

Board of Selectmen's Meeting Minutes

August 24, 2021; 4:30 P.M.

Board Members Present: Carmen E. Lone, Chairman; Glenn R. Zaidman, Vice-Chairman; Paul A. Tworog; G. Frederick Packard; Robert J. McHatton, Sr.; G. Frederick Packard.

Administration Present: Town Manager Robert Peabody, Jr.; Deputy Town Manager Georgiann Fleck; Town Clerk Laurie Chadbourne; Community Development Director Linda LaCroix.

1. Call to Order

Chairman Lone called the meeting to order at 4:30 P.M.

2. Pledge of Allegiance

The Board recited the "Pledge of Allegiance."

3. 4:30 P.M. Executive Session per MRS Title 1 Section 405.6.E; Legal Matters

Motion was made by Vice-Zaidman to enter executive session at 4:30 P.M. per MRS Title 1, Section 405.6.E. for discussion of legal matters; second from Selectman Tworog. 5 approve/0 oppose

Motion was made by Vice-Chairman Zaidman to exit executive session at 5:20 P.M.; second from Selectman Packard. 5 approve/0 oppose

4. 5:00 P.M. Approval of Minutes

a. August 10, 2021

Motion was made by Selectman Packard for approval of the minutes from the August 10, 2021 meeting; second from Vice-Chairman Zaidman. **Motion** was made by Vice-Chairman Zaidman to amend the minutes under Selectmen's Concerns to read: "Selectman McHatton was concerned that the Planning Board did not have ample time to review the Sign Ordinance to recommend mural amendment for the November Election;" second from Selectman Packard. 5 approve/0 oppose Vote on main motion: 5 approve/0 oppose

5. Public Comments on Non-Agenda Items

Justin McIver requested approval and a waiver of the fee for a one-day event victualer's license to The Greenhouse by SAO. Vice-Chairman Zaidman noted that the Board had already approved food trucks at the event to which Town Clerk Chadbourne responded that each food vendor must obtain a permit under the current ordinance. Selectman Tworog asked if the Board had waived any fees in the past, adding that all other businesses are subject to payment. **Motion** was made by Vice-Chairman Zaidman to approve the temporary permit and waive the fee as requested; second from Selectman Packard. 4 approve/1 oppose (Tworog was opposed)

Police Chief Jones introduced Grace Gendron as the new Police Department Administrative Assistant. The Board welcomed Ms. Gendron.

Justin McIver clarified that he requested the fee waiver for the one-time event license and not for a full year license.

6. Committee/Liaison Reports

a. Ordinance Review Committee Review Update

At the last meeting, Selectman McHatton reported that Gregory Bullard resigned from the Community Development Committee and from the Sub-Committee and has since requested reappointment to the

Community Development Advisory Committee. **Motion** was made by Selectman McHatton to appoint Gregory Bullard to the Community Development Advisory Committee; second from Selectman Tworog.

5 approve/0 oppose

Representing the Ordinance Review Committee, Glen Rudin reviewed a work summary and requested direction from the Board regarding priority. The Board opted to add this item to a future agenda.

7. Correspondence, Presentations and Other Pertinent Information

a. Discussion of a Surveillance Video Policy

Selectman Tworog requested information regarding the placement of cameras, public notification, length of retention and who is authorized to review. Discussion ensued. **Motion** was made by Vice-Chairman Zaidman confirming that video surveillance is an operational matter for the Town Manager; second from Selectman McHatton. 4 approve/1 oppose (Tworog opposed)

Selectman Tworog requested clarification of what would be considered a policy set by the Board versus an operational matter for the Town Manager. Selectman McHatton responded that motions are directives of the Board of Selectman to establish a policy for management and operational matters are administered by the Town Manager. **Motion** was made by Vice-Chairman Zaidman to move the question and close debate; second from Selectman Packard 4 approve/1 oppose (Selectman Tworog was opposed)

b. Lease Assignment (Laundromat)

This item was passed over.

c. Review of Ordinance Consolidation Costs (tabled 8/10/2021)

1. Discussion of a Legal Services Use Policy

Motion was made by Vice-Chairman Zaidman to take this item off the table; second from Selectman Packard. 5 approve/0 oppose

Community Development Director LaCroix provided an overview of the summary sheet as provided for legal expenses. Town Manager Peabody stated that if a department head has a legal line budget, they do not require approval from him in advance. The Department Head is the liaison to elected officials seeking legal advice as well. Selectman Tworog stated that this issue appears to be operational to which Town Manager Peabody reported that elected officials may not be following this procedure which is why this item is before the Board. Planning Board Chairman Deb Brusini explained the lengthy process in working with legal to prepare the ordinance consolidation which was all done through and with the Community Development Director. Discussion ensued.

d. Discussion of Virtual Board Meetings (tabled 8/10/2021)

Motion was made by Vice-Chairman Zaidman to take this item off the table; second from Selectman Packard. 5 approve/0 oppose

Motion was made by Selectman Tworog to allow the public to participate in meetings via electronic means; second from Selectman Packard. **Motion** was made by Selectman Packard to include a start date of October 1st; second from Selectman Tworog. 5 approve/0 oppose Vote on main motion: 3 approve/2 oppose (Vice-Chairman Zaidman and Selectman McHatton were opposed)

8. New Business

a. Awards and Other Administrative Recommendations

1. Request from Planning Board to Direct Ordinance Consolidation to Referendum Ballot Question 2. Shall an ordinance entitled "Amendments to and Consolidation of Certain Town of Bridgton Land Use Ordinances" be enacted?

(Note: A "Yes" vote will repeal the Town of Bridgton Land Use Ordinance, Site Plan Review Ordinance, Shoreland Zoning Ordinance, and Building, Plumbing and Razing Ordinance and replace these ordinances with the Bridgton Land Use Code. Copies of the text of the ordinance are available from the Town Clerk.)

Motion was made by Selectman Tworog to move the Order entitled, "Order to Place Referendum Question 2 on the November 2, 2021" be adopted in form presented this meeting, and that an attested copy of this Order be filed with the minutes of this meeting; second from Selectman McHatton. 5 approve/0 oppose

2. November 2, 2021 Special Town Meeting Warrant

Motion was made by Selectman Tworog for approval of the November 2, 2021 Special Town Meeting; second from Selectman McHatton. 5 approve/0 oppose

a. Certification of Proposed Ordinance Entitled "Repeal and Replacement of Victualers and Marijuana Establishment Licensing Ordinance" and Order

Motion was made by Vice-Chairman Zaidman to approve the Certification of Proposed Ordinance Entitled "Repeal and Replacement of Victualers and Marijuana Establishment Licensing Ordinance" and that an attested copy of this Order be filed with minutes of this meeting; second from Selectman Tworog. 5 approve/0 oppose

Motion was made by Vice-Chairman Zaidman to recommend passage of Question 1 on the ballot; second from Selectman Packard. 5 approve/0 oppose

b. Certification of Proposed Ordinance Entitled "Amendments to and Consolidation of Certain Town of Bridgton Land Use Ordinances" and Order

Motion was made by Selectman McHatton to approve the Certification of Proposed Ordinance Entitled "Amendments to and Consolidation of Certain Town of Bridgton Land Use Ordinances" and that an attested copy of this Order be filed with the minutes of this meeting; second Selectman Packard. 5 approve/0 oppose

Motion was made by Vice Chairman Zaidman to recommend passage of Question 2 on the ballot; second from Selectman Tworog. 5 approve/0 oppose

b. Permits/Documents Requiring Board Approval

1. Request for Use of Town Owned Property (Depot Street Parking Lot); Wreaths Across America

Motion was made by Vice-Chairman Zaidman to use the designated section of Depot Street Parking Lot on September 16th from 10:00 A.M. until 4:00 P.M. by Wreaths Across America; second from Selectman McHatton. 5 approve/0 oppose

2. Certificate of Commitment of Sewer User Rates Commitment #254

Motion was made by Vice-Chairman Zaidman for approval of the Certificate of Commitment of Sewer User Rates Commitment #254 comprising of two pages totaling \$8,511.66 to the Treasurer for collection; second from Selectman Packard. 5 approve/0 oppose

3. Tax Abatements and Supplementals

Motion was made by Selectman Packard to approve the recommended August 24, 2021 tax abatements totaling \$21,110.94 and tax supplements totaling \$18,569.57 as recommended by the Assessors Agent; second from Selectman Tworog. 5 approve/0 oppose

c. Selectmen's Concerns

- **Selectman Packard** had no concerns.
- **Selectman Tworog** reported that Board Members all received a letter requesting that pickleball be included in the proposed new community center behind Stevens Brook Elementary. Interested individuals should reach out directly to the Economic Development Corporation.
- **Selectman Tworog** reported several venues for live music over the weekend.
- **Selectman Tworog** voiced concerns with the amount of turnover with municipal government employees and suggested review of hiring procedures and employee satisfaction.
- **Vice-Chairman Zaidman** reported that he was not able to access the building on Friday night or Saturday to pick up his packet to which Town Manager Peabody has rectified this issue.
- **Selectman McHatton** asked if clarification was received on murals within the Sign Ordinance to which Deputy Town Manager Fleck read the following response from Maine Municipal Association:

Georgiann,

I cannot give you a succinct and definitive legal opinion concerning whether a mural is a "sign" under Bridgton's sign ordinance because there is so much contradictory guidance from the courts on this point. As one federal court stated, "it is truly a Herculean task to wade through the mire of First Amendment opinions to ascertain the state of law relating to sign regulations." *Granite State Outdoor Advertising, Inc. v. Clearwater*, 213 F.Supp.2d 1312, 1327 (M.D. Fla. 2002).

However, I can say the following: artistic expression such as a mural is generally considered to be a form of speech that is protected by the First Amendment. Regulation of this sort of speech must pass a high standard that courts call "strict scrutiny." Commercial speech, on the other hand, is less protected by the First Amendment and subject to more rigid regulation, which must pass a lower standard called "intermediate scrutiny." In determining what kind of speech is at issue, it is helpful to know some of the guidelines set by the U.S. Supreme Court, which has characterized commercial speech as an "expression related solely to the economic interests of the speaker and its audience," *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 561 (1980), and as "speech that does no more than propose a commercial transaction." *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001).

Thus, in order to regulate the murals as a sign, the town would have to show that the mural's primary purpose was commercial rather than non-commercial. For example, in *Complete Angler, LLC v. City of Clearwater*, 607 F. Supp.2d 1326, 1331-33 (M.D. Fla. 2009), a Florida bait shop had a marine-themed mural painted on the outside wall of the store. The city attempted to enforce its sign and banner ordinance, and so the shop owner sued the city in federal court. The court determined that the mural was artistic expression and *not* commercial activity because its primary purpose was to promote the local marine environment, and the mural did more than just "propose a commercial transaction." In contrast, in a case with a similar factual background, a federal appeals court determined that a mural on the side of a dog daycare business *was* commercial speech because it featured the company's cartoon dog logo.

With these cases and with the Supreme Court's definition of "commercial speech" in mind, I think that where a business proposes to hire or otherwise permit a local artist to paint a mural on its building, and the mural is not an advertisement insofar as it does not feature the business name, logo, mascot, etc., then a court would likely consider the mural to be artistic expression and protected by the First Amendment. Of course, this is such a complex and subjective area of the law, that the Select Board may want (and in my opinion would be well-served) to get a second opinion from your town attorney.

Please feel free to call or email if you or the Board like to discuss this in more detail.

Sincerely,

Michael Lichtenstein, Staff Attorney
Legal Services Department

- **Vice-Chairman Zaidman** questioned the Boards authority to allow murals on buildings to which Chairman Lone suggested further review.

- **Chairman Lone** expressed appreciation to the Planning Board, Community Development Director, Code Enforcement Officer and all the staff that worked on the consolidation project and congratulated all for a job well done.

d. Town Manager's Report/Deputy Town Manager's Report

Town Manager Peabody requested that the Board consider holding a goal setting session on September 21st as this provides guidance in working on the budget.

Deputy Town Manager read the following into the record:

TOWN OF BRIDGTON, DEPUTY TOWN MANAGER'S REPORT

August 24, 2021

General: A ground-breaking event to welcome Woodlands Memory Care located at 222 North High Street is scheduled for tomorrow, Wednesday, August 25 at 11:30. Woodlands Senior Living has been approved by the Planning Board for a 26,038 sf senior living facility containing 46 beds with a 12 person overnight caretaker/family unit. Charisse Keach, Finance Officer, recently tendered her resignation effective September 8, 2021. We thank Charisse for her years of service beginning in 2015 and wish her the best of luck in her next endeavor. A group of Tax Acquired properties are currently being offered for sale by sealed bids which are due Tuesday, September 14, 2021 at 2:00p.m. For more information please refer to the Town of Bridgton web site at www.bridgtonmaine.org or call Deputy Town Manager, Georgiann Fleck, at 207-647-8786

Community Development Director: Linda LaCroix, Community Development Director, reports that recently the CDD office held a workshop under the Resilience Pilot Project in conjunction with Windham and GPCOG to identify potential vulnerabilities from climate change and response options. The two towns will now meet to discuss overlapping vulnerabilities and identify priorities for action going forward that will inform a proposal request for a planning grant offered through the Governor's Office of Policy Innovation and the future. Anyone interested in participating in this project can contact CDD Administrative Assistant Courtney Kemp at CKemp@bridgtonmaine.org.

Public Works Department: Chadbourne Hill Road will be CLOSED on Tuesday, August 31, 2021 from 6:00a.m. to 5:30p.m. beginning at Route 37 to the four corners for the purpose of culvert replacement. Built a generator pad for North Bridgton Fire Station. Installed new driveway culvert on Winterberry Lane. Ditched and rip rapped ditch on Chadbourne Hill Road. Started installing solar speed signs.

Bridgton Recreation Department: Summer Rec came to an end for the season. The return of enrichment field trips, swim lessons, adding kayaks to the summer equipment, and so many activities, made it an eventful summer to say the least. Prior to this year there were 45-55 participants each week, this summer there were 160 participants in summer camp and a total of 250 participating in swim lessons. A teen program was added providing 30 full time scholarships, free breakfast and lunch thanks to SAD 61 Food Service. There were over 90 sign-ups for various summer varsity sports. Gary Colello, Recreation Director, would like to thank Leslie Hayes, Recreation Programmer, who was hired in late spring and did a fantastic job this summer...thank you Leslie! Now, fast forward to fall programming....for information on this and more, please refer to the Town of Bridgton website at www.bridgtonmaine.org or contact Gary at 647-1126.

Bridgton Police Department: Chief Phil Jones reports that the recent event "Coffee with a Cop" held this past Saturday at the Farmer's Market on Depot Street was a great success. The Police Department continues to actively recruit for the open patrolman's position most recently working with PoliceAPP, a nationwide advertising venue which implements modern technology, has marketing experts on staff, and a vast advertisement database for an energetic and responsive recruitment. The new speed signs are currently being installed at the Town Hall, Woods Pond, Kansas Road and South Bridgton by Adams Pond. The signs will be operational at the beginning of September.

Health Officer: Catherine Pinkham, Health Officer, reports that she was contacted by Ms. Daley, Bridgton resident, who has medical equipment on hand for individuals who are in need. Catherine will meet with Ms. Daley to establish an inventory. Catherine will be doing a health assessment with CDC in October to review demographic needs. Recently the U.S. FDA approved the Pfizer COVID 19 Vaccine reaffirming that the vaccine is safe and highly effective.

Until next time....be safe and be well.

Respectfully submitted, Georgiann M. Fleck, Deputy Town Manager

9. Old Business

a. Wastewater Status Update

Town Manager Peabody provided a brief wastewater status update.

b. Streetscape: Upper and Lower Main Street Status Update

Town Manager Peabody provided a brief upper and lower Main Street status update.

10. Treasurer's Warrants

Motion was made by Selectman Tworog for approval of Treasurer's Warrants numbered 181, 182, 14, 15, and 16; second from Vice-Chairman Zaidman. 5 approve/0 oppose

11. Public Comments on Non-Agenda Items

Planning Board Chairman Deb Brusini reported that Ms. Miller has made suggested amendments to the Sign Ordinances.

12. Dates for the Next Board of Selectmen's Meetings

August 31, 2021 (Workshop with Water District at 5:00 P.M.); September 14, 2021; September 28, 2021

13. Adjourn

Motion was made by Selectman McHatton to adjourn the meeting at 8:00 P.M.; second from Vice-Chairman Zaidman. 5 approve/0 oppose

Respectfully submitted,

Laurie L. Chadbourne
Town Clerk