

BOARD OF SELECTMEN/ASSESSORS  
Town of Berwick  
December 4, 2012  
APPROVED MINUTES

**ROLL CALL:** Chairman Haley, Selectwoman Murphy, Selectman Crichton, Selectman O'Connor and Selectman Ganiere in attendance.

**OTHERS PRESENT:** Interim Town Manager, Gary Stenhouse, Town Clerk, Melissa Albert and 15 other members of the public.

**APPROVAL OF MINUTES:** *Selectwoman Murphy moved to accept the minutes of November 13<sup>th</sup>, 2012 as written second by Selectman Ganiere. 5/0*  
*Selectwoman Murphy moved to accept the minutes of the Special Meeting on November 29, 2012 as written second by Selectman Ganiere. 5/0*

**PLEDGE OF ALLEGIANCE:** Chairman Haley led those present in the Pledge of Allegiance.

**PUBLIC COMMENT:** Mr. Hotkinson transfer station attendant informed the residents that the Transfer Station will be open December 26<sup>th</sup>, 2012 and January 2, 2013.

Mr. Ball- Would like a Holiday tree in the front of the Town Office, he has asked for a number of years for a tree and never has received an answer. Interim Town Manager informed the Board that the Boy Scouts will be putting up a holiday tree on December 14, 2012. Board thinks that this is a great idea for an every year event.

Jodi Wright- 12 Wilson Street, thanking the Board, for the Sullivan School project that wasn't in compliance and now is being torn down. Mrs. Wright commented on Executive Session and the Board not deviating from what the Executive session is about.

**COMMUNICATIONS:** (item C under Communications was moved before A) No objection from the Board

**A. Meet Police Department New Hire-** Steve Schisler came to the podium and introduced himself to the Board and stated that he has 20 year of law enforcement experience, 21 years in Kennebunkport, Noble graduate and lives in Berwick.

- Chief Towne gave the Board a brief overview of the child size toilets that are present at the Police Department. Will not be replacing all the toilets just some of them. Police went out to bid two years ago and Gray Osgood was granted the bid but Osgood has not been in the building for over two years and feels that this project should be placed for another RFP.

**B. Schedule meeting with State Representative Plante-** Representative Plante contacted Interim Town Manager and wanted to set up time to meet the Board at a regular scheduled meeting. Chairman Haley asked the Town Manager to have Rep. Josh Plante attend the December 18, 2012 meeting.

**C. Ron Vigue- Citizenship Dinner, April 27<sup>th</sup>, 2013-**

- Charles H. Post will be holding this dinner in April; American Legion donated \$1500.00 to the dinner. The culinary school from Noble High will be catering the dinner. Mr. Vigue is looking for nominees for citizen of the year. Any citizen that has gone above and beyond for the town of

Berwick could be a nominee. The applications will be available at the Town Office and will be mailed to Ron Vigue and the deadline for these nominations will be January 13<sup>th</sup>, 2013.

- D. Planning Board and Board of Appeals Appointments-** Board received a memorandum from Planning Director, Patrick Venne regarding vacancies on these Boards at the end of December 2012. Mr. Venne as advertised these positions in the Foster's, website and the Town Hall. Chairman Haley made a statement that the community boards are looking for volunteers for regular and alternate positions on the Planning Board and Board of Appeals contact Town Planner or Town Manager. Appointments will be held on December 18, 2012 for these positions.
- E. C.O.A.S.T. Board Appointment-** Board of Selectman received this letter for appointment to this Board back in July 2012, the Board decided to wait on appointment until a new manager was hired. Chairman Haley volunteered to be the appointed member to this Board and represent the town of Berwick until a permanent Manager is hired. Interim Town Manager will contact Mr. Nichols form COAST about Chairman's appointment.
- F. OTHER:** Interim Town Manager told the Board that the Legal Expense account is projected to be over expended by 60,000 to 100,000 for FY 2013. Interim Manager stated that the Town had a number of lawsuits filed against them that the Board did not anticipate and successfully defended them. Per Finance Director the Interim Manager stated that the Town has expended the legal account from July 1, 2012-December 4, 2012 in the amount of \$80,709. The amount budgeted for legal was \$40,000 for FY2013, Chairman Haley stated that the Board increased this amount during the budget process from \$10,000 to \$40,000. Interim Manager said there are a few more bills that he is expecting to receive in a few weeks for legal expenses. Board of Selectman budgets legal expenses is under Miscellaneous and there are other budget items in miscellaneous that the Town is required to have by law. Most Towns' have a catch-all warrant article that states the Board can balance line items with a surplus at the end of the year. The Town this year ended the Fiscal year 2012 with over \$300,000 under expenditures but the Town had two line items that were over expended. Town does not have the catch-all warrant article to move surplus around. Interim Manager told the Board they may want to consult MMA and have a Special Town Meeting. Chairman Haley stated that the over expenditures for legal and unfunded liabilities was sent to the voters in November and those articles were turned down, Chair stated that he likes the idea of the warrant article with some flexibility to re-allocate as long as they are within the budget. Chairman Haley stated that the Board spent the legal budget wisely and saved the Town money in the long run. Chairman feels that the Board should send this back to voters and there is a return for the expenditures the Board had contractual agreements for the unfunded liabilities. If the voters do not authorize the Board to move this money, this will become a black mark on the Towns audit and this will damage the Town's credit rating for borrowing money in the future. The Board will have an educational campaign about the warrant articles that did not pass and these articles will presented again to the voters in May. All the Board members agreed with no official vote.

Selectwoman Murphy commented on when the last audit was completed the auditors never came before the Board and went over the audit. Selectwoman Murphy would like the new auditors to come before the Board and go over the FY12 audit.

Ron Smith, Principal from RHR Smith came to the podium and introduced himself. Chairman Haley asked Mr. Smith about the negative footnote's on an audit report. Mr. Smith suggested having a workshop

with the Board to discuss the whole audit and its footnotes. Mr. Smith noted that the town of Berwick does not have its own credit rating; credit rating is based on the State rating. Mr. Smith stated that the 2012 audit will be completed at the end of December. **Selectman Crichton moved to have regular Board of Selectman meetings on January 8<sup>th</sup> and January 22<sup>nd</sup>, 2013 and an Audit Workshop on January 15<sup>th</sup>, 2013 at 6:30P.M., second by Selectman O'Connor. 5/0**

Without objection Chairman Haley moved up the Executive Session pursuant to MRSA 405 (6) (A) to discuss personal matters with Board members, Interim Town Manger and Town Auditors. No objection from other Board members, Board entered Executive Session at 7:33 P.M

Board returned from Executive Session at 8:10 P.M.

**APPROVAL OF ACCOUNTS PAYABLE WARRANTS:**

AP 1322 \$99,390.53

TW 1319 \$100,734.83

TW 1320 \$44,675.67

**Selectwoman Murphy moved to accept the warrants as presented, second by Selectman Ganiere 5/0**

**REPORTS OF COMMITTEES: NONE**

**UNFINISHED BUSINESS:**

- A. BCTV Policies and Procedures-** The changes are under definitions page 2; and general guidelines of page 6. Selectman Ganiere asked about putting a disclaimer in the policy. Interim Manager will have Derek Gould, Chairman of BCTV make changes to the policy and Board will review the policy at the next meeting. **Selectwoman Murphy moved to table BCTV Policies and Procedures until December 18, 2012 meeting, second by Selectman Ganiere 5/0.**

**NEW BUSINESS:**

- A. Confirm Appointment of BCTV Board-** Chairman Haley asked Interim Manager if BCTV is a Board or Committee, Interim Manager stated that they are a committee. **Selectman Crichton moved to appoint Derek Gould, Brian Cincotta and Vicki Stone to the Berwick Community Television Committee, second by Selectwoman Murphy. 5/0**
  
- B. Request to hire full time Employee in Water Department-** Chris Weismann, Chief Operator of the Water Department. Requesting to re-fill a permanent full-time position, few years ago there was a retirement and left the third position open. Water Department paid off a large bond and there are funds available to hire for this position. Mr. Weisman said the up-keep of the Water Department and preventative maintenance is very time consuming and increases their workload. Mr. Weisman is concerned that if he does not have enough employees to run the plant and if an employee leaves or retires there won't be sufficient knowledgeable person to run the plant. Mr. Weisman stated that this hire will have no effect on the tax rate or the water rates. Mr. Weisman stated that when Nelson Begin retired saved the Water Department considerable amount on salaries. Employee that is hired will go through training and testing for treating the Water Department. Selectwoman Murphy would like to have a copy of the job description for this position.  
**Selectman Crichton moved to lift the hiring freeze for the position of water treatment operator, second by Selectman Ganiere, 4/1 Selectwoman Murphy opposed, motion passes.**

Interim Manager stated that once the Board lifts the hiring freeze the position becomes an administrative decision for the Interim Manager and Chief Operator to handle per State Law and personal policies.

- C. **2014 Budget Process and Timetable-** Interim Manager stated that statute he is responsible for the budget, the budget comes from the Town Manager to the Board and then the Board may choose to make changes. Department Heads will have their budgets to him by December 28<sup>th</sup>. Mr. Reid gave the Board an exercise for the Department Heads to use for the budget process, this document will be attached to these minutes. Mr. Reid gave a presentation on how the department heads could utilize this exercise. Interim Manager will be having a staff meeting with the Department Heads to go over the budget process. Chairman Haley stated that Department Heads should prepare their budgets regularly and with a 10% decrease.
  
- D. **Town Hall Schedule Day Before XMAS-** Interim Manager stated that the Town Hall is open half a day on Christmas Eve and some members of staff have asked if the Town Hall can be closed all day. Town Manager stated that employees would use their own time for half the day or if employees had no time on the books, it would be time without pay. Town Manager said that this day is very slow. If any employee does not want to participate and use their own time, the Town Hall would remain open half the day. The consensus of the Board was favorable to close the Town Hall on Monday December 24<sup>th</sup>, 2012 employees must use their own time or take time without pay for those hours.
  
- E. **OTHER-** Interim Manager recommended having more than one signatory for signing of checks. Selectman O'Connor moved for the Board to authorize Selectwoman Murphy and Selectman Crichton as alternate signatories for Town checks, second by Selectman Ganiere. 5/0

Chairman Haley stated that MSAD 60 hired a new Superintendent, Steven Connolly.

Mr. Crichton suggested that the Board hire an engineering company to evaluate the boiler system and be open to any type of heating system. Selectman Crichton recommended using the amount of money that was allocated for building maintenance. And the remainder of the money left over after study is completed will be reallocated towards a new HVAC.

Chairman Haley recognized Mr. Stolpe; he came to the podium and suggested that the Board look at the Lena Clark money for HVAC study. Mr. Stolpe feels that the warrant article was appropriated for capital improvements.

Selectman O'Connor revised his motion and Selectwoman Murphy took back her second.

***Selectman O'Connor moved to authorize the Interim Town Manager to seek proposals to hire an HVAC consultant to evaluate the needs of the Town Hall for heating and Air Conditioning venting. 5/0***

Interim Town Manager asked the Board how they want to proceed with Interim Town Manager services. Interim Manager asked the Board should he contact MRI for his replacement. ***Selectman Crichton moved to authorize Interim Town Manager, Gary Stenhouse to contact MRI and seek services for another Interim Town Manager until permanent Manager is hired. 5/0***

**ABATEMENTS/SUPPLEMENTALS:**

*Selectman Ganiere moved to accept the abatement for PP#445 for the 2012/2013 year in the amount of \$76.71 plus an applicable interest. 5/0*

*Selectman Ganiere moved to accept the abatement for PP#265 for the 2012/2013 year in the amount of \$ 28.66 plus any applicable interest. 5/0*

*Selectman Ganiere moved to accept the abatement for PP#65 for the 2012/2013 year in the amount of \$ 69.19 plus any applicable interest. 5/0*

**PUBLIC COMMENT:**

Jodi Wright Wilson Street- Commented on Leah Rachin's Independent Review and is the Board going to utilize this report. Chairman Haley asked for a consensus of the Board for Attorney Leah Rachin to attend a regular scheduled meeting and discuss

Mrs. Wright has an issue with the verbiage on #6 of the decree. She would like the words "torn down" instead of, to the original footprint.

Mr. Reid- Questioned why the Town does not do business with the bank in Town.

*Selectman Crichton moved to adjourn the meeting at 9:42 P.M. second by Selectwoman Murphy, 5/0*

Respectfully Submitted,

Melissa Albert  
Town Clerk

This evening, your Board of Selectmen is going to vote on settling, through dismissal, the 3 lawsuits currently pending in York County Superior Court brought against the Town of Berwick by Sullivan School Associates LP. We will accomplish this by effecting a mutually agreed Consent Decree authorizing final resolution of all disputed issues regarding violations of the Town of Berwick Land Use Ordinance in connection with the permitting and construction of the Sullivan School Associates 34 Unit Affordable Housing Project located on School Street. Because of the obvious legal sensitivity of the negotiations, our deliberations with counsel were conducted in executive sessions. Although no public discussion was possible during this process, your Board had received extensive input during many public meetings over the course of the last 7 months. We had no question as to where the townspeople stood regarding the desired outcomes of our negotiations with the Bateman's on your behalf. We were also very careful not to step on the toes of our Planning Board, understanding and respecting their autonomy and authority in Land Use matters.

With all this being said, your Board is pleased to inform you that with our acceptance of this consent decree, the portion of the addition to the historic Sullivan School Building that is not in compliance with the Planning Board approved plan will be torn down to the original footprint. There will be NO 3 bedroom units. The site will also be built in accordance with the Planning Board approvals with a few very minor exceptions 1) the island will remain omitted, 2) they will create a cut in the front curbing to better accommodate pedestrian traffic, and 3) a couple of lights will be repositioned. The parking lot footprint will be in accordance with the original approval meaning they will remove the expanded paved parking area and restore the playground to its original size and location. Additionally, The Bateman's will pay a \$25,000 fine to the town and they will pay the additional money owed for the Planning Board Process expenses...\$8,818.19 being the remaining unpaid balance.

This consent decree is a huge win for Berwick. The removal of the 8 three bedroom units at 1.5 children per bedroom saves the town over \$100,000 per year in SAD 60 costs...for 75 years. We also avoid the cost of litigating these cases further which was estimated to save \$50-\$100,000 over the next 9-18 months with no guarantee of yielding similar results.

Congratulations Berwick...and Thank-You to the many concerned citizens who sacrificed to much time and effort to make this outcome possible.

STATE OF MAINE  
YORK, ss

DISTRICT COURT  
DIVISION OF WESTERN YORK  
CIVIL ACTION  
DOCKET NO. \_\_\_\_\_

TOWN OF BERWICK,	)	
	)	
Plaintiff	)	
	)	
vs.	)	CONSENT DECREE AND ORDER
	)	(Rule 80K, M.R.Civ.P.)
SULLIVAN SCHOOL ASSOCIATES	)	
LP,	)	
	)	
Defendant	)	

Plaintiff Town of Berwick having filed a Complaint against Defendant Sullivan School Associates LP, and all parties having consented to the entry of this Consent Decree and Order, it is hereby ORDERED and DECREED as follows:

1. The Town of Berwick, Maine is a municipality under the laws of the State of Maine (the "Town").
2. Sullivan School Housing Associates LP ("Sullivan") is the owner of a certain affordable housing project located on School Street in Berwick, Maine (the "Project").
3. On March 18, 2010, Sullivan obtained site plan approval for the Project from the Town of Berwick Planning Board (the "Planning Board"), which included (a) the renovation of the historic Sullivan School building (the "Existing Building") into 24 affordable housing units; and (b) the construction of a new addition (the "Building Addition") to include 10 affordable housing units. On January 20, 2011, the Planning Board approved an amendment to the parking configuration on the site plan. (The March 18, 2010 site plan approval and the January 20, 2011 amendment shall be collectively referred to as the "Approved Site Plan.")
4. On May 11, 2012, Sullivan submitted an application to the Planning Board for site plan amendments.
5. During the course of its deliberations regarding the amended site plans, the Planning Board voted to approve changes to the storm water plan for the Project (the "Approved Storm Water Plan").
6. The Town brought this action pursuant to Rule 80K, alleging that Sullivan violated the Town of Berwick Land Use Ordinance (the "Ordinance") in connection with the permitting and construction of the Project. Specifically, the Town has alleged that Sullivan

violated the Ordinance because the Building Addition and site improvements, as constructed, did not conform to the Approved Site Plan as amended in three material respects: (a) the footprint of the Building Addition, as constructed, exceeded the footprint approved by the Planning Board; (b) the inclusion of three-bedroom units in the Building Addition was not approved by the Planning Board; (c) the site included an additional paved area and parking spaces, in the area that includes where the playground was located and approved.

7. This Consent Decree is executed by Sullivan and the Town to finally resolve all disputed issues with respect to the permitting and construction of the Project.

8. Sullivan shall construct the Project in accordance with the Approved Site Plan and the Approved Storm Water Plan (collectively, the "Approved Plans"), except with respect to the alterations to the Approved Plans which are set forth in the attached Exhibit A ("Settlement Plan") and incorporated herein and which include the following modifications:

a. Sullivan shall remove the two parking spaces and additional paved area located at the southerly most corner of the parking area that were added to the plan in accordance with an expectation of having additional bedrooms on the site that will not now be constructed, that is at variance with the Approved Plans, and will construct the playground in its original location.

b. Sullivan shall carve out a five foot cut and opening, within the island separating the exit lanes on School Street that would allow pedestrian access through this island which would otherwise impede sidewalk travel.

c. Sullivan shall remove an internal parking lot esplanade and reposition 3 parking area lights.

9. Sullivan shall submit a building permit application, including revised architectural plans for the Building Addition (the "Revised Plans"), to the Town's Code Enforcement Officer (the "CEO") by no later than November 28, 2012.

10. The CEO shall act upon the building permit application without delay; provided, however, that the CEO may not deny the application on the grounds that the plans submitted do not conform to the Approved Plans. Rather, the CEO shall evaluate the Revised Plans to determine whether they conform to applicable building codes and the terms of this Consent Decree. In the event that the permit application is denied, the CEO shall specify by no later than November 30, 2012 what issues must be resolved to his satisfaction in order for the permit to issue.

11. The Town agrees and acknowledges that Sullivan is not required to submit an application to the Planning Board for approval of the Revised Plans, as they are substantially in conformity with the Approved Plans.

12. Sullivan shall commence construction of the Building Addition in accordance with the Revised Plans, once the permit is issued.

13. Sullivan shall make the footprint of the Building Addition conform to the Revised Plans within 60 days after the issuance of a building permit. Sullivan may seek an extension of this deadline for good cause shown.

14. The Town's Code Enforcement Officer has already opined that the Existing Building, as constructed, satisfies all applicable life and safety codes and is ready for occupancy. Immediately upon issuance of this Order, the Town shall issue certificates of occupancy ("COOs") for all residential units in the Existing Building.

15. Contemporaneously with the issuance of the COO's, Sullivan shall pay to the Town \$25,000.00. Such payment shall be in full and final satisfaction of any alleged land use violations relating from the Building Addition. Such payment shall also be in full and final satisfaction of any claims for legal or other professional fees incurred by the Town in connection with the alleged land use violations through the date of this Order, as well as fees relating to the implementation of this Order. Provided however that this shall not relieve Sullivan from the payment still owing, for fees incurred by the Town during a recent Planning Board review of a proposed amendment to the original Approved Site Plan, which fees total \$8,818.19, and shall be paid within 30 days of the issuance of the COO.

16. Upon the entry of this Order and the issuance of a building permit for the Building Addition based on the Revised Addition Plans, the parties shall promptly file stipulations of dismissal, with prejudice and without costs, of the following actions pending in the York County Superior Court:

*Sullivan School Associates LP v. Town of Berwick*, Docket No. CV-12-88;  
*Sullivan School Associates LP v. Town of Berwick*, Docket No. AP-12-44;  
*Sullivan School Associates LP v. Town of Berwick*, Docket No. AP-12-49.

17. In the event that any interested party files an appeal of any building permit or COO issued in accordance with this Consent Decree, such appeal shall not prevent Sullivan from proceeding with construction of the Project (specifically, the Building Addition) or with the occupancy of the Project.

IT IS HEREBY ORDERED that this Consent Decree and Order shall be effective immediately upon entry.

This Order may be incorporated by reference on the Court docket.

DATED: November \_\_, 2012

\_\_\_\_\_  
District Court Judge

SEEN TO AND AGREED BY:

DATED: November \_\_, 2012

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Alan Shepard, Bar No. 2855  
Attorney for Plaintiff Town of Berwick  
Shepard & Read  
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(207) 985-2291

DATED: November \_\_, 2012

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Associates LP  
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# TOWN OF BERWICK

## F/Y 2012-13 BUDGET PROJECT FOR DEPARTMENT HEADS

For purposes of this project, assume that your department will receive a 10% reduction in budget dollars for next year compared to the current budget year F/Y 2012-13. To achieve this reduction in budget dollars, prepare a detailed report, including the department head's reasons and rationale for identifying these reductions, as requested below. (Please note that this project *does not necessarily mean that your department is in fact going to receive a 10% reduction* for the next budget year. It is designed to identify where reductions *may* be possible or where savings can be achieved in your department by other methods.) This project will assist the town manager and selectmen in the preparation of next year's budget.

1. Identify and list services/personnel/equipment & supplies/activities that can be reduced or eliminated that will have NO IMPACT on the operation or services of your department. Include a detailed description of these services/personnel/equipment & supplies/activities and specific reasons why you have determined to cut them.
2. Identify and list services/personnel/equipment & supplies/activities that can be reduced or eliminated that will have MINIMAL IMPACT on the operation or services of your department. Include a detailed description of these services/personnel/equipment & supplies/activities and specific reasons why you have determined to cut them.
3. Identify and list additional services/personnel/equipment & supplies/activities that can be reduced or eliminated that will have an impact on the operation or services of your department to achieve the remainder of a 10% reduction in your budget. List these additional services/ personnel/equipment & supplies/activities from LEAST IMPACT to MOST IMPACT. Include a detailed description of these services/personnel/equipment & supplies/activities and specific reasons why you have determined to cut them.
4. Research and identify ways that your department may be able to mitigate or eliminate some or all of these reductions by utilizing improved methods, shifting of personnel or hours worked, modification or shifting of department assets, eliminating or delaying purchases of equipment or supplies, modifying maintenance schedules, or other creative methods that may be available to you. Department Heads are encouraged to "think outside the box" to identify workable solutions that will minimize any impact on the departments operations or services. These proposed solutions should be included in the report along with a detailed analysis of why and how these solutions could be implemented along with backup documentation, bids, etc. that can be discussed in detail with the Selectmen during the budget process for F/Y 2012-13.

(Please note that this item is not meant to replace items 1-3 which should be prepared as requested. This item is designed to explore alternatives to having to make the cuts requested in items 1-3.)

### **CAPITAL EXPENDITURES**

5. In a separate report, identify in detail the capital expense needs (by individual project), of your department for the next 5 years along with backup documentation and budgeting bids for these projects or equipment purchases to be listed in order of MOST IMPORTANT to LEAST IMPORTANT along with estimated project date or equipment needed date for each capital expense. Be prepared to discuss in detail these capital expense needs with the selectmen during the budget process for F/Y 2012-13.