

TOWN OF LAKEVILLE
Selectmen's Meeting Minutes
January 24, 2011 - 7:00 PM

On January 24, 2011, 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 7:05 PM. Selectmen present were: Selectman Yeatts, Selectman Olivier and Selectman Maksy. Also present were: Rita Garbitt, Town Administrator, Tracie Craig, Executive Assistant and Christine Weston, Recording Secretary. Cindy Dow, representative for The Middleborough Gazette, was recording.

7:00 PM Meet with Cable Advisory Committee regarding Comcast License Renewal and to discuss request from Jose Invencio to be appointed to Cable Advisory Committee

David Curtis, Robert Marshall, Donald Foster, Thomas Cirignano and Sheri Colucci were present from the Cable Advisory Committee. According to State law, the Town must by February 2, 2011 either agree or deny the request for license renewal. Some points have been agreed to, but not all. Mr. Curtis stated that the Committee would like to request that the Town deny Comcast's request for renewal since the Committee is still in the process of negotiation. Comcast will continue to provide service, but they will not provide payment during the time that it is in negotiations. If the Town does not deny Comcast License Renewal by February 2, 2011, they will go to the Department of Telecommunications and Energy (DTE) and request that the DTE approve the license. If the DTE approves the license, then it is out of the Town's hands. Therefore denying to renew is the best strategy at this point. According to Attorney Epstein, Lakeville's counsel, Massachusetts is one of the few states that have to deny a license when continuing license negotiations. Selectman Olivier asked how far apart is the Committee and Comcast and what does the Committee expect to gain? Mr. Curtis stated that the biggest gap is with the gross annual revenue and the capital. They do not want to put in language concerning having a local office either in Middleborough or Lakeville and that is one of the points that we are on them about. We required Verizon to open an office either here or in Middleborough, and they opened one in Lakeville. So Verizon would be able to close theirs if Comcast does not have a local office. We do not have much say about a studio. They are closing the studio and that is all there is too it. We are trying to get a studio in place and have a lot of work to do.

Selectman Olivier asked Mr. Curtis to elaborate on the gross revenue and capital cost differences. Mr. Curtis responded that the gross revenue payment is based on the number of subscribers, and it is a percentage of their gross revenue. The capital costs is an agreed upon amount that we agree upon with the license. They can pay it in a lump sum or pay it over the term of the license. We would like for Comcast to pay it over the term of the license. The Town decides what the capital costs are. Mr. Marshall stated that the Committee is trying to estimate the amount of money that will be needed to purchase equipment to meet the community's cable needs going forward. This money, spread over eight (8) years, would pay for a certain amount of cameras, tripods, changing in wires, developing the studio, furnishing it, etc.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: That the Board of Selectmen, in its role as Statutory Issuing Authority for the Town of Lakeville, is hereby issuing a Preliminary Assessment of Denial of Comcast of Massachusetts I, Inc.'s cable television renewal proposal to the Town of Lakeville, dated February 2, 2011. The Board of Selectmen will issue a written statement of reasons within fourteen (14) days of tonight's vote, in accordance with 207 CMR 3.06(3), detailing the reasons for its Preliminary Assessment of Denial.
Unanimous in favor.

Ms. Garbitt stated that Attorney Epstein was to send in his Statement of Reasons, but it has not been received yet. Ms. Craig said Attorney Epstein would have it in by the February 2nd meeting. The 14th day is February 7th. Chair Yeatts asked that Ms. Craig email Attorney Epstein to make sure that the Board of Selectmen receives the Statement of Reasons as soon as possible.

The Board briefly discussed the request to appoint Jose Invencio to the Cable Advisory Committee.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To appoint Jose Invencio to the Cable Advisory Committee with a term to expire July 31, 2011.
Unanimous in favor.

Selectman Maksy stated that he would like to look at the procedures on how the Board makes appointments for vacancies on Town Boards, Committees, etc. Chair Yeatts stated that the discussion will be put on the next agenda. Mr. Marshall stated that it was not an issue of a vacancy, there was just someone who expressed interest in being on the committee and has expertise as well. Selectman Maksy stated that he fully understood that, but the Selectmen need to make sure that the public is made aware of the fact that there are vacancies available. Selectman Olivier asked if a resignation was received from Tom Cirignano. If so, then the position should have just advertised then as a vacancy. Chair Yeatts stated that the vacancy has been published in the Gazette.

7:20 PM Meet with Lakeville Arts Council to announce FY11 Grant Awards

Joanne Corrieri-Upham, Chair of the Lakeville Arts Council, was present for the discussion. She stated that 13 grants were awarded totaling \$4,219 for cultural programs in the Lakeville/Middleborough areas. The grants were awarded from a pool of funds distributed to Lakeville by the Massachusetts Cultural Council. Those involved in the grants will be Authors Without Borders, the Lakeville Library, South Coast Historical Association, Davis Bates, Scott Jameson, Gregory Maichack, Dan Cooney, Shane Wood, The Marble Collection, Lakeville Council on Aging, Theatre One, Soule Homestead Education Center and the Middleborough Historical Association. She noted that some of the grants awarded are for events happening in Middleborough. Chair Yeatts stated that she did not like seeing the money going to

Middleborough. Ms. Corrieri-Upham understood, but noted that Lakeville residents attend these events in Middleborough also. She stated that there are five (5) grants that are going to Lakeville residents, and then the rest are between Middleborough and Lakeville activities. Ms. Corrieri-Upham noted that Lakeville always receives a grant from Middleborough every year for the Art Festival.

7:30 PM Class II License Hearing-Michael Outer, dba Marley Motors -475 Kenneth Welch Drive

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To open the hearing at 7:34 PM.
Unanimous in favor.

Michael Outer was present for the discussion. Chair Yeatts read the legal notice into the record. Mr. Outer showed the list of who he had sent the certified mail notices to and gave the green cards to Ms. Garbitt. Selectman Maksy noted that the property is Industrial zoned. Mr. Outer stated that his father has a business at the proposed location importing goods overseas. Mr. Outer is leasing some office space in the building. Mr. Outer said he is not looking to do retail sales, just wholesale. He is the buyer at the auction and finds inventory for a few dealers. Mr. Outer stated that he spoke with Robert Iafrate, Building Commissioner, and he has no problem with the location since he will not store vehicles at the site. Selectman Maksy stated that selling vehicles is a fine line under the Industrial zoning. Selectman Maksy asked if he could get a license to sell out of his home as long as he did not bring any cars to his home. Selectman Olivier stated that was a good question. Ms. Garbitt explained that when the Selectmen adopted their Class II Regulations, they voted that car sales would not be allowed from a residence. You have to be in a Business zone. Ms. Garbitt asked about warranty work. Mr. Outer stated that others will be doing the warranty work; he is just the wholesaler. Selectman Maksy agreed with Mr. Iafrate that this was an allowable use. Selectman Olivier said it would be a wholesale office showroom with no storage. Chair Yeatts stated that the next time that there is a hearing, Mr. Iafrate should be present to explain his decision.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To close the hearing.
Unanimous in favor.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To approve the application for a Class II License for Michael L. Outer, d/b/a Marley Motors with an expiration date of January 1, 2012. Mr. Outer will provide the Town with a \$25,000 surety bond as required by State Law.
Unanimous in favor.

Selectman Maksy stated that he just wants to make sure that in the minutes they reflect that this is wholesale operation. Ms. Craig will put on the license that there is no outside storage or display.

Review letter from Planning Board requesting comments on rezoning – Gene Bartlett's property-Bedford Street.

Chair Yeatts explained that the property being considered for rezoning is 109 acres on Bedford Street. Mr. Bartlett would like to rezone the use from Residential to Industrial. The Planning Board Hearing is scheduled for March 15, 2011 at 8:00 PM at the Lakeville Senior Center. Chair Yeatts then read the letter from Mr. Bartlett's Attorney, John Ryder. It was noted that some of the property is located in Middleborough. Selectman Maksy stated that he would like to reserve his opinion until the hearing. Lakeville needs business in Town, and this is a step in the right direction. Selectman Olivier stated that he would like to find out everything about the property before the hearing. He noted that the railroad cuts through the property, and there is close proximity to the highway, so it makes sense to look at this property. Ms. Garbitt will post the Board for the Planning Board Hearing in case all Board members want to attend.

Review and vote on amended Family Medical Leave Act (FMLA) Policy

Ms. Garbitt stated that Town Counsel sent a memo regarding amending the Family Medical Leave Act Policy. She asked for permission from the Board to make the changes as recommended by Town Counsel. Selectman Maksy asked about the limited cases. Ms. Garbitt explained that the limited cases are for members of the military. Selectman Olivier stated that he thinks that Town Counsel should advise what the extenuating circumstances would include. Ms. Garbitt noted that #1.A.(4)a-b has changed. Selectman Maksy suggested to then add the reference in.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To adopt the amended Family Medical Leave Act (FMLA) Policy and forward it to the Wage and Personnel Board to add into the Wage and Personnel Handbook.
Unanimous in favor.

Discuss letter from Conservation Commission Chairman Orrall regarding request from Jamie Bissonnette to be appointed to Conservation Commission

Chair Yeatts read the letter from Jamie Bissonnette withdrawing his letter of interest to be appointed to the Conservation Commission.

Review and vote to renew Board of Health Agreement with Town of Middleborough Board of Health

Ms. Garbitt stated that the agreement with the Town of Middleborough Board of Health expired on January 11, 2011. The Lakeville Board of Health asked the Town of Middleborough to do inspections on Body Art Establishments. The Board of Health has just permitted a Body

Art Establishment at Allure Day Spa. Town Counsel has been asked to review the changes to the contract, but we have not received a response yet. Selectman Olivier asked about the Town of Middleborough providing the Town with a Certificate of Insurance for professional liability. Chair Yeatts suggested tabling this until the next meeting.

Review dates to schedule a meeting with April Anderson from Secretary Bialecki's Office

Ms. Garbitt stated that the meeting with April Anderson will be taking place in Lakeville, not in Boston. Chair Yeatts stated that the best date for her would be February 7th. Ms. Garbitt will confirm the date with Ms. Anderson from Secretary Bialecki's Office. The meeting to discuss the former Lakeville Hospital property will be in Lakeville so that residents would be able to attend the meeting if they would like.

Discuss request for reappointment as Constable-Herve Vandal, Jr. & Kenneth Upham, Sr.

Chair Yeatts said that the Board had received requests for Constable renewals from Herve Vandal, Jr. and Kenneth Upham, Sr.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To reappoint Herve Vandal, Jr. as Constable with a term to expire January 28, 2012.
Unanimous in favor.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To reappoint Kenneth Upham, Sr. as Constable with a term to expire January 9, 2012.
Unanimous in favor.

Vote to approve Annual Town Election Warrant – April 4, 2011

Chair Yeatts read the warrant for the Annual Town Election, to be held on April 4, 2011 at Ted Williams Camp, into the record. Positions available are: Moderator and Finance Committee Member (one-year term); Planning Board Member (five-year term) and Selectman, Board of Health Member; Board of Assessors Member; Library Trustee; Finance Committee Member; Cemetery Commissioner; Two Park Commissioners; and Local School Committee Member (all three-year terms).

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To approve the Annual Election Warrant for April 4, 2011.
Unanimous in favor.

Discuss Letter of Interest received for Building Feasibility Study Review Committee

Chair Yeatts noted that the only response for an at-large member for the Building Feasibility Study Review Committee was received from Cindy Dow. Chair Yeatts asked that the notice asking for at-large members for the Committee be put in the newspapers again and on the website. She would like to place this on the February 7th meeting and make the appointments together. She was looking for four (4) at-large members from the community. A deadline for response was set at February 2, 2011.

Review Selectmen's Priority List and Designations for 2011

The Board reviewed the Selectmen's Priority List for 2011. Items completed and crossed off the list included: Construct Water Tower (2010), Extend Water Line to Town Office Building (2010), Water Master Plan, Open Space Plan update and Appoint Green Committee. Items that are part of the new Energy Advisory Committee include By-Law for Wind Turbines, Research Solar Panels for Landfill and Research Grants from DOER. The Police Union Contract was added to the list as a High Priority.

Ms. Garbitt stated another bid has been received for the roof repair at the Town Office Building in the amount of \$15,000. Robert Iafrate, Building Commissioner, is not sure how long the patches that he made are going to last. It seems to be leaking again. Selectman Olivier suggested having Plymouth County Inmates do some maintenance to the building. Selectman Maksy stated that the inmates cannot go onto roofs. Chair Yeatts agreed saying they have to stay at ground level. They may not even be allowed to go on a ladder.

Chair Yeatts asked to add Horsely and Whitten to update Zoning By-laws Section 7.2-Water Resource Protection. She suggested placing the Police Station Design Committee meeting as medium priority and on hold. The Board of Water Commissioners should be moved from medium priority to high priority. Housing Rehabilitation, identified as Clark Shores, Water Overlay District, and Neighborhood Business District were all crossed off of the medium Priority List. Zoning Bylaw update is what the update 7.2 will now be called. Chair Yeatts stated that from the demographic study for the Business District, it would appear that a Trader Joe's would be a good fit for Lakeville since the Town does not have a grocery store. The closest Trader Joe's store is in Hanover. She thought that Sherry Clancy from National Development may already have the study. Ms. Garbitt stated that Firefighter's Union negotiations are scheduled for February 1st at 6:30 PM.

Chair Yeatts asked that Camp, Dresser & McKee make a presentation to the Board regarding the Board of Water Commissioners. The Selectmen are meeting with the Board of Assessors on February 7th to discuss betterments. She asked to move the Fire Department Substation to low priority. Also, to move Renovations to Town Office Building to low priority. Selectman Maksy asked about Southcoast Rail. Mrs. Grubb responded that right now they are waiting on the Army Corp. of Engineers to finish their environmental report. Selectman Maksy said that he is very concerned about the intersection of Bridge and Main Streets, specifically where the State's asphalt ends and the Town's begins. The concrete blocks should be removed, and it should be

paved. He would like this moved to high priority and to have Christopher Peck, Superintendent of Streets, explain why he can or cannot do it.

Ms. Garbitt stated that the Housing Authority and Affordable Housing Trust are still ongoing. Perhaps Richard Keaton could come in and speak with the Board on these items. There is \$22,000 in the Affordable Housing Fund Trust from the removal of some of the affordable units at Wood's Edge. Selectman Maksy stated that he has received a lot of complaints that people could not get their boats out due to low water levels in the ponds. Ms. Yeatts responded that Assawompset was at 52.92' for August. Chair Yeatts stated that she will do an update on the water levels at the next meeting. The weeds have not grown since the water has been so high, and they need light to grow.

Discuss future Health Insurance Eligibility for Elected Officials

Michael Petruzzo, Melissa Hopkins and Edward Bunn were present from the Finance Committee for the discussion. Selectman Maksy stated that he would rather not discuss the topic and would like to table it or put it on the Priority List. Ms. Garbitt suggested that the Board vote to put this on the Priority List. Selectman Olivier stated that he did not feel the same way. The Town needs to look to the future and where money can be saved. This is a good step forward. It is not the last step. It is the first, and there will be more to come. This is not impacting anyone that presently holds an elected position; it is for the financial future of the Town. We cannot continue down the road the way we are and sustain this. Selectman Maksy stated that this topic comes up every year, and it is always the public officials that get punished. The stipends never went back up. That was supposed to be a one-year reduction, but never went back up. Selectman Olivier stated that he firmly believed that there would still be people to run for election, even if there is no health insurance. However, there might be people that are running for the position just for the health insurance. We can take a look at the stipends, but the Town needs to address the health insurance for the long term. Selectman Maksy stated that some of the Elected Officials put in a lot of time fulfilling their duties, and he does see a reason to change it. You need everyone here that is going to be affected by this to discuss it. Selectman Olivier stated that, excluding the Treasurer and the Town Clerk who work full time, other Elected Officials who continue in their positions will continue to be eligible for health insurance. But when someone new comes onto the position, then they will not be eligible for health insurance.

A motion was made by Selectman Maksy to put the matter as a high priority on the Priority List, but the motion was not seconded. Chair Yeatts asked what the figure is right now that is being spent on health insurance for Elected Officials. Elections are coming up in a few months, and she would like to know what the cost would be. Selectman Maksy stated that this affects their livelihood. Elected Officials should be present for the discussion. It is not necessarily true that people can be grandfathered in. It could affect people that are retired; we don't know for certain. Selectman Olivier stated that Town Counsel's opinion was that the Board could craft their vote to the needs of the Town. Selectman Maksy stated that he did not agree with it. Selectman Olivier read Town Counsel's opinion into the record. Selectman Maksy stated that based on what was read, the retired officials would be dropped. He would like Town Counsel to be present when the Board discusses this and also the Elected Officials. Ms. Garbitt stated that Elected Officials pay into a pension out of their stipends. If they withdraw their pension, then

they lose out. Selectman Maksy stated that it is the principle of this that he has a problem with. Ms. Garbitt stated that there is no definition in Chapter 32B for retiree. Selectman Maksy stated that they would no longer be entitled unless Town Counsel says differently. Selectman Olivier stated that he could not see how it can just be taken away. Further discussion/debate on this occurred between Selectman Maksy and Selectman Olivier.

Ms. Garbitt stated that pursuant to the Pension Reform that became effective on July 1, 2010, being vested has increased from six (6) years to ten (10) years. Selectman Maksy stated that people need to be provided a chance to speak. This will affect a lot of people. Chair Yeatts stated that she would like to make sure that retirees are not affected. Selectman Olivier asked Ms. Garbitt to find out what would need to be done to protect current and future retirees. Mr. Bunn asked if you are a current official in Town and have served the number of years required to be vested, then are you eligible for health benefits for the rest of your life. Ms. McRae pointed out that it is only for the three (3) Boards that receive stipends, not for all Elected Officials. Chair Yeatts stated that it needs to be determined what to put in the motion to protect current Elected Officials and future retirees. She felt that the Board of Health and Board of Assessors should be invited for the discussion, along with the Finance Committee and members of the public. The topic will be put on the next agenda of the Board of Selectmen. Town Counsel will be asked for an opinion on the previous questions. Selectman Maksy asked if Ms. Garbitt could ask if the Board of Selectmen could set the amount of hours that an elected official must work to receive a stipend and be eligible for health insurance. Can it be stricter than the law of 20 hours? Chair Yeatts stated that the topic will be on the February 28th meeting agenda.

Review request to use Town House-Boy Scout Troop 26-Annual Fundraiser yard sale – May 13 and 14, 2011

Chair Yeatts said that the Board had received a request from Boy Scout Troop 26 to use the Town House for their annual fundraiser yard sale.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To give conditional approval for the use of the Town House by Boy Scout Troop 26 for their annual fundraiser yard sale on May 13 and 14, 2011, subject to receipt of updated Certificate of Insurance.
Unanimous in favor.

Schedule March and April Selectmen meetings

It was the consensus of the Board to schedule the March Selectmen meetings for Monday, March 21, 2011 and Monday, March 28, 2011. The Board will wait to schedule the April meetings.

Review and vote to approve Selectmen Executive Session Meeting Minutes for January 10, 2011

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To approve the Executive Session Meeting Minutes of January 10, 2011 as presented.
Unanimous in favor.

New Business

Ms. Garbitt distributed information regarding the Ted Williams Earth Removal Project. She will send out an addendum tomorrow. Bertolotti Construction will increase their bid if they have to pay the administrative fee and per cubic yard fee.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To waive the administrative fee and the per cubic yard fee for the Ted Williams Camp Earth Removal Project.
Unanimous in favor.

Selectman Maksy distributed a letter he had received from a resident that had installed a septic system. They had been thinking that they wanted to remove the remaining soil and probably should have done so at that time. There is approximately 300-500 yards, and he does not know if they need a permit or not. Discussion occurred on the matter. Chair Yeatts said the Earth Removal By-law is a General By-law and does not specify an amount that would trigger a permit. This would have to be changed by Town Meeting vote. Chair Yeatts stated that if they are selling the material, the Town is entitled to charge. Ms. Craig stated that the amount being requested is 700 cubic yards, which would be a fee of \$105. Selectman Olivier asked if the Town should be clearer in the by-law. Selectman Maksy stated that under the current by-law, it would require a public hearing. Chair Yeatts felt that the Board needs to visit the site. The resident needs to follow the process like anyone else.

Other Items

1. Notice received from Town Clerk regarding Re-Precincting
Chair Yeatts stated that she wanted to make sure that this is getting done. The deadline is June 15th, so she would like the Town Clerk to update the Board periodically on her progress.
2. Letter from SEMASS regarding Notice of Increased Costs due to change in Clear Air Act – Greenhouse Gas Reporting Rule
Chair Yeatts asked how they could increase the cost with a contract. Ms. Garbitt responded that it was a change in the law, which is included in the contract.
3. Memo from Kopelman and Paige regarding Green Energy Projects Located on Municipal Land – Procurement and Contracting Issues

4. Memo from Kopelman and Paige regarding Important Decision Addressing Private Nuisance Claims Brought Against Municipalities
5. MMA Legislative Alert – Spring Legislative Breakfast Meetings
Ms. Garbitt stated that there are not any close legislative meetings. Typically, they are closer than Marshfield, which is February 18th. Chair Yeatts asked to find out where the legislators are going. She did not want to go to Marshfield if the legislators will not be there.
6. Notice of Annual Transportation Breakfast – February 14, 2011
7. Notice from the Plymouth County Commissioners announcing the Qualified Energy Conservation Program
8. Notice from Superintendent McCarthy regarding FY12 School Budget Working Session
Selectman Maksy stated that there are a lot of school committee meetings, but asked Selectman Olivier to let the other Board members know when they should attend. Selectman Olivier stated that they did have an operational presentation at the last meeting. When they presented the budget, the Superintendent had every principal sit and explain how this will work for FY12. A lot of it was coming out of Special Ed since they are implementing an early intervention for English and Math and focusing on Response to Intervention. It is a pyramid. They are focusing on the middle section of kids that are not grasping what is going on in class, since there are a lot of SPED students at the top end. He is guaranteeing 20-24 for class size in the schools. There will be three (3) people in the classroom, he will increase the day of instruction. They are getting rid of study hall since it is not used, and it will be replaced with a class now. They spent, for all three (3) budgets last year, \$35 million and by restructuring all these, the class time and class size, it is \$37 million for the FY12 budget. There is no Excess & Deficiency, no sports or parking fees. Mr. McCarthy is within \$700,000 to get to where he was last year. He is making a lot of positive changes. Transportation is tied to Chapter 70. It was a very good meeting. They will be making all schools virtual. They are only increasing the budget by \$65,000 to do that. Selectmen Olivier gave Ms. McRae, the Selectmen and Ms. Garbitt a copy of the budget. Mr. McCarthy had also mentioned about the 4th graders going to GRAIS. He did that with no E&D and no fees. E&D is not being used in the operational budget. That will be for planned capital expenses going forward and emergencies.
9. Copy of Letter from Field Engineering Co., Inc. to MassDOT regarding Field Change 4 Plan for the Relocation of Route 79 (The Contract Drawings are on the Selectmen's desk)
10. SRPEDD Meeting Notice and Agenda for January 26, 2011

At 10:15 PM, upon a motion made by Selectman Maksy; seconded by Selectman Olivier, on a unanimous roll call vote, the Board:

VOTED: To enter into Executive Session to conduct strategy sessions in preparation for negotiations with non-union personnel and the Fire and Police Unions since an open session may have a detrimental effect on the bargaining position of the public body.

Polled vote of Selectman Maksy – aye, Selectman Yeatts – aye, and Selectman Olivier – aye.

Unanimous in favor.