

TOWN OF WENHAM

Board of Selectmen
Meeting of August 5, 2015
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 WEDNESDAY, August 5, 2015 at 5:30 PM in the Selectmen Chambers.

WELCOME AND OVERVIEW OF THE AGENDA

With a quorum present, Ms. Harrison called the Board of Selectmen (BOS) meeting to order 5:35 PM. Selectmen present Catherine Harrison, Chair; Jack Wilhelm, Vice Chair; John Clemenzi
Also Present: Peter Lombardi, Town Administrator; Catherine Tinsley, Recording Secretary

Public Information

Recorded with permission by HWCAM (open session only)

Agenda

Announcements

One-Day Liquor License – application

Federal Highway Administration Title VI Nondiscrimination Assurance

Workforce Investment Act Agreement

Financial Policy- draft

Minutes- July 21, 2015 open / ES

EXECUTIVE SESSION (ES)

Litigation Strategy -76 Topsfield Rd pertaining to claims and appeals of L. Miller and Cross Keys/ 110 Inc.

Litigation Strategy – Recovery Centers of America (RCA)

Present: Town Counsel Paul Weaver; Attorney Mark Bobrowski, Special Counsel

Paul Weaver participated remotely as allowed (940 CMR 29.00) due to distance, and stated for the record that “no other person was present and/or able to hear the discussion at the remote location”.

VOTE: Ms. Harrison moved the BOS go into Executive Session according to MGL chapter 30A Sec 21 for the purpose of Exemption (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares and to include Town Counsel, Paul Weaver, and Special Counsel Attorney Mark Bobrowski, and to return to open session for the regular posted meeting of the BOS. The motion was seconded and carried unanimously by roll call vote.

The Selectmen returned from executive session at 6:30 PM and Ms. Harrison called for a recess until the regular meeting of the BOS at 7 PM.

WELCOME: CALL TO ORDER

Ms. Harrison reconvened the BOS meeting at 7 PM, noting the meeting was called to order at 5:30 PM for the purpose of going into executive session.

PUBLIC INPUT: ON ITMES NOT ON THE AGENDA

There were none.

ANNOUNCEMENTS

- The Chairman spoke on behalf of the Board and extended condolences to the Trustey Family of Wenham, in the deaths of their family members.

- Ms. Harrison observed the BOS met earlier in executive session, regarding RCA, and asked Special Counsel for the Town Attorney Mark Bobrowski, to give a brief update on recent action by Rehabilitation Centers of America (RCA). Attorney Bobrowski reviewed that RCA commenced two actions against various boards of the town.

He reported the *administrative appeal* of the Building Inspector's denial of the *reasonable accommodation*, which was pending with the ZBA, has been withdrawn by RCA as allowed by right, and does not require approval.

Attorney Bobrowski went on to say that although it was withdrawn "without prejudice", he considers this "with prejudice" because the appeal period of thirty days expired months ago; RCA cannot appeal this again.

RCA has also sought *dismissal by stipulation* of the pending appeal of the ZBA's denial of the two special permits for a non-conforming use and for profit educational use of the property. The twenty-day appeal period has also passed; there is a two-year waiting period to refile any application for special permits, unless both the Zoning Board and Planning Board agree there are substantial and material changes to the property.

Attorney Bobrowski added that RCA is pursuing a location for a facility in Danvers and opined there is no indication RCA will continue with the Wenham location.

Attorney Bobrowski addressed the misconception of the legal status in the present constitution of the ZBA relating to the RCA appeal explaining that only two ZBA members had been to all the meetings/ hearings related to RCA (now mute) and explained that the town has not adopted the so called Mullen Rule that allows a member to miss a meeting and still vote, as long as that member certifies having familiarized themselves with all the material. He went on to explain that two qualified members are a quorum and can take actions, including a vote to deny, but in order to reverse the decision of the Building Inspector a unanimous vote of (all three members) is required and there was never any danger of a constructive grant for these reasons.

- School Committee Vacancy – The HWRSC and BOS seek a Wenham resident to fill a (Wenham) vacancy through the next annual election in April 2016. The application dead line was extended to Sept 23, 2015 to submit letters of interest.

REPORTS

Town Administrator (TA)

- The position for an Administrative Assistant for the Department of Public Works / Water Department was posted. The deadline for applications has passed and interviews will be scheduled. The DPW Director and Water Superintendent will participate in the interview process.
- The Town Clerk attended a week of training and as a result is recommending the Town prepare a welcome packet for new residents; this is in the preliminary stage.
- The TA is working with the Veteran's Memorial Committee to revise the scope of work for the next phase of the Veteran's Memorial Park that includes granite curbing, pathways, and various plantings.

Chair

Ms. Harrison gave an update on the BOS's July 27th retreat saying goals were identified, grouped and categorized. The Town Administrator will assign reasonable due dates and give a presentation at the next BOS meeting on August 18, 2015.

NEW BUSINESS

Appointments – Town Officials Board Committees

Ms. Harrison announced that it was recently brought to the attention of the Board that the general posting of "Appointments" on the agenda does not comply with the Open Meeting Law (OML), which requires each position and candidate be listed therefore this agenda item would be deferred.

The Chair recognized Ben Tymann, Larch Row, who asked if previous appointments made are valid? And what was the impetus for checking? Ms. Harrison responded that a resident brought the agenda posting to the attention of the Board which was confirmed with the Attorney General, and it is uncertain at this time how this applies to past votes.

Mr. Tymann referenced an on-line petition supporting the reappoint of Tony Feeherry to the ZBA and submitted this in printed form to the Board.

Sandy Belock-Phippen, Dodges Row, suggested by not reappointing Mr. Feeherry the BOS exercised power in the ZBA decision (regarding RCA) and told the Board they need to be more transparent in their decisions.

Ms. Harrison noted that RCA is no longer “on the table”, but explained that at the July 21, 2015 meeting, when the appointment to the ZBA was on the agenda, Selectman Clemenzi planned to participate remotely because he was out of state but there were technical problems with the phone and due to the importance of this appointment, action was deferred to a meeting when all the Selectmen were present to participate. She reiterated that no action was being taken during this (August 5, 2015) meeting due to the agenda not listing the positions and candidates for appointment as required by the OML.

Ms. Harrison confirmed the appointment to the ZBA will be on an upcoming agenda, adding that this appointment coinciding with the ZBA’s decision regarding RCA is coincidental.

Mr. Clemenzi stressed all appointments deserve careful consideration and public deliberation, and the appointment to the ZBA is an important decision with many things to be considered.

One day Liquor License – Hamilton Wenham Mother’s Club

Lori Homes was present to speak to the application saying this is for the annual membership “kick-off” party at the Wenham Museum on September 17, 2015.

It was noted that Public safety has seen the application and had no comments.

Vote: Mr. Clemenzi moved to approve the one day Liquor License for Hillary Homes requested for HW Mother’s Club annual membership drive on Thursday, September 17, 2015 from 5 PM to 11 PM at the Wenham Museum. The motion carried unanimously.

Federal Highway Administration (FHWA) Title VI Nondiscrimination Assurance

Mr. Lombardi summarized that the State must comply with certain federal discrimination standards; Communities are asked to commit to not discriminate in any program service or activity supported by federal financial assistance, and sign the Assurance; MassDOT is also required to sign the Assurance. By signing the Assurance, Wenham will continue to be able to access federal funding; there are no projects pending at this time.
VOTE: Mr. Wilhelm moved, and it was seconded, to approve the Federal Highway Administrations Non-discrimination Assurance policy as required by MassDOT in order to maintain the Town’s eligibility for federally funded transportation projects. The motion carried unanimously.

Workforce Investment Act Agreement

Mary Sarris, the Executive Director of the North Shore Workforce Investment Board (NSWIB) was present to talk about the Agreement and answer questions.

The NSWIB represents 19 communities with Salem being the lead Community of the North Shore region. This includes about 40,000 residents and 12,000 companies. Members of the Board are appointed by the Salem Mayor and address needs in the economy such as identifying needs and providing training.

Ms. Sarris reviewed that new federal regulations requires strategic planning with active involvement from the communities; Wenham is one of those communities; 60 inquires were received from residents in the past year.

VOTE: Mr. Wilhelm moved, and it was seconded, to approve entering into a Workforce Investment Act Agreement as presented by the North Shore Workforce Investment Board & the lead City of Salem to strengthen a regional partnership that will support workforce development efforts under the Federal Workforce Innovation & Opportunity Act. The motion carried unanimously.

Disposition of Enon One (1849 Antique Hand Fire Pump)

Fire Chief Bob Blanchard was present for this discussion to bring Enon One, the Town’s 1849 antique hand fire pump back to Wenham. Chief Blanchard reviewed that Enon One was stored/displayed in an out building on town property behind the fire station but during the town hall/ police station building project, Enon One was lent to the American Hand Engine Society in Newbury, for safe keeping, where it has been on display in their museum.

APPROVED – 8.18.2015

Now with construction complete, Chief Blanchard recommended discussions begin to bring Enon One back to Wenham beginning with reconstitute the Enon One committee to make a recommendation on a site location. The museum will continue to guide the town in this venture.

Chief Blanchard noted it is the intention to apply for Community Preservation Act funding, as well as seek donations.

The Selectmen were supportive in this venture, but had additional questions, including procedural and legal concerns.

VOTE: Mr. Clemenzi moved and it was seconded, to table agenda item (E) regarding Enon One and reserve the right to continue discussion on this at a future BOS meeting to be determined. The motion carried unanimously

Financial Policies – Part II

Angel Wills, Finance Director was present to participate in this discussion.

She gave an overview of part two of the “Miscellaneous Funds Policies and Procedures”.

Mr. Wilhelm noted this a lengthy document and he has not had time to review the document.

Mr. Lombardi and Ms. Wills have reviewed and edited the document; there remains one last section (3) for review and approval. Mr. Lombardi noted the importance to approve this before the audit in September.

Selectman Clemenzi requested to review section one that was approved last year.

This will be addressed at the next BOS meeting August 18, 2015. Mr. Wills noted she would not be able to attend.

OLD BUSINESS

A list of open positions on town boards/committees will be updated on the town’s web site.

MINUTES – JULY 21, 2015 OPEN /ES

VOTE: Ms. Harrison moved to approve the open minutes of the July 21, 2015 meeting as edited. The motion carried by majority vote with Mr. Clemenzi abstaining siting his absence at that meeting.

VOTE: Ms. Harrison moved to approve, but hold not for release, the executive session minutes of July 21, 2015 meeting as edited. The motion carried by majority vote with Mr. Clemenzi abstaining siting his absence at that meeting.

ADJOURNMENT

Mr. Wilhelm moved to adjourn at 8:18 PM and it was unanimous to do so.

Respectfully submitted by

Catherine Tinsley
8.8.15