

Selectmen's Meeting
September 26, 2011
4:00 pm

A meeting of the Board was held on the above date in the Fred B Morgan Jr. Meeting Room, Town Hall. Members present were: Arthur Smadbeck, Chairman; Michael J. Donaroma, and Margaret E. Serpa. Also present was Ms. Pamela Dolby.

At 4:00 p.m. Mr. Smadbeck opened the meeting and read the notice for the first item aloud:

“Consideration of a proposal to forward to the Martha’s Vineyard Commission (MVC) a nomination to designate as Special Ways within the Special Ways Zone of the Island Road District of Critical Planning Concern under St. 1977, c. 831, five historic paths (Ben Tom’s Road, Middle Line Path, Pennywise Path, Tar Kiln Path, and Watcha Path). The Planning Board originally submitted a nomination of these five ways to the MVC on August 1, 2007.”

He then recused himself, turning chair duties over to Mr. Donaroma.

Mr. Donaroma stated that the first item on the agenda was to renominate some special ways to the Martha’s Vineyard Commission (MVC). He recognized Mr. Ronald Rappaport, Town Counsel.

Mr. Rappaport stated that the issue was complicated and summarized. In 2007 five ancient ways were submitted to the MVC for determination as ancient ways to be added to the District of Critical Planning. The ancient ways had gone to Town Meeting and the voters had approved the nomination. The decision of the MVC and the Town was challenged by an abutter and taken to court.

The court found that the MVC “failed to make sufficient findings” and gave them 30 days to correct the issues. The MVC did correct those issues within the allotted timeframe.

The town and MVC are appealing the first decision.

The abutter now alleges that there were open meeting law violations and that consideration was inappropriate by the MVC. This re-referral just starts the ball rolling at the MVC and eliminates the alleged procedural deficiencies. They can be re-referred by the Board of Selectmen, Board of Health, or the Planning Board. Mr. Rappaport sees the re-referral as an economic decision that would save the town legal expenses in the long run. He sees it as a back up if the first decision is upheld. It is possible the ancient ways may need to go back to a town meeting vote. That is unclear at this point.

Ms. Serpa moved to refer the ancient ways to the Martha’s Vineyard Commission for discussion. Mr. Donaroma seconded.

Mr. Donaroma asked Mr. Rappaport if the appeal was decided in the town’s favor, did the Board still have to re-refer? Does the re-referral go away then?

Mr. Rappaport responded affirmatively to each question. The reply brief was due October 2nd.

Mr. Robert M. Cavallo, member of the Planning Board, thanked the Board of Selectmen for keeping the process moving.

Mr. Donaroma asked what would happen if the Board did not re-refer.

Mr. Rappaport replied that he didn’t want there to be a gap. This re-referral only addresses the MVC procedural issues and carries out the will of the voters.

Mr. Donaroma then asked if anyone else would like to speak in favor. Then asked if there was anyone against. He then recognized Mr. Benjamin Hall Jr. Mr. Hall’s family is the abutter in the lawsuit.

Mr. Hall stated that his family owns 60 acres abutting the proposed ancient ways. He stated that there were deficiencies the MVC and the Town were making a great effort to downplay. He stated that the ways were not public and cited page 18 of the decision by Judge Cornelius Moriarty. (The decision quoted is the one being appealed by the town.)

Mr. Hall continued that all the designations were invalid and questioned the “overwhelming” vote at town meeting because it was a special town meeting. He alleged that voters were told not to allow and amendments on town meeting floor. He urged the Board of Selectmen not to re-refer and to stop wasting money. He called it convoluted. He then stated that Mr. Bill Veno at the MVC told him that he could maintain his own roads if they are not public roads which he and several other people have been doing.

Mr. Fred Mascolo, member of the Planning Board, asked how long the appeal would take.

Mr. Rappaport replied perhaps a year.

Mr. Mascolo wanted to clarify that the town lost the first suit.

Mr. Rappaport stated that the court found some deficiencies that the town and MVC are appealing. He thinks that they may see differently in the second reading of the regulations. He stated that he is not trying to push an unnecessary procedure and advises this is the best route.

Mr. Donaroma asked if there was any more input. There being none, the Board voted unanimously to re-refer the ancient ways.

Mr. Smadbeck returned and resumed chairing duties. He then recognized Mr. Paul Bagnall, Shellfish Constable.

Mr. Bagnall stated that the Shellfish Committee had unanimously voted to set the Scallop Season as follows:

- Recreational Bay Scallop Season will begin in Edgartown on October 1, 2011 with a limit of one ten gallon wash basket, including shells, per week. No dragging in Cape Pogue until Friday October 21, 2011. No dragging in Sengekontacket all season.
- Commercial Bay Scallop Season will begin in Edgartown on October 24, 2011 in all areas with a limit of three ten gallon wash baskets per day, including shells, Monday through Friday.
- Both seasons end on March 31, 2012. All other regulations remain in effect

Ms. Serpa moved to approve the Scallop Season as approved by the Shellfish Committee. Mr. Donaroma seconded. Unanimous.

Mr. Donaroma asked Mr. Bagnall if this would be a good year.

Mr. Bagnall was optimistic. They had some successful seed rescues and he expected about 4,000 bushels out of Cape Pogue. He then stated that he was unsure about the opening of Sengekontacket Pond because there had been some bad test results. It would probably still be open to scalloping, just closed to clamming until the state approves. Eel Pond would be open October 1st.

The Board then approved the following items:

An Occupy the Sidewalk permit for Mr. Richard Saint Amant at 1 South Water St. in front of Jack Wills.

A Yard Sale Permit for Eric Basset at 201 Upper Main St. with permission from the Building and Zoning Inspector.

The minutes from 9/9/11, 9/12/11, and 9/19/11.

They read a note from Ms. Joan Adibi asking the Board not to sign any Comcast contract not including Chappaquiddick. The Board stated that negotiations were ongoing.

They read a letter from Mr. Monahan complimenting the Fire Department and EMTs in a recent incident he had.

Ms. Dolby stated that Mr. Tom Wallace had an offer to buy a 4 acre parcel of land at Herring Creek Farm. The town has a first refusal and 120 days to respond. She has sent the matter over to Town Counsel to seek his opinion and has notified the appropriate boards. The new owners may have to pay the back taxes because of the 61A agricultural discount.

Approve the new gift acceptance procedures as recommended by the Town Accountant letter of 9/26/2011

Ms. Dolby then announced that the books for FY2011 had been closed and that the free cash amount was \$1,365,154.

She stated that there had been many reactions to the article in the paper about the bungalow on Morse Street being torn down. Many residents have asked to have the Historic District expanded. They hate to see all the historic homes in town torn down.

Mr. Donaroma stated that long ago they had set up a committee to establish the Historic District.

Ms. Dolby stated that the HDC has also been working on adding an abandoned property section to their bylaw.

Mr. Donaroma stated that it would be difficult but worth a shot.

It was decided that the Board would write a letter to the HDC encouraging them to proceed.

Mr. Smadbeck stated that he had run into Mr. John Lovewell and he wanted to clarify that he had a bungalow and that it was still standing with no intention of tearing it down.

Mr. Donaroma then gave a report from the Library Building Committee. He stated that they were getting ready for Special Town Meeting so they could give an update on the new library status. They may want to ask the town to sell the Warren House at the meeting. It had not been decided yet. They were going to have another meeting on the 3rd and establish a firmer plan.

At 4:44pm Ms. Serpa moved to go into executive session for personnel reasons. Mr. Donaroma seconded. Followed by a unanimous rollcall vote.

Approved:

Arthur Smadbeck, Chairman

Michael J. Donaroma

Margaret E. Serpa
Board of Selectmen

Respectfully submitted,

Kristy Rose
Assistant