

Carver Board of Selectmen Meeting Minutes

Carver Town Hall, 2nd Floor

April 16, 2019 - 6:00pm

In Attendance: Chairman Ronald Clarke, Dave Robertson, Sarah Hewins, Mark Townsend & Kari Poudrier

Chair led the meeting with the Pledge of Allegiance and Robertson read the community prayer.

Town Counsel – Discussion of Memo related to Article 97 applicability to Playground

Gregg Corbo reviewed and discussed Article 97.

“It is my opinion that mere use of the Property for playground purposes does not mean that it is subject the requirements of Article 97. Rather, something more is required. There must be “clear and unequivocal” intent to permanently dedicate the land for such a purpose. Smith, 478 Mass. At 63. Although there are various ways that this intent can be manifested, there must be something more than “simply an intent to use public land as a park temporarily or until a better use has emerged or ripened.” Id. In the Smith case, the Court placed significant emphasis on the fact that the City surrendered its ability to convert the property to another use by accepting federal grant funds to rehabilitate the playground. In my opinion, the facts presented are distinguishable from the facts presented to the Supreme Judicial Court in the Smith case, where the City had taken clear and unequivocal action to permanently designate the land for playground purposes. Specifically, the City had used the property for playground purposes for more than sixty years, it formally transferred the property to the playground commission and, significantly, by accepting federal grant funds to rehabilitate the playground, agreed that the property would be permanently restricted for that use. In contrast, in this matter, although the Town has used the subject property for playground purposes for almost nineteen years, in my opinion, it never took any action to formally dedicate it exclusively for that use. In fact, it is apparent the Town always considered this property as a possible location for a police station, as evidence by the fact that a police station was shown on plans dating back to 1999. Moreover, it does not appear that control of the property was ever transferred to any board or commission for the purpose of maintaining the property as a permanent playground, and I am not aware of any restrictions of the Town’s ability to change its use, such as the federal grant that had been issued in the Smith case. Rather, it appears that the Town was simply using this portion of the Property for a playground until its police station plans came to fruition. Therefore, based on the totality of the circumstances described to me, it is my opinion that the Town is not required to comply with Article 97 prior to using the subject property for the site of a police station.”

Dunham: Expressed his concern with the potential of Hewins Selectmen status being a conflict of interest.

Hewins: Stated she filed an appearance of a Conflict of Interest document (Form 23 B (3)) with the state as required.

Hewins: Presented the following documents: A memo from Nancy White, who is with the Playground Inspections of New England, LLC, Grand Opening flyer of The Carver Municipal Playground Committee held on October 6, 2001, Public Safety Facilities Study by Reinhardt Associates dated December 28, 2010 and a printout found on 2017 SRPEDD.org website reflecting the Town of Carver's Master Plan listing the Police Station as going to be located at 112 Main St. back in 2017. She noted she felt Mr. Corbo should have facts he may not have been aware of. She also noted that public funds and donations were used for the Dedicated Playground and that the playground has been there for 18 years and so is not a placeholder. At the 2013 Special Town Meeting topics of the location of Fire Station & Police Station were recommended as 99 Main St. for the Fire Station and 112 Main St. for the Police Station.

Dunham & Clarke: Both clarified that times and things change over the years.

Corbo: After further discussion he believes Article 97 still does not apply.

Townsend: When the Playground Committee was created they noted where the location of the Police Station would be, could that change the opinion of Article 97.

Corbo: Did not feel it would change the opinion of Article 97.

Donna Forand - Chairman on Committee of Disability - reviewed accessible route for wheelchairs in regards to the current playground and feels it may not be in compliance. The playground equipment may not be moved due to the new playground due to non-compliance according to State regulations.

Hewins: Stated that the Playground was ADA compliant at the time and is currently ADA compliant.

Corbo: The threat of litigation could require open meeting law if something arises within 48 hours and was not on the Agenda. Corbo's recommendation is noted below:

Ratify and confirm open session votes and discussion occurring during the Board's April 11, 2019 meeting on the following agenda items added less than 48 hours prior to that meeting due to the receipt of new information:

Motion: Dunham, second by Robertson at 6:45pm to move to go into Executive Session pursuant to G.L. c. 30A, §21(a)(3) to discuss litigation strategy with respect to a threat of litigation concerning the Town's Police Station Project, which threat was received on April 10, 2019 at 5:48pm, if discussing the matter in Open Session may have a detrimental effect on the Town's litigating position and the chair so declares.

Roll Call Affirmative: Clarke, Dunham, Robertson, Townsend

Hewins recused herself

Open Session discussion and possible vote regarding of Police Station project location and possibility of placing article on Annual Town Meeting warrant to seek legislative approval to build police station on site of existing playground in light of recent threat of litigation.

Motion to ratify above Dunham, second by Robertson. Roll Call: Clarke, Dunham, Robertson, Townsend - Hewins recused herself

6:48 Break

7:00pm meeting called back to order open session. Roll Call Affirmative: Clarke, Dunham, Robertson, Townsend, Hewins.

Citizens Participation:

Donna Forand – Voiced her concerns regarding the Planning Board's discussion of a Marijuana Dispensary possibly being built in the high volume traffic areas on Rte. 58 near Crossroads Church and at the Kings Richards Fair entrance.

SRPEDD Appointment – Selectmen's Reps: Stephen Cole and Planning Board Rep: Bruce Maki?

Motion to appoint Stephen Cole and Bruce Maki made by Dunham, second by Robertson. Vote 5-0

Annual Town Meeting Warrant review and approval:

Review and presentation of Article #32 (will be #31 on final warrant) by COA Board of Directors

Chair Colleen Preston - Reviewed the changes to be amended in Sections 4.4 of the Town's General Bylaws relative to the Council on Aging.

Motion to recommend to vote on it as written by Dunham, second by Robertson. Vote 5-0

Clarke: Took a moment to note the Friends of the Carver Council on Aging is sponsoring a golf tournament to help with the council needs.

Discussion to reconsider vote taken at the Board of Selectmen meeting on 12/4/18 and delete as follows:

To accept the Police Station Advisory Building Committee's unanimous recommendation, and to

designate the area north of the Library as the future home of the new Carver Police Station.

*To further direct the Police Station Advisory Building Committee to work in collaboration with Recreation Committee to secure a portion of the \$900,000 of CPC funds available with support of CPC Committee at April Town Meeting to redevelop a Recreation Complex as part of the proposed Town Hall Master Plan Vision. **Further, no relocation or demolition shall occur to the existing playground until necessary funds are secured for its' replacement as further outlined.***

To design and redevelop the Recreation Complex as part of the Town Hall Master Plan Vision as proposed by the Police Station Advisory Building Committee in phases, under the direction of the Recreation Committee in collaboration with all the youth groups to redevelop a Recreation Complex that will fit within the awarded budget and include opportunities for all youth. Included in the Recreation Complex will be a new playground equal to or better than the exiting 18 year old playground (this will include a complete replacement or relocation of every item in the existing playground so that nothing is lost).

Motion relative to this recommendation by Townsend, second by Dunham for discussion only:

Dunham: Feels that striking that language would be taking away the residents prior votes

Clarke: Believes that the residents at Town Meeting will be making the decisions, leaving the wording could condemn the station being built where the playground is currently

Townsend: Residents at Town Meeting will have the opportunity to vote on this

Hewins: Agrees with Dunham to leave the wording in, a promise was made to the residents

Robertson: Feels the wording should stay in, he made a prior promise to the residents

Clarke: Believes it makes a huge difference to have Town Meeting make this decision

Vote to Strike the last line - **VOTE 2-3** (Clarke & Townsend for) - (Robertson, Hewins & Dunham opposed)

Vote on remaining Town Meeting Warrant Articles:

Article 16 – Transfer of Tax Title Properties

Motion no action taken by Dunham, second by Townsend. VOTE 5-0

Article 18 – Private Hauler Garbage Disposal

Motion by Robertson, second by Townsend for discussion only. VOTE 3-2 (Opposed Dunham & Townsend)

Article 26 – Wetland Bylaw Change

Savery Moore: Addressed concerns raised at a prior meeting 2 weeks ago. He noted the questions were clarified in the bylaw and an Informational Summary has been streamlined by K-P Law.

Motion by Townsend, second by Dunham. VOTE 4-1 (**Hewins opposed**)

Discussion of Town Moderator To Designate Deputy Moderator for Town Meeting for Article #1 only:

Article 1 at the ATM needs to have the Moderator step out of his official position. They are looking for a Deputy Moderator to step into the Moderator position. A person has not been identified. Discussion was tabled.

Town Administrator Update: N/A

Board of Selectmen Update:

Hewins, Robertson, Townsend & Dunham: Reminded the residents to come to Town Meeting on April 22nd and to come out and Vote at the Annual Election on April 27th.

Dunham: He attended Fire Station new recruits training graduation and was very impressed to see how well it's run. He also attended the Easter Egg Hunt and commended the Recreation committee for their outstanding job creating a great family event.

Approval of Town of Carver Cyber Use Policy:

Motion to table by Dunham, second by Robertson. VOTE 5-0

Minutes/Licenses/Topics not reasonably anticipated by the Chairman 48 hours in advance of meeting:

Minutes of 3/19/19, 4/2/19 & 4/8/19

Motion to table all minutes by Hewins, second by Townsend. VOTE 5-0

Fishing Tournament Request 7/20/19 (rain date of 7/27/19) Our Lady of Lourdes 5:30am-11:30am & to waive all fees:

Motion to approve by Dunham, second by Townsend. VOTE 5-0

Next Meeting: 4/22-Annual Town Meeting, 5/7/19, 5/21/19, 6/4/19, 6/18/19, 7/2/19, 7/30/19, 8/6/19, 9/3/19, 9/17/19, 10/1/19, 10/15/19, 11/5/19, 11/19/19, 12/3/19, 12/17/19

Motion to adjourn at 8:30pm by Townsend, second by Robertson. Vote 5-0