

**SELECTMEN'S MEETING**  
**Monday, March 12, 2007**

On March 12, 2007, the Board of Selectmen held a meeting at 7:00 PM at the Town Office Building in Lakeville. The meeting was called to order by Chair Yeatts at 7:00 PM. Selectmen present were: Selectman Yeatts and Selectman Evirs. Also present were: Rita Garbitt, Town Administrator, Tracie Craig, Executive Assistant and Christine Weston, Recording Secretary.

**7:00 PM Meet with Marcus Baptiste**

*Ann Marton, consultant, Ken Motta of Field Engineering and Marcus Baptiste of MBC Development were present for the discussion.* Ms. Marton said they were there to discuss parcels of land that may possibly be considered for use as mitigation in regards to the relocation of Route 79. The parcels that were presented to Sarah Haggerty of National Heritage were a 28-acre parcel (#21) located on Staples Shore, which would give an additional net benefit of 19.9+/- acres of habitat protection for the Eastern Box Turtle. The second (parcel #22) is one of four (4) parcels that are part of the Viger's Conservation Area owned by the Town of Lakeville and managed by the Conservation Commission. There is approximately 42 +/- acres to this parcel.

Ms. Marton noted that at the February 26<sup>th</sup> meeting of the Board, the Selectmen were leaning towards the Staples Shore parcel, however, this parcel is under Article 97. Article 97 does not prevent active recreational use (parks and athletic fields, etc.) or necessarily afford the necessary protections for the Box Turtle habitat. Natural Heritage is not inclined to place a CR on it since, from their perspective, it does not provide additional protection. Natural Heritage did review Mass Highway's plans with Mark Carmichael, and they did not accept the alternative layout, thus they will proceed with the layout that had been previously discussed. Although this may be a step forward in the layout for Route 79, the matter is still what to do regarding the mitigation. Guidance needs to be given from the Board as to the direction to take at this time. Chair Yeatts stated that other parcels of land need to be considered. The Town has its own Open Space Plan. Is 21 acres the amount of land necessary? Ms. Marton responded that for the 1 to 1 mitigation and the 2 to 1 benefit, then 21 acres would basically cover it. 1 to 1 for the alteration of the roadway, two (2) pieces which will be bisected from the habitat and then another piece which totals 8.2 acres for the 2 to 1 benefit. Basically, 20 acres would be appropriate. Ms. Haggerty seems to be more interested in seeking out land that is upland and of the same nature that would be taken for other use.

Mr. Baptiste stated that this decision is more about the relocation of Route 79 than it is about his project. In order to have the relocation of Route 79 take place, some form of mitigation and net benefit needs to take place. Mr. Motta stated that the mitigation would still be part of the Town's obligation. It has been a joint effort between the Town and the Developer at the time. Ms. Garbitt said that she had understood that the State, under the MEPA review, was satisfied with the redesign. Mass Highway was also all set. Mr. Motta responded that it was part of the 61 Findings, but not under that section of the Certificate.

Ms. Garbitt asked if Ms. Haggerty was presented with the Pickens Street parcel? Ms. Marton responded that the Pickens Street parcel would be more in line with what Ms. Haggerty

would be looking for since it is more consistent with the type of habitat that Route 79 is taking from the Box Turtle. Selectman Evirs stated that that was one of the four (4) Viger's parcels and it is under the Town of Lakeville Conservation Commission.

Discussion then took place regarding Article 97. Not all parcels of land that are donated to the Conservation Commission are automatically considered Article 97 parcels. There are parcels that are donated that the Selectmen want dedicated to the Conservation Commission. There is also land owned by the Town and the Conservation Commission is the steward of the land. Not the entire 42 acre parcel would need to be used toward the mitigation. Possibly only the area that is closest to Route 140, such as the back half, could become restricted. Chair Yeatts stated that the deeds on the land can be researched tomorrow, thus 20 acres could be taken out of the Pickens Street (Vigers Conservation) 42 acre parcel. It was decided that this matter would then be discussed at the March 26<sup>th</sup> meeting of the Board of Selectmen.

### **Discuss postponing the Annual Town Meeting**

Chair Yeatts read a memo from Ms. Garbitt asking if the Board was going to postpone the Annual Town Meeting.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To postpone the Town Meeting from May 14, 2007 to June 11, 2007 at 7 PM  
at the Apponequet High School.  
Unanimous in favor

### **Review Snow and Ice Budget Appropriation**

Ms. Garbitt reviewed and explained the potential deficit of \$8,000 in the Snow and Ice Budget Appropriation, which is actually much less than the previous year. It is anticipated to have a year like in 2002.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To authorize deficit spending for Snow and Ice under Chapter 44, Section 31 for the Fiscal Year 2007.  
Unanimous in favor

### **Schedule FY08 Budget Meetings**

Ms. Garbitt stated that the 29<sup>th</sup> of March is a potential night to meet with Department Heads regarding discussing the FY08 Budget. She felt the Board would want to speak to Department Heads of the Police Department, the Fire Department, the Board of Health, the Building Department and the COA Director and the Veterans Agent since there has been an increase in those budgets. The Assessor's is another important department to meet with.

It was decided that the Board of Health, the Assessors, the Police Department and the Fire Department would be scheduled on the 29<sup>th</sup> of March, beginning at 4:00 PM. The agenda will be established by the Town Administrator, and she will try and schedule as many Boards to meet with the Selectmen as possible. Chair Yeatts mentioned that she would like to meet with the Police and Fire Departments somewhere in between the rest of the Boards that they would be scheduled to meet with and not as the last two.

Ms. Garbitt stated that the Board of Selectmen has been invited to attend the April 4<sup>th</sup> meeting of the Local School Committee at 7:00 PM to discuss the budget. The meeting of the Regional School Committee may be taking place at the Superintendent's Office, however, it is not confirmed.

#### **Review request for temporary living trailer and storage trailer**

Ms. Garbitt noted that a house trailer can be used for the period of one (1) year, however, the applicant has to reapply after six (6) months. The storage trailer can be on-site for one (1) year. Ms. Craig stated that she only collected one (1) permit fee from the applicant since it was thought that both trailers would be done under one permit since it was the same property. Ms. Garbitt stated that it is two (2) permits actually. The applicant will also need to renew the permit for the living trailer after six (6) months.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To allow a temporary living trailer for one (1) year, renewable in six (6) months, beginning March 12, 2007 and a storage trailer for one year beginning March 12, 2007 to Wayne & Judy Reynolds for the purpose of living during construction and demolition of their existing house and storage of their personal belongings during this time.  
Unanimous in favor.

#### **Request for appointment of Waltraud Kling to Board of Registrars**

Chair Yeatts read a request from Janet Tracy, Temporary Town Clerk, for the appointment of Waltraud Kling to the Board of Registrars to fill a vacant position.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To appoint Waltraud Kling to the Board of Registrars with the term to expire July 31, 2007.  
Unanimous in favor

#### **Review request of National Multiple Sclerosis Society for annual bike ride**

It was noted that the Fire and Police Chiefs are in approval of the race, which would go through the Town of Lakeville on June 23, 2007 of the two-day 150 mile bicycle tour to support the National Multiple Sclerosis Society.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To allow the National Multiple Sclerosis Society to conduct their 23<sup>rd</sup> Annual Great Mass Gateway MS 150 Bike Tour in Lakeville on June 23-24, 2007 with cyclists expected to enter Lakeville at 10:45 AM on Saturday and exit by 1:30 PM.  
Unanimous in favor.

#### **Review request for Constable reappointment – Kenneth Upham**

Chair Yeatts read a request from Kenneth Upham to be reappointed as constable for the Town of Lakeville.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To reappoint Kenneth Upham as a Constable for the Town of Lakeville, effective January 9, 2007 until January 9, 2008. His bond is on file and in effect until 2009.  
Unanimous in favor.

#### **Request for appointment-Volunteer Observers-Middleborough/Lakeville Herring Fishery Commission**

Chair Yeatts read a request from the Middleborough/Lakeville Herring Fishery Commission for appointment of Volunteer Observers for the Commission.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To appoint Harold Atkins, Robert Deane, Luke Leonard, Jr., David Lemmo, Mark Brochu, Kristen Chin, and Luann Livesy-Howe as Volunteer Observers for the Middleborough/Lakeville Herring Fishery Commission with terms to expire September 30, 2008.  
Unanimous in favor

### **Request to use Town House-Southeast Mass Festival Chorus**

Chair Yeatts read a request to use the Town House for a yard sale fundraiser for the Southeast Mass Festival Chorus on April 13<sup>th</sup> and April 14<sup>th</sup>.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To allow the Southeast Mass Festival Chorus to use the Old Town House on Friday, April 13<sup>th</sup> from 6:00 to 8:00 PM and Saturday, April 14<sup>th</sup>, 2007 9:00 AM to 2:00 PM with the contingency that the group is all cleared/cleaned up by Saturday night.  
Unanimous in favor.

### **Review ZBA petitions: Lynn & Olivieri**

*James Marot, Building Commissioner, was present for the discussion.* The first petition was for the property located at 302 & 303 Pond Lane. The petitioner is requesting to build a 30' x 22" garage on a lot of land located across the street from his dwelling. The owner owns four (4) lots of land in the same area as noted on the Assessors plot plan. This petition is similar to a previous petition by Scott Zion. Chair Yeatts stated that many of the items as required by the application have not been provided. The ZBA should not have to look at a petition if all the information that they should have available to them has not been presented. Mr. Marot noted that the petitioner and the land owner are two (2) different people, thus it is believed that the petitioner is acting on the owner's behalf. Mr. Marot then explained the situation on the plan design for the Selectmen. The parcel is considerably larger than the Zion parcel. The owner is willing to move the garage in order to comply with the setbacks, however, there is one (1) large tree that they would like to keep, so they want to take their petition to the ZBA since they feel it is a hardship of the land worthy of a request for sideline variances. However, there are other areas on the parcel where the garage could be located. The roadway, according to the plot plan, is very curved, the septic system appears to be on the far side of the lot from the plan, however, that is not where it actually is. Without having an as-built plot plan, it is difficult to determine how the changes might come about. The roads on the plot plan appear differently than they actually are. Ms. Garbitt noted that the area is on the Natural Heritage map, so shouldn't approval be received from them prior to them going before the ZBA? Mr. Marot responded that they will need to do that and this is on the memo that will be presented to the ZBA. Selectman Evirs recommended that the petitioner obtain a continuance from the ZBA until they can get the issues with Natural Heritage agreed upon first. Then the petition could be resubmitted with all the correct information.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To recommend that the petitioner obtain a continuance from the ZBA until such time that all the issues with Natural Heritage and the other necessary information

for the petition to be considered completed, accomplished and then resubmitted for consideration.  
Unanimous in favor.

The petition of John Olivieri of 10 Forest Park, who was looking for a variance from the minimum lot size for a buildable lot was next considered by the Board. Mr. Marot stated that the State law allows properties in existence prior to sub-division control or prior to passing of any zoning bylaw, to be protected for five (5) years or for a period post-dated 1976. The Town made the zoning change on May 3, 1973, which means that the date for an extension would be until 1976, thus five (5) years from that time is 1981. The owner would have needed to transfer ownership for the adjacent property by January 1, 1981 and it was not done until November 1981, thus eleven months too late. Yet, even if this was done at the appropriate time, the entity which he was transferring to is one that the owner has complete ownership over and it would remain one (1) contiguous lot which does not meet current zoning. The home was built without the consideration of the dividing line between the lots. It is believed that the garage was built when the house was built. Discussion took place on the petition. Selectman Evirs asked if the petitioner wants to create two (2) non-conforming lots? Mr. Marot responded that the petitioner wants to sell the second lot as a buildable lot. Though the Town cannot prevent him from selling it, a building permit cannot be issued to anyone who purchases it. The petitioner has been paying taxes on a potentially buildable lot. The burden is on the petitioner to find out if the lot is buildable or not. This may not be under the Town's jurisdiction, it may be under state law for exemptions since the petitioner had the opportunity to do this, however, he did it for himself rather than another entity. Selectman Evirs stated that a non-conforming lot cannot be created from a lot that does not conform. This would then make two (2) non-conforming lots. The bylaws are pretty specific and a variance cannot be given for this to take place. The ZBA can be apprised that to divide up the lot would result in a non-conforming lot and this is not recommended since it would go against state law. Right now there is a conforming lot with the garage being built on part of the parcel that he is looking to divide. If anything was to be done it should have taken place prior to January 1<sup>st</sup>, 1981.

**Any other business that may properly come before the meeting.**

Chair Yeatts read a request from Boy Scout Troop 26 of Lakeville to use the Town Office Building for a car wash fundraiser.

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, it was;

VOTED: To allow Boy Scout Troop 26 of Lakeville (Berkley) to use the Town Office Building on April 7<sup>th</sup>, 2007 to hold a carwash fundraiser.  
Unanimous in favor.

Ms. Garbitt mentioned that an invitation had been extended from OSHA that on Thursday, March 15, 2007 at 9:00 AM their personnel will be at the Postal Service's Lakeville Carrier Annex to give official STAR Site recognition to the employees there as a result of an extensive examination of the safety programs and procedures under OSHA Voluntary Protection Program

guidelines. Ms. Garbitt will try and attend this event since Chair Yeatts and Selectmen Evirs have prior commitments.

### **Other Items**

1. Letter from Jason Burgeson Scholarship Fund regarding Spring Fling Dinner Dance  
Selectman Evirs read the Jason Burgeson Scholarship Fund letter dated February 27, 2007 into the record. There will be another annual fundraising event to take place on Friday, May 18, 2007 beginning at 6:30 PM at the LeBaron Hills Country Club. There will be a dinner dance with a silent and live auction. Tickets are \$35 per adult and \$10 per child.
2. Letter from Historical Commission regarding FY08 budget
3. Letter from Field Engineering regarding water connection-Lakeville Corporate Park
4. Letter from DET regarding Comcast license renewal
5. Letter from GeoInsight regarding ADESA property
6. Letter from DEP regarding Scott Hyman waterways application
7. Waterways application for dock-Carolyn McGrath
8. Notice of Plymouth County Commissioners Advisory Board meeting-March 21<sup>st</sup>  
Chair Yeatts stated that she would attend the Plymouth County Commissioners Advisory Board meeting on Wednesday, March 21<sup>st</sup>, at 7 pm at the Plymouth County Commissioners' Building in Plymouth.
9. Plymouth County Commissioner's meeting agenda-March 6, 2007
10. MMA Regional Update meeting schedule  
Ms. Garbitt stated that she would attend the Massachusetts Municipal Association meeting on March 15<sup>th</sup> at 6:00 PM at the Middleborough Town Hall.
11. Cranberry Country Chamber of Commerce Newsletter
12. Information regarding SCX Yearly Operational Plan
13. Notice from Verizon-Cable Choice Bulletin
14. Comcast Shining Moments brochure
15. MassDevelopment Funding Availability Notice
16. Suburban Coalition Position Paper-2007
17. US Census Bureau News – Workshop on 2010 Census Update

Upon a motion made by Selectman Evirs with Chair Yeatts stepping down to second and stepping back up to vote, the Board at 8:15 PM unanimously:

VOTED: To enter into Executive Session and not return to Open Session for the purpose of discussing pending litigation and for the purpose of discussing Collective Bargaining with the Fire Department.  
Polled Vote: Selectman Evirs – Aye and Selectman Yeatts - Aye