

MINUTES OF THE BOARD OF SELECTMEN

January 6, 2020

Meeting held at Town Hall, 139 Main Street, Rowley, MA
7:00 p.m.

MEMBERS PRESENT: Chairman Cliff Pierce; Vice Chairman Joseph Perry; Clerk Robert Snow (Town Administrator Deborah Eagan, Assistant Town Administrator Natalie Lovett) Deana Ziev – ABSENT; Dave Petersen - ABSENT

PUBLIC ATTENDEES: John Sullivan; Chrissy Mason; Tom Corben; Lawrence White – FINCOM; Bernard Cullen – 283 Wethersfield St; Gino Tzortzis – 264 Newburyport Turnpike (Route 1 Auto Sales)

CALL MEETING TO ORDER

Chairman Pierce called the meeting to order at 7:00 p.m. He said the meeting is being video recorded and televised live by Rowley Community Media.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

GENERAL BUSINESS

1. Letter of resignation from Reserve Police Officer Tara Bernard

Chairman Pierce read the resignation letter from Tara Bernard.

Joe Perry made a motion to send a letter of thanks to Tara Bernard, Bob Snow second, all in favor – AYE (3-0) Dave Petersen – ABSENT, Deana Ziev – ABSENT.

NEW BUSINESS

1. Discuss State Massachusetts Firefighter Protective Clothing Grant

Chairman Pierce read the following:

The State Department of Fire Services has awarded the Town a \$2,484 firefighter protective clothing grant. Fire Chief James Broderick will use these funds to purchase firefighter hoods for each firefighter in the Fire Department.

The State Department of Fire Services has sent us the Grant contract documents, which lists Chief James Broderick as the Contractor Manager. The Board of Selectmen needs to vote to authorize Fire Chief James Broderick as the authorized signatory on the Grant paperwork.

Chairman Pierce will need to sign the Contractor Authorized Signatory Listing.

Joe Perry made a motion to authorize Fire Chief Broderick as an Authorized Signatory for the Massachusetts Firefighter Protective Clothing Grant, Bob Snow second, all in favor – AYE (3-0) Dave Petersen – ABSENT, Deana Ziev – ABSENT.

2. Sign Local Initiative Program Compliance Certificate for the sale of 870 Haverhill Street Unit 3B

Chairman Pierce read the following:

An affordable housing condominium at 870 Haverhill Street has been sold through the State Local Initiative Program administered through the State Department of Housing and Community Development.

The sale confirms to the “affordability requirements” and the Compliance Certificate needs to be signed by the Chief Executive Officer of the Town. The Board of Selectmen needs to vote to authorize Cliff Pierce to sign the Local Initiative Program Certificate for the sale of 870 Haverhill Street Unit 3B. Principal Assessor Sean McFadden will notarize Cliff’s signature.

Bob Snow made a motion to authorize Cliff Pierce to sign the Local Initiative Program Compliance Certificate for the sale of 870 Haverhill Street Unit 3B, Joe Perry second, all in favor – AYE (3-0) Dave Petersen – ABSENT, Deana Ziev – ABSENT.

3. Discuss application filed by Gino Tzortzis doing business as Route 1 Auto Sales for a Class II Auto License for 264 and 272 Newburyport Turnpike

Chairman Pierce read the following:

Mr. Gino Tzortzis has filed a Class II Dealer’s License application for 264 Newburyport Turnpike. He indicates in his application that the cars for sale will be parked on an adjacent parcel that he owns, identified as 013-14-F, which is 272 Newburyport Turnpike. The street addresses of both parcels will need to be covered under this application – the sales office and the site where the vehicles are parked. We are required to maintain sketches of car dealer sites showing the location of where the vehicles for sale are parked.

The Town Planner, Health Services and Regulatory Compliance Officer, Conservation Agent, Fire Chief and Police Chief provided comments on this application, which were sent to the Selectmen on December 16, 2019. (copies are attached.) The Planning Board has granted a Special Permit and Site Plan to Nature’s Remedy for a retail marijuana establishment and a registered medical marijuana dispensary at 264 Newburyport Turnpike.

The Zoning Board of Appeals met with Mr. Tzortzis a couple of weeks ago and discussed the sales at 264 Newburyport Turnpike. The ZBA did not discuss the adjacent vacant lot which is Mr. Tzortzis' proposed site for the parked vehicles for sales. Both 264 and 272 Newburyport Turnpike are in the Retail District which doesn't permit the sales of automobiles by right, only if the business has been grandfathered. The last Class II license issued by the Board of Selectmen to 264 Newburyport Turnpike was to Atlantic Auto Solutions. Atlantic Auto Solutions surrendered their license for 264 Newburyport Turnpike in February 2018, as part of a transfer to a new address. Since Atlantic Auto Solutions turned its Class II license for 264 Newburyport Turnpike no used car sales have been licensed to operate out of this address. We cannot find any Class II license issued with an address of 272 Newburyport Turnpike, the adjacent vacant parcel. There is a two-year grandfathering period for non-conforming zoning.

The Board of Selectmen may want to direct the applicant to meet with the Zoning Board of Appeals to discuss the status of the zoning at both addresses, 264 and 272 Newburyport Turnpike, prior to taking any further action on this application.

Chairman Pierce said there is currently a retail marijuana facility, Nature's Remedy, with a Special Permit from the Planning Board for this location. He said site plan approval has been issued, and Nature's Remedy has received a building permit to construct the space. He asked Mr. Tzortzis why he is requesting an auto dealer's license for the same location. Tzortzis responded that he would like to have the license in case the marijuana facility does not open. Pierce stated that the Town does not issue licenses for "just in case reasons," the auto business needs to be operational. Pierce stated that the purpose of the license from the Selectmen is that, after all the permitting is approved and the business is ready to go, they issue the license to operate.

Pierce said that he would prefer Tzortzis to come back at a later time, if Nature's Remedy does not open. Tzortzis said he is OK with this approach, but he wants the Selectmen to be aware that if Nature's Remedy does not go in this location, he would like to continue to operate an auto dealer there. Pierce said the Board will not take action tonight on the Class II Auto License.

Pierce recommended that Tzortzis speak with ZBA about the zoning for these parcels. Debbie Eagan added that the term of use will expire in February, which is 2 years after Atlantic Auto Solutions surrendered their license for 264 Newburyport Turnpike. After February, Tzortzis will need to go before the Zoning Board of Appeals for new Special Permits to operate a used car dealership on the properties before the Selectmen can issue a license. She said the licensing is only issued after all zoning conditions have been met. Eagan said the State is requiring more documentation from the municipalities on the enforcement of the Lemon Law.

Mr. Tzortzis said that he will talk with the ZBA.

OLD BUSINESS

1. Update on Pine Grove School Project

There were no updates on the project.

7:15 p.m. APPOINTMENT Chrissy Mason and John Sullivan to discuss Open Space Residential Development Density Bonus for the conversion of a two-family building to a three-family building at the Twin Hills Farm development

Chairman Pierce read the following:

Attached is the letter submitted by Chrissy Mason and John Sullivan.

Also attached is a copy of the Section 6.4.7 of the Rowley Zoning Bylaws (OSRD Density Bonus).

Also attached is a copy of an email message from Town Counsel Tom Mullen regarding the Zoning Bylaws.

Just a reminder that the Department of Revenue Division of Local Services Law Unit informed us back in November that the OSRD bonus is not a gift to the Town. DLS Law Unit has received this type of inquiry many times from other towns. The DOR says that this is no "donative intent" and that the funds would have to be deposited into the General Fund and appropriated at Town Meeting.

Chairman Pierce summarized that work in exchange for a density bonus is not considered a gift to the Town. He said that because this work is not considered a donation it raises issues of the value of the work and compliance with procurement laws. Pierce asked the applicants for clarification on their request: they are requesting one additional unit in exchange for completing work to build a bridge connecting the state forest property to Pingree Farm? Mr. Sullivan said that is what they are proposing. He said the bridge project was initially created as a volunteer project, but is too complex to be completed by volunteers. Sullivan said he does marine work for a living, so this project seemed to be a good fit.

Pierce said that Town Counsel is recommending the Selectmen not implement this section of the Bylaw and further, that the section be revised. Pierce read the email from Town Counsel Thomas Mullen. Pierce said that this bridge work raises implications for prevailing wage and procurement. They have no idea if the Town is getting appropriate value for this work.

Sullivan asked for clarification on why he can't do work for the density bonus but he could go out tomorrow and do work as a volunteer. Eagan said usually when the Conservation Commission uses volunteers it is trail clean-up work and there is a limit to what they are allowed to do.

Ms. Mason said her understanding is that the funding from state is only sufficient to cover the cost of materials and the Conservation Commission does not have money to pay for the construction. Eagan said there is \$9,700 in Community Preservation Act funds and a \$10,000 State grant. She said that if there isn't enough money to complete the project, the Conservation Commission can request more funds at Town Meeting. Eagan said the work will be procured under MGL Chapter 30 Section 39M, so they won't know until the bids come in whether there

are enough funds to cover construction. Eagan said when projects are bid there are requirements that the contractor must comply with as part of the contract including specification, insurance certificates, and product warranties.

Sullivan said he thought they were coming before the Selectmen to get approval to work on Town property, not for approval of the density bonus. Mason said the Bylaw is vague. Sullivan said he has done test piles out there, with Brent's approval. He said they discovered there is very dense gravel, so he asked Brent if they could use machines to complete the project as it would be a lot of work to do it by hand. Eagan said the issue isn't about the work or volunteering, there is a quantifiable value to the additional housing unit.

Sullivan said the town is getting an additional \$700,000 taxable unit. He said he had hoped that because he grew up in Town, lives in the neighborhood, and isn't a developer, he could get this project done. He said the additional unit would make the building look a lot better and would be a good use for the bonus. Pierce said because the work is not considered a donation, the Town would have to allow other bidders. Sullivan said so if it were a donation, could he sign a waiver with Brent and complete the project. Pierce said he would have to talk with Brent. He said they would not get the density bonus.

Mason asked how the Town determines whether a project is of "substantial" value to the Town under the Bylaw. Pierce said that the opinion of Town Counsel is that the Bylaw is so poorly worded, there is no good way to implement it. Pierce said he was on the Planning Board for many years and he has never seen this Bylaw implemented. Mason asked if the BOS would block the Planning Board from taking a density bonus at all. Pierce said there is a developer in Town proposing a monetary donation in exchange for units, but this has its own issues because the Town would need to accept the funds and then have it appropriated at Town Meeting. He said a scenario could occur where a density bonus payment has been received by the Town, but Town Meeting denies the appropriation on the basis of rejecting the bonus. Pierce added that the Bylaw does not say the density bonus is a right.

Snow and Perry agreed with Town Counsel and Pierce's opinions on the density bonus.

Sullivan asked if they can go before the Planning Board to give a \$35,000 payment in exchange for a density bonus. Pierce said they could but he doesn't know whether the Planning Board would approve it. Mason said that if they go to the Planning Board to ask to go ahead with the bridge project and they say yes, are the Selectmen going to step in. Pierce said that yes, the Selectmen would stop the project because it is on Town property. Pierce said the Selectmen are deciding on the bridge project work, not whether the applicants should receive a density bonus.

Larry White, Finance Committee, asked if this conversion is a paper conversion from 2-3 units or if there is new construction involved. Mason said it is an existing building from the 1980s and they are not increasing the footprint of the building. She said right now it will be a 12,000 square foot building with 2 units, they are proposing to make it 3 units instead. White said that there is a precedent that Sullivan could do this work with Brent's blessing just as they go out and do trail work without formal training. Snow said that the issue is with regards to the exchange for the density bonus, how to you quantify the bonus?

Snow asked Pierce if the Planning Board has seen density bonus proposals. Pierce said that many years ago, a developer proposed to construct a ballfield in exchange for a density bonus but there was so much community opposition that it wasn't approved. Pierce said since that time there have not been any density bonuses. He said that the Falcon Ridge subdivision, which is currently in the permitting process, is proposing a density bonus of 3 units in exchange for \$35,000 per unit, which would increase the number of units from 45 to 48. He said he is not sure where that project stands, the density bonus has not yet been approved by the Planning Board. Pierce said the funds would be put into the Town reserves and Town Meeting would have to appropriate the funds. Mason asked if the funds have to be used. Eagan said that is the intent of the Bylaw, as written.

Bernie Cullen, 283 Wethersfield Street, said the Wild Pastures softball field was going to be built on the developer's property, which took the Town out of the situation. Pierce said the Bylaw reads that the work needs to be for the public good, the fields were going to be given to the Town. Cullen said he hasn't heard anything that precludes applicants from going before Town Meeting to accept funds in exchange for a density bonus, though it would hold up construction. Cullen asked why the ZBA didn't just allow the requested units. Pierce said it falls under the jurisdiction of the Planning Board. Pierce said the OSRD density is determined through a fixed process. He said the applicants received the number of units they were entitled to under the OSRD, which some people may argue was already generous because there were issues with the cul-de-sac and length of driveway that the Board gave allowances for when calculating the density.

Joe Perry made a motion to deny the proposal to construct a bridge on Town property in exchange for a density bonus, Bob Snow second, all in favor – AYE (3-0) Dave Petersen – ABSENT, Deana Ziev – ABSENT.

7:10 to 7:15 p.m. PUBLIC COMMENT

There were no public comments.

ANNOUNCEMENTS

- Eastern Essex Veterans Board of Directors Meetings are now being video-recorded and shown on Rowley Community Media
- Vacancies:
 - 1) One vacancy on the Conservation Commission;
 - 2) One vacancy on the Zoning Board of Appeals Associate seat; and
 - 3) Several vacancies on the Rowley Cultural CouncilInterested residents should send a letter of interest to the Board of Selectmen or call the Selectmen's Office at 948-2372.

ADJOURN

Chairman Pierce called for a motion to adjourn. Bob Snow so moved, Joe Perry second, all in favor – aye (5-0).

Meeting adjourned at 8:02 p.m.

Respectfully submitted,
Natalie Lovett
Assistant Town Administrator

ATTACHMENTS:

1. Letter from Tara Bernard to Chief Dumas resigning from the position of Reserve Police Officer
2. Meeting memo regarding New Business #1: Discuss State Massachusetts Firefighter Protective Clothing Grant
3. Letter from Fire Chief James Broderick regarding Commonwealth of Massachusetts Firefighter protective clothing grant with attachments
4. Meeting memo regarding New Business #2: Sign Local Initiative Program Compliance Certificate for the sale of 870 Haverhill Street Unit 3B
5. Letter from Justin DeFilippo, Esq. regarding Compliance Certificate for 870 Haverhill Street Unit 3B
6. Compliance Certificate for 870 Haverhill Street Unit 3B
7. Letter from Massachusetts Department of Housing & Community Development regarding the Right of First Refusal for 870 Haverhill Street, Unit 3B
8. Assessor property card for 870 Haverhill Street, Unit 3B
9. Meeting memo regarding New Business #3: Discuss application filed by Gino Tzortzis doing business as Route 1 Auto Sales for a Class II Auto License for 264 and 272 Newburyport Turnpike
10. Application for an Auto License filed by Gino Tzortzis dba Route 1 Auto Sales
11. Assessor property card for 272 Newburyport Turnpike
12. Assessor property card for 264 Newburyport Turnpike
13. Memo from Deborah Eagan to Board of Selectmen regarding Class II License Application – 264 Newburyport Turnpike with attachments
14. Meeting memo regarding Old Business #1: Update on Pine Grove School Project
15. Meeting memo regarding 7:15 p.m. Appointment: Chrissy Mason and John Sullivan to discuss Open Space Residential Development Density Bonus for the conversion of a two-family building to a three-family building at the Twin Hills Farm development
16. Email from Town Counsel Tom Mullen regarding OSRD Density Bonuses in Return for Public Improvements
17. Excerpt from the Rowley Protective Zoning Bylaw of Section 6.4.7
18. Email from Chrissy Mason and John Sullivan requesting to be added to Board of Selectmen agenda with attached letter