

**Board of Selectmen
Minutes of June 10, 2014
Bourne Community Building
Bourne, MA 02532**

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TA Guerino

Peter Meier, Chairman
Don Pickard, Vice-Chairman
Stephen Mealy, Clerk
Don Ellis
Linda Zuern

Note this meeting is being televised and recorded. If anyone in the audience is recording or videotaping, they need to acknowledge such at this time – Michael Rausch Bourne Enterprise

Documents

- Draft letter dated 6/10/14 addressed to Martin Greene handed to the board by Mealy – 1 page

Meeting Called to Order

Chm. Meier called the meeting to order at 6:30 pm.

Moment of Silence for our Troops/Salute the Flag

Public Comment – Non-Agenda Items

None requested.

Minutes: 6/3/14

Pickard moved and seconded by Mealy to approve minutes of 6/3/14 as submitted. Vote 5-0.

Correspondence

None at this time.

Ratify Town Administrator's Contract

Atty. Troy said there have been some communications with respect to the vote of the board to authorize the Town Administrator and the recent contract. After reviewing the actual document verses the term of the vote, he recommended to the Chm. of the Selectmen and the town that the contract be ratified.

He emailed each member of the Board of Selectmen a clean copy versus dealing with the format of the board's previous vote. To ratify the Town Administrator's contract, it will require three (3) signatures of the board to ratify the contract.

Ellis MOVED and SECONDED by Mealy to ratify the Town Administrator's Contract as set forth in the document given by Town Counsel.

Discussion

Pickard raised issue about the process of the vote of said when the last contract was up for renewal, Mr. Meier was not permitted to vote because Troy's office stated as long as his mother is a town employee, he cannot vote on the Town Administrator's contract, perform an evaluation or be involved in any part in a removal of the Town Administrator under the Bourne Town Rule. Atty. Troy responded by saying he has to see what portions can be discussed in Executive session and regular session. That subject is not being discussed tonight.

Chm. Meier ruled Pickard out of order.

Pickard requested members table the Town Administrator employment agreement until it is determined whether Chm. Meier's participations violated an ethics decision.

Mealy asked Atty. Troy is there was reason all five (5) members cannot cast a vote tonight. Atty. Troy responded he doesn't know of any reason.

Pickard feels there is an underlying notion that Chm. Meier could not participate in the agreement, discussion or removal of the Town Administrator.

Zuern feels there are certain things that were done that could have been done better.

Meier explained he did his due diligence and didn't make any quick decision.

Pickard asked for clarification of why the board could not discuss how the board got to this contract. Atty. Troy said the board can discuss anything which can be fairly anticipated under the agenda item. Pickard explained that the Chm. can make the decision. Atty. Troy said it cannot be discussed at a subsequent meeting.

Mealy explained he did his due diligence (viewed the tape of the 5/13/14 meeting and made detailed notes and presented to Town Counsel). Because Town Counsel confirmed there is reason to not go forward, he would go ahead with the vote this evening and pursue legality at another date and time.

Pickard said if there is a majority vote, there will be a contract.

TA Guerino said there is a contract that was signed in May and is a valid contract. Pickard believes it is an illegitimate contract because of Chm. Meier's participation.

SELECTMEN VOTE

Roll call: Pickard – no; Zuern – no; Mealy – yes; Ellis – yes; Meier – yes.

VOTE 3-2.

Pickard requested to put on the next agenda the "Removal of the Town Administrator under the Home Rule Charter".

Ellis believes one meeting agenda for discussion is sufficient. Consistently putting this on the agenda will inflict damage to this board and the town.

Pickard disagrees. He is concerned with the contract and how it was arrived at by this board.

Atty. Troy said five (5) signed copies will go to the Finance Director, Atty. Troy's office, the Town Administrator, Town Clerk's office and the HR Department.

Atty. Troy said this item would have been able to be done with the board who originally sat on the meeting in which the contract was signed, but unfortunately that meeting was the day before an election and that member no longer on the board. He said the document is exactly what the previous board had voted.

Zuern raised issue that the last page was not the same as the document currently has only the Chairman's signature and that the original document had all of the Selectmen's signatures.

Atty. Troy said the contract was sent to each member of the board yesterday. The other contract was not formatted correctly and he made sure each provision was the same. All contracts the Town enters into with the board require the majority of the board's signatures.

Zuern requested all contacts go through Town Counsel if any changes are made.

Selectmen Appointed Committees

Pickard moved and seconded by Mealy to re-appoint Peter Meier to the Affordable Housing Trust Committee for a term to expire 6/30/15. Vote 5-0.

Pickard moved and seconded by Meier to appoint Stephan Mealy to the Bourne Financial Development Corp – Main Street Steering Committee for a term to not expire unless suspended or revoked. Vote 5-0.

Meier moved and seconded by Mealy to re-appoint Don Pickard to the Bourne Landfill Business Model Working Group for a term to expire 6/30/17. Vote 5-0.

Pickard moved and seconded by Mealy to re-appoint Thomas Guerino to the Cape Cod Regional Transit Authority for a term to expire 4/30/15. Vote 5-0.

Mealy moved and seconded by Ellis to re-appoint Linda Zuern to the Cape Cod Water Protection Collaborative for a term to expire 5/2/15. Vote 5-0.

Mealy moved and seconded by Ellis to appoint Peter Meier to the Local Emergency Planning Committee for a term to expire 6/30/15. Vote 5-0.

Pickard moved and seconded by Mealy to re-appoint Donald Ellis to the Massachusetts Military Reservation – Military Civilian Community Counsel for a term to not expire unless suspended or revoked. Vote 5-0.

Pickard moved and seconded by Mealy to re-appoint Donald Ellis to the Massachusetts Military Reservation Senior Management for a term to expire 6/30/15. Vote 5-0. *TA Guerino to check if this is a one or three-year term.*

Pickard moved and seconded by Mealy to appoint Peter Meier to the Trustees, Bourne Memorial Community Building expiring when there is a new voted Chm. of the Board of Selectmen. Vote 5-0.

Licenses/Appointments

a. Knights of Columbus – Common Victualer license

Pickard moved and seconded by Mealy to approve Knights of Columbus at 5 Armory Road, Buzzards Bay request for a common Victualer license (no alcohol) for fish Fry every other Friday starting 6/13/14 from 5:00 pm – 10:00 pm per routing slip. Vote 5-0.

b. Three (3) One-Day Liquor Licenses for Sagamore Beach Colony Club

Pickard moved and second by Ellis to approve Sagamore Beach Colony Club annual request for three one-day liquor license (beer and wine only) on 7/19/14 from 5:00 pm – 9:00 pm (Family Night); 8/1/14 from 7:00 pm – 11:00 pm (Corn Hole Tournament); and 8/9/14 from 6:00 pm – 11:00 pm (Music & Comedy Night) per routing slip. Vote 5-0.

c. Recreation Committee Appointment (Andrea Cannon–Tellier)

Pickard moved and seconded by Mealy to appoint Ms. Andrea Cannon-Tellier to the Recreation Committee for a term to expire 6/30/17 based on letter of interest. Vote 5-0.

TA Guerino said pursuant to Charter to appoint a member to the Board of Assessors and would recommend the appointment of Joseph Carrara, Sr. He is asking the board wave the 15-day requirement will put on the agenda for the next meeting.

Zuern would like applicants come in before the board prior to a vote of appointment.

TA Guerino asked if the board would be willing to change the next meeting date from 6/17/14 to 6/24/14. The consensus of the board is to hold the next meeting on 6/24/14. Zuern will not be around for the 6/24/14 meeting.

Recess

7:00 pm Joint meeting with Board of Health to Review Land fill RFP response from Harvest Power, Inc.

Introductions

Board of Health: Stanley Andrews, Skip Barlow, Kelly Mastria, Kathleen Peterson and Donald Utti.

Attorneys Robert Troy (Town Counsel), Mark Kalpin (Special Counsel) and George Harrison (consultant)

Document overview and review (Possible Executive Session)

The consensus of both the Selectmen and Board of Health is not go into Executive Session.

Mr. John Redman, Chm. of the ISWM Working Landfill Business Model Working Group said it was established on January 19, 2010 to investigate potential business opportunities at the landfill. Committee members include Bill Ware (Capital Outlay), Bob Schofield (Energy Advisory Committee), Stan Andrews (BOH), Don Pickard (Selectmen) and myself from the Finance Committee along with George Aronson (Consultant) from Commonwealth Resource Management and Dan Barrett and Phil Goddard from ISWM.

During the next two years the committee reviewed various options for the landfill. We hosted a Regional Solid Waste Management Forum at the Upper Cape Tech School for the Cape Cod Solid Waste Advisory Committee prior to a potential bid on the Cape Town's MSW contract. Although we did not sign up most Cape towns, we ultimately ended up with an agreement with the Town of Falmouth as well as a very favorable contract with Covanta to process ash from their facility in Rochester. In retrospect, this was probably a better deal for the town.

We also continued meeting with a number of firms desiring to use a small part of ISWM's land/infrastructure to locate their operations as new technologies were identified. We hosted a pre-proposal meeting in January 2012 for firms indicating an interest in bidding to use ISWM land for their operation.

Fifteen (15) firms purchased flash drives for bidding purposes. The RFP Review Subcommittee was established at the Working Group meeting of January 12, 2012 comprising of John Redman (Chairman), Bob Schofield (Vice Chairman) and Bill Ware (Clerk) joined by George Aronson from Commonwealth Resource and, Dan Barrett and Phil Goddard from ISWM. Messrs. Pickard and Andrews would not serve on the subcommittee as they would ultimately represent their respective committees on the final vote.

March 29, 2012 Bourne received proposals, noted price and non-price. April 2, 2012 we reviewed non-price proposals and ranked them – we documented the results and then opened the price proposals. What will be presented to you this evening is the subcommittee's recommendation.

Atty. Mark Kalpin presented the lease between the Town of Bourne and Harvest Power. Harvest Power will comply with all applicable laws, obtain all application permits and the modification of Assignment of Jurisdiction will be with Board of Health. The lease is on 4.4 acres of land to design, finance and construct an operation aerobic facility for turning items into useful products of food, waste, solids and fats. The town and Harvest Power agreed to work together to obtain permits (some Harvest Power will obtain directly) and some in the name of the town. Harvest Power will reimburse the town for costs as part of the permitting processes. The facility is anticipated to cost \$35M to build and 15 months to construct. This will be a 15 year underline lease with two 5-year options.

Compensation will go to the town in host fee payments for organic waste components and material brought in by Harvest Power over 25 years for the life of the project which will bring in \$14.5M in revenue to the town.

If Harvest Power doesn't comply with any terms of the lease agreement, it will be considered a breach at which time the town has the ability to stop and shut Harvest Power down. If the Harvest Power discharge is unacceptable, there will be penalties. Harvest Power is providing a removal bond if the facility should be taken down. The town has set time frames for construction of the facility (2 years), commence operations (within 2 years), and certain exemptions of permit issuance with a drop-dead date seven (7) years out.

In short, the lease agreement is to protect the town. Moving forward, assuming the lease was approved by the Board of Selectmen and to be executed by Harvest Power and the permitting process would start. The site assignment will be with the Board of Health.

Discussion

Peterson (BOH) raised concern of how neither the Board of Health nor the Board of Selectmen has been included with regard to the lease agreement. Atty. Kalpin said he tried to draft the lease agreement and negotiate on behalf of the town a detailed lease. He has represented towns on other renewable projects in other towns.

Atty. Kalpin said Harvest Power has a very good relationship with the Commonwealth of Massachusetts, the DEP and the Executive Office of Energy and Environmental Affairs.

Mr. Barrett said there will be site oversight from ISWM on the construction of the facility.

Barlow (Board of Health) said the lease is specific and the financial side may be impressive. However, he doesn't think it is a big deal to the money and is more concerned about the quality of life to the residents. He raised issue how noise pollution falls within the DEP and not the town.

Barlow said residents need to be aware of potential issues of the project.

Atty. Kalpin said before the permitting process begins, there must have site control.

Peterson said this is the first time the Board of Health has discussed this project.

Barlow suggested the Selectmen visit a compost facility before taking a vote on this.

Mr. Barrett said the odor complaint was registered 6 or 8 months ago.

Peterson said the lease is contingent on all approvals and modification site assignment approval from the Board of Health. Litigation starts when we begin to look outside of formal statutory process.

Atty. Harrison said visiting the facilities is an important point and that Harvest Power has plants that are enclosed and controlled.

Peterson said 45 days not sufficient for this board. Mr. Barrett said 60 days could work, but it can be extended.

Pickard suggested continuing discussion after a visit to the operational facility in Ontario, Orlando is conducted. Atty. Troy said if a site visits was important enough, the town could consider appropriating the money itself. The applicant could pay the town to reimburse it for the appropriation.

TA Guerino asked about a training mechanism for the staff and about time payments during construct. Atty. Kalpin said there is training and if the town uses a reverse osmosis system, under the time payments, capital costs will be covered.

Atty. Troy suggested Harvest Power is invited to the next meeting as there is no proponent here.

Pickard suggested a review on 7/8/14 and suggested TA Guerino make arrangements for Mr. Barrett and Mr. Goddard visit either the Florida or Ontario sites.

Zuern requested a summary of the said lease. Atty. Kalpin will write a summary. Chm. Meier requested to include a table of contents.

Atty. Kalpin to ask Harvest Power their availability for a 7/8/14 meeting.

Peterson asked if the Executive Session minutes were available and be distributed to the Board of Health. Chm. Meier will review with the Clerk of the Board of Selectmen; some parts will be encumbered and will ask the board to review before making the full determination.

Atty. Kalpin said the lease has a three-step process: 1) Town Meeting approval for the draft lease; 2) the site assignment process will need to be approved by the Board of Selectmen; and 3) Board of Health approval.

Mr. Mulvey said this is a complex document and new endeavor for the town. He raised a question about a dispute. Atty. Kalpin said it is in the lease agreement that a 3-step process would be involved. Mr. Mulvey asked what happens to the building and equipment if there is a corporate failure. Atty. Kalpin said there is a removal bond required to be posted before construction begins started and will be restored to pre-existing condition.

Redman said there will be experts to help with the whole process and we want what is best for the town.

Mr. Ware (ISWM working group) raised concern of ample time for Board of Health review.

Chm. Meier asked if the town is acting as the applicant, who waives the time period. Atty. Troy said if the Board of Health wants more time, the Board of Health will be given as much time as needed.

Next Steps

Atty. Kalpin said the sole purpose of tonight's meeting was to present the draft lease and answer questions as the first step in this process.

Peterson said she feels the Board of Health won't be put in position where residents don't have benefit.

TA Guerino said the next meeting will be held on 7/8/14 for the Selectmen to decide whether to sign the lease.

Mealy requested the Board of Health be invited.

Mr. Mulvey suggested Harvest Power use a PowerPoint presentation.

Barlow requested Mr. Barrett ask Harvest Power to answer what they do with residual compost.

Pickard suggested the field trip can be conducted between 7/8/14 – 7/22/14.

TA Guerino said there will be a Board of Sewer Commissioner's meeting at 5:45 pm before the 7:00 pm meeting on 7/8/14.

Mr. Goddard suggested visiting Harvest Power at www.harvestpower.com for local reports and video of their actual operating facility.

Adjourn

Pickard moved and seconded by Zuern to adjourn. Meeting adjourned at 9:00 pm. Vote 5-0.

Respectfully submitted – Lisa Groezinger, sec.