

New Shoreham Town Council Minutes
Town Hall, Old Town Road, Block Island
Wednesday, February 20, 2013
7:00 p.m.

Present: First Warden Kimberley H. Gaffett, Second Warden Kenneth C. Lacoste, Town Councilor Sean McGarry, Town Councilor Norris Pike, Town Councilor Christopher Warfel. Also present were Town Manager Nancy O. Dodge and Town Solicitor Katherine Merolla. Town Clerk Fiona Fitzpatrick was present to take the minutes of the meeting.

First Warden Gaffett called the meeting to order at 7:00.

Warden's Report

The DEM parking lot in Pt. Judith was plowed promptly and the plowers were on site assisting drivers to get out after the recent snow storms. Ms. Gaffett reported there are two pending ethics investigations against her. She has been offered a settlement but she has chosen to make her case and has not accepted the settlement as proposed. Second Warden Lacoste spoke about the build-up of sand by the east dock in New Harbor. The Town Manager said Joe Sprague has been contracted to take sand off east side of the breakwater and remove it before it washes in.

Public Input

Bill Penn, President of BIRA, asked the Town what their strategy was regarding Interstate rate increases and asking for an opportunity for public comment. The item is on the agenda. Chris Blane asked about a land records volume and brush along the east side of Corn Neck Road. Lars Trodson is the new editor of the Block Island Times.

1. Public Hearing re: Proposed Amendment to New Shoreham Zoning Ordinance Relating to Affordable Housing (Article 2 Section 202 Definitions, Article 4 Section 403 Secondary Dwelling Development, Article 4 Section 404 Attached Multifamily Development, Article 4 Section 405 Affordable Housing and Article 7 Section 712 Permits, Procedures and Enforcement)

First Warden Gaffett called the public hearing to order at 7:10. Planner Jane Weidman presented the amendments to the Town Council and answered questions. Block Island Housing Board Chair Cindy Pappas and Planning Board member Sam Bird were present to answer questions. Ms. Weidman's presentation is attached to these minutes. The Planning Board provided a favorable advisory opinion.

Rob Gilpin noted that most lots of record in the RA zone are approximately 80,000 square feet, and the amendment would not allow an additional affordable house on a developed preexisting nonconforming lot of less than 120,000 square feet. Ms. Weidman confirmed that it was not the Planning Board's intention to double the density on preexisting nonconforming lots. Rob Gilpin said he would like a change to allow the addition of an affordable unit on an 80,000 square foot house in the residential A zone.

Councilor Warfel noted there is no definition for "duplex" in the zoning ordinance. After a brief discussion, it was decided the definition for attached multifamily would apply. If more is needed, the ordinance may be amended.

At 8:15, a motion to close the public hearing was made by First Warden Gaffett and seconded by Councilor Pike.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

Ms. Gaffett made a motion to adopt the amendment as advertised, seconded by Mr. Pike.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

2. North Light Commission presentation re: thanks and appreciation for volunteer contributions

North Light Commission Chair Rob Gilpin was present. He said the North Light Commission voted to acknowledge and thank Tammy Tyler, Chris Warfel and Shirlyne Govern for their contributions to the renovation of the North Light. Electrician Tammy Tyler has helped the Commission since the installation of the wind turbine and she has donated her time on many occasions. She donated the fire alarm system and installed it without charge. Chris Warfel helped with site plan for the wind turbine,

and he has helped keep the photovoltaic system going. He designed the system and donated the panels and inverter for the flasher and the lantern. Mr. Gilpin said he would not still be involved in the project without the help of Shirlyne Govern who has kept him on track and on task over the years and always with good spirits. He presented three beautiful framed photographs of the Lighthouse taken by Malcolm Greenaway. First Warden Kimberley Gaffett thanked Mr. Gilpin, and said the renovations would not have been completed without his leadership and his enduring passion for the project.

3. Tabled Item: Receive and act on Shellfish Commission letter re: C. Gale commercial shellfish license application

Ms. Gaffett said the Shellfish Commission met yesterday and voted to recommend Charles Gale's commercial shellfish license be granted pending payment of all outstanding fees owed to the Town and the Harbors Department.

First Warden Gaffett moved to grant a Commercial Shellfish License to Charles Gale pending receipt of all appropriate fees and payment of his outstanding mooring permit fees, seconded by Mr. Pike.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

4. Receive and act on TNS Police Department monthly report: January 2013

Second Warden Lacoste moved to accept the New Shoreham Police Department Report of January 2013, seconded by Councilor Pike.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

5. Receive and act Town Manager reports and recommendations re:

• TNS Fee Schedule responses and recommendations from Department Heads

A memorandum was received from the Town Manager regarding the responses of Department Heads.

Ms. Gaffett moved, seconded by Mr. Lacoste, to table the item and take it up during budget development.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

• Beach Pavilion repair/renovation plan

A discussion of the beach pavilion repair/renovation options ensued. The Council's consensus at the last work session was that they favored the basic renovation option, plus parking lot improvements. Town Council discussion: insurance will pay for Hurricane Sandy repairs to the furnace, roof, porch, stairs and railings before summer. The basic renovation plan may be in the FY 2014 budget in anticipation of a Department of Environmental Management matching grant for construction and renovations next fall and winter, structuring the new parking plan.

Public comment: Jess Willi said it is an extremely important building that brings tourists to the Island who support the local economy. She spoke about the food and beverage and hotel taxes remitted to the Town. Mr. Lacoste reported a suggestion from Terry Mooney that the project be bid out and turned over to an investor to manage until the renovation is paid down. There was no support for this option. Kathy Szabo asked that the prohibition on alcohol be lifted to attract functions. The Council does not want to compete with existing businesses.

The Council asked the Town Manager report back with a plan describing what will be done with the hurricane repair money, what will be done with the renovation funding, and price options for the parking lot. Mr. Wafel asked that a plan be developed and a schedule be prepared that includes repair start dates.

Mr. Lacoste moved to instruct the Town Manager to work with the Recreation Director to solidify estimates for the minor renovation plan keeping in mind the state grant funding schedule, town budget schedule and parking lot project. Motion was seconded by Mr. Warfel.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

• Payroll deduction for Town housing rentals

The Town Manager confirmed Mr. McGarry's information that it is illegal to deduct rent from payroll. She said for some employees' summer salaries will be reduced to reflect that housing will be provided as part of overall compensation.

6. Receive and act on K. Erik Wallin letter re: amendment to Town Ordinance Article VII, Motor Vehicles for Hire, Section 8-164(b) "waiting list" provisions

Erik Wallin was present and asked the Town Council to consider an amendment to the Motor Vehicles for Hire ordinance that would allow a position on the taxi waiting list to pass to a surviving spouse. A brief discussion ensued.

First Warden Gaffett moved to schedule a March 20, 2013 public hearing on the proposed amendment, and to direct the Motor Vehicles for Hire Commission to offer an advisory opinion, seconded by Second Warden Lacoste.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

7. Receive and Act on Old Harbor Task Force letter re: name of Old Harbor lots 146 & 147

Kathy Szabo was present for the Old Harbor Task Force and requested the Town change the name of "Pole Harbor Park" to "Old Harbor Park." Her letter was read into the record and is attached to these minutes. Discussion ensued.

Second Warden Lacoste moved to change the name of the Town property at Plat 6, Lots 146 and 147 to "Old Harbor Park" seconded by Mr. Warfel.

Ayes: 1 (Lacoste) Nays: 4 (Gaffett, McGarry, Pike Warfel)

The motion did not carry so the name remains Pole Harbor Park.

8. Receive and act on letter from EUTG re: professional evaluation of decommissioning costs of Deep Water Wind turbines

Ms. Gaffett read the Electric Utility Task Group's recommendation, attached to the minutes, into the record. Electric Utilities Task Group member Bill Penn noted the recommendation was made when the Coastal Resources Management Commission was not planning to include a study of the cost, methodology and structure of decommissioning in the report from their independent verification agent. EUTG member Barbara MacMullan pointed out there are two areas of expertise needed, a legal review of the funding mechanism requiring legal, finance and insurance bonding experience and an engineer who can make recommendations regarding the cost estimates for the decommissioning. Discussion ensued.

Mr. McGarry moved to request the Town Manager to issue a request for proposals in consultation with the Electric Utility Task Group regarding Deepwater Wind's decommissioning financing plan and cost evaluation. The motion was seconded by Mr. Warfel.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

9. Receive and act on Willis Brown/The Moped Man, Inc. letter re: settlement conditions

First Warden Gaffett read Mr. Brown's letter into the record. Attorney Merolla said the letter presumes a fact which does not exist. Mr. Brown signed a document that was a result of a settlement negotiated in US District Court in 1995. He and all the other parties signed an extension in 2012. It is a contractual obligation based on a negotiated settlement, and all the parties except the Moped Man have complied. Discussion ensued.

Mr. Warfel moved to direct the Town Solicitor to write a friendly letter to Mr. Brown to clarify and explain the situation. The motion was seconded by Mr. Lacoste.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

10. Receive and act on Town Clerk memo re: reopen and correct Town Council Jan. 7, 2013 minutes

First Warden Gaffett recused. Second Warden Lacoste led the discussion. The Town Clerk's memo requesting the minutes be reopened and corrected is attached to these minutes. Discussion ensued.

Mr. Pike moved to reopen the minutes of January 7, 2013, seconded by Mr. Warfel.

Ayes: 4 (Lacoste, McGarry, Pike, Warfel) Opposed: 0 Recused: 1(Gaffett)

Mr. Pike moved to accept the minutes as amended, seconded by Mr. McGarry.

Ayes: 4 (Lacoste, McGarry, Pike, Warfel) Opposed: 0 Recused: 1(Gaffett)

11. Boards, Committees, and Commissions:

• reconsider Town Council vote re: John Spier appointment to Planning Board

Ms. Gaffett recused. Second Warden Lacoste led the discussion. There was no motion to reconsider; Mr. Spier's appointment to the Planning Board stands.

• Set date to meet with Conservation Commission re: proposed "tree ordinance"

The Town Council will meet with the Conservation Commission on February 27, 2013.

• Announce Board, Committee and Commission openings

First Warden Gaffett announced openings on the Senior Advisory Committee and the Board of Canvassers.

Receive and act on Building Official Annual Report

Mr. Tillson was not able to attend the meeting. His report was received with appreciation. The Council agreed they would like to meet with him to hear more about green construction.

Mr. Pike moved to accept the Building Official's Annual Report, seconded by Mr. Lacoste.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

12. Correspondence: Block Island Chamber of Commerce re: Interstate Navigation; Mike Beaugard re: Block Island Wind Farm; Decommissioning Costs; Deer Task Force re: changing State Hunting laws to effectuate extermination of BI deer herd

Ms. Gaffett has been in contact with the DEM and USFW regarding a March 20, 2013 meeting.

13. Set meeting date with NS Sewer Commission to discuss tax payer participation for sewer system capital improvements

The First Warden reported the item was postponed at the request of the Sewer Commission.

14. Minutes: February 4, 2013

Ms. Gaffett voted to approve the minutes of February 4, 2013 as amended, seconded by Mr. Lacoste.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

15. Receive and act on Town Solicitor reports and recommendations regarding the following litigation (these discussions may be held in closed session pursuant to Rhode Island Public Laws §42-46-5(a)(2) for the discussion of litigation)

• Act on recommendations re: pending legal action on Plat 8 lot 109 (Pinney wastewater system)

Wastewater Inspector Don Thimble was present. Attorney Merolla reported the wastewater system has been installed and is in compliance, the notice of violation has been removed. The Council levied a \$50 fine for noncompliance beginning November 23, 2012 (74 days before compliance). Ms. Merolla asked the Council whether they wished to dismiss or continue the lawsuit to collect the \$3,700 fine. Discussion of time invested, five or six 6 hours by Ms. Merolla in addition to Mr. Thimble's time.

Mr. Pike moved to assess the full penalty as it is written. Mr. Lacoste seconded for the purpose of discussion.

Discussion of the collection process ensued. Mr. Pike withdrew his motion and Mr. Lacoste withdrew his second.

Mr. McGarry moved to the authorize Town Solicitor to contact Mr. Pinney to discuss the possibility of a settlement, seconded by Ms. Gaffett.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

Discussion of the specifics will be held in closed session.

- Waste Haulers BI, LLC vs. Block Island Recycling Management, Inc, et als (WC 11-729)
“Transfer Station Litigation;”

Attorney Merolla reported hearing for a motion for summary judgment was held January 23 and the parties are waiting for a decision.

- Ballards vs. Land Trust

Attorney Merolla pointed out the Town is not a party to the litigation; the discussion was held in open session. Ms. Merolla reported Ballards filed suit against the Block Island Land Trust at the end of last year on a matter involving a claim on an easement. Ballards alleges the actions of BILT violate an easement and they are seeking appropriate relief in court. The Town’s Building Official was served a subpoena which Ms. Merolla said was onerous, overly burdensome and not specific. On behalf of the Town and the Building Official Ms. Merolla filed an objection to the subpoena. She conferenced with the plaintiff’s attorney and the subpoena was withdrawn.

- Interstate Navigation Company Application to Change Rates (Division PUC Docket 4373)

The Town has entered into the matter as an intervenor. The closed session would be for the Attorney to brief the Town Council on the communication that has been taking place between Interstate and the Division, which was given to Ms. Merolla to share with the Town Council confidentially. Discussion ensued.

At 10:50 First Warden Gaffett moved to enter closed session pursuant to Rhode Island General Law 42-46-5(a)(2) for the discussion of litigation, the Interstate Rate Case and the Pinney wastewater system. The motion was seconded by Mr. Lacoste.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

At 11:45, a motion to move out of closed session was made by Mr. Lacoste and seconded by Mr. Warfel.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

Mr. McGarry moved to seal the minutes, seconded by Mr. Wafel.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

First Warden Gaffett noted one motion was made in the Pinney matter which will not be disclosed at this time because it would affect an ongoing strategy or negotiation.

At 11:45 Mr. Lacoste moved to adjourn, seconded by Mr. Wafel.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel) Nays: 0

Minutes approved: March 6, 2013

Fiona Fitzpatrick,
Town Clerk