

MINUTES – SELECTMEN’S MEETING

Monday, October 28, 2019

Town Hall, Selectmen’s Hearing Room

Present: Joseph E. Kelleher, Chairman; Michael G. Bradley; Christopher R. Rohland; Michael A. Maresco, Town Administrator

Joe Kelleher opened the meeting at 7:00 p.m. and announced that the meeting is being recorded.

Town Administrator Report – Michael Maresco provided the Board with his brief as follows. Week of October 21, 2019:

- Attended Capital Budget Committee meeting with Patrick Dello Russo
- Met with Chief Tavares regarding FY21 Budget
- Attended Fiscal Team meeting
- Met with Capital Project Building Committee
- Attended Cyber Security Seminar
- Met with Janet Maloof regarding Police budget
- Attended Joint Public Hearing with Advisory Board
- Met with Ann Marie Sinnott regarding tax issues
- Met with resident regarding issues with Eversource storm response
- Weekly roof project update
- Several TV interviews regarding issue at Veterans Park
- FY21 Budget Meeting – DPW
- Met with Bob Galvin and Bill Grafton at Scituate Chair regarding lagoon and dam repairs
- Attended storm After Action meeting at the EOC
- Met with Tom Scollins regarding town meeting articles
- Gave a group of Cub Scouts a tour of Town Hall
- Met with Cindy Castro and Phil Tavares regarding planned application for CPC funds
- Attended retirement party for Karen Jenks
- Worked with DPW on Saturday to clean up the Hancock building in preparation for the groundbreaking ceremony tomorrow.

New Appointment to Agricultural Commission – Joe Kelleher read through the application from Kristen Webb requesting appointment to the Agricultural Commission. Mr. Kelleher noted that the Agricultural Commission supports this request. Joe Kelleher moved, seconded by Mike Bradley, to appoint Kristen Webb to the Agricultural Commission for a three year term expiring on June 30, 2022. The vote was unanimous.

New Appointment to Recreation Commission – Joe Kelleher read through the application from Brian Robinson requesting appointment to the Recreation Commission. Mr. Kelleher noted that the Recreation Commission supports this request. Joe Kelleher moved, seconded by Mike Bradley, to appoint Brian Robinson to the Recreation Commission for a three year term expiring on June 30, 2022. The vote was unanimous.

Ratification of Vote Taken in Executive Session – Joe Kelleher reviewed the terms of the agreements with the Police Chief and Fire Chief for cost of living and merit increases that were voted on by the Board of Selectmen in Executive Session on October 21, 2019. Joe Kelleher moved, seconded by Mike Bradley, to ratify the salary increases as voted in executive session. The vote was unanimous.

Levitte Backyard – Application for One Day All Alcohol License – Joe Kelleher read through the application from Dan Hassett for a one day all alcohol license for November 1, 2019. Mr. Kelleher noted that the seasonal license at that establishment expires on October 30, 2019 and said that the Police Department, Fire Department, and Board of Health support this request. Joe Kelleher moved, seconded by Mike Bradley, to grant a one day all alcohol license to Daniel Hassett, Levitate Backyard & REXICANA Surf Cantina for Friday November 1, 2019 from 3:00 p.m. until 11:00 p.m. The vote was unanimous.

MINUTES – SELECTMEN’S MEETING

Monday, October 28, 2019

Page 2 of 3

Request to Establish Gift Account for Harbor Park – Joe Kelleher read the email from Harbormaster Mike DiMeo requesting permission to set up a gift account for donations made for the upkeep and maintenance of the Harbor Park. After a brief discussion, Joe Kelleher moved, seconded by Mike Bradley, to establish this account as requested. The vote was unanimous.

Daniel Smith – Application for Earth Removal Permit – Joe Kelleher opened the hearing at 7:15 p.m. and read into the record the public notice regarding this hearing which was continued from October 15, 2019. Mr. Kelleher also listed the documents that are included as part of the record. Attorney Jeff Delisi and Rick Grady from Grady Consulting appeared before the Board to represent Daniel Smith at this hearing. Mr. Delisi said that the ZBA issued Site Plan Approvals in September 2018 and November 2018 and that the Conservation Commission issued an Order of Conditions in November 2018, and noted that those decisions did not mention the Earth Removal Bylaw. Work to achieve grade began in the spring of 2019, which is when they were notified by Town Counsel that an Earth Removal Permit was required. The application was submitted in July 2019. Mr. Delisi said that Mr. Smith’s business includes importing soil and screening it for resale and said that the soil shown in the pictures submitted as part of the record being transferred to a property owner in Scituate was a part of that process. Mr. Delisi said that he feels that his client is exempt from the Earth Removal Bylaw based on several of the exceptions listed in the bylaw and gave details on his opinion.

Rick Grady presented the Board with some plans showing the property and gave some details on Mr. Smith’s history and the background of his purchase of the property and the operation of his business. Mr. Grady addressed some of the issues brought up in the Woodard & Curran report and provided the Board with a written response to the comments. Mr. Grady reviewed how Mr. Smith has addressed all of the applicable conditions in the bylaw. Scott Medeiros, Woodard & Curran, gave some details on his engineering review.

Joe Kelleher asked how many cubic yards of soil have been removed. Mr. Smith said that 16,000 cu. yds. (571 truckloads) have been removed. Mr. Kelleher asked when this took place. Mr. Smith said that it was in April 2019.

Mike Bradley asked how much soil needs to be removed to grade the property. Mr. Grady said that they estimate 20,000 cu. yds. Mike Bradley asked Tony Riley for clarification on Town Counsel’s position. Mr. Riley said that it is the position of Town Counsel that the exception listed under Section 3A-3 of the Bylaw does not apply since they are removing soil from above grade. Mike Bradley said that the Board of Selectmen should have been notified by the ZBA and Conservation Commission as required in the Bylaw.

Christopher Rohland said that he believes there was no intent to violate the bylaw, but added that he does not want to create a precedent of applying for these permits after the fact.

Resident Ben Lyons asked Mike Bradley if he said that he would have approved the permit if the application came before the work began. Mike Bradley said that he would have preferred to have had the opportunity to consider it before the earth removal process began. Mr. Lyons asked if the Board has any concerns about environmental impact. Scott Medeiros gave some details on the review process and said that his review did not find any issues with environmental impact.

Mr. Delisi said that the main concern is public health and safety and although there was an error in not applying for the permit, the work was done in a safe manner.

Joe Kelleher moved, seconded by Mike Bradley, to close the public hearing at 8:00 p.m. and begin deliberation.

MINUTES – SELECTMEN’S MEETING

Monday, October 28, 2019

Page 3 of 3

Mr. Kelleher said that the first thing the Board needs to consider is whether the applicant more probably than not violated the Earth Removal Bylaw by failing to apply to the Selectmen before engaging in earth removal. Mr. Kelleher said that it is his opinion that he did, and noted that it should not be the responsibility of other Boards and Commissions to inform the applicant of his responsibilities. Mike Bradley said that he does not think it was intentional and said that he would give Mr. Smith the benefit of the doubt this time. Mr. Rohland agreed that Mr. Smith did not knowingly violate the bylaw.

Mr. Kelleher said that the second thing the Board needs to consider is whether the applicant has now applied appropriately and should be granted an after the fact Earth Removal Permit. After some discussion, Joe Kelleher moved, seconded by Mike Bradley, to find that the proposed operation, as conditioned, will not be injurious or dangerous to the public health; will not produce noise, dust or other effects observable from adjacent property in amounts seriously objectionable or detrimental to the normal use of the property; and will not have a material adverse effect on the water supply, health or safety of persons living in the neighborhood or on the use of or amenities of adjacent land, and to grant an after the fact Earth Removal Permit. The vote was unanimous.

Mr. Kelleher said that the third thing the Board needs to consider is what conditions should be attached to the permit. Mr. Kelleher noted that all of the conditions have been addressed in the response to the Woodard & Curran report. Mr. Bradley said that the earth removal should be capped at 20,000 cu. yds., which would allow the removal of an additional 4,000 cu. yds.

Mr. Kelleher said that the fourth and final thing that the Board needs to consider is what, if any, penalty should be imposed on the applicant for failure to comply. Mike Bradley said that he does not think there should be a fine for this offense, but noted that he would not give the benefit of the doubt if there are any future offenses. Chris Rohland agreed that the Board should issue a warning but no fine. Joe Kelleher said that not imposing a fine sets a bad precedent and said that he feels that a minimal fine would be appropriate. After a brief discussion, Mike Bradley moved, seconded by Chris Rohland, to issue a warning with no fine to Mr. Smith. The vote was 2:1 with Mr. Kelleher opposed.

Acceptance of Minutes – Joe Kelleher moved, seconded by Mike Bradley, to accept the minutes of October 21, 2019 as written. The vote was unanimous.

Executive Session – At 8:10 p.m. Mr. Kelleher moved, seconded by Mr. Bradley, to go into Executive Session for the purpose of discussing collective bargaining that if discussed in open session may have a detrimental effect on the bargaining position of the Town, not to return to open session. The vote was unanimous. Roll call vote: Mr. Rohland – aye; Mr. Kelleher – aye; Mr. Bradley – aye.

Mr. Kelleher moved, seconded by Mr. Bradley, to close the executive session at 8:45 p.m. and adjourn the meeting. The vote was unanimous. Roll call vote: Mr. Rohland – aye; Mr. Kelleher – aye; Mr. Bradley – aye.

Respectfully submitted,

Catherine Burke

The following documents and exhibits were presented at the meeting: application for Earth Removal Permit and accompanying information including public notice, engineering review, response to engineering review and other letters from Grady Consulting, email from the Local Building Inspector with pictures of trucks moving soil from the site to a location in Scituate, copy of the Earth Removal Bylaw, and copies of decisions from ZBA and Conservation Commission; application for appointment to Agricultural Commission from Kristen Webb and recommendation from Agricultural Commission; application for appointment to Recreation Commission from Brian Robinson and recommendation from Recreation Commission; information on Police and Fire Chief COLA and merit increases; application from Daniel Hassett for one day All Alcohol license, copy of liquor liability insurance and recommendations from Police, Fire and Board of Health; email from Harbormaster requesting permission to set up a gift account for the Harbor Park.