

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

SPECIAL MEETING – WEDNESDAY, FEBRUARY 22, 2006 - 5 PM

JUDGE WELSH HEARING ROOM

Chairman Cheryl Andrews convened this special meeting at 5:00 PM noting the following attendees: Board of Selectmen members: Cheryl Andrews, Sarah Peake, Michele Couture, Richard Olson, David Nicolau

Other attendees: Town Manager Keith Bergman, DPW Director David Guertin, Ron Adams, Project Manager - Metcalf & Eddy and Facilitator John Goodrich, Consultant Dennis Anderson

Recorder: Vernon G. Porter

The following are meeting minutes, in brief.

1A WASTEWATER FACILITATED MEETING

Led by John Goodrich

Laundromat Extension Update

The purpose of this meeting is to provide the Board of Selectmen with the information needed for the Sewer System Warrant Article for the April Special Town Meeting as well as to review the proposed Laundromat Extension.

David Guertin explained new handout relating to the Laundromat Interim Sewer Connection Permit and the Memorandum of Understanding. The proposer has offered a third component – housing - bringing the total gallonage up to 9985 gpd. This now includes the Grand Union (2,795 gpd), the Laundromat (4,000 gpd) and 29 bedrooms bring in 10 additional units (ownership) – two (2) of which would be affordable units (3190 gpd). The housing gallons add 3190 gpd thereby bringing the total gallonage to 9985 gpd with an assessed cost of \$350,000 total cost. New betterment cost would be at the rate of \$39.

Open discussion ensued.

WASTEWATER

The following are notes from Facilitator John Goodrich:

Introduction

The following topics were discussed at the February 22nd Facilitated Meeting of the Board of Selectmen:

- Proposed Laundromat Extension
- April Special Town Meeting Warrant Article

The following notes summarize (i) the presentation of any new information not contained in the Packet for the February 22nd meeting, (ii) the discussion, including questions from the Board, and (iii) Staff action items, including the information discussed at the follow-up staff meeting held on February 23rd.

Proposed Laundromat Extension

The DPW Director, David Guertin, provided the Board with a review of the status of the proposed Laundromat Extension, including a summary of the meetings that had taken place since the preparation of the Board's Packet – (i) a meeting with the proposer, Mr. Silva, on February 17th (ii) a meeting with the Cape Cod Commission on the morning of February 22nd, and (iii) a meeting of the Water & Sewer Board on the afternoon of February 22nd.

Meeting with Mr. Silva

As requested by the Board at the February 6th meeting, the staff reviewed the proposed business terms prepared by Town Counsel and the other requests from the Town with Mr. Silva. Because this meeting occurred after the Packet for the February 22nd meeting was prepared, some of the information is different – the information presented verbally by Mr. Guertin and contained in these meeting minutes is more up-to-date than the preliminary information contained in the Board’s Packet. For example, the information available for the Packet indicated that Mr. Silva was interested in including 19 bedrooms of housing in the Laundromat Extension, while the more recent discussions have shown that the number of bedrooms on his property that he would like to include is 29.

As a result of these discussions, Mr. Silva suggested the following in order to address the Town’s requests and to try to move the process forward so that the Laundromat could be on line this summer:

- In order to make it economically feasible for him to cover the entire estimated cost of the Laundromat extension as requested by the Town (estimated to be \$350,000), he would like to connect not only the proposed Laundromat and the Grand Union properties but also 29 units of housing located on the property he owns directly adjacent to the proposed Laundromat. The estimated Title 5 design flow for all of his contiguous properties is 9,985 GPD, which is less than the 10,000 GPD amount that the DEP will approve on a “fast track” basis. The per-GPD betterment calculation for this proposal is economically feasible for him, whereas the per-GPD betterment calculation of around \$50 is a “deal breaker” - \$50 is the approximate estimated per-GPD cost if only the Laundromat and the Grand Union are responsible for the entire construction cost.
- Following the suggestion of Austin Knight (the Water & Sewer Board’s designated representative for the Laundromat discussions) that Mr. Silva consider ways in which he could make the overall proposal more attractive to the Town, Mr. Silva further offered to convert two of the housing units to affordable housing at the time that he rehabilitates the housing currently on the site – he is not proposing to add any units, only to rehab the existing units.
- Mr. Silva also provided the Town with some suggested language changes to the business terms, particularly in regard to receiving some protection against the Town authorizing a competing commercial Laundromat once he has made a significant investment and long-term financial commitment. He recognizes that his suggestions will need to be reviewed by the Board and by Town Counsel and will require further refinement before there is an agreement on business terms.

Meeting with the Cape Cod Commission

Mr. Guertin provided Dorr Fox and his staff at the Cape Cod Commission with an update on the as-built sewer system as well as the on-going plans and proposals. They were very pleased to receive the update and are looking forward to being kept informed as the current proposals move forward.

They indicated that they believe that all of the on-going and proposed work is well within the bounds of their 2001 DRI decision – the Town should not need to formally come back to the Commission until and unless there is a request to increase the WWTP capacity above the 575,000 limit already approved, or there is a request to add to the effluent beds. They do not see additional piping associated with the collection system or additional connections as inconsistent in any way with the findings or conditions of the DRI. In particular, the Commission’s decision focused on the natural resource factors at the plant site and water resource issues related to the permitted GPD discharge, and not on the “pipe conveyances”.

In order to have all of the proper documentation should anyone choose to challenge their decisions, they would like to have copies of the following when they are in final form:

- The infiltration reports prepared by EPG and others, the DEP decision on allowable infiltration rates, and EPG’s mounding reports.
- Town reports provided to the DEP that demonstrate the relationship between Title 5 design flows and actual flows, including any formal DEP decisions that confirm that actual flows can be used where available. Their DRI refers to Title 5 flows, and they will need this information to justify the Town’s use of actual flows

in the future.

- The Wetlands Management Plan.

Update on approvals from the Conservation Commission and the DEP

The Board was provided with an update in the Board Packet on all of the efforts being undertaken by Mr. Guertin to obtain a new Order of Conditions from the Conservation Commission for the proposed Laundromat Extension work. The Town is on track to receive approval by the beginning of April. The Board was provided with an update on the DEP approval process at the February 6th meeting. M&E is continuing to prepare all of the information needed to submit the application by the middle of March so that approval will be granted by the middle of May.

It is important to point out that both the Conservation Commission Notice of Intent approval and the DEP Sewer Extension Permit approval can be filed, reviewed, and approved based upon the information that is already known. Neither approval requires the Board to decide which properties adjacent to the proposed sewer extension will be connected. The information that is required includes: (i) the proposed location and design of the pipe on Shankpainter Road, (ii) the location and design of the lift station to be located in the parking area of the Grand Union, and (iii) the total number of gallons requested in the permit, up to a limit of 10,000 GPD.

Therefore, these applications and approval processes can continue to move forward whether or not the Board decides to approve Mr. Silva's proposal with the inclusion of the housing component.

Water & Sewer Board meeting on February 22nd

The Water & Sewer Board met just prior to the Selectmen's meeting on February 22nd to review the latest information concerning the proposed Laundromat Extension. They voted 4-0 to accept the proposed Interim Permit and Memorandum of Understanding – subject to review and approval as to final form by Town Counsel – and to forward their decision to the Board of Selectmen.

During the discussion between Mr. Silva and the Water & Sewer Board, the following issues were raised:

- The Water & Sewer Board would like Town Counsel to review the so-called “exclusivity” or “moratorium” clause. The first proposal was for five years, Mr. Silva would like it to be for the life of the permit, and Mr. Guertin has suggested a compromise of 20 years. Mr. Silva indicated that his concern is that if he is going to spend some \$240,000 for capital improvements that have a life of 15-20 years, he would like to have some protection for his investment. He is perfectly comfortable with language that allows special situations – such as laundry facilities to serve boaters at the Marina, campground facilities, etc. – his concern would be another large commercial competing Laundromat facility.
- Mr. Silva indicated that if for some reason the Laundromat Extension does not go forward for this summer, then he would like to have the flexibility to build a new structure adjacent to his existing building, designed specifically to house the Laundromat. Therefore, he wanted language in the M.O.U. that would allow him to do that. He will use the area above the liquor store if the Laundromat can go on line this summer, since there wouldn't be time to construct the new structure.
- He is waiting for a final commitment from the Grand Union's owners – the family-owned business owners make all such business decisions, and he is waiting for their final approval.

Board discussion of the business terms

The questions and comments from the Board concerning the proposed business terms included the following, which staff will address with Mr. Silva and Town Counsel as appropriate:

- Number of machines: the Board would like it to be very clear that there will be 10 machines at the beginning of operations, and that there is a clear process to be followed if Mr. Silva wants to increase the number of machines. Some Board members want Mr. Silva to pay an additional betterment/assessment for any

additional machines and gallons allocated to him in the future, while others are willing to accept the proposed business terms, which would require him to pay an additional assessment only if and when the Town incurs additional capital expenses. If and when Mr. Silva wants to add more machines, it may require a change to the DEP permit if there is not enough unused flow within the initial 10,000 GPD permit. Such a change may not occur until the proposed Brown Street/Court Street/Shankpainter Road extension is permitted, in which case there will be plenty of approved capacity to add additional machines.

- Betterment per-GPD amount: Town Counsel will be asked to review the legal minimum that can be charged, as well as the ways in which the betterment can be assessed. Some Board members favor recovering all of the costs of the Laundromat Extension from Mr. Silva (and letting that policy determine the per-GPD number), while other members prefer to fix the per-GPD figure, and to make sure that it is no less than what others are being asked to pay. A new rate of \$39.08 went into effect on January 1st, 2006, but no one has committed or connected since then and been assessed the new rate. This rate is based on the actual costs incurred, as required. If the borrowed funds incur interest charges, those borrowing costs will also be passed through to the assessed properties.

- Change in use and/or ownership: the Board wants to be sure that the business terms are very clear as to the process that governs any change in use and/or ownership or any discontinuation of the Laundromat operation. The current language covers each of these items and staff will review the language with Town Counsel to ensure that it adequately covers the Board's concerns. For example, items 14 and 15 of the Memorandum of Understanding are designed to cover the commitment to pay the betterment for 20 years regardless of any changes in use or ownership. Item 11 is designed to ensure that if the Laundromat ceases operation, the gallons will go back into a "pool" and Mr. Silva or his successor will have to apply for the gallons – through an Economic Development Permit.

- Commitment to paying the Betterment: in addition to the comments above concerning the commitment to paying the betterment, the Board would like to be assured that Mr. Silva will be committed to paying the Betterment even if he does not receive all the necessary Town approvals to rehabilitate his housing units, and that he will pay the entire first Betterment installment as soon as the Laundromat is connected even if the housing does not connect until a later date.

Board discussion of the housing proposal

The questions and comments by the Board at the February 22nd Facilitated meeting focused on the housing proposal portion of the proposed Laundromat Extension, since the Board was hearing the information about the housing for the first time. The discussion included the following:

- Understanding of the current use and the proposed use: the Board would like the Town to have a walk-through of the property to verify the number of legal bedrooms and the associated Title 5 design flows, as well as understand what is proposed in terms of rehabilitation and any other changes that may need review. The Board wants to have a clear understanding of what "value added" if any Mr. Silva might obtain from the inclusion of these housing units in the proposed sewer extension to serve the Laundromat. Subsequent to the February 22nd meeting, staff have determined from Assessor's records that there are 28 bedrooms; Mr. Silva maintains that there are 29, and the walk-through will be needed to verify the correct number. The Board is also interested in knowing whether or not either the Conservation Commission or the Board of Health will have any problems with the proposed use of the property and its connection to the sewer. The Board would like to see a site plan, showing any wetlands and the location of existing septic systems.

- Establishment of a Board policy for accepting affordable housing units: since the proposal does not contain a request for additional units, the affordable housing process established under Growth Management does not appear to apply. The Board wants to fully understand the process to be followed, the affordable housing commitments (deed restrictions, etc.) to be made and how they will be enforced, and to establish a clear policy for how such voluntarily- offered affordable housing situations should be handled. The offer of two affordable housing units by Mr. Silva may set a precedent; therefore, the Board wants to review all of the information and the issues carefully before reaching a decision. Some of the questions to be addressed include the following: (i) will these be ownership or rental units and what are the conditions attached? (ii) what is a reasonable percentage

of affordable units in relation to the benefits that Mr. Silva will receive by having a sewer connection sooner than other residential properties in the neighborhood – is it the number of units he has offered? 10% of the units? 33%? (iii) will the same procedures and guidelines that apply to other affordable housing units be put in place for this proposal?

- Allocation of capacity to this property: Board members would like to receive the same amount of information and to have the same opportunity for discussion for the housing portion of the proposal, as for the Grand Union portion of the proposal. As with the Grand Union, the Board wants to be reassured that there is sufficient unused capacity at the plant to accommodate all properties that may not be able to comply with Title 5 if capacity is released now for this property that could comply with Title 5 on site. The Board would prefer to be able to evaluate this proposed connection within the context of knowing about all of the interested properties in the Brown Street/Court Street/Shankpainter Road neighborhood – including their estimated Title 5 flows. However, that analysis won't be completed until later this year, as a part of the overall "needs analysis" to be undertaken by M&E as a part of the sewer system expansion and optimization planning.

As reported at the February 6th meeting, all of the properties in the immediate area along Shankpainter Road from the Grand Union to Route 6 that have expressed an interest in connecting to the sewer have an estimated Title 5 design flow of 26,000 GPD. As discussed at the February 6th meeting, the staff do not feel that a process can be developed quickly to prioritize which of these properties should be connected at the same time as the Laundromat and which should wait until an overall Brown Street/Court Street/Shankpainter Road sewer extension is built. For that reason, the staff have recommended consideration of including Mr. Silva's housing in the "fast track" extension for the Laundromat – together with the Grand Union – in order to have enough gallons (and revenue) to cover the estimated cost of the sewer extension. The Board does have the option of selecting other properties from the list of interested properties, with the caveat that from a permitting, engineering, and construction standpoint, they would need to be properties that can be served by a gravity connection to the proposed lift station in the Grand Union parking lot.

Next steps concerning the proposed Laundromat Extension

The Board decided to schedule another meeting on March 6th to review additional information obtained by the staff and to discuss the policy issues. The Board also raised a number of general issues about the Laundromat Extension proposal process, including the following:

- The summer opening deadline for the Laundromat has resulted in the Board being asked to make a lot of important policy decisions quickly. These decisions are important and set precedent: the Board wants to make sure that they have all the necessary information and the time to make informed decisions.
- The Board would like to see the staff narrow the choices to be made at this point in the process – instead the choices seem to be increasing (the addition of Mr. Silva's housing component, for example), and this makes it more difficult for the Board to reach an informed decision.

April Special Town Meeting Warrant Article

The Board was presented with two options for a warrant article for continued funding of the optimization and expansion of the sewer system. The first option included those planning, engineering, and construction funds deemed sufficient to cover the anticipated costs of the sewer system until the April 2007 Town Meeting. The second option included only those funds deemed necessary to cover the planning, engineering, and construction costs to be incurred over the time period from the April 2006 Special Town Meeting until the fall of 2006.

The Board did not feel comfortable approving the first option until more is known about which areas and properties will be served by any proposed sewer expansion, the anticipated construction costs and the "affordability" of the proposed construction - including an estimate of the per-GPD betterments or assessments. This information will not be known until the overall optimization and expansion planning is completed by M&E later this year. The Board indicated that they do not want to authorize any construction funds until they

know what it will be spent on, and until they know what the town will be getting for the money.

The Board agreed to approve the second option, with the understanding that the wastewater planning team will very likely be coming to the Board to request additional construction funds at a fall 2006 Town Meeting, once the planning work is completed. The Board voted 5-0 to include an article for \$1.5 million for sewer system optimization and expansion on the warrant for the April Special Town Meeting.

Prior to the April Special Town Meeting, the staff will provide the Board with a written description of the proposed planning, engineering, and construction work to be undertaken for the \$1.5 million requested. At the February 22nd meeting, the Facilitator summarized the estimates that have been prepared by the staff and M&E as follows:

Planning, engineering, and permitting work, to include:

- (i) Preparation by M&E of the DEP permit application to increase the allowed flow at the plant from 500,000 to 570,000 GPD - \$75,000+/-
- (ii) Facilities planning and engineering by M&E for both optimization of the current sewer system and sewer expansions, including to serve the Brown Street/Court Street/Shankpainter Road basin - \$350,000+/-
- (iii) Preparation of any approval or reporting documentation for the Cape Cod Commission, the Provincetown Conservation Commission, and any other related permit or approval work - \$50,000+/-
- (iv) Legal and other consulting expenses - \$50,000+/-

Sewer system construction work, to include:

- (i) Proposed Laundromat Extension - \$350,000+/-
- (ii) Proposed Manor Connection - \$300,000+/-
- (iii) Downtown optimization (sewer bank and other connections) - \$250,000+/-
- (iv) Police details for construction work - \$75,000+/-

The estimates for the first option included an additional \$2,500,000 for construction of sewer extensions and possible plant modifications. The total estimate presented by the Facilitator for the first option was \$4,000,000.

Next Steps

The third agenda item for the February 22nd meeting included a discussion of the proposed agenda for the next meeting to be held in March. As a result of the discussions for the first agenda item, it was decided to schedule the next meeting for Monday March 6th at 5 PM and to focus on the issues associated with the proposed Laundromat Extension. Therefore, there was no discussion of the agenda items proposed in the Board's Packet for the next meeting.

The Wastewater Planning Team recommends that the Board schedule a meeting for the week of March 20th (the proposed date is Wednesday March 22nd, due to scheduling conflicts for Monday that week) to discuss the following topics for the proposed facilities planning effort, as described in the Packet for the February 22nd meeting:

- Board policy decisions that need to be made before Metcalf & Eddy can undertake and complete the “needs analysis” and recommend areas and properties to be served by any sewer system optimization and expansion.

- Public outreach to those neighborhoods and property owners that may be included in any future sewer extensions and/or optimization efforts.

MOTION: Move that the Board of Selectmen vote to insert on the warrant for the April 3, 2006 Special Town Meeting an article requesting a supplemental sewer borrowing authority in the amount of \$1,5000.00.

Motion by: David Nicolau Seconded by: Sarah Peake Yea 5 Nay 0

Next meeting is schedule is March 6, 2006 at 5 pm.

2A BUDGET UPDATE

FY 2006 Cape End Manor – Proposition 2½ Override

Keith Bergman gave an overview of the reasoning behind this request.

Open discussion ensued.

MOTION: Move that the Board of Selectmen vote, pursuant to MGL C.59,§21C(g) to insert a ballot question onto the May 2, 2006 Annual Town Election ballot to read as follows: "Shall the Town of Provincetown be allowed to assess an additional \$350,000 in real estate and personal property taxes for the purpose of funding the operating budget of the Cape End Manor Nursing Home for the fiscal year beginning July first, two thousand and five? Yes__ No__"; and, further, to vote to insert onto the warrant for the April 3, 2006 Special Town Meeting an article requesting a supplemental FY 2006 appropriation for the Cape End Manor of \$550,000, with \$350,000 thereof contingent upon the voters approval of a Proposition 2½ override ballot question, in accordance with the provisions of MGL C. 59, §21C(m).

Motion by: Michele Couture Seconded by: David Nicolau Yea 5 Nay 0

2B LITIGATION STRATEGY – FY 2007 BUDGET

Cape End Manor Care Campus – New England Deaconess Association

MOTION: Move that the Board of Selectmen vote, pursuant to MGL C. 39, § 23B, clause 6, to go into executive session for the purpose of discussing land negotiations and the value of land; and not to convene in open session thereafter. (Roll Call Vote)

Motion by: Sarah Peake Seconded by: Richard Olson

Michele Couture – Yes Sarah Peake – Yes Cheryl Andrews – Yes

David Nicolau – Yes Richard Olson - Yes

Yea 5 Nay 0 Motion Passes

The Board went into executive session at 8:43 pm.

Minutes transcribed by: Vernon G. Porter
February 22, 2006