

WENHAM BOARD OF SELECTMEN
Meeting of Tuesday, February 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 was held on February 18, 2014 at 7 PM in the Selectmen Chambers.

WELCOME & OVERVIEW OF AGENDA

With a quorum present, Chairman Whittaker called the Board of Selectmen meeting to order at 7 PM
Selectmen Present: Ken Whittaker, Chair; Patrick Wilson, Vice Chair; Jack Wilhelm, Clerk
Also Present: Mark Andrews, Town Administrator; Catherine Tinsley, Minutes Secretary
This meeting was recorded, with permission, by HWCAM.

Public Information

Agenda
FY 15 Budget
Minutes – January 7, 2014

Abbreviations used

BOS Board of Selectmen
FAC Finance & Advisory Committee
ATM Annual Town Meeting
FY Fiscal Year
HWRSD Hamilton Wenham Region School District

PUBLIC INPUT

PRESENTATION BY GUESTS

ANNOUNCEMENTS

Mr. Wilson made the following announcements:

- Volunteers are needed to serve on the:
 - Council on Aging – One Member
 - Zoning Board of Appeals – Alternate member
 - Board of Health – One member
- Trudy Reid, Town Clerk announced that the 2014 Annual Town Election Nomination Papers were due by 5 pm tonight. People have until 5 PM on March 4, 2014 to withdraw. No nomination papers were pulled for the Board of Assessors or the Cemetery Commission's unfilled term.

NEW BUSINESS

Public Hearing: The removal of twelve White Pine Trees on Main Street

Chairman Whittaker read the legal notice and opened the hearing to take testimony on the disposition for the removal of the pine trees along Main Street, in front of the Car Barn Lot, in preparation for the construction of the War Memorial. The project is being publicly bid under MGL chapter 30B. He stated that the hearing would remain open and written comments would continue to be accepted through the Town Administrator's office until further notice.

War Memorial Committee member Peter Hersee reviewed that the bid documents have been prepared and are due in by March 6, 2014. He summarized that these trees are brittle by nature and should be taken down to open up the area and more appropriate trees planted to compliment the War Memorial. He stated that the town has received a gift of the labor to have the trees removed; there is a short "window" of time this can be done.

Former Tree Warden and Committee member Albi Dodge reviewed that the trees were planted as a snow barrier with the idea of keeping them 5 feet high. He noted that the trees are "ok" but would soon be too tall for any situation at that corner. He supported the trees be removed.

War Memorial Committee member Bruce Blanchard said that Landscape Architect that prepared the Master Plan for the center of town to site the memorial, identified that these trees no longer serve the original purpose and recommended they be removed and deciduous trees be planted.

Approved 3.4.14

Chairman Whittaker opened the hearing to the public.

Judy LeBlanc, Main Street abutter, said that she and her husband are in favor of the War Memorial and the plan. She talked about her concern that the trees would be removed prematurely prior to the construction of the project. Ms. Leblanc reiterated that although she would like the trees to stay, she is ok with them being removed, but strongly suggested the town receive the bids for the project first and wait until concrete construction plans are in place. Her main concern is that the area would be left unplanted for some time. She questioned the use of red maple trees for that area asking if they too would become too tall.

Tom Starr, Pleasant Street, said he was against the trees being taken down citing they are a historical part of the center, opining that removing the trees would change the character of the center.

Mr. Blanchard responded that there is money in the budget for the replacement of the trees; the Town's DPW would plant the trees as a cost savings to the project. Arrangements have been made to remove the trees at no cost. This cannot be done after the winter.

Mr. Dodge added that maple trees are cleaner than pine trees and the timing of the removal of the trees should be done while the car barn lot is vacant citing there are wires on the street side of the trees and taking the trees down after the monument is completed would be complicated and more costly.

Chairman Whittaker opened the hearing to the Selectmen.

Mr. Wilson questioned if the Historic District Commission had an opinion. Chair of the Historic District Commission (HDC) replied that the HDC has no jurisdiction over anything that grows in Town.

Mr. Wilson suggested the Master Plan be reviewed to understand what the Landscape Architect Kim Ahern reasoning was for recommending they be removed. It was noted that the Selectmen previously approved the Master Plan.

Mr. Blanchard said the War Memorial Committee has \$10,000 of Community Preservation Funds for the purchase of the replacement trees that must be spent by June 30, 2014. Mr. Wilhelm commented that these funds could be encumbered if a timely commitment was made to spend the funds before June 30, 2014.

Win Dodge, Porter Street, noted that removing these trees has been talked about over many years and this is not a new idea. He supported the trees be removed saying they are not valuable, branches have broken off and they are now deformed and possibly pose more of a hazard.

Vote: Mr. Wilson moved, and it was seconded, to continue the hearing. The motion carried unanimously.

State Community Innovation Challenge Grant- \$90,000 Award and Update on Collins Center Report

Mr. Wilson reviewed the Governor's intent for the Community Innovation Challenge Grant program was to encourage communities to find ways to provide municipal services to tax payers in a more efficient and cost effective manner. Wenham, Hamilton, and the HWRSD received the first grant of \$30,00 to explore a combined department of facilities and infrastructure. The second grant award of \$90,000 will be used to evaluate the software and information technology to support systems software for such a department. All three entities currently use a different accounting program.

Part of the grant will be used to implement an asset inventory to understand all the equipment the three entities have and can be deployed in an efficient manner.

Mr. Wilhelm cautioned that merging the accounting for all three entities is complex and could be an issue.

Fire Department

Fire Chief Blanchard reported the Fire Department applied for and received a grant of \$2,368.95 for the purchase of a multi purpose gas meter unit and calibrator. This equipment detects natural gas/carbon monoxide readings, and oxygen levels in the air.

Appointments

Vote: Mr. Wilhelm moved, and it was seconded, to appoint Penny Wingate to the Counsel on Aging Board of Directors for a three-year term through June 30, 2017. The motion carried unanimously.

Annual Town Meeting Warrant for April 5, 2014 - HDC Demolition Delay Article

The acceptance of the Demolition Delay Bylaw would delay the demolition of a historically valuable home or property in town for six months to allow for alternate action to demolition. The Demolition Bylaw must be adopted by Town Meeting and would be administrated by the Historic Commission under the revised duties of the HDC.

Approved 3.4.14

Jim Howard, HDC Chair, reported that letters regarding the Demolition Delay Bylaw were sent to all property owners in Town of homes built before 1860.

He addressed one concern stating this does not expand the Historical Commission authority outside the historic district. Another concern expressed by residents was that this bylaw would reduce the value of property. The assessors would consider this. One suggestion is that current owners are not subject to the bylaw and be “grandfathered” only activating the bylaw upon the sale of the property. Mr. Howard noted that of the communities that have the demolition bylaw, none have a “grandfather clause”. Town Counsel has been contacted to give legal opinion.

Mr. Howard said that in 20 years, he has only known of one historic house that has been lost.

It was the consensus of the Selectmen and Mr. Howard that the Demolition Bylaw was not ready for action at the Annual Town Meeting.

Mr. Howard is going forward with the Historical Commission. This will add duties to the HDC. A public hearing will be held.

Close the Annual Town Meeting Warrant for April 5, 2014

Vote: Mr. Wilhelm moved, and it was seconded, to close the April 5, 2014 Annual Town Meeting warrant to citizen’s petitions. The motion carried unanimously.

Mr. Whittaker clarified that it is still possible to withdraw a citizen’s petition. .

Chapter 30B Procurement Violation

Regarding: Historic Cemetery Restoration Project - Fannin Lehner

Mr. Whittaker identified the BOS had a lengthy document to review, put together by the Finance Director, detailing comprehensive information regarding Procurement Laws.

He went on to explain that work to restore historic head stones at the Wenham Cemetery on Main Street was commissioned to be paid for by CPA funds. The work was done and the quality of the work was good, but there were irregularities in the bidding process. When the invoice for the work was submitted, none of the necessary paper work was in place. It was determined Procurement Laws were not followed and there is no way for the Town to legally pay this invoice of \$31,550.

Opinion of Counsel (Morgan, Brown, & Joy) was sought. Chairman Whittaker summarized the legal opinion that the Town is not legally able or allowed to honor the invoice for lack of compliance with procurement regulations.

Mr. Wilhelm added that he spoke with Town Counsel, who agrees with this opinion. Mr. Wilhelm went on to initiate a discussion if the Town has explored every possible way to pay this bill such as petitioning the Inspector General to avoid potential legal action. Mr. Andrews said the Town wants to pay the bill and many hours were spent trying to resolve this issue. The Inspector General referred the Town to speak to Counsel. It is a difficult circumstance and there is no way to satisfy this obligation without violating the law. A certified letter was issued to Fannin Lehner.

Mr. Wilson observed that this vendor stated they had experience with municipalities and said they should have been aware of Procurement Laws or at the least to have a contract in place.

Chairman Whittaker recognized Michelle Bailey, Cemetery Commissioner, who questioned language used in Counsel’s legal opinion. Mr. Whittaker responded citing legal opinion that “failure to follow procurement regulations is fatal”. If the Town pays this bill, they would be in violation of procurement laws themselves.

Ms. Bailey confirmed that the Town is not pursuing other avenues to pay the invoice.

NEW BUSINESS

Financial Policies and Procedures –Workshops for Boards, Commissions, and Committees

Mr. Wilson said Mr. Andrews and Mr. Genereux have put together Policies and Procedures in draft form. A workshop has been planned on May 15, 2014 for all Town Boards, Committees, and Commissions regarding the Policies and Procedures of the Town, including procurement laws to assure business for the Town is done properly. Mr. Andrews recommended the Financial Polices and Procedures be considered a standard operating procedure for the Town.

He requested the BOS take action on the document by the end of March.

Financial Services – Town Finance Director and Town Accountant

Approved 3.4.14

Chairman Whittaker opened discussions on how the town would approach staffing the Finance Department. A decision needs to be made to continue with contracted services or hire full time employees. He recommended advertising the positions and at the same time starts the 30B procurement process for outside financial services. A cost comparison was requested between contracted services and full time employee.

Mr. Wilhelm suggested the criteria of the job description be reviewed to ascertain why only one firm, BMAG, qualified. Mr. Wilson concurred, noting the job description is critical, as well as a clear assessment of the department. He added BMAG has provided good quality service and saved costs of benefits.

Finance Chair Mike Lucy said he is comfortable with looking at both contracted services and full time employees, saying placeholders could be carried in the budget. He commented that the outsourcing of financial services has been working and the Finance Committee was comfortable with the services provided by BMAG to date.

A discussion followed if there is back up coverage if BMAG cannot fulfill this contract. Mr. Andrews noted that BMAG has hired two additional staff and is under contract to provide services.

Chairman Whittaker asked that the Town Administrator's review be scheduled, suggesting sometime in March. It was uncertain if the Town Administrators contract is through April 30, 2014 or June 30, 2014. Mr. Wilhelm reminded the Committee members that Mr. Andrews' performance was extensively reviewed during the summer concluding with a raise for Mr. Andrew's along with a contract extension to June 30, 2014.

Mr. Wilhelm then commented that one important responsibility of the Town Administrator is to coordinate all aspects of the annual Town Meeting and the review would best be served after the April 5, 2014 ATM.

Mr. Wilson said with many opportunities to evaluate Mr. Andrews, and supported the review be in March.

Roll Call Votes

Chairman Whittaker explained that the BOS failed to take roll call votes at their February 4, 2014 meeting when Selectman Wilhelm participated remotely as required by M.G.L. c. 30A, sec 20(d). The following votes were ratified.

1. *Vote: Mr. Wilson moved, and it was seconded, to appoint Elizabeth Colt to the Wenham COA Board of Directors through June 30 2017. The motion carried unanimously by roll call vote.*
2. *Vote: Mr. Wilson moved, and it was seconded, to appoint Judy Bubriski as an Election Officer through September 30 2014. The motion carried unanimously by roll call vote.*
3. *Vote: Mr. Wilson moved, and it was seconded, to appoint Cyndy Morong as an Election Officer through September 30 2014. The motion carried unanimously by roll call vote.*
4. *Vote: Mr. Wilson moved, and it was seconded, to approve the ratification of the BOS potential request for grant opportunities for the Community Preservation Funds as related to the Town Hall and the Essex Heritage Foundation grant as related to the Rail Trail Kiosk. The motion carried unanimously by roll call vote.*
5. *Vote: Mr. Wilson moved, and it was seconded, to authorize the Town to exceed the (2014) appropriation for the Snow & Ice Account as per MGL 44; Sec 31D. The motion carried unanimously by roll call vote.*

Mr. Wilhelm commented that by making Reserve Fund transfers to cover account deficits related to snow removal should first be used to the extent funds are available, to minimize amounts put on the next year tax rate. At the end of the year, the Reserve Fund can be used to the maximum and only a minimum amount is put onto the following year's taxes.

Mr. Andrews reviewed the Finance Director's weekly report.

Mr. Wilhelm pointed out that the Regional School District Agreement requires the HWRSD to issue the BOS a monthly financial report. Mr. Andrews will look into this.

MINUTES

Vote: Mr. Wilson moved, and it was seconded, to release approved executive minutes of March 12, May 7, May 21, July 2, and September 3, 2013. The motion carried unanimously.

Vote: Mr. Wilson moved and it was seconded to approve the BOS open meeting minutes of February 7, 2014. Chairman Whittaker stated he had minor edits to the minutes and the minutes were held for further editing and review.

Approved 3.4.14

Vote: Mr. Wilson moved to adjourn at 9:23 PM and it was unanimous to do so

Respectfully submitted by

Catherine Tinsley
2.25.14