

TOWN OF SANDWICH

THE OLDEST TOWN ON CAPE COD

130 MAIN STREET
SANDWICH, MA 02563

TEL: 508-888-4910 AND 508-888-5144
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E-MAIL: selectmen@townofsandwich.net
E-MAIL: townhall@townofsandwich.net



BOARD OF
SELECTMEN

TOWN
MANAGER

BOARD OF SELECTMEN & FINANCE COMMITTEE AGENDA July 23, 2015 – 7:00 P.M. Sandwich Town Hall – 130 Main Street

1. Convene Meeting & Pledge of Allegiance
2. Review & Approval of Minutes (*Vote*)
3. Public Forum (*15 Minutes*)
4. Town Manager Report
5. Correspondence / Statements / Announcements / Future Items / Follow-up (*10 Minutes*)
6. Staff Meeting (*90 Minutes*)
 - Seasonal Resident Open Forum

 - State Representative Randy Hunt – FY'16 Budget & Other Updates

 - Finance Committee – Budget Assumptions for FY'17 & Beyond; FY'15 Reserve Fund Transfers; Other

 - Cindy Russell, 375th Celebration Committee – Funding Efforts
7. Old Business (*15 Minutes*)
 - Army Corps of Engineers Section 204 Project – Town Neck Beach Nourishment
 - Chamber of Commerce – Route 130 Lease & Financing of Project
 - Open Meeting Law Complaint Acknowledgement & Possible Response – July 2, 2015 Complaint from Ron Beaty (*Vote*)
 - Other
8. New Business (*5 Minutes*)
 - Other
9. Public Forum (*15 Minutes*)
10. Closing Remarks
11. Executive Session
 - Exemption 6: Acquisition of Real Property – Easements for Beach Nourishment Project on Town Neck Beach
12. Adjournment

NEXT MEETING: Thursday, August 6, 2015, 7:00 P.M., Town Hall

C.S. 1-ER Commonwealth of Massachusetts Department of Revenue FY2016

NOTICE TO ASSESSORS OF ESTIMATED RECEIPTS

General Laws, Chapter 58, Section 25A

Sandwich

A. EDUCATION:

Distributions and Reimbursements:

Chapter 70	6,740,018
School Transportation	0
Charter Tuition Reimbursement	325,022
Smart Growth	0

Offset Items – Reserve for Direct Expenditure:

School Choice Receiving Tuition	458,438
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Sub-Total, All Education Items:

7,523,478

B. GENERAL GOVERNMENT:

Distributions and Reimbursements:

Unrestricted General Government Aid	1,039,044
Local Share of Racing Taxes	0
Regional Public Libraries	0
Urban Revitalization	0
Veterans Benefits	16,808
Exemp: VBS and Elderly	99,229
State Owned Land	522,087

Offset Item - Reserve for Direct Expenditure:

Public Libraries	23,077
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Sub-Total, All General Government:

1,700,245

C. TOTAL ESTIMATED RECEIPTS:

9,223,723

C.S. 1-EC Commonwealth of Massachusetts Department of Revenue FY2016

NOTICE TO ASSESSORS OF ESTIMATED CHARGES

General Laws, Chapter 59, Section 21

Sandwich

A. COUNTY ASSESSMENTS:

County Tax	309,447
Suffolk County Retirement	0
Essex County Reg Comm Center	0
Sub-Total, County Assessments:	309,447

B. STATE ASSESSMENTS AND CHARGES:

Retired Employees Health Insurance	0
Retired Teachers Health Insurance	0
Mosquito Control Projects	99,619
Air Pollution	7,444
Metropolitan Area Planning Council	0
Old Colony Planning Council	0
RMV Non-Renewal Surcharge	21,400
Sub-Total, State Assessments:	128,463

C. TRANSPORTATION AUTHORITIES:

MBTA	0
Boston Metro. Transit District	0
Regional Transit	95,739
Sub-Total, Transportation Assessments:	95,739

D. ANNUAL CHARGES AGAINST RECEIPTS:

Special Education	3,230
STRAP Repayments	0
Multi-Year Repayment	0
Sub-Total, Annual Charges Against Receipts:	3,230

E. TUITION ASSESSMENTS:

School Choice Sending Tuition	344,631
Charter School Sending Tuition	2,921,112
Sub-Total, Tuition Assessments:	3,265,743

F. TOTAL ESTIMATED CHARGES:

3,802,622

FUTURE BUDGET ASSUMPTIONS - FY'17 & BEYOND

(Section 7.1.g of Sandwich Town Charter)

INDEX OF ATTACHMENTS

- #1 FY'16 Budget as Voted at Annual Town Meeting
- #2 FY'16 State Cherry Sheet - Receipts - Final
- #3 FY'16 State Cherry Sheet - Assessments - Final
- #4 FY'16 Budget as Amended by Current Cherry Sheet Estimates
- #5 Assumptions for Future Budget Planning Projections - FY'17 & Beyond

Sandwich Town Charter Section 7.1.g:

(g) After the annual town meeting, but before June 15, the board of selectmen shall meet in joint session with the finance committee to review the assumptions used to project budgets for the next 2 fiscal years. If necessary, the board of selectmen shall vote to reset any of those assumptions.

Comments & Observations:

1. Final estimated FY'16 State Budget figures were sent to municipalities on July 17, 2015. The attached estimates reflect what the Department of Revenue provided.
2. Reviewing future budget projections annually makes sense, but it does not change the requirement of having to appropriate a balanced budget each fiscal year. Projections for FY'17 and beyond are helpful, but will never match the final budget amounts for each fiscal year. In fact, the FY'17 assumptions we will review in December will be different than the assumptions being considered now and will change as better information is known throughout the annual budget process.
3. The Free Cash certification based on FY'15 year end calculations will likely be delayed compared to prior fiscal years. The Department of Revenue has told municipalities that due to early retirements and many positions not being filled, it is likely this fiscal year's Free Cash certification will not even be looked at until after January 1.

PROJECTED REVENUES AND EXPENSES - FY'16

REVENUES

<u>FY'16 Tax Levy:</u>		
FY'15 Levy Limit	52,158,738	
2.5% Increase	1,303,968	
Est. New Growth	525,000	
Excess Levy Reserve Est.	0	
Overrides / Exclusions	0	
County Assess. Outside 2.5: CCC	162,847	
Debt Outside 2.5 (- Non-Levy & SBA)	1,022,574	55,173,127
 <u>Other Revenue:</u>		
Land Bank / CPA Debt	1,252,561	
Marina Debt	210,000	
School Building Authority Funding	1,279,534	
State Aid: Discretionary (-9.05%)	1,886,891	
State Ch. 70 Aid: School (0.00%)	6,665,593	
Est. Local Receipts (Includes Meals Tax)	4,400,000	
Surplus Revenue / Free Cash	1,741,440	
Overlay Release	100,000	
Transfer from Stabilization Fund	0	<u>17,536,019</u>
 Total Estimated Revenues	 72,709,146	

EXPENSES

<u>ReCap Sheet Items:</u>		
State Assess: Tuition Assess (1.67%)	3,100,000	
State Assess: All Other (3.00%)	541,128	
Abatements / Overlay	400,000	4,041,128
 <u>Town Meeting Items:</u>		
Group Health Insur.+ Mitig. Plan (5.70%)	9,275,000	
County Retirement Assess. (5.38%)	3,147,347	
Property & Liability Insurance (1.82%)	840,000	
Medicare (1.96%)	600,000	
Unemployment Account	100,000	
Debt: Long Term	4,221,147	
Debt: Short Term	50,000	
Reserve Fund	500,000	
Capital Budget - Net	924,575	
Transfer to Stabilization Fund	200,000	
OPEB Trust Fund	100,000	
FY'15 Snow & Ice Deficit	400,000	20,358,069
 <u>Operating Budgets:</u>		
School Budget: Local (-1.56%)	24,250,000	
Ch. 70 (0.00%)	6,665,593	30,915,593
 UCCRVTS Budget (12.07%)		2,049,172
 General Gov't. Budget (4.25%)		<u>15,345,156</u>
 Total Estimated Expenses		72,709,118

<u>Stabilization Fund Balance:</u>	
Actual Balance on 1/1/15:	1,022,450
Proposed Transfer From/To Stabilization Fund:	200,000
Projected Post ATM Balance:	<u>1,222,450</u>

ESTIMATED FY'16 BUDGET BALANCE 28

<u>Account:</u>	<u>Final DOR Est. FY'15</u>	<u>Final DOR Est. FY'16</u>	<u>Difference</u>	<u>% Change</u>	<u>ATM FY'16 Budget Est.</u>	<u>Difference</u>
A. EDUCATION:						
<u>Distributions and Reimbursements:</u>						
* 1. Chapter 70	6,665,593	6,740,018	74,425	1.12%	6,665,593	74,425
2. School Transportation Programs	0	0	0			
3. Retired Teachers' Pensions	0	0	0			
4. Charter Tuition Assessment Reimbursement	414,762	325,022	-89,740			
<u>Offset Items - Reserve for Direct Expenditure:</u>						
* 5. School Lunch	9,909	0	-9,909			
* 6. School Choice Receiving Tuition	434,051	458,958	24,907			
Sub-Total, All Education Items	7,524,315	7,523,998	-317	0.00%		
B. GENERAL GOVERNMENT:						
<u>Distributions and Reimbursements:</u>						
1. Unrestricted Gen. Gov. Aid (Old = Lottery & AA) <u>New = Annual Formula for Local Aid</u>	1,002,938	1,039,044	36,106			
2. Local Share of Racing Taxes	0	0	0			
3. Regional Public Libraries	0	0	0			
4. Police Career Incentive	0	0	0			
5. Urban Renewal Projects	0	0	0			
6. Veterans' Benefits	17,611	16,808	-803			
7. Exemptions: Vet, Blind, SS, Elderly	117,335	99,229	-18,106			
8. State Owned Land	522,087	522,087	0			
<u>Offset Items - Reserve for Direct Expenditure:</u>						
* 9. Public Libraries	22,886	23,077	191			
Sub-Total, All General Government	1,682,857	1,700,245	17,388	1.03%		
C. TOTAL ESTIMATED RECEIPTS	9,207,172	9,224,243	17,071	0.19%		
Total Discretionary Aid	2,074,733	2,002,190	-72,543	-3.50%	1,886,891	115,299
* Note: Not Included in Discretionary Aid Calculation						

<u>Account:</u>	<u>Final DOR Est. FY'15</u>	<u>Final DOR Est. FY'16</u>	<u>Difference</u>	<u>% Change</u>	<u>ATM FY'16 Budget Est.</u>	<u>Difference</u>
A. County Assessment, County Tax:	306,771	309,447	2,676	0.87%		
B. STATE ASSESSMENTS AND CHARGES:						
1. Retired Employees Health Insurance	0	0	0			
2. Retired Teachers Health Insurance	0	0	0			
3. Mosquito Control Projects	95,557	99,619	4,062			
4. Air Pollution Districts	7,418	7,444	26			
5. Metropolitan Area Planning Council	0	0	0			
6. Old Colony Planning Council	0	0	0			
7. RMV Non-Renewal Surcharge	21,400	21,400	0			
Sub-Total, State Assessments	124,375	128,463	4,088	3.29%		
C. TRANSPORTATION AUTHORITIES:						
1. MBTA	0	0	0			
2. Boston Metro. Transit District	0	0	0			
3. Regional Transit (CCRTA)	93,404	95,739	2,335			
Sub-Total, Transportation Assessments	93,404	95,739	2,335	2.50%		
D. ANNUAL CHARGES AGAINST RECEIPTS						
1. Special Education	817	3,230	2,413			
2. STRAP Repayments	0	0	0			
Sub-Total, Annual Charges Against Receipts	817	3,230	2,413	295.35%		
E.* TUITION ASSESSMENTS						
1. School Choice Sending Tuition	343,113	344,631	1,518			
2. Charter School Sending Tuition	2,705,841	2,921,112	215,271			
3. Essex County Technical Institute Sending Tuition	0	0	0			
Sub-Total, Tuition Assessments	3,048,954	3,265,743	216,789	7.11%	3,100,000	-165,743
TOTAL ESTIMATED ASSESSMENTS	3,574,321	3,802,622	228,301	6.39%		
Total Non-Tuition Assessments	525,367	536,879	11,512	2.19%	541,128	4,249

* **Note:** Tuition Assessment totals are subject to change until "final" charter & school choice sending figures are provided to the State DOE. Charter Schools are required to report to the DOE enrollment projections for the upcoming school year by March 15.

PROJECTED REVENUES AND EXPENSES - FY'16

REVENUES

<u>FY'16 Tax Levy:</u>		
FY'15 Levy Limit	52,158,738	
2.5% Increase	1,303,968	
Est. New Growth	525,000	
Excess Levy Reserve Est.	0	
Overrides / Exclusions	0	
County Assess. Outside 2.5: CCC	162,847	
Debt Outside 2.5 (- Non-Levy & SBA)	1,022,574	55,173,127
 <u>Other Revenue:</u>		
Land Bank / CPA Debt	1,252,561	
Marina Debt	210,000	
School Building Authority Funding	1,279,534	
State Aid: Discretionary (-7.44%)	2,002,190	
State Ch. 70 Aid: School (1.12%)	6,740,018	
Est. Local Receipts (Includes Meals Tax)	4,400,000	
Surplus Revenue / Free Cash	1,741,440	
Overlay Release	100,000	
Transfer from Stabilization Fund	0	<u>17,725,743</u>
 Total Estimated Revenues	 72,898,870	

EXPENSES

<u>ReCap Sheet Items:</u>		
State Assess: Tuition Assess (7.00%)	3,262,299	
State Assess: All Other (2.20%)	536,879	
Abatements / Overlay	400,000	4,199,178
 <u>Town Meeting Items:</u>		
Group Health Insur.+ Mitig. Plan (5.70%)	9,275,000	
County Retirement Assess. (5.38%)	3,147,347	
Property & Liability Insurance (1.82%)	840,000	
Medicare (1.96%)	600,000	
Unemployment Account	100,000	
Debt: Long Term	4,221,147	
Debt: Short Term	50,000	
Reserve Fund	500,000	
Capital Budget - Net	924,575	
Transfer to Stabilization Fund	200,000	
OPEB Trust Fund	100,000	
FY'15 Snow & Ice Deficit	400,000	20,358,069
 <u>Operating Budgets:</u>		
School Budget: Local (-1.56%)	24,250,000	
Ch. 70 (1.12%)	6,740,018	30,990,018
UCCRVTS Budget (12.07%)		2,049,172
General Gov't. Budget (4.25%)		<u>15,345,156</u>
 Total Estimated Expenses		 72,941,593
 ESTIMATED FY'16 BUDGET BALANCE		 -42,723

Stabilization Fund Balance:	
Actual Balance on 1/1/15:	1,022,450
Proposed Transfer From/To Stabilization Fund:	200,000
Projected Post ATM Balance:	1,222,450

REVENUES

FY'16 Assumptions

Future Assumptions (FY'17 & Beyond...)

Tax Levy:

Tax Levy	Actual / Est. from Prior Year	Same
2.5% Increase	2.5% Allowed by Law	Same
Estimated New Growth	\$500,000 Annually	Same
Excess Levy Reserve Est.	\$0 Planned; Use As-Needed	Same
Overrides / Exclusions	None Planned	Same; Exclusions Reviewed Annually
County Assess. Out 2.5: CCC	Increase 2.5% Annually	Same
Debt Outside 2.5 (- Non-Levy & SBAB)	Actual Debt Schedule & SBAB	Same

Other Revenue:

CPA Debt	Actual from Debt Schedule	Same
School Building Authority Funding	Actual Approved Amount	Same
State Aid: Discretionary	Level Funded (0%)	Annual Decrease of -7.5% Based on Recent State Budget History
State Ch. 70 Aid: School	Level Funded (0%)	Same
Estimated Local Receipts	\$4,300,000 (Incl. Meals Tax)	\$4,150,000 Annually (\$150,000 Decrease = Meals Tax Petition Article)
Surplus Revenue: Certified	1,250,000	Same
Overlay Release	\$100,000	Same
Stabilization Fund Usage	TBD each FY	Same

EXPENSES

FY'16 Assumptions

Future Assumptions (FY'17 & Beyond...)

ReCap Sheet Items:

Tuition Assessments	10.0% Annual Increase	Same
County / State Assessments	3.0% Annual Increase	Same, but add \$50,000 in FY'17 for CCRTA Assessment
Abatements / Overlay / STCP	\$400,000 Annually; \$450,000 in Reval	Same

Town Meeting Items:

Group Health Insurance	5.0% Annual Increase	7.5% Annual Increase Based on Current Projections; Mitigation Plan
County Retirement Assessment	7.5% Annual Increase	Same
Property & Liability Insurance	2.5% Annual Increase	Same
Medicare	6.0% Annual Increase	Same
Unemployment Account	\$100,000 Annually	Same (may need to adjust annually based on operating budgets)
Debt: Long Term	Actual Debt Schedule	Same (with retiring debt reflected in actuals)
Debt: Short Term	\$50,000 Annually	Same
Reserve Fund	\$500,000 Annually	Same
Capital Budget	\$500,000 Annually	Same (but goal of appropriating more)
Transfer to Stabilization Fund	TBD each FY	Same
GASB 45 Appropriation	\$100,000 Annually	Same
Snow & Ice Deficit	\$150,000 Annually	Same

Operating Budgets:

School Budget - Local	3.0% Annual Increase	Same
- Ch. 70	Match Revenue Assumption	Same
UCCRVTS Budget	5.0% Annual Increase	7.5% Annual Increase
General Government Budget	3.0% Annual Increase	Same

Dunham, George

From: Spahr, Mimi
Sent: Thursday, July 16, 2015 12:37 PM
To: Dunham, George; Lapp, Doug
Cc: O'Neill, Phyllis
Subject: Reserve Fund Transfers

Good afternoon,

Here are the final figures needed for FY15 Reserve Fund Transfers:

Police: \$189,703.18
Fire: \$28,082.09
Snow & Ice: \$96,270.87
Vets: \$3,849.66
Glass Town (Lib.): \$15,800.00

Total: \$333,705.80

Please let me know if I am missing anything.

Thanks!

BOARD OF SELECTMEN PUBLIC ANNOUNCEMENT TOWN NECK BEACH EASEMENTS

July 9, 2015

The Board of Selectmen and Town staff have been working diligently for more than 15 years attempting to address erosion problems on public beaches in Sandwich, particularly on Town Neck Beach. In 2006 and 2007, the Town submitted formal requests for the U.S. Army Corps of Engineers to conduct studies to determine what role the federal government has played in contributing to this erosion through the construction and expansion of the Cape Cod Canal jetties and how the Army Corps could assist the Town until a more permanent effort was approved. We are pleased to report that within the last few weeks Sandwich has succeeded in realizing one of these goals by receiving federal approval of a report investigating the beneficial reuse of dredged material authorized under Section 204 of the Water Resources Development Act, commonly referred to as the Section 204 Project. We are now on the cusp of having a substantial amount of sand deposited on Town Neck Beach when the Cape Cod Canal is dredged later this fall and winter.

The beneficial reuse of compatible material from the Canal dredging will help protect numerous properties that are at imminent risk of destruction in light of the amount of erosion that has occurred over the last decade due to major storms, effects of rising seas and climate change, and negative impact of the Canal jetties preventing the natural movement of sand to this area. The inherent risk of living on the water has been exacerbated by these recent storms and it is clear that Sandwich is at a make-or-break moment for the short term Section 204 Project and for future long term erosion prevention efforts. Currently, there are several homes in imminent danger of being lost to the ongoing erosion. If the Section 204 Project moves forward expeditiously, a planted dune between the affected homes and Town Neck Beach more than eighty feet in width will be created, thus providing substantial protection to the affected homes.

It is a requirement of the federal government that in order to expend public funds on these efforts, permanent easements are needed from affected landowners to conduct the work and, because federal funds are being expended for this project, the permanent easements must allow for public access. The Army Corp of Engineers has informed the Town that this requirement and the language used in the easements are not subject to change or negotiation. Permanent easements must be granted by homeowners for the work to take place. Town Meeting granted the Selectmen the authority to accept these easements in May 2015. By securing permanent easements, future Section 204 and potential long term Section 111 improvement work can take place. Without these permanent easements, no work can occur.

The same is true for the expenditure of Town funds on private property. State law prohibits the expenditure of public funds on private property without an appropriate public purpose and authority. In light of the significant amount of additional Town funds

that will have to be expended on the Section 204 Project, a greater public purpose must also be identified for the work, namely permanent easements for construction and public access purposes. It is important to note that by securing these permanent easements, the Town and federal government are not obtaining any fee interest in the private land, just access on the impacted areas, the vast majority of which will be constructed as protected dunes leading to a public beach on Town land. The dunes and beach areas that are being constructed will occur in areas that have already been completely eroded or contain minimal upland. If anything, this project will add value and protection to the private homes that does not exist today.

The Board of Selectmen unanimously believes that completion of the Section 204 Project is critical and in the best interest of the Town, as well as the greater public good. It is our obligation to uphold these interests. We are fully committed and prepared to consider all options that are necessary to make this and future projects happen. We urge the impacted private property and association owners to voluntarily grant the required permanent easements to the Town. The Town and the Army Corp of Engineers will be holding another educational outreach meeting with these owners to explain the easement requirements and the planned construction on Thursday, July 16, 2015 at 6:00 p.m. at Sandwich Town Hall.

The affected homeowners have to understand, however, that unless permanent easements allowing for public access are secured before July 31, 2015 from 100% of the owners, in all probability the Army Corp of Engineers will cancel the Section 204 Project and the sand dredged from the Canal will be deposited in Cape Cod Bay. We have worked too hard, for too long, and spent too much public money for this effort not to move forward at this critical juncture.

Thank you.



Sandwich Chamber of Commerce
P.O. Box 744

Sandwich, MA 02563

(508) 833-9755

info@sandwichchamber.com

www.sandwichchamber.com

July 21, 2015

Dear Board of Selectmen,

In our efforts to keep you updated in the status of our work to secure funding for our Sandwich Visitor's Center, we wanted to send along this letter to tell you where we are currently at in the funding process. We commenced our \$60K in 60 days fund-raising initiative roughly 50 days ago, reaching out to residents and businesses for donations to help finally get this building constructed. We are happy to report we are almost at our goal of moving forward on the project. Below is a list of the monies collected and the pledges we are working to collect leading to the amount we need to make this building a reality. Granted, we still have work to do but we are farther along then we have ever been in this process. We thank you for allowing us to lease this great piece of land to finally construct a Visitor's Center that will make this town proud.

SOURCES as of 7/21/15

Cash	\$110,837	
Pledges	\$34,125	\$25,000 in 3 large pledges
In Kind	\$54,000	
Financing	\$90,000	approved up to \$100,000
Cash Reserve	\$10,000	
Pend. request	<u>\$15,000</u>	
TOTAL	\$313,962	

Several of the pending requests will be determined by the month's end and we will be able to specifically furnish those for your August 4th meeting.

Sincerely,
Jay Pateakos
Executive Director
Sandwich Chamber of Commerce
(508) 833-9755

2.37 acres as shown on a plan entitled "Area of Lease, January 21, 2015" attached hereto as Exhibit A and incorporated herein and as more particularly described in the RFP and the Proposal.

ARTICLE II

Term of Lease

The term of this Lease shall commence on the date of the execution of this Lease by the parties hereto (the "Commencement Date"), and shall be for a term of thirty (30) years, unless terminated automatically if the Tenant, despite its diligent efforts, by July 30, 2015, is unable to deliver to Landlord, which in the Landlord's sole and reasonable discretion, is suitable evidence of adequate financing for the project as set forth in the RFP and the Proposal. Upon expiration of the term, the Landlord may, at its sole discretion and with reasonable notice to Tenant, exercise an option to renew this Lease for an additional twenty (20) year term for a Net Rent amount to be negotiated prior to the renewal period.

ARTICLE III

Net Rent

Section 3.1. Throughout the term of this Lease, the Tenant shall pay rent ("Net Rent") at annual rates, payable in a single lump sum due and payable no later than five (5) business days after the end of each year of the Lease term and any additional amounts, fees or charges payable under this Lease, all such payments to be made at the Landlord's mailing address aforesaid or at such other place as the Landlord shall from time to time designate in writing, without notice, demand, off-set or deduction (unless herein specifically authorized).

Section 3.2. Annual Net Rent shall be \$1.00, until such time as the construction financing for the building and improvements from the Tenant to the original lender has been repaid in full, at which time the Landlord and Tenant shall agree to an adjusted rent.

Section 3.3. It is the express understanding and agreement of the Landlord and the Tenant that the Net Rent due and payable hereunder shall be absolutely net to the Landlord so that this Lease shall yield to the Landlord the Net Rent specified above during the term of this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises shall be paid by the Tenant (including, but not limited to, real estate taxes, if any, assessments, water use fees, insurance premiums and utility expenses), without cost or obligation of any type to the Landlord whatsoever. In addition, the Tenant agrees to pay all costs, expenses, and obligations of every kind and nature whatsoever in connection with the operation, repair, restoration, maintenance, cleaning, protection and management of the Premises including, without limitation, the following: costs for personnel engaged in, and for other services rendered in connection with, the operation, repair, restoration, maintenance, cleaning, protection and management of the Premises; electricity, gas, oil, septage disposal and water (including any



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: RONALD Last Name: BEATY

Address: 245 Parker Road

City: West Barnstable State: MA Zip Code: 02668

Phone Number: +1 (508) 685-2921 Ext. _____

Email: ronbeaty@gmail.com

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Board of Selectmen, Town of Sandwich
130 Main St., Sandwich, MA 02563, Phone: (508) 888-4910

Specific person(s), if any, you allege committed the violation: Sandwich Board of Selectmen - All Members

Date of alleged violation: Jul 2, 2015

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

Relative to their executive session conducted on Thursday, July 2, 2015, the Sandwich Board of Selectmen violated the Massachusetts Open Meeting Law (M.G.L. c. 30A, sec. 18-25; and Attorney General's Regulations-Open Meetings, 040 CMR 29.00).

The OML violation(s) took place because the Sandwich Board of Selectmen's 4:00 PM, Thursday July 2, 2015 Meeting Agenda & Notice failed to adequately comply with the legal criteria and procedures to properly conduct an Executive Session. Prior to conducting an Executive Session, a public body must first convene in Open Session. The public body should list "open session" as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session. This was not done for the Executive Session listed on the Meeting Agenda & Notice in question.

Furthermore, the list of topics pertaining to the executive sessions must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. Again, this was not done.

Said meeting agenda and notice simply stated the following: "2. Executive Session - Exemption 6 Acquisition of Real Property - Town Neck Beach"
"Note: The Chairman of the Board of Selectmen has determined that conducting this business in open session will have a detrimental effect on the Town's strategic and negotiating position."

The Executive Session appears to attempt to utilize allowable Purpose 6 as its justification, but it lacks sufficient specificity to properly inform the public. Additionally it uses the term "exemption" which is not part of the Open Meeting Law parameters concerning Executive Sessions. No "Exemption 6" exists. However, according to the OML, Purpose 6 may be employed: "To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;" However, it must be noted that whether or not holding the meeting in open session would actually compromise the purpose for which this executive session was held, the Board of Selectmen must be able to demonstrate a reasonable basis for that claim if challenged, as they are now being challenged. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its negotiating position.

As a direct result of their questionable actions in this matter, the Board of Selectmen have demonstrated a clear dearth of transparency and accountability to the detriment of the public interest. Finally, their attempted abuse of the power of eminent domain in this matter is deplorable and a betrayal of the public trust.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

This formal complaint should first be officially and publicly acknowledged and admitted by the public body in question. In a timely fashion, the public body should then take immediate remedial action via seriously addressing and completely correcting said violations and problems that have been pointed out. It should also take concrete measures to ensure that no further OML violations/problems occur again. Open Meeting Law training should be mandated forthwith for the Selectmen and all staff.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, will be considered a public record and available to any member of the public upon request. In response to such a request, the AGO generally will not disclose your contact information.

II. Consulting With a Private Attorney.

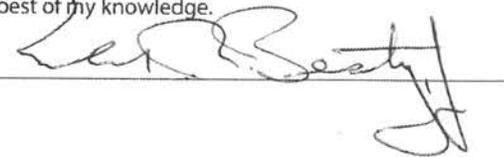
The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____



Date: 07-02-2015

For Use By Public Body For Use By AGO
Date Received by Public Body: Date Received by AGO:

TOWN OF SANDWICH

THE OLDEST TOWN ON CAPE COD

130 MAIN STREET
SANDWICH, MA 02563

TEL 508-888-4910 AND 508-888-5144

FAX 508-833-8045

E-MAIL: selectmen@townofsandwich.net

E-MAIL: tc@townofsandwich.net



BOARD OF
SELECTMEN

TOWN
MANAGER

BOARD OF SELECTMEN AGENDA July 2, 2015 – 4:00 P.M. Sandwich Town Hall – 130 Main Street

1. Pledge of Allegiance
2. Executive Session
Exemption 6: Acquisition of Real Property – Town Neck Beach

Note: The Chairman of the Board of Selectmen has determined that conducting this business in open session will have a detrimental effect on the Town's strategic and negotiating position.

3. Adjournment

NEXT MEETING: Thursday, July 9, 2015, 7:00 P.M., Town Hall

Walter D. Bennett 6/30/15

TOWN CLERK
TOWN OF SANDWICH

3 H 12 M P Mlf
RECEIVED & RECORDED

Dunham, George

From: Dunham, George
Sent: Tuesday, July 21, 2015 10:24 AM
To: Dunham, George
Subject: FW: Sandwich - Ron Beaty Open Meeting Law complaint

From: Michele Randazzo [mailto:MRandazzo@k-plaw.com]
Sent: Monday, July 20, 2015 4:20 PM
To: Dunham, George
Cc: Lapp, Doug; John Giorgio
Subject: RE: Sandwich - Ron Beaty Open Meeting Law complaint

Summary of Allegations and Facts

The Board has received an Open Meeting Law complaint from Mr. Ron Beaty, alleging that the meeting notice for the Board's July 2, 2015 meeting was not sufficient, because it: 1) failed to list "open session" as a topic on the meeting notice, prior to the executive session agenda item; 2) incorrectly referred to "exemption 6" in the meeting notice; and 3) failed to cite the particular matter with specificity to be discussed in executive session under Purpose #6. The Complainant does not allege that the meeting was not posted sufficiently in advance of the meeting.

The relevant law with respect to the form and content of the meeting notice is as follows.

General Laws c.30A, §20(b) provides in its entirety:

Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. [emphasis supplied].

The relevant portion of the regulations promulgated by the Attorney General, 940 CMR 29.03(1)(B), provide:

Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting. The date and time that the notice is posted shall be conspicuously recorded thereon or therewith. [emphasis supplied].

The meeting notice had listed, as its first agenda item, the Pledge of Allegiance. This surely signifies to the public that the meeting was going to convene, in open session, prior to the Board moving to go into executive session. There is no legal requirement that the agenda list the words "open session" first on the meeting notice. The Board did in fact convene in open session first, before entering executive session, as required by law.

With respect to the reference to "exemption" 6, rather than Purpose #6, this allegation elevates form over substance. There is no prescribed form for meeting notice items, including for executive session meetings. The Attorney General has determined that citation to the statutory provision(s) under which the executive session will be held is sufficient for meeting notices. AG OML 2012-109. For many years, the Board has referred to "exemptions" on its meeting notices, instead of "purposes" when identifying the specific statutory provision authorizing executive session. Although the Board believes that its meeting notices comply with the Open Meeting Law, nonetheless, the Board further understands that the Town Manager has been actively working with Town Counsel to ensure that the wording of executive session agenda items is appropriate, and it encourages that dialogue.

Finally, on the substance of the content of the executive session item on the meeting notice, the Attorney General has concluded that, when utilizing Executive Session Purpose #6, ("[t]o consider the purchase, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the

public body”), that the agenda item must identify the property at issue “if doing so would not compromise the purpose for which the executive session was called.” See, e.g., AG OML 2014-97; OML 2013-97; OML 2012-52 [emphasis supplied]. Thus, while a property identifier such as street address may be required to be included in a meeting notice invoking Executive Session Purpose #6, if the public body reasonably believes that disclosing this information will compromise the purpose for which the executive session is being called, inclusion of a specific property identifier on the meeting notice is not required. Here, the Town included a reference to “Town Neck Beach” on the meeting notice, so it is unclear what further specificity Mr. Beaty is asserting is required. There has been lengthy public discussion of the beach nourishment project at Town Neck Beach, including a Town Meeting vote to authorize eminent domain takings for certain easements necessary for the beach nourishment project. The Board is certainly authorized to discuss, in executive session under Purpose #6, its negotiating strategy with respect to the acquisition of such easements, it reasonably believed that having this discussion in open session would have a detrimental impact upon its negotiating position, and the Chair declared that having an open session would have a detrimental impact upon the Board’s negotiating position. The Board additionally notes that Town Counsel was present at this executive session, for purposes of providing the Board confidential legal advice in this regard, which supports the Board’s belief that having the discussion in open would have a detrimental impact upon its negotiating position. In his complaint, Mr. Beaty suggests that the Board must now justify its going into executive session, in light of his complaint, but the Board is not aware of any such legal requirement that it must now disclose the specific discussions in executive session in an effort to justify the propriety of the executive session in the first place. To do so would compromise the purpose for which the executive session was originally held.

Conclusions

In summary, the Board’s meeting notice for its July 2, 2015 was sufficiently specific to comply with law.

Potential Motion

I move that the Board acknowledge receipt of an Open Meeting Law complaint from Ron Beaty concerning the meeting notice for the Board’s July 2, 2015 meeting, specifically claiming that the notice was not sufficiently detailed for the reasons discussed above, and also move that the Board resolve the complaint by denying that it violated the law, where: the meeting notice fairly notified the public that the Board would first convene in open session prior to entering Executive Session, through the meeting notice’s inclusion of “Pledge of Allegiance” as the first order of business; the use of the phrase “exemption 6” was not misleading to the public; and the meeting notice was as specific as the Board could be with respect to the reasons for entering into Executive Session under Purpose #6, without having a detrimental effect upon the Board’s negotiating position.

And further, although the Board believes no remedial action need be taken with respect to the allegations, the Town of Sandwich takes its responsibilities under the Open Meeting Law very seriously, and acknowledges that it has an obligation to provide as much specificity as possible in its meeting notices. Therefore, the Board shall cause to be included in meeting notices going forward a clear indication of a “call to order” or other language signifying that the Board will first be convening in open session, prior to entering executive session, where that is not otherwise evident on the meeting notice. In addition, where an executive session under Purpose #6 is anticipated, the Board affirms that it will continue to provide as much specificity in the meeting notice, so long as that additional specificity does not compromise the purpose for which the executive session was called.

And further, that Town Counsel shall prepare a response to the complaint to be forwarded to the complainant and Attorney General consistent with the vote taken hereunder.

Michele E. Randazzo, Esq.
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Boston, MA 02110
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FAX (617) 654-1735
mrando@k-plaw.com