

**Board of Selectmen  
Minutes of May 29, 2012  
Bourne Community Building  
Bourne, MA 02532**

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TA Guerino

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

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

List of documents

- None

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.

**Meeting called to order**

Chm. Pickard at 7:00 pm.

**Moment of Silence/Salute the Flag**

**Public Comment**

Mr. Agrillo – was unhappy at last week’s meeting and suggested the board come up with rules against cardboard signs (kangaroo court). Chm. Pickard said the board cannot deliberate, but TA Guerino can discuss with Town Counsel if it is considered free speech.

Mr. Hebb – read his letter for the record to Meier’s comments about being in the press. He doesn’t agree with his comments at the last board meeting in response to the newspaper article. Said letter was submitted to Chm. Pickard. Meier said his comments were over emotional and apologized for naming Mr. Hebb’s wife in his comments. He briefly reviewed his actions on the Planning Board.

Mr. Agrillo – called a point of order. Chm. Pickard allowed Meier to continue to speak.

Meier didn’t vote to put Mr. Hebb out of business, but rather voted on the facts that were presented to him as a member on the board. He said it didn’t have to get to where this has gone.

Ms. Dwyer – for the record, she is asking the board to consider spending \$9,000 for lifeguards at Gray Gables from the hours of 12:00 pm – 4:00 pm. Chm. Pickard said he understands Ms. Dwyer’s position, and it is up to the TA as to where he allocates the funds.

Mr. Daniel Botelho – TA Guerino explained Mr. Botello is a candidate for office and asked to come before the board. Mr. Botelho is an Independent candidate as a Congressional candidate for District 9. He is a veteran supporter; a fair tax supporter; for responsible for energy policy (putting turbines in areas that make sense); in favor of immigration reform and entitlement reform. For more information call (774) 226-VOTE. Or Google DanielBotelhoForCongress.

#### **Approval of minutes –regular meeting minutes of 5/22/12**

Meier asked to table minutes. Baldwin MOVED and SECONDED by Meier to defer minutes to the 6/5/12 regular meeting. VOTE 5-0.

#### **Correspondence**

Meier read correspondence into record. Copies of correspondence are available at the Town Administrator’s office.

Meier received an e-mail from Ms. Kelly Morley which will be included in the correspondence for the next meeting.

#### **Town Administrator’s review**

Meier disclosure – mother is an employee of the Town of the Bourne. ASK PETER TO ADD Disclosure ...

Chm. Pickard –The overall rating is 2.07 - Satisfactory.

#### **Overall Summary**

A. Relationship with the board	1.58 – Satisfactory
B. Financial Management	2.65 – Strong
C. Town Management	1.70 – Satisfactory
D. Community & Public Relations	2.70 - Strong
E. Accomplishment or Progress on Goals	1.75 – Satisfactory

Overall Rating with the Board	2.07 - Satisfactory
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Items A – E were briefly reviewed by Chm. Pickard.

TA Guerino said comments under Town Management are incorrect.

#### **Board Re-organization**

Ford MOVED and SECONDED by Baldwin to appoint Peter Meier as Clerk to the Board of Selectmen. VOTE 5-0.

Meier MOVED and SECONDED by Zuern to appoint John Ford as Chairman to the Board of Selectmen. VOTE 5-0.

Ford MOVED and SECONDED by Meier to appoint Pickard as Vice Chairman to the Board of Selectmen. VOTE 3-2 (Baldwin, Zuern).

Meier MOVED and SECONDED by Pickard to take Item 11b out of order. VOTE 5-0.

**Robert S. Troy, Town Counsel regarding Waterways Regulations, et. al.**

Chm. Ford asked Atty. Troy to breakdown. Decisions were received on 4/19/12 and also received on 2/2/12 and 4/30/12 and 5/29/12.

2/2/12 – 1<sup>st</sup> opinion – Board or Harbormaster has authority with regard to regulations. Harbormaster has statutory rights, but Selectmen shared in the area of policy. Differentiation when policy vs. administrative will come on a case by case basis.

3/16/12 – 2<sup>nd</sup> opinion - town has the right to restrict the Harbormaster. Legislature didn't allow in the field of harbor regulation; Harbormaster plays a statutory in his role of the harbormaster. In terms of policy, board has authority to adopt policy. Harbormaster has rights in the area of moorings under State law.

V. Chm. Pickard – asked Atty. Troy specifically with regards to moorings. Historically the board has signed moorings regulations. It seems if the Harbormaster formulates, does the board need to sign the regulations? Atty. Troy believes the board promulgates the rules. The board can sign the rules and regulations with regards to the waterways. With regard to moorings, the board may give guidance but the Harbormaster's decision is final.

Chm. Ford – would like to have definition of commercial and non-commercial mooring definitions and who gets them as policy. Policies are made at the Department of Natural Resources.

Mr. Mullen - no clear cut definition for commercial moorings. He has worked with the Shore & Harbor Committee (SHC). As far as what a commercial mooring can do/cannot do, they are used not only by marinas, but boatyards, boat brokers, dock installers and mooring installers.

Mr. Mullen – believes fee regulations should be a policy. Chm. Ford recommends the board come up with a bylaw to address, but is not sure what the bylaw could include. It seems the Harbormaster can enforce the policy and the board can make the policy.

Pickard – feels these questions come from the boating public and the board wants to know where this is all formulated. The public likes to have input with the political board they elect.

Chm. Ford – when decisions come back, it is good to know what questions are being asked. Opinions should be sent to the Harbormaster then to the public to get the big picture.

Atty. Troy – Chapter 90B allows for local regulation, including through Town Meeting, the use of waterway regulations. Use of moorings is separate from the regulations. The State has not been upfront in giving local government interpretation. He suggested seeking SHC involvement and/or a group the board sits on and to identify questions. Atty. Troy will review and get back to the board.

Chm. Ford – commercial mooring can be sold. Mr. Mullen said it is discretionary to an extent. If you look at specifically how moorings are transferrable, the State law doesn't differentiate between commercial and non-commercial moorings.

Pickard – there is nothing in the waterway regulations that says one who owns 10 moorings can use discretionary.

Zuern – moorings handed down to family members. Mr. Mullen said this is how discussions began; it falls within the jurisdiction of the Harbormaster.

Chm. Ford – there is no issue with Mr. Mullen working with the board. He wants to know where the authority begins and ends.

Mr. Mullen – issues have come up between commercial and non-commercial moorings.

Chm. Ford – raised issue with someone who had 6 moorings which means they have 6 boats. Mr. Mullen said no one since then has been able to obtain a 4<sup>th</sup> permit. Annually, every permit holder is required to prove they have a boat for each permit.

Zuern – if wanted to change regulations or add, the board can do this. Atty. Troy said with respect to commercial and non-commercial moorings, the board has the authority if it wants to issue regulations with respect to moorings. The authority is tempered by the State law authority and it is the Harbormaster's sole authority. There are other parts of the regulations where the State allows the board to set rules.

Atty. Troy – recommended rather than do at a Selectmen's meeting, come up with a list of subjects to examine who makes recommendations back to the board and if there are any legal questions. The law is murky as the towns do differently and the state doesn't want to butt in.

Mr. Mulvey – this seems to be giving the power to the board. It is clear under the State law, where there is a Harbormaster, the tidal waters of MA and the land beneath are under the province of the Harbormaster. Difference of opinion hangs on the waterways. The board has the right to set fees.

Atty. Brian Wall – with regard to authority, when the Harbormaster makes a decision, the board can make the policy. Chapter 90 deals with regulating speed, which comes from the police power. Chapter 102 deals with the boarding of vessels, also a police power. Chapter 91 deals with public trust rights, where the public can traverse public waters. It exists to protect the public when accessing the water and their ability to navigate it. When the board exercises their authority, ultimately the Harbormaster has to enact and promote the policy to maintain a fair and equitable list for the moorings if the Harbormaster determines contrary to the purpose of Chapter 91.

Mr. York – agrees with Mr. Mulvey, however, there has been a process where the Harbormaster writes and the board approves them. As a member of the public, he is in favor of the forum and to be notified.

**Presentation by the Cape Cod Commission re: Wastewater Protection Collaborative (Andrew Gottlieb)**

Mr. Gottlieb is not present tonight. TA Guerino will follow-up with him. Zuern sent questions and concerns and gave Mr. Gottlieb a judgment call as to whether or not to be present tonight.

**MEP – Umass Dartmouth – Squeteague/Megansett**

**Zuern—saw \$57,000 in the budget for estuary studies for Squeteague Harbor. She had gone to the meetings when MEP was working on the Phinney's Harbor study and saw assumptions that weren't making sense to her. She didn't believe anything was ever presented to the board at that time.**

**She asked why consider a treatment plant**

**When she saw the amount in the budget at Town Meeting for Squeteague Harbor she was concerned this money would be wasted. Apparently, Falmouth needs the study done; Bourne's portion is \$54,000 and Falmouth's portion is \$24,000.**

TA Guerino went back into the history as he originally cancelled contract with UMass Dartmouth going back to 2009. DEP and UMass came to an agreement. A year and a half ago, he received a letter from Falmouth to review and urging Bourne to go forward. Bourne wasn't planning to go forward. Falmouth asked Bourne if it could take money from CPA funds (like Falmouth), which wasn't going to happen in Bourne. Last Fall Town Meeting, Selectmen determined it wasn't appropriate at the STM but to bring to the ATM. At the Capital Outlay Committee meeting, it was determined something that needed to be done in Squeteague. Capital Outlay brought before the board and all of the issues bringing forward. The board voted to adopt as presented by Capital Outlay and went to ATM. It was adopted by ATM. Zuern brings up good points. It is something that Bourne needs to do, which is to top the project. Mr. Mulvey and TA had discussions on funding sources. To date, it was passed by ATM to move forward. TA suggests the plan needs to be adopted by the board; if board does not want to move forward, he doesn't have strong opinion either way. It is primarily CWMP, not that DEP on board with science moving forward Bourne was first to cancel. The third was have to do, try to do together assuming had to get done. To summarize, there is a Comprehensive Wastewater Management Plan (CWMP), science verified and Bourne is practicing good neighborhood policy.

Pickard –feels the board is not in a position to take a vote.

Zuern - requested two people that are present tonight to be allowed to make their presentations.

Mr. Seaver – has been monitoring estuaries since back in 1987. He took a sample this morning; it is scientifically reviewed and written up. Several data sources indicate a CWMP will have to be done again. In 2005 the nitrate source was improved. His studies are non-related to a septic system, but does include dredging of ponds. The study has to be done within a few years of when this CWMP is to be done. There is good data available.

Mr. York – funds available in terms of a capital CWMP. Several estuaries in town have not been studied and discontinued working. If the town wants a CWMP, did Capital Outlay agree to study the other end of the town where there is not much of looking into sewer in that area. He is surprised that Bourne is paying more than Falmouth.

TA Guerino – there has always been an issue with the estuary lines between Falmouth and Bourne. Mr. Mullen has been unable to enforce regulations because he doesn't know where the lines are.

Zuern – commented on Mr. Seaver's Cataumet Civic Association testing. Mr. Seaver's analysis costs \$500 a year, but Mr. Seaver is not paid for his time. He is willing to share his findings with Falmouth and with DEP.

Zuern – if the town has to complete the study, can the town go with the study already done. TA Guerino said that is the only money has been appropriated for the study.

Chm. Ford – take Pickard’s recommendation to bring a member of Capital Outlay Committee before the board. Mr. Seever’s fear is that it is more than \$54,000.

Zuern - \$16,000 already been spent in Pocasset and some in Megansett. TA Guerino said the total to spend is \$141,000.

Mr. Mulvey – estuaries study given to the board in the past. Buttermilk Bay is not included as it is three different watersheds (Bourne, Wareham and Plymouth). Each tasks are assigned a dollar value. Totaled and are split. Town’s share is not the total cost. Town’s cost is zeroed out behind Eel Pond. The cost of Eel Pond was through ISWM as they wanted a baseline for the future. Of the five estuaries, Phinney’s Harbor was done in some detail and is complete (a deliverable); there are no other deliverables. Megansett/Squeteague was supposed to be the third estuary done for \$54,750 which is an old cost. This was under Coastal Zone Management called “linked watershed invadement model”.

T A Guerino – a CWMP needs be done. Bourne has spent monies prior to cancelling the contract. He agrees with Pickard in getting necessary parties in to discuss further.

Zuern – some of the testing has been done. She received a report today and will forward to TA Guerino who will get said study on cd form for the board.

Mr. York – if Bourne begins to spend money on this MEP type of study, he believes the State requires a CWMP and the only model accepted is the UMass Dartmouth model. The town should prioritize in terms to where it will put sewers in town.

TA Guerino – CWMP is needed for wastewater treatment. The sewer relative to Buzzards Bay, deals with capacity and the science has been determined. Buttermilk was left out as it was already considered.

Mr. Mulvey – Tidal flow into and out of Squeteague are linked and Falmouth cannot do a complete study on their own.

### **Licenses/Appointments/Easements**

#### **a. Sagamore Beach Colony – Four (4) One Day Liquor Licenses**

Pickard MOVED and SECONDED by Zuern to approve request for four (4) One Day Liquor licenses to John M. Adams at PO Box 417 Sagamore Beach on 7/13/12 from 6:30 pm – 9:00 pm (Corn Hole Tournament); 7/14/12 from 6:30 pm - 9:00 pm (Family Night) ; 7/21/12 from 6:30 pm – 9:00 pm (Annual Fund Raiser); and 8/11/12 from 6:30 pm – 9:00 pm (August Fest Social), per routing slip. VOTE 5-0.

#### **b. Senor` Trappers – Common Victualer**

Meier MOVED and SECONDED by Baldwin to approve request for Common Victualer license for Paul Levesque, Manager at 71 & 73 Main Street, Buzzards Bay, per routing slip (BOH and FD). VOTE 5-0.

**Selectmen's business****a. Set goals date**

TA Guerino will facilitate rather than getting an outside source to save money. He will get back to the board at the 6/12/12 meeting.

**Adjournment**

Meier MOVED and SECONDED by Pickard to adjourn meeting. Meeting adjourned at 9:15 pm.  
UNANIMOUS VOTE.

Respectfully submitted,  
Lisa Groezinger, sec.