

## BOARD OF SELECTMEN

### MINUTES

**March 14, 2012**

Board met in session at 7:30 a.m. in the Selectmen's Meeting Room at Abbot Hall.

Present (constituting a quorum):

Jackie Belf-Becker, Chair  
Harry C. Christensen, Jr.  
Judith R. Jacobi  
Bret T. Murray  
James E. Nye

#### **PUBLIC HEARING. Takings of an Easement.**

**Tioga Way.** Assistant Town Counsel, Lisa L. Mead was present. The Chair opened a public hearing for the Taking of an easement in Tioga Way for water and sewer purposes as authorized by Article 24 of the 2010 Annual Town Meeting. Said notice having been sent by this Board on January 18, 2012 to the following owners:

24 Tioga  
Whim & Impulse LLC  
24 Tioga Way  
Marblehead MA 01945  
New Office Realty Trust of Marblehead  
Edward Moore, Trustee (40 Tioga Way)  
8 Doaks Lane  
Marblehead, MA 01945  
JEM Realty Trust  
Michael J. O'Connor, Trustee (35 Tioga Way)  
P.O. Box 631  
Marblehead, MA 01945  
Tioga Way LLC (21 Tioga Way)  
8 Doaks Lane  
Marblehead, MA 01945  
Nullarbor Realty Trust  
William Hatch Trustee (20 Tioga Way)  
3 Page Road  
Marblehead MA 01945  
BECC Inc  
Robert Erbetta President (Road itself)  
P.O. Box 44  
Marblehead MA 01945

Andrew Petty, Director of Public Health, spoke in favor of the taking. Rosanne Phelan, Tioga Way, expressed concerns regarding road closures and the impact to businesses and

asked for clarification of the project. Ms. Mead stated that at no time will the road be completely closed and that the project manager will notify all abutters prior to the start of the project, which is estimated for January 2013. No one spoke against it. The Public Hearing was closed. Motion made and seconded that the Board of Selectmen adopt the Order of Taking for a permanent Water and Sewer Easement, as approved by Article 24 at the 2010 Town Meeting, for a property located at Assessors Map 153, Lot 3Y 0, within the Town of Marblehead. The permanent Easement is shown as "Taking Area B, Utility Easement" on a plan entitled "Easement Plan of Land, Tioga Way, Marblehead, Massachusetts," prepared by WSP Sells Transportation and Infrastructure, 155 Main Dunstable Road, Suites 120 & 125, Nashua, NH 03060, and dated November 30, 2011 (which is the same land as shown on the plan entitled "Town of Marblehead Landfill Closure and Transfer Station Project, Proposed Tioga Way Easement" and dated January 18, 2010).

The purpose of the Order of Taking is to acquire an easement interest in the aforesaid Taking Area B to allow for the installation and maintenance of water and sewer lines by the Town of Marblehead, for the health and welfare of its inhabitants, including but not limited to: the right to lay, construct, operate and maintain them; the right of excavation to provide access thereto; the right of entry upon the aforesaid property, by foot or by vehicle, with or without equipment, in connection with the exercise of said rights; and any and all other rights incidental thereto and not inconsistent with the foregoing. Said rights are to be exercised in the Town's sole and unfettered discretion. The owner(s) of the aforesaid property, their successor(s) and assign(s) may pass and repass over and upon Taking Area B and shall retain all rights to use the same for any and all purposes not inconsistent with the rights herein granted; provided, however, that no permanent structure that may unreasonably interfere with the Town's rights as aforesaid shall be erected over, under or upon Taking Area B at any time, nor shall shrubbery or tree(s) be planted thereupon without the express, written permission of the Town.

Should the Town's use of Taking Area B for the aforesaid purposes result in damage thereto, the Town's sole responsibility is to restore the same as nearly as practical to its condition immediately prior to said damage; provided, however, that in the event improvements are made to Taking Area B, whether consistent or inconsistent with the foregoing, the Town shall not be required to replace the same with other than grass, reasonable and normal landscaping or asphalt, as the case may be. The foregoing right and easement shall be assignable and otherwise transferrable at the will of the Town, subject to the conditions referenced above.

And further that the Board of Selectmen moves to award damages in the amount of two thousand five hundred and 00/100 dollars (\$2,500.00) in accordance with the appraisal report dated July 11, 2011, and prepared by A.M. Appraisal Associates, Inc., 131 Main Street, Malden, MA 02148. Moved by Mr. Christensen, seconded by Mrs. Jacobi. On a polled vote the Board voted as follows: Mr. Murray, in favor; Mr. Christensen, in favor; Mrs. Jacobi, in favor; Mrs. Belf-Becker, in favor; Mr. Nye, in favor.

#### **40 Tioga Way**

The chair opened the public hearing for the Taking of an easement in 40 Tioga Way for water and sewer purposes as authorized by Article 25 of the 2010 Annual Town Meeting. Said notice having been provided on January 18, 2012 to the following owner: New Office Realty Trust of Marblehead, Edward T. Moore, Trustee, 8 Doaks Lane, Marblehead, MA 01945.

Andrew Petty, Director of Public Health spoke in favor of the taking. No one spoke against. The public hearing was closed. Motion made and seconded to approve as follows: That the Board of Selectmen adopt the Order of Taking for a permanent Water and Sewer Easement, as approved by Article 25 at the 2010 Town Meeting, for a property located at 40 Tioga Way, Assessors Map 152, Lot 12, within the Town of Marblehead. The permanent Easement is shown as "Taking Area A, 20' Wide Water & Sewer Easement" on a plan entitled "Easement Plan of Land, Tioga Way, Marblehead, Massachusetts," prepared by WSP Sells Transportation and Infrastructure, 155 Main Dunstable Road, Suites 120 & 125, Nashua, NH 03060, and dated November 30, 2011 (which is the same land as set forth on a plan entitled "Town of Marblehead Landfill Closure and Transfer Station Project, Proposed Water and Sewer Easement" and dated January 18, 2010).

The purpose of the Order of Taking is to acquire an easement interest in the aforesaid Taking Area A to allow for the installation and maintenance of water and sewer lines by the Town of Marblehead, for the health and welfare of its inhabitants, including but not limited to: the right to lay, construct, operate and maintain them; the right of excavation to provide access thereto; the right of entry upon the aforesaid property, by foot or by vehicle, with or without equipment, in connection with the exercise of said rights; and any and all other rights incidental thereto and not inconsistent with the foregoing. Said rights are to be exercised in the Town's sole and unfettered discretion. The owner(s) of the aforesaid property, their successor(s) and assign(s) may pass and repass over and upon Taking Area A and shall retain all rights to use the same for any and all purposes not inconsistent with the rights herein granted; provided, however, that no permanent structure that may unreasonably interfere with the Town's rights as aforesaid shall be erected over, under or upon Taking Area A at any time, nor shall shrubbery or tree(s) be planted thereupon without the express, written permission of the Town.

Should the Town's use of Taking Area A for the aforesaid purposes result in damage thereto, the Town's sole responsibility is to restore the same as nearly as practical to its condition immediately prior to said damage; provided, however, that in the event improvements are made to Taking Area A, whether consistent or inconsistent with the foregoing, the Town shall not be required to replace the same with other than grass, reasonable and normal landscaping or asphalt, as the case may be.

The foregoing right and easement shall be assignable and otherwise transferrable at the will of the Town, subject to the conditions referenced above.

And further that the Board of Selectmen moves to award damages in the amount of six thousand five hundred and 00/100 dollars (\$6,500.00) in accordance with the appraisal report dated July 11, 2011, and prepared by A.M. Appraisal Associates, Inc., 131 Main

Street, Malden, MA 02148. Moved by Mr. Christensen, seconded by Mrs. Jacobi. On a polled vote the Board voted as follows: Mr. Murray, in favor; Mr. Christensen, in favor; Mrs. Jacobi, in favor; Mrs. Belf-Becker, in favor; Mr. Nye, in favor.

### **151 Green Street.**

The Chair opened the public hearing for the Taking of an easement in 151 Green Street, stormwater management and roadway purposes as authorized by Article 26 of the 2010 Annual Town Meeting. Said notice having been provided on January 18, 2012 to the following owner: Green Street Realty Trust, Susan Muldoon, Trustee, 2 Walnut Street, Marblehead MA 01945

Andrew Petty, Director of Public Health spoke in favor of the taking. No one spoke against. The public hearing was closed. Motion to approve as follows: That the Board of Selectmen adopt the Order of Taking for a permanent Stormwater Management and Access Road Easement, as approved by Article 26 at the 2010 Town Meeting, for a property located at 151 Green Street, within the Town of Marblehead. The permanent Easement is shown as “Stormwater Management & Access Road Easement” on a plan entitled “Easement Plan of Land, 151 Green Street, Marblehead, Massachusetts,” prepared by WSP Sells Transportation and Infrastructure, 155 Main Dunstable Road, Suites 120 & 125, Nashua, NH 03060, and dated November 30, 2011 (which is the same land as shown on the plan entitled “Town of Marblehead Landfill Closure and Transfer Station Project, Proposed Land Taking on Muldoon Property” and dated January 18, 2010).

The purpose of the Order of Taking is to acquire an easement interest in the aforesaid Stormwater Management & Access Road Easement to allow for the installation and maintenance of facilities for stormwater management and road construction by the Town of Marblehead, for the health and welfare of its inhabitants, including but not limited to: the right to install, operate and maintain such facilities; the right of excavation and construction, if necessary, in connection therewith; the right of entry upon the aforesaid property, by foot or by vehicle, with or without equipment, in connection with the exercise of said rights; and any and all other rights incidental thereto and not inconsistent with the foregoing. Said rights are to be exercised in the Town’s sole and unfettered discretion. The owner(s) of the aforesaid property, their successor(s) and assign(s) may pass and repass over and upon the Stormwater Management & Access Road Easement and shall retain all rights to use the same for any and all purposes not inconsistent with the rights herein granted; provided, however, that no permanent structure that may unreasonably interfere with the Town’s rights as aforesaid shall be erected over, under or upon the Stormwater Management & Access Road Easement at any time, nor shall shrubbery or tree(s) be planted thereupon without the express, written permission of the Town.

Should the Town’s use of the Stormwater Management & Access Road Easement for the aforesaid purposes result in damage thereto, the Town’s sole responsibility is to restore the same as nearly as practical to its condition immediately prior to said damage; provided, however, that in the event improvements are made to the Stormwater

Management & Access Road Easement, whether consistent or inconsistent with the foregoing, the Town shall not be required to replace the same with other than grass, reasonable and normal landscaping or asphalt, as the case may be.

And further that the Board of Selectmen moves to award damages in the amount of five thousand and 00/100 dollars (\$5,000.00) in accordance with the appraisal report dated July 11, 2011, and prepared by A.M. Appraisal Associates, Inc., 131 Main Street, Malden, MA 02148. Moved by Mr. Christensen, seconded by Mrs. Jacobi. On a polled vote the Board voted as follows: Mr. Murray, in favor; Mr. Christensen, in favor; Mrs. Jacobi, in favor; Mrs. Belf-Becker, in favor; Mr. Nye, in favor.

**FAIR HOUSING COMMITTEE. Interviews. Appointments.** Virginia Healy-Kenney, 23 Beacon Street, and Jacqueline Mara Lynch, 20 Ocean Avenue, appeared before the Board seeking appointment to the Fair Housing Committee. Motion made and seconded to appoint Virginia Healy-Kenney to the Fair Housing Committee with a term to expire in May 2012. All in favor. Motion made and seconded to appoint Jacqueline Mara Lynch to the Fair Housing Committee with a term to expire in May 2012. All in favor.

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY. Advisory Board Update.** John Heffernan, MBTA Advisory Board, appeared before the Selectmen to advise them on the efforts of the MBTA Advisory Board. Mr. Heffernan stated that the public input process has been completed. The Advisory Board met on February 29, 2012, drafted and approved a plan that was then presented to the MBTA Finance Committee. This plan calls for no service reductions while recognizing that fare increases would be necessary. Mr. Heffernan urged the Board to support the Advisory Boards plan and to write letters stating their position. Motion made and seconded to send letters to Governor Patrick, Senator McGee, Representative Erlich and the MBTA Board of Directors expressing the Board's support of the plan put forth by the Advisory Board which includes no service reduction to the Town. All in favor.

**CHAMBER OF COMMERCE. Request.** Gene Arnould, 33 Mechanic Street, Chamber of Commerce, Board of Directors, appeared before the Board seeking support to post "Keep it Local" signs on various street posts in Marblehead with the design and materials of the sign to be determined. Motion made and seconded to support the concept and to further explore the proposal seeking advice from Town Counsel. All in favor.

**WINE CHARITY LICENSE. ONE DAY LIQUOR LICENSE. Warwick Theatre Foundation.** Motion made and seconded to approve the request from the Warwick Theatre Foundation for a one day Charity Wine License on Saturday, March 24, 2012 from 7:00 p.m. to 11:00 p.m. at Tower School, 75 West Shore Drive, subject to receipt of the proper application, approval from the ABCC and receipt of the required Liquor Liability Insurance. Wine will be delivered on Saturday, March 24, 2012 on or about 5:00 p.m., unused portions will be removed after the event. On a polled vote the Board voted as follows: Mr. Murray, in favor; Mr. Christensen, in favor; Mrs. Jacobi, in favor; Mrs. Belf-Becker, in favor; Mr. Nye, in favor. **ONE DAY LIQUOR LICENSE.**

Motion made and scnded to approve the request from Warwick Theatre Foundation for a one day liquor license on Saturday, March 24, 2012 from 7:00 p.m. – 11:00 p.m. for a Film and Food Festival subject to the following conditions:

1. Delivery of and receipt by the Licensing Authority of the required fee (\$50.)
2. Delivery of and receipt by the Licensing Authority of Proof that the alcohol will be purchased from an authorized source.
3. Proof that the applicant can receive proper delivery; provide proper storage and disposal of all alcoholic beverages purchased all in accordance with the requirements of G. L. c. 138.

Alcohol will be purchased from Cape Ann Brewing Co., Turkey Shore Distilleries and Ryan & Wood Distilleries and delivered to the Tower School on Saturday, March 24, 2012 and removed from the premises after the event. On a polled vote the Board voted as follows: Mr. Murray, in favor; Mr. Christensen, in favor; Mrs. Jacobi, in favor; Mrs. Belf-Becker, in favor; Mr. Nye, in favor

**LICENSING. Second Hand Dealer.** Motion made and seconded to approve the application from the following business for a Second Hand Dealers License subject to receipt of the required forms, fees and CORI approval: The Karmic Closet, 128 Pleasant Street, Manager: Linda Hawryluk. All in favor.

**TAX COLLECTOR. Abatement.** A letter was received from John C. Moore, Jr. as it relates to an excise abatement issue.

**ARTICLE 35. Old Town House.** Motion made and seconded that the Board of Selectmen support Article 35, Old Town House, at the 2012 Annual Town Meeting. All in favor.

**OVERNIGHT PARKING BAN.** Motion made and seconded to lift the overnight parking ban effective 12:01 a.m. on March 24, 2012. In the event of a snow storm after March 24, 2012 and prior to April 15, 2012 all cars will be required to be off the public way and the winter parking ban would be in effect immediately. All in favor.

**REQUEST.** Carl Caswell, 174 Pleasant Street, appeared before the Board seeking a permit to open a Medical Marijuana Dispensary & Marijuana Doctors Directory at 174 Pleasant Street. Assistant Town Counsel, Lisa L. Mead advised Mr. Caswell that the Board of Selectmen do not have jurisdiction or authority in this matter and he should contact the Board of Health and Building Department to determine their requirements and regulations.

Motion made and seconded to adjourn at 8:23 p.m. All in favor.

Kyle A. Wiley  
Administrative Aide