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February 04, 2013
Minutes of the Board of Selectmen

PRESENT: Rick Griffin, Chairman
Richard Nichols, Vice Chairman
Michael Pierce, Selectmen
Ben Moore, Selectmen
Philip Bean, Selectmen
Frederick Welch, Town Manager
Mark Gearreald, Town Attorney

7:00 PM

SALUTE TO THE FLAG

I. Public Hearing – Continuation under RSA 79-E

1. Sea Spray Condominium Development Tax Relief Application

Atty. Stephen Ells and Michael Green, the principle of the development company; both present to discuss this application tonight. Atty. Ells provided the Board with a supplemental memorandum which he went through with the Board. He discussed the following: the true beneficiary of the tax benefit will be for future owners, but the tax benefit will attract buyers, and a direct benefit to the developer; duration of tax relief and guidelines, requests a longer term for relief the better chance for revitalization, former uses compared to new project. The trash for residential units will privately picked up and not by Town, the commercial trash will be picked up by the Town as had been done in the past. Atty. Ells reviewed the standards set forth in RSA 79-E.7 to see if this project meets these standards, identified the uses that are prohibited in 8 commercial units, this development will reconnect the business commercial area of the beach, add an element of safety with this project and discussed 4 public benefits of this project. Atty. Ells feels that this development meets the standard for the granting of the tax relief. The granting of this will be a positive effect on the Beach as a whole.

Mr. Tinker made the following points: purpose of RSA 79-E which he read, relief specific to building purpose, clarified that application tonight is kind of unique, deals with multiple merged lots, multiple types of units, the tax relief value is more complicated than just determining the building value, it is determining the value of both the commercial and residential condominium values separately and together. Mr. Tinker explained how they created the assessed value of the property using todays assessment for the historic use of all the properties involved, then developed an assessment for each unit and totaled them. It is a lot more involved than just determining the building value, he explained how the building value is calculated for now and compared it to the prior value of property. Mr. Tinker went through the report he had provided to the Board which included: description of the units in

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the new building, size of lot, determine value for destroyed buildings and how this was done, determine the value of the building portion of the condominium units and how this was done, determined the difference in value of building portion was 16%, the 16% would be the relief portion that would be applied each individual unit, each unit will have different value, provided some examples of what type of an effect this will have and the amount of the reduction.

Comments from the Public

Senator Stiles made the following comments: a little history of RSA 79-E, how she and another senator made changes to this RSA after the fire on the A Block, discussed some of the numbers that Mr. Tinker brought up, advice she received from counsel in regards to who would receive this tax relief, spoke on revitalization of this project and she would encourage the Board to accept this application to go forward.

Chuck Rage, 121 Ocean Blvd, speaking as a business owner as well as the Chairman of the Precinct made comments as follows: intent of warrant article pretty clear wanted to see areas revitalized, passed by 71%, need to show developers and property owners that we want to see this revitalization, this will help everyone and please grant this application.

Mr. Preston made comments as follows: long time coming, owned a business next to Old Salt, very important part of the beach, need to bring traffic back to this area of the beach, important to give them a chance and thinks they should support this application.

John Nyhan speaking as the Chairman of the HBAC made comments as follows: discussion the commissioners had in regards to supporting this application under 79-E and it was supported by the commissioners, how this developer was referred to them by the Planning Board to discuss the development of this project to fit into the Master Plan, work they did together, discussed the Master Plan with the Board, how this is a key location, items discussed by Senator Stiles, how everyone is working together on this, thinks it should be brought up what Town has been receiving in taxes over the past 7 years for this dirt parking lot, need to continue to work with business owners to entice them to invest in Hampton Beach and he completely supports this application.

Richard Reniere, 29 Highland Ave, made comments as follows: commercial aspect of the project and businesses that would not be appropriate, would like a few things added to the list which he shared with the Board and requesting through the Board that T-Shirt Shops be added to the list of businesses that are not appropriate.

Applicant's response

Atty. Ells asked the Board to think big and allow this application to be granted for the full 5 years.

Michael Green made comments as follows: resident of Hampton for 16 to 17 years, spoke about the discussions he has heard from many in Town in regards to buildings up the beach, the tax relief was something they have been considering since day 1, make something that is a marketable property, creating something that he thinks the beach needs, combination of residential above and commercial below, how the beach seems to stop at J Street since the Old Salt fire, purpose is to make this project work and continue other projects on the beach and concerns raised by Mr. Pierce in regards to giving the tax relief to the future property owners.

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Discussion from the Board

Mr. Bean thanked them for addressing many of his concerns and coming this evening.

Mr. Moore made comments and asked questions as follows: public hearing will be closed tonight and the Board would then have 45 days to render a decision.

Mr. Pierce asked questions and made comments as follows: when was the property purchased by Mr. Green, when was construction started, when did they start trying to attract buyers and was property presented to future buyers as getting a significant tax break.

Mr. Green asked Mr. Tinker to speak to what the tax was for the dirt parking lot and what it will be if this tax relief is granted. Mr. Tinker provided the following information: estimated taxes with the 16% relief would be about \$183,000, at full value would be around \$218,000, difference of about \$35,000, prior assessment of land was \$2.2M and new estimated assessment would be around \$10M and taxes last year were around \$38,000 to \$40,000. Mr. Green pointed out the increase in taxes even if application is granted. Atty. Ells explained that this relief is giving them a tax break on the increase in value which he explained in detail.

Chairman Griffin thanked them for coming and the Board will be taking this under advisement.

II. Public Hearing – RSA 53-C:3

1. Cable Franchise Renewal

Chairman Griffin informed the public that with them tonight is Kate Miller from Donahue, Tucker & Ciandella the Attorney from the Town who has been negotiating the Comcast contract. Chairman Griffin read the reason for the public hearing including information that is included in the contract and items that are not included.

Atty. Miller made comments as follows: long process over 5 years, problem with franchise fees that has been worked on, Comcast sat on proposal for over a year, Board will hear from the public, discussed some items in the contract, strong agreement for Town, gives a lot of flexibility, can be used by the schools, short contract only 5 years and tried to preserve the flexibility of the Town.

Comments from the Public

Art Gopalan, 20 Windmill Lane, made comments as follows: confirmed 3 minute rule does not exist, would like yes or no answers to his questions, document online is the actual document, restricted use of 2 channels to School Board Meetings and prohibit the broadcast of educational materials as presented by the School Board at the January 28th BOS meeting, do terms of contract prohibit sharing of the franchise fee used for the 1st two channels, will the motion to vote on the contract be only on the content and all its intended language as posted on the website with no alterations/additions/modifications or interpretations imposed on it. Atty. Miller attempted to address Mr. Gopalan's questions.

Chairman Griffin closed the public hearing since no one else from the public came forward to speak.

Comments from the Board

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Mr. Moore made comments as follows: is in favor of the contract as presented and would vote to accept it.

Mr. Nichols asked for clarification purposes the question Art Gopalan asked in regards to the contract on the website being the actual contract that would be voted on by the Board. It was confirmed that if the Board did vote on the contract tonight it would be the same as the one on the website assuming no modifications were made tonight.

Mr. Bean thanked Atty. Miller for her presentation and thanked Art for his comments.

Mr. Pierce made comments as follows: he thinks that this all plays back to whether they want to be cooperative with the schools or not, tonight was an explicit demonstration that there seems to be a problem in that arena with some people on this Board, he feels some people on the Board are concerned with the schools getting a portion of the franchise fees, education system in Town that needs these facilities, in favor of contract and Chairman should not have been so rude to the guest tonight.

Chairman Griffin made comments as follows: pretty much resents everything that Mr. Pierce has said tonight, he is actually probably one of the only people at the table tonight who has not made up their mind and asked if anyone wanted to make a motion.

Mr. Moore asked about the effective date which was addressed by Atty. Miller.

Mr. Moore MOTIONED that the Board of Selectmen as the franchising authority for the Town of Hampton approve the renewal of the Cable Television Franchise with Comcast of Maine/New Hampshire and the settlement agreement with Comcast of Maine/New Hampshire as presented and discussed at the Public Hearing held tonight pursuant to RSA 53-C:3(a) with an effective date on page three of the contract being February 4, 2013. Mr. Pierce SECONDED.

VOTE: 5-0-0

III. Public Comment Period

Art Gopalan, 20 Windmill Lane, asked about the agenda item in regards to sun-setting of some Selectmen Committees and has concerns with the Board doing this.

IV. Announcements and Community Calendar

Chairman Griffin thanked Mrs. McNamara; who is in rehab from a recent heart attack; for her work as a Ballot Clerk for many years.

V. Appointments

1. Ed Tinker
 - a. 2013 Land Rent Warrant

Mr. Tinker explained the warrant for the period including: contains 2 properties that no longer having to pay land rent which he explained and total fees for 2013 is \$ 152,086.

- b. 2012 Tax Collector Abatements

Mr. Tinker explained that this is mostly a housekeeping item with refunds totaling right around \$1,000.

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Mr. Nichols MOTIONED to Approve the 2013 Land Rent Warrant. Mr. Pierce SECONDED.

VOTE: 5-0-0

Mr. Nichols MOTIONED to Approve the 2012 Tax Collectors Abatements. Mr. Pierce SECONDED.

VOTE: 5-0-0

VI. Approval of Minutes

1. December 27, 2012 – Sealed Minutes

Mr. Nichols MOTIONED to APPROVE the Sealed Minutes of December 27, 2012. Mr. Bean SECONDED.

VOTE: 5-0-0

2. January 07, 2013

Page 3: Remove the duplicated sentence at line number 21.

Page 6: Add the following sentence to the first paragraph after the word “Board” “, \$1200 was spent on the Attorney for this warrant article,”

Page 8: Add the following vote to Article 16 “VOTE 5-0-0”.

Mr. Pierce MOTIONED to APPROVE the Minutes of January 07, 2013 as corrected. Mr. Moore SECONDED.

VOTE: 5-0-0

3. January 14, 2013

Page 4: 3rd paragraph, add the word “encumbrance” after “100k” in the motion.

Page 8: 7th paragraph, correct the spelling of the word “basis” to “bases”

Mr. Nichols MOTIONED to APPROVE the Minutes of January 14, 2013 as amended. Mr. Pierce SECONDED.

VOTE: 5-0-0

4. January 28 14, 2013 Non-public- Sealed Minutes

Mr. Nichols MOTIONED to APPROVE the Minutes of January 14, 2013 Non-public. Mr. Moore SECONDED.

VOTE: 5-0-0

VII. Town Manager’s Report

1. The dredging of Hampton Harbor appears to be completed, as it was observed this week that the dredging company is removing the piping on the Hampton side.
2. The contracts for the construction of the Church Street Station were signed last week and we expect construction to start in the next two weeks. Mr. Noyes has asked for use of the Church Street Lots for this project.

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3. The Police and DPW are investigating the complaint of trucking on Mary Batchelder Road and monitoring the street and will be back to me with reports for the Board on trucking restrictions and speed limits.
4. The DPW Director has assigned resources to plow the sidewalks at the beach on Ashworth Avenue when staff and resources are available. Note is made that after the last storm and with some success the sidewalks were plowed.
5. The Finance Director has informed me that the final documents for the purchase of the BAN should be processed by February 12th and the Board will need to sign them on the 11th.

Other items added to Town Managers report

Mr. Welch added that he received a note from the Tax Collector that her office will be closed on February 12th so she can attend annual training with the DRA.

Discussion

The following members of the Board asked questions and made comments which were addressed by Mr. Welch.

Mr. Nichols asked questions and made comments as follows: aspects that made Ashworth Ave sidewalk plowing an issue in the past and brief discussion and reconsideration of the Selectmen's vote Article 21 Sewer Connection fees.

VIII. Old Business

1. Acceptance of the Batchelder Woodland Conservation Easement
 - a. Conservation Easement Deed
 - b. Baseline Report
 - c. Closing Statement

Jay Denier made comments as follows: closed last summer on 2 of the 3 parcels, tonight hope to sign documents for the 3rd parcel, noticeable differences with this parcel, and no access except via private property so no public access, donated easement by Batchelder Family, would like the easement document signed and where they need signatures.

Discussion

The following members of the Board asked questions and made comments which were addressed by Mr. Denier.

Mr. Nichols asked questions and made comments as follows: sent an email, which he copied to the Board, and Jay addressed his questions, and asked if Atty. Gearreald has reviewed these documents and confirms they are ready to be signed by the Board.

Mr. Pierce asked about a problem with a piece of property that was too close to the property line. Mr. Denier discussed this in detail for the Board and the solution that they have reached.

Chairman Griffin and Mr. Moore both thanked and complimented Jay on a job well done.

Mr. Nichols MOTIONED to Approve the ACCEPTANCE of the Batchelder Woodland Conservation Easement to include the Conservation Easement Deed; Baseline and Closing Statement. Mr. Pierce SECONDED.

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VOTE: 5-0-0

Other Old Business

Mr. Nichols brought up Article 21 Sewer Connection Fees and asked questions as follows: is the language clear after changes made at Deliberative, unclear who would be charged and what would they be charged, under existing statute discussed what a unit would pay and increase in this new language amended at Deliberative, tripled the fee, vote to recommend by Board was 5-0-0, based on dialogue at Deliberative Session such radical changes were made to fund items at WWTP in the future, questions if a sewer connection fee is the right way to fund this and request that given all these changes the Board retake there vote.

Mr. Welch explained how the fee would be imposed. If you have an existing connection you would not pay the fee, it would be only if you increase the number of units. For example, if the existing connection is for five units and will continue to be five units, no charge, however if there was an increase in the number of units using the existing connection, then that added increase would be considered as a new connection and it would be just the number of new units that are added that would be charged; five to seven – two new sewer charges..

Mr. Moore made comments as follows in regards to Article 21: anything in statute prohibits them from charging an amount higher than the Town's cost, changing fee from \$100 to \$300 is not as drastic as it is being made out to be and would be happy to vote on this again.

Mr. Moore MOTIONED to reconsider the Selectmen's vote (5-0-0) to recommend Article 21. Mr. Pierce SECONDED.

VOTE: 4-0-1(Beau)

Mr. Moore MOTIONED to recommend Article 21. Mr. Pierce SECONDED.

VOTE: 3-1(Nichols)-1(Beau)

Mr. Nichols asked about an email from Mr. Welch in regards to the \$14,350 encumbrance for the General Code update, and suggested that the Board void it and take a vote at tonight's meeting to this effect. Mr. Welch suggested a number of different avenues to address this but if the Board wants to void it that's up to them. He discussed the significant amount of material. Mr. Nichols is in favor of voiding this encumbrance.

Mr. Nichols MOTIONED to void the \$14,350 encumbrance related to general code. Mr. Pierce SECONDED.

VOTE: 2(Nichols, Pierce)-2(Moore, Griffin)-1(Beau)

Motion failed.

Mr. Pierce questioned if this is deemed an illegal encumbrance and Mr. Welch discussed this with the Board in detail that there was an expression of intent to issue an PO for this work last August, but the PO paperwork was not issued before the end of the year.

Mr. Nichols brought up a third issue, the BOS has two request to make the legal opinions related to both these encumbrances the \$100,000 and \$14,350 available to the public. He knows that the Town Attorney has concerns on how they would do that. He thinks that after all that has gone on with this, this would be the wise thing to do.

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Mr. Moore made comments as follows: the issue is releasing to the public privileged communications between the Board and Town Counsel; he has a problem with the precedent that might be set, the concern being that if the BOS takes a piece of paper that was written as a privileged document; between the Board and Counsel; and release it to the public, that might change the way that Counsel established an communication with the BOS the next time around, not knowing if whether it is were going to be public or not, and sees no reason, in this instance or any other instance to release this privileged information. He prefers to have the current relationship with Counsel, that Counsel can write confidential documents knowing that the intent of the document will be kept confidential; he respects the privileged communication of information from the Town Counsel, not in favor of removing that restriction. He also pointed out that after speaking to Atty. Gearreald earlier that the only way this information can be released is by a majority vote.

Mr. Nichols clarified that Mr. Moore is generally not in favor of releasing any confidential information from Counsel. Mr. Nichols questioned if in the past the Board has voted to release confidential information and Atty. Gearreald shared the one time he remembers this happening and it had to do with Town Meeting and communications with outside counsel, and outside counsel wrote it with the knowledge it would be released. It was not release by this Board but the Planning Board.

Mr. Pierce asked if it would be satisfactory to the Board to not release the document but instead have Atty. Gearreald provide his legal opinion to the public tonight.

Mr. Moore with a quick answer to that stated that once a privileged document continues to be repeatedly spoken about it loses it shield.

Atty. Gearreald stated that rather than summarizing the document he would be happy to give a bottom line view which is not repeating the document.

Mr. Nichols MOTIONED that the Board ask Atty. Gearreald to issue a summarized version of his legal opinion on the \$100,000 and \$14,350 encumbrances verbally. Mr. Pierce SECONDED.

VOTE: 4-0-1(Beau)

Atty. Gearreald made the following comments in regards to the \$100,000 and \$14,350 encumbrances: he has considered separately the \$100,000 that was but is not on the list now and the \$14,350 which is on the list, and with each of these encumbrances we are dealing with RSA 32:7 which indicates that amount to be carried forward if it has been encumbered by a legally enforceable obligation prior to the end of the fiscal year.

Atty. Gearreald stated with regard to the \$100,000, that is no longer on the list, it is his view that where Lessard & Sons who were named on the PO, but had not been communicated with, that neither the Town nor Lessard and Son can force against each other the obligation and therefore it was taken off; with regards to the \$14,350, since the last meeting I have looked into the facts of this and after reviewing this with Mr. Welch and the communications he had with General Code before the end of the year; the figure on the PO matches the figure from General Code that was written in the communication; it is his opinion that this encumbrances meets the criteria to be encumbered. Atty. Gearreald's recommendation is that it is arguable that there was a meeting of the minds before the end of the year; therefore

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there can be a legal enforceable argument and it will be the judgment of the Board for it to remain on the books; and that it can legally remain on the books or be taken off.

Mr. Nichols questioned if the \$14,350 was a budgeted item and if not where did they intend to come up with this amount. Mr. Welch stated it was not budgeted but it would be taken out of the supplies line in the Executive line item of the budget.

IX. New Business

1. Selectmen's Committees – Sunset Provisions

Mr. Welch made the following comments in regards to this: the Board asked for a list of the Selectmen Committees, there are a number of committees that have already been sunsetted such as the IT Committee which is being sunsetted on 3/31/13, went through the committees that actually meet and those that do not meet, discussed some of the other committees in detail for the Board and some suggestions on which committee should remain and which do not need to continue. The following committees are suggested for discussion as to whether they should be sunsetted: Highway Safety; Insurance Advisory Committee, Permanent Building Committee and Recycling Education Committee.

Chairman Griffin asked to take one committee at a time.

Highway Safety Committee

Mr. Moore went over the suggestion of Mr. Welch that the committee be eliminated and the action by the Board would be from the recommendations of the Chief of Police and DPW Director for the filing of grants for public safety. This committee is not required by RSA, it is optional.

Mr. Pierce made comments as follows: the previous Chair would bring information to the Board, serves a real good purpose as the Police Chief and DPW Director are both very busy.

Mr. Bean MOTIOEND to sunset the Highway Safety Committee effective immediately with the new authority designation to the Police Chief and DPW Director. Mr. Moore SECONDED.

Discussion on motion

Mr. Nichols commented that as a courtesy to the individuals involved in this committee from a protocol standpoint where there are active committee members they should be allowed to express their opinions.

Chairman Griffin made notice that there is a motion on the floor. He also commented that he is on the Planning Board; it is the Police Chief and DPW Director who are the ones who make the decisions in the end, so the committee is redundant.

Mr. Pierce would like to amend the motion to have a sunset date of 3/31/13; as the new Board may have a new view on this.

Mr. Nichols thinks Mike has a good point and remembers last year starting in November or December of last year just about every serious decision was deferred to the new Board, especially when we are dealing with a period of four week and that this is an active committee.

Mr. Bean withdrew his motion and Mr. Moore withdrew his second.

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Mr. Moore has a bit of concern that with what Mr. Nichols just indicated; that is effectively that this means that this Board only works for 8 months and then is in dormancy for 4 months awaiting an election of a new board, he believes the Board cannot get any work done. If the Board wants to defer the vote for any active committees, fine, but he does not see any point in deferring the vote for the committees that are not active. He also mentioned that if the Board is not going to make any decisions why meet after January 15th, if we are not going to do anything as we wait for a new board to be elected, we are missing a lot of time and work.

Chairman Griffin stated that they would wait to make any decisions on all committees until after the new Board is in place.

Mr. Moore re-stated that the Board will not take any action on any committees until March 31, 2013.

Other New Business

Mr. Nichols would like the Boards approval to testify on behalf of the Board of Selectmen in favor of HB672 which is a bill to do with pollution control exemption. There was a consensus amongst the Board that Mr. Nichols could testify on the Boards behalf.

X. Consent Agenda

1. Dunbar Hotel LLC dba Ashworth Hotel for a Caterer Off-site Cocktail Lounge Liquor License
2. Parade and Public Gathering License "Eastern States 20 Mile Road Race" 03/24/13

Mr. Moore MOTIONED to MOVE the Consent Agenda. Mr. Pierce SECONDED.

VOTE: 5-0-0

XI. Closing Comments

Mr. Moore made the following comments: Board conducting employee reviews date needs to be set, perhaps some Tuesday, and the Board should review Boards 2012 goals to see if they were obtained, and when a date will be set for the RSA 79E request.

Mr. Nichols thinks sooner is better than later for the Board to decide on the 79E request. It will be on the agenda for Monday the 4th.

Chairman Griffin commented that he resents the fact of what Mr. Pierce has done here tonight and in his 9 years on the Board he has never seen anything like this, and this is a cheap election time trick.

XII. Adjournment

Mr. Bean MOTIONED to adjourn the public meeting. Mr. Moore SECONDED.

VOTE: 5-0-0

Chairman