

**TOWN OF PROVINCETOWN - BOARD OF SELECTMEN
MEETING MINUTES - SPECIAL MEETING
MONDAY – FEBRUARY 29, 2016 – 5:00 p.m.
JUDGE WELSH ROOM - 260 COMMERCIAL STREET**

Chairman Donegan convened the open meeting at 5:00 p.m. noting the following attendees:
Board of Selectmen members: Thomas Donegan, Erik Yingling, Cheryl Andrews, Raphael Richter, and Robert Anthony.

Other attendees: Town Manager David Panagore, Assistant Town Manager David Gardner,
Pier Corp. Members: Kerry Adams, Carlos Verde, Herbert Hintze, and Harbormaster Rex McKinsey.

Recorder: Loretta Dougherty

1. Public Hearing – Condo Conversion Bylaw Amendments and Inclusionary Zoning Bylaw Amendments – Discussion and Approval of Language for Town Meeting, and Refer the Articles to the Planning Board for a Public Hearing:

Selectman Anthony recused himself and left the room at 5:02 p.m. Selectman Yingling read the Public Hearing Notice. Chairman Donegan read the written comments sent in by email. The drafted Condo Conversion By-law may be found on the Town's web page www.provincetown-ma.gov in the Board of Selectmen's agenda packet.

David P. started with the presentation of the current drafted Condo Conversion By-law and explained the difference between the Condo Conversion By-law presented this evening and the one presented at last fall's Special Town Meeting. Firstly, the two year moratorium has been removed. Secondly, in Section 4, subsection B, numbers 7, 8, & 9 have been added whereas the last version ended at number 6. These three regulations create a hardship exemption. He recommended slightly changing the language in number 8 to read, "...would be a manifestly unjust hardship." Number 9 would allow conversion if not doing so would constitute unconstitutional confiscation of the owner's property. When there is no value left at all it would be an unconstitutional taking.

Cheryl wanted to know if the Amherst by-law contained the language regarding the hardship exemption. She believes it would be helpful to know if this has been done somewhere else.

David P. will check and get back with her tomorrow. It is his understanding that this is a Provincetown by-law. He pointed out that the intent of number 7 is very clear, as is that of number 8. However, he will ask for legal advice on number 9 and inform the Board.

Raphael referred to the term Vacancy Rate being used in subsection E. This does not seem to be defined anywhere else. He wondered if we need to define it more as it seems to be defined broader in this version.

Tom asked how we would measure the findings referring to subsection E which allows the Board to determine the Vacancy Rate for year-round rental units in the Town in order to declare a state of public emergency, if the Vacancy Rate is equal to or lower than 5% of the overall housing stock. He stated that we have not really talked a lot about this section.

There were no public comments.

Selectmen's Comments:

Erik believes that this is a very fair and solid by-law.

Tom has concerns for people who are realtors, those who have a retirement in place and anyone who has invested all their monies into real estate. This requires the hardship exemption. We need to be mindful of not being punitive to these people. He believes that the hardship exemption is good.

Raphael believes that we have not really discussed the Condo By-law a lot since the last town meeting. He feels that the commentary over the last few years has not been strong. He does not want to see a huge number of hardship cases coming before the Board. He has not seen how the condo conversion fits in the plan the Board has made and wants to understand that before he puts his support behind it.

Cheryl believes the problem with this by-law is that it targets the one group of people who did the right thing by not selling for condo conversions and now will be harmed by this by-law. She does not want to see a lot of hardship exemptions coming before the Board.

Erik asked the Board if there were any amendments to this by-law that the Board might want to make in order for them to support it.

MOTION: Move that the Board of Selectmen refer the Condo Conversation By-law, as amended to the Annual Town Meeting, as presented by the Town Manager.

Motion: Erik Yingling

Seconded: Tom Donegan

Raphael stated that he would vote yes in order for it to be included in the Warrant.

3/1/0 (Cheryl Andrews) Motion passed.

Inclusionary Bylaw:

The drafted by-law may be found on the Town's web page www.provincetown-ma.gov in the Board of Selectmen's agenda packet.

Gloria gave a summary of this by-law stating the primary purpose is to encourage the creation of a range of housing opportunities for households of all incomes, ages and sizes in order to support a strong, stable and diverse year-round community and a viable and healthy local workforce and to prevent the displacement of Provincetown residents; mitigating the impact of residential development on the availability and cost of housing; protecting the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land; providing a mechanism by which residential development can contribute in a direct way to increasing the supply of affordable and community housing in exchange for a greater density or intensity of development than is otherwise permitted as a matter of right, and supporting the goals of Provincetown's December 2006 Affordable and Community Housing Action Plan (updated January of 2014).

The majority of the ensuing conversation among the Board dealt with the Barnstable County allowable median income percentages, as defined by the United States Dept. of Housing and Urban Development adjusted for household size.

Erik wanted to know what would be 160% of the area median income (AMI) for two people, and is concerned about the 80% or below figures.

Tom believes that there is no other place that provides anything above 80%, and this by-law feels like an opportunity to do that. It is very difficult to find anything affordable at the 80% or under in Provincetown. Tom asked to open Public Comments.

David Nicolau believes that the Inclusionary By-law has some good points and that we are moving in the right direction. He has concerns about people adding a unit on to their home and then personally using it. He recommended possibly looking at a flat rate rather than the in lieu of payment. He also wanted to know how this would affect growth management. He wanted clarification of what the end goal is to be; how many units for rent and/or ownership.

Doug Dolezel appreciates all the work that has been put into this. He supports the 6 units and above but is concerned about the 1-5 units. He believes this by-law will put the burden of the payment on the purchaser. He feels that the in lieu payment is still quite high and explained his reasoning to the Board. He recommended providing better incentives.

Public comments were closed.

Selectmen's comments:

Tom and Erik thanked Gloria and the staff for a really great job in putting the by-laws together.

Erik believes the whole incentive is to get the market to build for us. The incentive is very strong for the 6 plus units, but perhaps we can lower it for the 1-5 units and we might get more support.

Cheryl is still concerned about putting a disincentive on people wanting to create year-round rentals.

Raphael thanked everyone for their input and Gloria's presentation. He believes that the dollar amounts we are expecting from people may be too high. He is in favor of bringing it to a lower number than 5%. He will support 3% for the 1-5 units.

MOTION: Move that the Board of Selectmen vote to amend Section 4 (a) (1) for the 1-5 units, so payments would be 3% per unit rather than 5% per unit.

MOTION: Raphael Richter **Seconded:** Erik Yingling
4/0/1 (Robert Anthony was recused) Motion passed.

MOTION: Move that the Board of Selectmen vote, pursuant to Massachusetts General Law Chapter 40A Section 5, to submit the attached proposed Zoning Bylaw Amendments to the Planning Board for review and public hearing on Thursday, March 24, 016, in order to be placed on the April 4, 2016 Spring Town Meeting Warrant.

Motion: Raphael Richter **Seconded:** Erik Yingling
4/0/1 (Robert Anthony was recused) Motion passed.

Robert returned to the meeting at approximately 7:10 p.m.

Public Statements on the Warrant Articles:

Doug Dolezel came before the Board and asked about growth management as reflected in the Inclusionary by-law. The Town Manager suggested that Doug meet with him for further discussions as this is a Planning Board item.

2. Selectmen Statements:

There were no Selectmen statements.

3. Approve Articles and Vote to Insert in the April 4, 2016, Annual & Special Town Meeting Warrant:

The Board reviewed the Articles and per David P. they will be reordered at Friday morning's meeting. David G. wanted the Board to know that there is an issue concerning the title to 26 Alden Street and we are waiting for Town Counsel's response concerning this. David P. stated that there is the potential that we will have to go back to Town Meeting. There have been challenges to imminent domain on the property. It relates to the process declaration of purposes; the technical aspects of the taking. It is a title issue.

MOTION: Move that the Board of Selectmen vote to approve all the articles except ATM 20, 22 & 23 and STM 7 for the April 4, 2016, Annual and Special Town Meeting as presented by the Town Manager and to insert said Articles into the April 4, 2016, Annual & Special Town Meeting Warrant forthwith subject to Town Counsel's review.

Motion: Raphael Richter **Seconded:** Erik Yingling
5/0/0 Motion passed.

Cheryl was concerned about the amount of discussion that might take place at Town Meeting on Article 20 and asked the Board how much HDC discussion do we want to have upstairs.

MOTION: Move that the Board of Selectmen vote to approve Article 20 for the Annual and Special Town Meeting as presented by the Town Manager and to insert said Articles into the April 4, 2016, Annual & Special Town Meeting Warrant forthwith subject to Town Counsel's review.

Motion: Raphael Richter **Seconded:** Erik Yingling
4/1/0 (Cheryl Andrews) Motion passed.

MOTION: Move that the Board of Selectmen vote to approve Article 22 for the Annual and Special Town Meeting as presented by the Town Manager and to insert said Articles into the April 4, 2016, Annual & Special Town Meeting Warrant forthwith subject to Town Counsel's review.

Motion: Raphael Richter

Seconded: Erik Yingling

3/1/1 (Cheryl Andrews/Robert Anthony was recused) Motion passed.

MOTION: Move that the Board of Selectmen vote to approve Article 23 for the Annual and Special Town Meeting as presented by the Town Manager and to insert said Articles into the April 4, 2016, Annual & Special Town Meeting Warrant forthwith subject to Town Counsel's review.

Motion: Raphael Richter

Seconded: Erik Yingling

4/0/1 (Robert Anthony was recused) Motion passed.

4. Joint Meeting with the Provincetown Public Pier Corp. to Review the Memorandum of Understanding:

The PPPC convened their meeting at 7:30 p.m. Kerry provided a short summation for the Board of the MOU which had been approved in June of 2015 which now has the updated Appendix A showing the integration of Town and Pier Corp CIP and maintenance planning processes included. This appendix outlines the processes that the Pier Corp will use in the planning and budgeting of their maintenance activities and processes for the integration of these activities with the Town's CIP.

Raphael asked to discuss the rent abatement and to look at Appendix A for a vote to accept or not.

Kerry wanted to get a consensus from the Board regarding whether or not the town will give the Pier a subsidy if they pay the rent or if the Board will give them an abatement on the rent.

Carlos stated that they are limping along due to set backs with the storm that wiped them out financially. They had to foot the bill of \$239,000 that wiped out their maintenance reserve and that is when the problem began. While waiting for FEMA money to come in they do not have any money to do maintenance. They need help and cannot afford any longer to maintain the pier.

Erik agreed to a rent abatement but not at 100%; a lesser amount is agreeable. He wants to see what happens over the next year. He stated that our budget is already balanced and the approximately \$120,000 rent abatement being asked for was not included in that budget.

Cheryl knows that some years they will be able to pay the rent and other years they won't. If there was a surplus then it comes to the Town.

Raphael would be willing to abate the rent at 50% now and review it in December of 2016.

Tom wanted to know why we do not have a Capital Plan and an Operating Plan. The town has a specific way of dealing with maintenance.

David P. stated that Eric Larsen is working with them. The Bourne review that was done was not sufficient; we did not have enough money to get the final overall review. Bourne needs to come up with numbers and go through the review with the Dept. of Public Works.

Robert stated that he respects all of the people at the table. He believes that the Pier Corp has never proven itself as a viable entity. He has been really thinking about it; 15 miles up the Cape they had a Pier Committee that ran the pier and it did not work. They then created an Enterprise Fund and the Committee was used as an advisor.

MOTION: Move that the Board of Selectmen direct the Town Manager to begin preparations to establish a Waterfront Committee incorporating the harbor pier and waterfront for economic development and various regulatory affairs and to take appropriate action to resolve the Pier Corp. effective November 1, 2017.

Motion: Robert Anthony

Seconded: Erik Yingling

Robert stated that it is not that the Pier Corp. has not tried; it just does not work. We have to do something.

Raphael will not support this motion tonight; the pier is running great.

Carlos asked for the money so they can make the pier better before the Board dissolves it.

Erik stated the motion requires a lot of thought. Our enterprise funds are run very well. He wants a partial abatement something like \$20,000 would work.

3/2/0 (Cheryl Andrews & Raphael Richter) Motion passed.

Cheryl heard conversations re: capital versus maintenance. Maintenance could be covered by their budget and capital would be covered by the owners which is the Town. She spoke to the full and partial rent abatement. There is nothing in writing that states what the rent should be.

MOTION: Move that the BOS make the rent abatement of the Pier Corp. in the amount of \$25,000.

Motion: Erik Yingling Seconded: Robert Anthony

3/2/0 (Cheryl Andrews & Raphael Richter) Motion passed.

5. **Other:** None.

The Board motioned to go into Executive Session at approximately 9:05 p.m.

MOTION: Move that the Board of Selectmen vote to go into Executive Session pursuant to MGL c30A, Section 21(a), Clause 6 for the purpose of:

Clause 6 - To consider the purchase of, exchange, lease or value of real estate, if the chair declares (chair declared) that an open meeting may have a detrimental effect on the negotiating position of the public body. Old Community Center (46 Bradford Street) & Winslow Farm (44-48 Winslow). Votes may be taken.

and to convene in open session thereafter.

Motion to adjourn was made by: Erik Yingling Seconded: Robert Anthony

(Roll Call Vote)

Tom Donegan: Yes

Erik Yingling: Yes

Cheryl Andrews: Yes

Raphael Richter: No

Robert Anthony: Yes

Yea: 4 Nay: 1 Motion passed.

Raphael stated that he will not vote to go into Executive Sessions after 9:00 p.m. based upon principal.

The Board went into Executive Session at approximately 9:07 p.m.

The Board reconvened in open session at approximately 9:45 p.m. and with no further work being conducted Tom adjourned the meeting at 9:46 p.m. without objection.

Minutes transcribed by: Loretta Dougherty