

Special Selectmen's Meeting

November 25, 2015

Approved December 3, 2015

Selectmen Present: Richard A. Daniel, Chairman, Elinor Multer and Kevin E. Johnson

Others Present: Town Attorney Amy Tchao, Town Administrator Kristi Eiane, Town Clerk Rosalind Knight, Donald and Barbara Prescott, Mariah Mitchell, the Prescotts' Attorney, and Michael Bernier, Jr.

The meeting was called to order at approximately 9:45am followed by the Pledge of Allegiance.

Adoption of the Agenda

It was moved by Chairman Daniel to adopt the agenda with the addition of "Use of Contingency" as item 4.5, seconded by Selectman Multer and passed 3-0.

Consent Agenda

It was moved by Chairman Daniel to approve the consent agenda, seconded by Selectman Multer and passed 3-0 [October 29 minutes and warrants 49 in the amount of \$197,410.92 and PR48 in the amount of \$20,165.31].

Consider Consent Agreement with Donald Prescott, Jr. Regarding Land Use Matter

Chairman Daniel explained that this item was a follow-up to a decision from a prior meeting at which Chairman Daniel and Selectmen Johnson agreed to enter into a consent agreement with current property owner, Donald Prescott, regarding setback violations that became known as a result of a mortgage inspection. Discussion ensued on imposing a financial penalty. Selectman Multer supported imposing a financial penalty, acknowledging that the Town as well as property owners bear responsibility for this situation. She proposed a \$3,000 penalty—the same amount imposed by the Board for a previous violation matter. Selectman Johnson stated that the previous violation matter has no bearing and that there had been no discussion of a financial penalty at the last meeting. He stated that he did not want to play the game of 'gotcha.' Selectman Multer expressed concern about the message being sent to the next violator. Chairman Daniel stated he did not want to play 'gotcha' either. He indicated that errors were made on the Town's part. Chairman Daniel agreed that he would like to see a small penalty, and proposed \$500 for the penalty and \$500 for attorney's fees. While small, he expressed that imposing a financial penalty is a deterrent to others, and that each situation warrants a case-by-case approach to be taken on the merits of the particular case. Selectman Johnson indicated he could live with the Chair's proposal. Selectmen Multer asked the Board to consider a minimum of \$1,000 penalty as she argued that \$500 was not enough of a deterrent. Selectman Johnson indicated he supported the Chair's proposal and moved to support Chairman Daniel's proposal. Chairman Daniel seconded the motion. Discussion continued on the amount of the penalty. Selectman Multer expressed that \$500 is too small. Chairman Daniel explained that the property owners had purchased a home they thought was in compliance and that each case is different and this is not precedent setting. Selectman Multer agreed that the Board was

not setting precedent, but noted that it is sending a message and if this is the penalty, it does not serve as a deterrent. Chairman Daniel asked if the Board members would consider \$750. Selectman Multer said she would support that amount, noting that the owner is not totally blameless. Selectman Johnson was not inclined to support the \$750. Chairman Daniel called for a vote on the proposed motion [\$500 for the penalty and \$500 for attorney's fees], which carried 2-1, with Selectman Multer dissenting. Selectman Multer acknowledged the Prescotts' sincerity noting she was not unappreciative of that. The consent agreement was signed by the parties with responsibility falling to the Prescotts to record the agreement and survey, and pay the \$500 penalty and \$500 for the Town's attorney's fees.

Adopt Notice of Decision Regarding Shellfish License Matter

Attorney Tchao explained that the Board first began the hearing on November 5 and continued it on November 19, when Chairman Daniel and Selectman Johnson voted to revoke the resident commercial shellfish license of Michael Bernier, Jr. and authorized the Town Attorney to draft a Notice of Decision (NOD). Attorney Tchao explained that the NOD summarizes the facts and provides reasoning behind the decision. While she drafted the NOD, she stated that it was the decision of the Board to determine if the NOD accurately stated the Board's position. Since Selectman Multer missed the November 19 continuation, she agreed to abstain from participation in the discussion and adoption of the NOD.

Mr. Bernier, Jr., announced that he had missed attending a Committee meeting last night, and so the Selectmen may not have to continue with this issue. However, the Town Clerk noted that Mr. Bernier still had adequate time to attend upcoming meetings and meet the two meeting requirement.

The Board took approximately 10 minutes to read the NOD. Chairman Daniel stated that he found the NOD reflective of the Board's decision. Selectman Johnson indicated he had no changes to the NOD. Chairman Daniel moved to adopt the written NOD regarding Michael R. Bernier, Jr. and the revocation of his resident commercial shellfish license. It was seconded by Selectman Johnson and passed 2-0, with an abstention by Selectman Multer. Chairman Daniel explained that Mr. Bernier could appeal the decision within 30 days to Superior Court and that this decision does not prohibit him from applying for a non-resident commercial shellfish license.

Mr. Bernier then stated he was disappointed that the Board relied on information from pending law enforcement cases, and he also stated that he had personally witnessed conservation crews not meeting their requirements and was troubled by that. Chairman Daniel asked Mr. Bernier to limit his comments to the license issue. Mr. Bernier indicated that he would provide his lawyer's contact information and asked that information be sent to his lawyer. Attorney Tchao indicated that the signed NOD would be provided to Mr. Bernier today and Mr. Bernier could make it available to his attorney.

Use of Contingency

Town Administrator Eiane explained that an issue earlier this week involving a failed water pump and pressure tank at the Town Office warrants the Board approving up to \$4,000 from contingency to remedy the situation. These items are being capitalized and would have come from the facilities reserve

account except that the reserve account has been overspent as a result of the roof being replaced on the Town Office. In addition, the Town Administrator noted that the Recreation Department is now operating in the red as the Recreation Director has been working more than the budgeted number of hours per week to keep up with programming. Selectman Multer moved to authorize the use of contingency for purchase and installation of the well pump and pressure tank for the water system and payment of the Recreation Director's salary and other incidental expenses. The motion was seconded by Selectman Johnson and passed 3-0.

The meeting was adjourned at 10:32am.

Respectfully submitted,

Kristi K. Eiane
Town Administrator