

TOWN OF SCITUATE
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Advisory Committee Meeting Minutes
Thursday, March 10, 2022
Zoom Video/Audio Conference – 7:00 pm

Pursuant to Chapter 20 of the Acts of 2021, Scituate Advisory Committee Members held the March 10, 2022 meeting via Zoom Video and/or Audio (Dial-in for those with only phone access). All participants participated remotely.

Committee Members Present: Jamie Gilmore; Chair, Elise Russo, Jerry Kelly, Missy Seidel, Patrice Metro, Lincoln Heineman and Lynda Ferguson

Committee Members Not in Attendance:
Dan McGuiggin, Michael Westort

Also in Attendance: Nancy Holt, Finance Director/Town Accountant; Seth Pfeiffer, SCTV Facilitator; James Boudreau, Town Administrator; Tony Vegnani, Select Board Member; Karen Connolly, Select Board Chair; Karen Canfield, Select Board Member; Ellen Kasper, petitioner; David Dardi, petitioner

Mr. Gilmore called the meeting to order at 7:02 p.m.

Mr. Kelly made a motion to accept the agenda which was seconded by Ms. Metro and voted unanimously in favor (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes, and Ms. Ferguson-yes

Mr. Gilmore called for a motion to accept the minutes as further amended of the March 3, 2022 meeting which was made by Mr. Kelly seconded by Ms. Russo. The minutes were voted in favor (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes, and Ms. Ferguson-yes

Mr. Kelly noted his disappointment that the zoning board articles had not yet been voted by the Select Board which will not occur until the date that the write-ups are due for the booklet. Ms. Ferguson agreed but noted that the Planning Board had not yet taken their final votes on the articles which was what was delaying the Select Board. Mr. Gilmore concurred that the delay was not consistent with the charter deadlines. Mr. Heineman stated that article language that had changed should result in a revisiting of the recommendation at the meeting before the annual town meeting. Ms. Holt noted that there is a public hearing for March 16th and the members

could potentially take their votes at their time. Mr. Kelly recommended that the marijuana zoning articles be made as a consent agenda.

Chief Thompson spoke about the new proposed general bylaw change relevant to camping, tenting and sleeping in public. He noted the previous year's incident with recreational campers in Cole Parkway and having an avenue to address that in the future. He noted this bylaw had nothing to do with harming persons experiencing homelessness and they would offer resources to any persons to assist in their situation. He stated the permission from the landowner provides some level of enforcement when the landowner cannot be reached or readily identified. He informed members that he had looked at other communities, especially coastal communities, and how they were addressing this issue in their bylaws.

Mr. Heineman stated the intent of the proposed bylaw could be different than the effect and the bylaw would ban homelessness. Ms. Ferguson stated that the Scituate Police Department makes great efforts to assist people that do not have a place to stay. She noted that the proposed bylaw is needed to prevent camping in public places as occurred last year and is occurring in cities across the country. Mr. Gilmore asked the Police Chief of the other services available and the Chief noted the social services manager, other entities and private businesses such as the Inn. The Chief noted a MA Supreme Court ruling that a person that is actually homeless is protected from legal action due to that reason. Mr. Kelly stated the article had previously been voted and the discussion was moot to which the Chair noted the article could be reconsidered if the members chose to do so. Mr. Heineman stated the bylaw was written poorly and should be re-drafted as was the sign bylaw.

Mr. Gilmore made a motion to reconsider Article 26 for General Bylaw Amendment – New Section 30125 – Tenting, Camping and Sleeping in Public the meeting which was seconded by Ms. Ferguson; the Committee voted against (3-4) by roll call vote; Mr. Gilmore-yes, Ms. Russo-no, Mr. Kelly-yes, Ms. Seidel-no, Ms. Metro-no, Mr. Heineman-no, and Ms. Ferguson-yes.

Discuss/Vote Special and Annual Town Meeting Articles
Article 3 – Capital Plan

Mr. Heineman asked about the balance in beach revolving account and why the beach improvements. Ms. Holt responded it was \$443,000 and the funding was from free cash as this was for stair repairs as well as accessibility. Mr. Heineman asked about the two projects that were changed by the Select Board relevant to the Cedar Point seawall and the Oceanside Seawall reduction to \$4M. Ms. Holt responded that the Cedar Point seawall was deferred to the fall town meeting as the partner for the project, Army Corps of Engineers, had asked for additional funds for study so the project scope and cost were not finalized. She noted that the Oceanside project was multiple phases and the first phase is recommended but the phases 2- 4 are deferred to the fall to allow time for the permitting to be completed and the easements obtained as well as receive the outcomes of multiple grant applications. Mr. Heineman stated that the Humarock Water mains should be supported by betterments as the project was moved up due to it being adjacent to the ocean. Ms. Holt responded that the project had already been approved for design and the Water Supervisor had testified that the loss of water was up to 50% and the water for this area was provided by the Town of Marshfield which is an operational budget cost to ratepayers.

Mr. Gilmore asked how old the water mains were and Mr. Boudreau replied they were at least 50 years old.

Ms. Metro made a motion to vote on Article 3 – Capital Plan except for Item B-Oceanside Seawall Replacement, Article EE-Automated License Plate Reader System which was seconded by Ms. Ferguson; the Committee voted against (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes and Ms. Ferguson-yes.

Mr. Heineman stated that protection of the business district is the number one priority and that residential foreshore protection without a betterment program should be put on hold until the cost of the harbor business district protection is identified. Mr. Boudreau responded that the genesis of this project was to address the flooding in that area which negatively impacts the sewer pump station which must pump all the water out of that area.

Ms. Metro made a motion to vote on Article 3 – Capital Plan, Item B-Oceanside Seawall Replacement which was seconded by Ms. Ferguson; the Committee voted in favor (6-1) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-no and Ms. Ferguson-yes.

Mr. Heineman stated that the Advisory Committee had taken a position against the automated license plate readers four years ago and it was an invasion of privacy and the existing methods used currently are fine. Mr. Boudreau informed members of the lack of staff is impacted by police reform so the old methods will not continue to work. Chief Thompson noted that the department is always looking for ways to become more efficient and the loss of seasonal employees to assist in summer parking enforcement is a concern. The Chief noted the information is already in public view and the Police Department has the legal right to run that plate. He noted that Abington, Braintree, Hingham, Hull and others have been using this technology very successfully. Mr. Gilmore asked if it was in 2 or 3 vehicles and Chief Thompson confirmed it would not be in every vehicle, perhaps 15% of the fleet. Mr. Gilmore asked if a license plate was protected under privacy law and the Chief responded that it is in public view and they can currently type in the plate in the computer in their car. Ms. Ferguson noted some special cases where human interaction was necessary.

Mr. Heineman asked if this was only for beach parking enforcement and the Chief responded no. Chief Thompson said the software could also be used for the two hour parking limit in Cole Parkway or other business options such short-stay parking for fishing/surfing. Mr. Heineman asked if the data that is collected is stored and the Chief said yes. Mr. Heineman stated this is the privacy issue.

Ms. Russo made a motion to vote on Article 3 – Capital Plan, Article EE-Automated License Plate Reader System which was seconded by Ms. Metro; the Committee voted in favor (6-1) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-no and Ms. Ferguson-yes.

Article 4 – General Fund Budget

Ms. Holt noted the distributed sheet with the seven changes caused by the votes of the Financial Forecast Committee.

Ms. Metro made a motion to vote on Article 4 – General Fund Operating Budget in the amount of \$89,557,298 which was seconded by Ms. Russo; the Committee voted unanimously in favor (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes and Ms. Ferguson-yes.

Review of Wind Turbine Articles

Mr. Gilmore provided a summary of the two articles. Mr. Kelly stated that the Town was treating this as a revenue issue and not in the manner of other communities as a public nuisance. He further stated that if it was a public nuisance then the Town would not be liable. Mr. Kelly listed multiple items from the Freedom of Information Act documentation against a former employee. Mr. Boudreau responded that the employee was not present to respond and Ms. Metro agreed. Mr. Boudreau noted it was not the Advisory Committee job to address whether the turbine is a public nuisance that is up to the Board of Health and Select Board.

Ms. Canfield shared her screen to show a presentation. She summarized the two articles of a curtailment from 11pm to 6 am year-round in Article 14 and a resolution to direct the Select Board to shut down the turbine permanently in Article 28. She displayed and summarized the timeline she displayed on the screen relevant to the turbine.

Ms. Canfield reported that the Select Board had voted 3-2 to support a year-round partial curtailment as outlined in Article 14 estimated to cost \$300,000. She stated the Select Board felt it was appropriate to bring this article before town meeting as this was a year-round curtailment, had a greater cost and there had been prior town meeting votes authorizing the turbine's operation. She also stated that the Select Board voted 5-0 against Article 28 for the permanent shut down of the turbine. She further commented that even if there was a credible study stating the turbine was not in compliance with MassDEP regulations it did not mean there would be a shut down of the turbine but instead the turbine operator had the opportunity to bring the turbine into compliance. She stated that the local and state public nuisance regulations had not been violated based in the study results. The Town has two separate studies conducted by credible entities stating the turbine was in compliance with the regulations as defined by the State and the Town. She acknowledged that additional information had been provided by the petitioners relevant to the compliance but the Town has documentation to the contrary.

Ms. Metro asked about mitigation offers made to the residents. Ms. Canfield responded that several options had been put on the table and the residents had not yet responded. Mr. Gilmore asked about retaining acoustical engineers to work with the residents that wish to participate to address some of the negative effects. Mr. Kelly asked if these solutions would impact the four or five months of the year to sit on their decks. Ms. Ferguson stated that it was similar to those persons living near train tracks and it affects people differently. Mr. Gilmore asked if the MassDEP found the turbine to be in compliance. Ms. Canfield responded the MassDEP does not

test for compliance but sets the standards. Ms. Canfield stated they asked the MassDEP to review the protocols of the test. Ms. Russo asked how the firms were chosen and Ms. Boudreau said it was a public bid with minimum qualifications. Ms. Ferguson noted there was no incentive for the Town to hire a company that would provide a bad report as it is not the Town's responsibility to fix it.

Ms. Russo noted her concern that there were two very divergent opinions relevant to the outcome of the tests. Mr. Kelly stated it was impacted by the person issued the RFP and setting the testing protocols. He further noted that the MassDEP does not specify what needs to be tested for only the limits. Mr. Gilmore stated that it would not be acceptable if American Testing Protocols were not followed. Mr. Gilmore said the focus should be on mitigation rather than shut down due to the liability to the Town. Ms. Canfield stated that testing is not part of either of the articles. She commented that even if the testing showed there was non-compliance, it would not necessarily result in a shut down as the turbine operator would still have an opportunity to address the non-compliance issue.

Mr. Kelly made a motion to provide new information with a limit of 3 minute limit to which any member can object if the information is determined not to be new which was seconded by Mr. Heineman; the Committee voted unanimously in favor (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes and Ms. Ferguson-yes.

Ms. Kasper of 120 Gilson Road noted that she had been affected by the turbine since the beginning and no mitigation had ever been offered to her. She stated the MassDEP did not approve of the protocols and there was not testing in homes or during the worst case conditions. Mr. Dardi stated that he was not asked to participate in the writing of the RFP for testing despite multiple attempts to contact the Town and approaching the DEP.

Ms. Seidel asked if there was any other recourse to recoup funds other than through a breach of contract by Scituate LLC if the Town decided to seek to shut down the turbine based on the information that has been learned from other towns /state/ wind energy industry over the past several years relevant to the operation of an industrial turbine in a residential area. Ms. Boudreau replied that Falmouth did receive \$1.5M in assistance and that the \$9.3M is not a final number. Mr. Kelly identified the source as Mass Clean Energy Center. Mr. Kelly stated he was not sure that the Town had any liability. Ms. Russo said she did not feel she had sufficient information to decide the cost of a shutdown of the turbine.

Mr. Kelly made a motion to discontinue discussion and vote on the articles seconded by Mr. Heineman;

Ms. Seidel asked if the Town has the ability to direct Scituate Wind to a permanent shutdown at night and would such a directive impact other parts of the contract with Scituate Wind LLC. Mr. Boudreau said it is a voluntary curtailment and he thought they would continue to agree to it as they are being made whole monetarily. Ms. Metro asked for clarification of \$300,000 loss which Mr. Boudreau responded was part revenue and part expense. Mr. Vegnani stated the cost was \$50,000 to \$175,000 loss annually.

the Committee voted unanimously in favor (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes and Ms. Ferguson-yes.

Mr. Kelly made a motion to vote on Article 14 – Partial Curtailment of Wind Turbine which was seconded by Mr. Heineman; the Committee voted unanimously in favor (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes and Ms. Ferguson-yes.

Mr. Kelly made a motion to vote on Article 28 – Resolution to Shutdown Wind Turbine which was seconded by Mr. Heineman;

Ms. Russo asked what the language in the petition of “or take any other action relative thereto”.

the Committee voted majority in favor (6-1) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes and Ms. Ferguson-no.

Ms. Ferguson stated that in watching the Select Board meetings; she noted that it was her impression that the marijuana zoning should be voted in case the ban was overturned. She was concerned that if the zoning was in place it might be illusionary zoning if the ban is not overturned. Mr. Boudreau stated that if you are in favor of having marijuana establishments then vote yes on everything and if not, vote no on all the articles relevant to marijuana.

Review of Advisory Committee Booklet

Ms. Holt reviewed the articles voted by the Select Board to be on the consent agendas. Ms. Holt informed the members that the draft booklet was underway.

Other Business

Ms. Holt informed members that their next meeting was the joint public hearing required by the charter between the Advisory Committee and the Select Board which was scheduled as a hybrid ZOOM meeting for Wednesday, March 16, 2022 at 7:00 PM. She asked if the members wanted to have a separate ZOOM room to retire to after the meeting or stay on the call to discuss any further action on their votes as Planning Board would have made their final votes at their March 10th meeting and final article language was expected on March 15th and the Community Preservation was taking their final vote on the reallocation of \$100,000 from annual town meeting article to the special town meeting article for the lighthouse restoration at their March 14th meeting. Discussion ensued amongst the members relevant to having an additional meeting to discuss any change to votes already taken. Mr. Gilmore directed Ms. Holt to post the meeting for March 16th.

Mr. Kelly made a motion to adjourn the meeting which was seconded by Mr. Heineman at 9:54 p.m.; the Committee voted unanimously in favor (7-0) by roll call vote; Mr. Gilmore-yes, Ms. Russo-yes, Mr. Kelly-yes, Ms. Seidel-yes, Ms. Metro-yes, Mr. Heineman-yes, and Ms. Ferguson-yes.

Respectfully Submitted,

Nancy Holt
Recorder