yes.

Pickard – asked how many boats are anchored at Bassets. Mr. Mullen said between 150 – 200. Pickard said enforcement is the best thing and if there was something the town can do. He suggested offering the State Police a slip to supplement the town's enforcement. He also suggested bringing in supplemental summer staff (as long as no benefits are required to cost the town more money). Mr. Mullen said the State Police declined last year.

Chm. Ford – suggested Mr. Mullen go through the Executive Office of Public Safety.

Mr. York – requested Mr. Mullen to list anchoring prohibition and agrees enforcement is the key.

Mr. Zeien – is in agreement of the enforcement. The town should take issue with public drinking as it is prohibited. Kingman's takes all activities into an adult responsibility. He is agreeable to work with Mr. Mullen and suggested possibly having the event two weeks in advance.

Mr. McPhee – sent an email to the Selectmen which raised concern with public safety.

Meier – asked where Mr. Mullen is suggested prohibiting anchoring. Mr. Mullen highlighted the area in yellow.

Mr. Mulvey – use same means of communication not too far ahead of this establishment and state bus shuttles will be used for booking offenders.

Correspondence
Meier read correspondence into the record. Copies of correspondence are available at the Town Administrator's office. He added two more additional items.

Item E – Electric Avenue and Shore Road has also done in the past.

TA Guerino added the email correspondence from Mr. York relative to pedestrian bicycling representation has been added to tonight's correspondence. After speaking with the Commission, he proposed for the board's approval to add a bicycle/pedestrian representative to sit on the Transportation Committee.

Discussion and vote on Tax Title Property for Public Auction – Nancy Sundman
There are 40 parcels of land the board voted to go to tax title. At that time there was one complete list. This past week, the lists were combined into one. There were two (2) parcels that were not included in the list given to the auctioneer. The board needs to decide, as we move forward with the auction, whether they want to include those 2 parcels. Rocky Point was provided to the auctioneer and classified as "water view", when in fact it is actually "waterfront". The assessment of the property is $175,000 but she was not sure if that was the water view or waterfront assessment. Ms. Sundman was concerned with the value of the property in connection with the absolute auction. Town Administrator was going to check with Assessor's Office. The auction date was postponed at this time. Some of the parcels are in conservation restriction in perpetuity and wondered why you would sell property if you cannot do anything with it. In speaking with Town Planner, she was told that if a parcel is contiguous to an abutting property owner, it can be combined as one lot and would have a value to an interested abutter for future additions.

Chm. Ford – asked TA Guerino if the town can be protected from a developer. TA Guerino will ask Town Counsel; most of the parcels are not large but if a home lot, he doesn't believe there is a lot for development.

Chm. Ford – TA Guerino said the board opted to go with the absolute auction. In looking at the Rocky Point assessed value, TA Guerino would like to have something in writing from the auctioneer to determine how that property will be auctioned off based on the assessed value.

Chm. Ford – asked about 33 Heather Hill Road. TA Guerino said the board would have to take a vote to pull from being auctioned.

Ms. Sundman said the two parcels not put on the list are: 0 Old Dam Road (Page 5) and 10 Samoset (Page 2).

Pickard MOVED and SECONDED by Baldwin to put two parcels – 0 Old Dam Road, 27.0_023.00 and 10 Samoset, 04.1_161.00 on the auctioneers list at the next public auction. VOTE 5-0.

Ms. Sundman – Page 3 – nothing to auction off as it is only airspace. 14.0_048.02 leave as is.

Pickard MOVED and SECONDED by Baldwin to not to put up for auction - 33 Heather Hill Road, 16.0_041.00 on the upcoming auction. VOTE 5-0.

TA Guerino and Chm. Ford commended Ms. Sundman for her work on this auction final list. She will get in touch with the Tax Title Attorney and give complete list of 38 parcels to the auctioneer moving forward.

Licenses/Appointments

a. Appointment – Education Scholarship Committee (Trish Lubold)

Pickard MOVED and SECONDED by Meier to appoint Trish Lubold to the Education Scholarship Committee for a term to end 6/30/14. VOTE 5-0.

b. Watershed Bike Ride

Pickard MOVED and SECONDED by Meier to approve Buzzards Bay Coalition Watershed Bike Ride request on 10/14/12 from 9:00 am in Westport and to finish in Woods Hole at 5:00 pm per routing slip.

Baldwin – asked about Canal Service Road and would like permission from the Army Corps. Pickard read route into record. TA Guerino said this has been done in the past.

Meier – asked how many bike riders. Pickard said there is no mention of size or riders. TA Guerino said it has been done in the past and not a large group. Meier is sympathetic and should be notified through the media.

Mr. York – mentioned some of the routes are incomplete; cyclists crossing from the Scenic Highway, (possible details mentioned Chm. Ford) should be addressed. He rode over the bridge and the sidewalk was impeded by a thorny bush. The State says it is the town's responsibility to

clear. It took him personally 16 hours to clear the sidewalk himself with the town mulching the brush.

VOTE 5-0.

c. MMA – Three One Day Liquor (9/15/12; 10/4/12; 10/6/12)

Pickard MOVED and SECONDED by Meier for Beachmoor @ MMA request 9/15/12 – wedding event from 4:00 pm – 9:00 pm; 10/04/12 – comprehensive strategies function from 5:00 pm – 9:00 pm; and 10/6/12 – wedding ceremony from 12:00 pm – 6:00 pm. VOTE 5-0.

d. Signing of Easement – Circuit Avenue

No motion necessary. The board signed tonight.

Overview of the Conservation Law Foundation issues with Mr. Gottleib, Cape Cod Water Collaborative – J. Ford O'Connor and Andrew Campbell Bourne Water District. Discussion of issues related to the legal action of CLF

Mr. Gottleib discussed two separate legal actions. The first was the EPA for not using its discretionary authority properly for 13 systems – those total maximum daily loads failed to take into account non-point sources - the relationship between point and non-point sources is a huge issue.

The second suit alleges a Section of the Clean Water Act in 1973. The claim states the obligation for the entity in charged with developing (preceding the Cape Cod Commission) to annually update and fro the EPA to certify annual. This action claims systems were not annually updated and therefore not compliant and seeks to impose unspecified monies.

Chm. Ford – asked about how the Conservation Law Foundation is funded. Mr. Gottleib said it is a 501C3.

The Foundation served the EPA; notice of suit went to the Barnstable County. Upon receiving notice of suit, the count engaged special counsel and provided a response articulating why both lawsuits are unfounded.

The Department of Justice is representing the EPA. Ford – asked why Barnstable involved. Mr. Gottleib said as a separate entity, they want their own counsel.

Chm. Ford – looking for regional solution and may settle with regional sewer. Barnstable has no authority to manage a wastewater system of any size. Has not been party to any proposed settlement to the suit.

Pickard – asked if there is another county involved. Mr. Gottleib said the suits are focused on Cape wastewater.

The claim made on the suit where EPA has discretion to determine groundwater should be treated as surface water discharges. The argument for plaintiffs to succeed is there is a connection in what to put in the ground; then becomes a question on where do you draw the line. If taken to the extreme (anything you put in the ground) one can easily extend permitting requirement to the homeowner. The county's position is Federal permitting is inappropriate and shouldn't happen. The law doesn't support and it is bad regulation. If the permitting requirement extends to the homeowners, there is no Title 5 system that would meet Federal permitting standards. The only option is the have a tight tank or to be connected to a treatment system. It will result in Title 5 owners in violation and subject to fines or result in towns intervening and building treatment systems and take everyone and bankrupt what is necessary.

County's position is that it is a bad outcome for the county. Plaintiff says permits are required and EPA has jurisdiction. EPA agrees with the plaintiffs and disagree that didn't abuse discretion.

TA Guerino – commented on only looking at the Cape. He asked Mr. Gottleib what the benefit is for Cape towns to intervene. Mr. Gottleib said the county has chosen not to intervene. They have the expectation that someone may enjoin the county and there will be no urgency to intervene (it is also expensive to participate). The county has not recommended any communities not to intervene.

Mr. Gottleib said last fall parties entered into settlement talks and invited the county to be part of the process; Mr. Gottleib and Mr. Nezrecki (SP?) did participate in 10 sessions to educate the community through the county. Mr. Gottleib and Mr. Nezrecki (SP?) withdrew from the settlement discussions. Discussions resulted in not settling and notified the court in May there was no settlement. Last night UPA filed to dismiss the 208 suit and anticipates dismissing the other suit. The court will decide to dismiss or not. If not, go to arguments and then oral arguments and go on trial.

In summary, the County is not a part of the suits. EPA will share the "pain" with everyone locally.

Ford O'Connor – counsel for Bourne Water District, said there is no one on behalf for the Cape towns. If allowed, will be there to see what happens and discuss Bourne Water District for impact and what will be faced with the decision. Bourne Water District will file to intervene, put money aside to watch the Cape, and if there is a settlement, we are there.
Limiting to watch and tell what is going on. Voted $40,000 from old legal fees, as did Sandwich, which is enough to keep some "hand" in the game.

Zuern – EPA saying cannot do this, but a non-profit can get power through the court system. Atty. O'Connor said the EPA will have all power. This would be total federal control.

Ford O'Connor – would like the opportunity for the Water District to be there for the settlement as their goal is to have good, clean water and not be bankrupt.

Chm. Ford – New Bedford and Boston for example are allowed to discharge into the ocean. MMA couldn't upgrade their plant as they were grandfathered. If they cleaned to drinking water, MMA could no longer discharge in the canal which doesn't make sense. The costs for Cape plants are extravagant.

Zuern – asked if Bourne should get involved. Ford O'Connor would love to have other towns to join. Zuern feels maybe Bourne should be a part of this.

TA Guerino – based on what Mr. Gottleib and Ford O'Connor have discussed, other than financial assistance, what value does Bourne add to this intervention that the Water District isn't already doing. Ford O'Connor said the town may have other concerns and that the Water District is only concerned with clean water.

Chm. Ford – if the town has to sewer everything including condos or large plants and leave residents under Title V, it would be a great cost.

Pickard – if Bourne signed on as an intervener, he wonders if we would have a voice, unless had separate legal advice.

TA Guerino – suggests if the board wants to continue, we can augment the budget for the special town meeting to include.

Zuern – need to talk to other people on what the role would be. Chm. Ford said Atty. Troy told him Bourne would need an Associate Town Counsel as he himself represents the town.

Mr. Gottleib – suggests Bourne obtain a subject matter counsel to fully participate and to look at the town's ability to intervene and what your standing would be. A lot of the financial issues raised by one town will be fairly common.

Mr. Mulvey – other areas are not impacted. New Bedford is highly organized and funded from Fall River to Gosnold. That is one of the organizations you are dealing with now.

Third Reading of Proposed Personnel Policies – possible adoption/vote

TA Guerino would like to table. There are some issues and need re-wording and will come before the board. Chm. Ford had some things he looked at and will address at the next meeting.

Zuern – asked about wording with regard the deletion on Page 13. TA Guerino to follow up.

Town Administrator's report

Zuern asked about job description for the Facilities Manager. TA Guerino will put on the agenda. Scope of duties will be discussed with Superintendent of Schools; as it will be a shared position, there will be a co-manager directive.
Chm. Ford – asked if the position has a co-manager, will the school pay for part of the position. TA Guerino said not at this time.

Zuern – feels the TA should be the person the Facilities Manager reports to.

Pickard – believes the Superintendent has the "lion's share". TA Guerino said the town can do an MOU for another night.

Mr. York – asked if marinas, parks and town beaches are included under the Facilities Manager. TA Guerino said marinas would be done through the DNA; parks would be through the DPW and beaches are not included.

Meier – asked about the description of the Facilities Manager with regard to assessments. TA Guerino said this position would be a contact point.

Selectmen's business

a. Final Goals Adoption

Goal – Financial (Pickard liaison)

1. Justification of dollars and proof of sustainability for any new recommended positions
2. Improved payroll costs measures for the monitoring and reporting of overtime
3. Revenue Stream Enhancements (ISWM/COADY)
4. Completion of Financial Policy Manual in consort with the Town Audit recommendations
5. Other Post Employment Benefits (OPEB) discussion and strategy

Goal – 2014 Cape Cod Canal Celebration (Ford liaison)

1. Public safety/EMS – crowd control and traffic movement – secure outside sources for the financial burden and other lead agency support
2. Eyesore removal privately owned building beautification
3. Municipal building and groups spruce-up
4. Municipal Agencies to work cooperatively with the Celebration Committee
5. Partnership with Neighborhood Associations
6. Combine and coordinate with Town Hall Anniversary Celebration

Goal – Municipal Engagement (Meier Liaison)

1. Review Boards and Committees level of effectiveness and efficiency
2. Encourage broader participation of under-represented groups (youth)
3. Require and encourage more transparency (more CATV coverage as an example)

Goal – Wastewater Planning (Zuern, Baldwin liaisons)

1. Wastewater planning for Bourne which assures local control and decision making negating the need of a large regional governmental entity.
2. Compliance with the goals and objectives set forth in the Long-term Comprehensive Plan
3. Monitor the movement of the Conservation Law Foundation's current action against EPA related to Buzzards Bay

Meier MOVED and SECONDED by Zuern to adopt the Bourne FY2013 Goals – July through April as outlined.

TA Guerino – reminded the board that some items are multiple year items, but need a starting point.

VOTE 5-0.

b. Adopt Amended Executive Order – Transportation Committee

Zuern – asked if the Bicyclist/Pedestrian would be appointed by the board. TA Guerino said yes.

Baldwin MOVED and SECONDED by Pickard to adopt Amended Executive Order for the Transportation Committee (Chief of Police or his designee, DPW Director, representative of the Cape Cod Commission or the MPO, Planning Board, Bicyclist/Pedestrian representative and four [4] members appointed by the Selectmen) as outlined. VOTE 5-0.

Mr. York – discussed small projects would involve bicycles with the Transportation Committee. He wanted to clarify at the last board's meeting discussion, the term "all" users should be included.

Zuern – sent a Proclamation that will be on the next meeting's agenda. She attended the meeting on Eco Toilets and would like to put on a meeting agenda in September.

Pickard – ask the Chm. of Selectmen to select at which meeting dates would be best for Board of Sewer Commissioners meetings and to send topics to TA Guerino. He requested Ms. Coffin, Board of Health and Ms. Moore, Town Planner, to review counterparts' suggestions to their own boards as far as addressing bylaws with regard to the Wastewater Planning report from the 7/10/12 meeting. TA Guerino will send request out.

TA Guerino – next meeting will be 9/4/12 and requested a complete agenda be filed next Wednesday and would be appreciated.

Adjournment

Pickard MOVED and SECONDED by Meier to adjourn. Meeting adjourned at 10:15 pm.

Respectfully submitted - Lisa Groezinger, sec.