

KW 12.8.14

APPROVED 12.16.14

TOWN OF WENHAM  
Board of Selectmen  
Meeting of Tuesday November 18, 2014  
Town Hall, 138 Main Street

Pursuant to the Open Meeting Law, M.G.L. Chapter 30 A, § 18-25, written notice posted by the Town Clerk delivered to all Board members, a meeting of the Board of Selectmen (BOS) was held on NOVEMBER 18, 2014 at 7 PM in the Selectmen Chambers.

**WELCOME AND OVERVIEW OF THE AGENDA**

With a quorum present, Chairman Wilhelm called the meeting to order at 7 PM

Selectmen Present: Jack Wilhelm, Chair; Catherine Harrison, Vice Chair; Ken Whittaker, Clerk

Also Present: Catherine Tinsley, Minutes Secretary

Not Present: Mark Andrews, Town Administrator

Public Information

The meeting was audio recorded with permission by HWCAM

Agenda

Announcements

Appointments

Town Administrator Job Description- draft

IMA- Pool Study

Minutes – ES October 7, 2014; October 30, 2014

**PUBLIC INPUT**

Harriet Davis, Chair of Community Preservation Committee gave a brief update on the Community Preservation Act, saying Wenham received a 62.3% match from the State; \$295,150 was raised from the local 3% surcharge on property taxes, together with the State match of \$184,094 for a total of \$479,244.

The application for CPA funds is available on the Town's web site and must be submitted to the Town Administrator's office by noon on January 9, 2015.

**ANNOUNCEMENTS**

1. The following Board/Committee openings were announced. Interested residents should submit a letter of interest to the Town Administrator's office.

- Opening For Alternate/Associate Member to the ZBA
- Opening for Deputy Town Counsel – New Position

2. The Wenham Museum Sleigh Bell Artisan Fair is November 21, & 22, 2014

Mr. Whittaker read the Proclamation for the Pancreatic Cancer Awareness Month and moved to issue the Proclamation that November is the Pancreatic Cancer Awareness Month in the town of Wenham and it was unanimous to do so.

3. Chairman Wilhelm announced that the Town Administrator, Mark Andrews accepted a position with the Town of Pepperell as of December 1, 2014. Although Mr. Andrews was not present for the meeting, the Board wished him much success.

**NEW BUSINESS**

**Car Barn Lot – Signage**

Chairman Wilhelm observed that the once vacant lot on the corner of Main Street and Arbor Street, known as the Car Barn Lot, is now the home for the War Memorial. He went on to suggest a temporary moratorium be issued by the BOS to not allow signs to be placed on the corner as has been previously allowed, while the Board further discusses options.

KW 12.8.14

*VOTE: Mr. Wilhelm moved, and it was seconded, to withhold the posting of signs at the War Memorial site for the next two weeks. Under discussion, Ms. Harrison commented with respect, there is pressure to have a place for signs. She reiterated the need to find a suitable alternate place as quickly as possible. Ms. Harrison agreed to follow up on alternate locations for general public signage and to make a recommendation to the Board. The Historic District Commission will be asked to opine. Commissioner Davis was present and commented that in the past, the Commission has not wanted the signs in the Historic District. The Selectmen agreed that signs that are put on the War Memorial Lot during this time be removed. The motion carried unanimously.*

#### **Cross Keys – Resolution of the Federal Lawsuit**

Chairman Wilhelm addressed public comments made recently in a Letter to the Editor, saying that the \$125,000 settlement awarded to Cross Keys is being paid through the Town's insurance company, not taxpayers' money. He went on to explain that the Attorneys for the Town strongly advised town officials accept the settlement, citing the case against the Town was judged to be very strong and the Town was highly likely to lose in court and cause an adverse affect on the Town. Due to pending litigation in the US Federal Court and pending appeals, Mr. Wilhelm said public information is limited. Special Counsel Attorney Doug Louison, Esq, of Louison, Costello, Codone & Pfaff LLP, Boston was present and summarized the status of the Settlement Agreement. Attorney Louison reiterated the Attorneys for the Town were of the opinion that the resolution was necessary and appropriate to protect the interest of Wenham, individuals, and the plaintiff as the applicant seeking lawful exemptions. The Reasonable Accommodation of the Federal Disabilities Act that was issued to Cross Keys is different from the Dover Amendment exemption that was initially sought by Cross Keys. It was the consensus of the Attorneys that Cross Keys was entitled to be in that location and was granted a Reasonable Accommodation. To not grant the Reasonable Accommodation would subject the Town to additional potential liability and lawsuits.

Attorney Ben Tymann, representing Lawrence Miller, 66 Topsfield Road, and Denis and Alison McGuire, 64 Topsfield Road reviewed his clients are upset allegedly due to a series of errors that were rectified through the appropriate process of Zoning Board of Appeals (ZBA). They believe these errors have been compounded by this Settlement Agreement. Attorney Tymann reviewed in detail the history of this case leading up to this current appeal. He disagreed on the Cross Keys lawsuit. Attorney Tymann reviewed the impact this facility has had on his clients as a large facility in a residential area. He stressed the lack of information and communication given to himself as the Attorney, or the neighbors regarding the Reasonable Accommodation. This is being appealed to the ZBA. He opined Cross Keys should be accountable to a Town Board, citing there are no conditions for there being in Wenham. Regarding the Settlement Agreement, Attorney Tymann referenced specific language in the Agreement that Cross Keys is exempt from zoning and the Town will not obstruct Cross Keys operation. He said this does not take into consideration the neighbors rights. Attorney Tymann asked the Town to undo the Settlement Agreement to avoid a lengthy court process.

Chairman Wilhelm responded saying the Town may have been deficient in communicating, but this case will be before the ZBA and this BOS meeting is not the appropriate forum to discuss this further. Attorney Louison responded by further explaining that the Settlement Agreement does not mean Cross Keys can do what ever it wants but rather agree to treat them lawfully.

Denis McGuire was recognized by the Chairman and stated he wrote the Letter to the Editor and apologized for any inaccuracies. He talked about the negative impact of Cross Keys moving into the neighborhood and talked about those concerns as identified by Attorney Tymann.

He opined that there is the potential for Cross Keys to make a lot of money, but claimed that the property values have "plummeted" and the equity in their home is gone.

Alison McGuire was recognized by the Chairman and talked about moving to Wenham 18 months ago, and never being informed by the Town that Cross Keys had purchased this property and further talked about her disappointment in the process the Town followed leading up to this point, stressing the need for the neighbors to be heard.

The Chairman closed the meeting to comments, but Ms. Chamberlain stated she had comments she wanted the Board to hear and was recognized by the Chair.

Justine Chamberlain, 77 Topsfield Road, identified that she lives across the street from Cross Keys. She stated her issue is with the Board of Selectmen (and the previous Board) for not informing the neighbors about decisions made regarding Cross Keys, including information that the property was changing from residential use to a business. She accused the

KW 12.8.14

Board of not acting in the best interest of the residents of Wenham and asked the BOS to “walk away” from this Settlement Agreement.

### **OPEB (Other Post Employee Benefits) Committee**

Mr. Whittaker read a statement from Mass Department of Revenue that states a community that fails to act on their OPEB liabilities runs risk that future health expense that will become so large they will eventually overwhelm other budget priorities and have a detrimental impact on municipal services.

Mr. Whittaker said he reviewed Retirement System and the 2013 Evaluation study of Wenham OPEB liability current and future. He summarized that to pay off the OPEB obligations it would cost (roughly) \$400,000 annually just to meet the obligation. The retired annual contribution worked into the evaluation only covers about 40%.

He proposed forming a committee to look at the health care costs, insurance employee contribution, and ways to control and meet the obligations. Mr. Whittaker has solicited comments from a number of people interested in serving on such a committee. This committee would be subject to the Open Meeting Law.

*VOTE: Mr. Whittaker moved to approve the formation of the OPEB committee to include the following members: a member of the Board of Selectmen, the Chair of Finance Committee, the Town Administrator, the Finance Director, Bond Counsel, and an unelected citizen of Wenham with knowledge of experience in financial analysis, investment services, and banking. Ms. Harrison offered an amendment to affirm the charter as well and a statement of its purpose be include a purpose of the committee. Mr. Whittaker accepted the amendment, adding to the motion, subject to a mission statement being submitted. Mr. Whittaker agreed to serve on this committee as the BOS representative. The motion carried unanimously.*

### **Appointments**

Ms. Harrison stated the process was followed for the following appointments:

- Zoning Board of Appeals – Full Member/Alternate Member  
*VOTE: Ms. Harrison moved to appoint Shaun Hutchinson as a full member of the ZBA for a term ending June 30, 2016 and it was unanimous to do so.*  
*VOTE: Ms. Harrison moved to appoint Christopher Vance as an Alternate Member of the ZBA for a term ending June 30, 2017 and it was unanimous to do so.*
- MBTA Representative - *VOTE: Ms. Harrison moved to appoint Paul Mendonca as Wenham’s MBT Representing for a term ending June 30, 2015 and it was unanimous to do so.*
- Parking Clerk - *VOTE: Ms. Harrison moved to appoint Deb Morong as the Parking Clerk for the Town of Wenham, for a term ending June 30, 2015 and it was unanimous to do so.*

### **Town Administration Transition Plan- Authorize Chair to sign documents**

Chairman Wilhelm did not support the hiring of an interim Town Administrator at this time. He suggested that as Chairman, he be authorized to sign the “routine” paperwork as necessary to keep the Town “running”.

Ms. Harrison suggested that there be a back up in the event the chair is not available and volunteered to be available. She added that although she agrees with not having an interim Town Administrator at this time, that the Board keep an open mind to hiring an interim Town Administrator.

*VOTE: Ms. Harrison moved that the BOS authorize the Chair of the BOS to sign routine documents that are normally signed by the Town Administrator, in the absence of a Town Administrator, and in the event Chairman Wilhelm advises the Selectmen of his unavailability, Selectmen Whittaker and/or Harrison are authorized to sign documents. The motion carried unanimously.*

### **Proposed Inter-Municipal Agreement (IMA)**

The Town of Hamilton issued a draft IMA for Design Services for the Joint Pool Plan. The IMA is only for the design services for a pool. The total cost is estimated at \$18,000. This would be a shared expense divided evenly between the Town of Hamilton, Town of Wenham, and the Joint Recreation. It was questioned if Wenham share should be equal. Mr. Wilhelm recalled that this was discussed and agreed that Hamilton would pay \$8,000, the Joint Recreation Department would pay \$6,000, and Wenham would pay \$4,000 for design services.

KW 12.8.14

Ms. Harrison asked that the Finance Director review the IMA, coordinate with the Hamilton Finance Director, and report back to the BOS. No action was taken at this time.

### **Discussion of Town Administrator Draft Job Description and Possible Modification**

The Selectmen agreed that this document remains a draft document at this time.

The Board discussed the draft job description for the Town Administrator's position and reviewed the proposed edits.

- Development of the Budget is primary the responsibility of the Finance Director, to prepare and present to the Board of Selectmen therefore the Town Administrator would work in collaboration with the Finance Director.
- The Town Administrator act under direction of the BOS
- Current practice that the Town Administrator recommends appointed positions for BOS approval is included in the process
- Mr. Whittaker suggested removing section 4 1 F & 2 B as no such sections, numbers, or designation appears in the document

Ms. Harrison will prepare a revised draft regarding this discussion and resend

*Vote: Mr. Whittaker moved to accept the document of Town Administrator's job description as a draft for the purposes of informing the search for a new Town Administrator subject to suggestions made during the meeting approved by a final review of the Selectmen. The motion carried unanimously.*

### **REPORTS**

- Chairman Wilhelm reported the Joint Recreation Committee is expected to recommend that the proposed pool remain at the current location at Patton Park, Hamilton and not at the Fairhaven Field behind the Library.
- The BOS is meeting November 22, 2014 with the Town Departments to receive an overview from Department Heads regarding Fiscal Year 16 budget.
- The Audit Committee met recently to hear the report from the Auditor on the Town's annual Audit. The Town Received a "Clean Opinion". There were some suggested enhancements to Town procedures, i.e. documenting reimbursement process, documenting policies. The Town will receive a Management Letter stating that the auditors did not find material weakness and there are no management letter recommendations.

Temporary Support for the Permitting Coordinator Office - This agenda item was held and the BOS asked it be on the agenda for November 22, 2014.

Update Request for Proposal (RFP) for Executive Recruitment for Town Administrator— Ms. Harrison said the RFP was published on November 10, 2014. Proposals will be accepted through November 24, 2014. The RFP was sent out to five firms.

**MINUTES** – October 7, 2014 ES; October 30, 2014

*VOTE: Mr. Whittaker moved, to accept the minutes of **October 30, 2014** and it was unanimous to do so.*

The Executive Session minutes of October 7, 2014 were held for further review; no action was taken at this time.

### **ADJOURNMENT**

The BOS unanimously adjourned at 8:45 PM

Respectfully submitted by

Catherine Tinsley  
12.4.14