

**MARION BOARD OF SELECTMEN
WATER/SEWER COMMISSIONERS
July 12, 2011
Meeting Minutes**

MEMBERS PRESENT: Jonathan Henry, Chairman
Stephen Cushing, Clerk
Roger Blanchette

ALSO PRESENT: Paul Dawson, Town Administrator
Scott Shippey, Building Commissioner
Jon Witten
Eunice Manduca
Margie Baldwin
Michael Baldwin
Steve Grima
Bill Weber
Marian Howell
Wendy Cullum
Eivind Strand
Sylvia Strand
Jay Ryder
Rick Barnes
Janet Barnes
Jeffrey Ferrari
W.S. Bradford
Judy Havens
Dorothy Heath
Laura Ryan Sachoy
Shelly Richins
Sherman Briggs
Chris Reagle (Sentinel)
Debra Paiva, secretary
Others who did not sign in

The meeting was called to order at 7:00 p.m. Mr. Henry announced that the meeting would be video recorded by ORCTV and audio recorded by Town of Marion staff and news media personnel. NOTE: A list of the materials reviewed at the meeting shall be attached to these minutes.

Mr. Henry announced that this is not a hearing in the formal sense but a meeting to consider testimony of abutters to the Tabor Academy project and to consider possible courses of action that might be undertaken by the Town in the future concerning the project. Mr. Henry requested that questions and comments be brief, to the point, and germane to tonight's issue.

Mr. Dawson announced that after consideration of his ethical obligations as the Town Administrator and after consultation with Town Counsel and the State Ethics Commission, it was his responsibility and duty to disclose what could be conceived as an

appearance of a conflict of interest. Mr. Dawson's public declaration of that possible appearance is intended to dispel that appearance and allow him to move forward and perform his duties as Town Administrator. Mr. Dawson publicly disclosed to the Board that his daughter is a rising sophomore at Tabor Academy and is the recipient of a financial scholarship package from Tabor Academy; the Schaefer Scholarship. After consideration of what his roles and responsibilities are as Town Administrator, Mr. Dawson explained that he feels he can continue to act in an impartial manner serving the best interest of the Board of Selectmen and the Town of Marion residents and citizens at large. Board members had no questions. Mr. Dawson will file a proper disclosure with the Town Clerk's office tomorrow.

Mr. Dawson presented to the Board a petition containing approximately 100 signatures; the petition requested the Board temporarily halt the construction of the Tabor Athletic Field project until the project is thoroughly reviewed for compliance with local, State, and Federal regulations.

Correspondence received this afternoon from the Planning Board was read into the record. The Planning Board encouraged the Board to support the actions of the Building Commissioner.

Mr. Shippey read into the record a chronology of events relative to the Building Permit application. Mr. Dawson said there have been ongoing discussions with representatives of Tabor Academy and their counsel; he asked Attorney Witten to provide a summary of the legal issues that have transpired to date. He said there is an impasse between the issuance of the denials of the Building Permits and Tabor's desire to complete the project. He suggested that the Board consider what to do with Tabor's continued work on the project despite the cease and desist orders, the most notable one being the one issued today limited solely to the zoning bylaw. Attorney Witten explained that only zoning appeals can be brought to the ZBA and only building code appeals can be brought to the State.

Mr. Shippey has the authority to issue noncriminal violations (a monetary fine) on a daily basis and they are a daily accruing fine, but he does not have the authority to issue an injunction. Only the court can issue an injunction and it is Attorney Witten's opinion that only the Board can authorize him to seek an injunction.

Mr. Henry said nobody has made mention of Tabor's insistence that they are shielded by the Dover Amendment and asked if that had been addressed in the discussions. Attorney Witten said the Dover Amendment is "front and center" in this debate. He said there is no question that an educational or religious use has protection from local zoning but those protections are from unreasonable review and regulation.

Mr. Henry asked if the permitting process itself regarding structures would be a normal component even if the zoning requirements were set aside under the Dover Amendment. Attorney Witten said there is no question that Tabor must apply for and receive building permits under the State Building Code for every structure that they seek to construct. Mr. Henry asked if they have done that. He was told yes and no, there is a dispute whether the backstop is a structure under local zoning. A public hearing with the ZBA for the field lights is scheduled; an application requesting a setback variance for the backstop has not been submitted. The proposed bleachers and dugouts will require a site plan review by the Planning Board because the work will be greater than 500 square feet of area. Mr.

Henry asked if that work fell under the Dover Amendment and Attorney Witten told him as long as the site plan review does not lead to a denial it is a permissible use of the land. Mr. Henry asked, hypothetically, if the structures are around the periphery, the center portion (Astroturf, grading, drainage) could be completed. Mr. Shippey explained that would require site plan review because the dugouts and the curb/foundation of the backstop are connected and falls under the zoning bylaw's definition of structure. Mr. Cushing asked if any official plans showing completed or pending work have been submitted. Mr. Shippey said he had the plans originally submitted with the building permit application.

The following individuals commented on the issue:

Headmaster Jay Stroud –

Said because this was not a formal hearing Tabor Academy did not have counsel present. Said the school might have publicized the project more clearly. Called attention to informational handouts compiled by the school and available to the individuals present tonight.

ZBA Chairman Robert Wedge –

Said the situation regarding the encroachment on setbacks is not as simple as a study of the field. Described the four conditions required for a variance to be granted.

Janet Barnes, 296 Front Street –

Asked the Board to support Mr. Shippey and to carry out the requirements of the bylaw. Voiced concern for safety risks the project might cause (distractions to drivers, fly balls).

Robert Sanderson, 416 Front Street –

Voiced concern for the impact of the project on his property on Ryder's Lane and asked if there is any recourse available in the event quality of life or property values are adversely impacted.

Margie Baldwin, 36 Cottage Street –

Asked what is reasonable to expect from Tabor Academy
Suggested how the school might have provided more information to the public
Voiced respect for the school's presence in the town
Said the school should have to abide by the local bylaws
Said the school should allow review of the project's impact on the harbor and the neighborhood

Andrew Santos, Creek Road –

Voiced concern for the process involved for a project resulting in such a dramatic change.

Joanne Inman, 300 Front Street –

Said she always considered the school a good neighbor
Described her surprise when she saw the construction underway

Said the project should have been better explained
Said overall the school has done some wonderful things for the town

Eileen Lonergan, 58 Cove Circle -
Asked if there were pros/cons to having turf vs. natural field

Janet Barnes –
Described information she found online and in discussions
Asked how the materials used would perform in a velocity zone during a coastal storm surge
Said she could find no applications of artificial turf with infill material being placed in a velocity zone

Robert Margolane, Point Road –
Said the Conservation Commission must have reviewed the project and asked if they had addressed the Board's concerns.
Commented that the backstop should probably be higher

Albin Johnson, Board of Health
Said the Board of Health has yet to review any drainage plans for the project and is looking forward to the site plan review, when the Board of Health might see a set of plans to review.

Trina Wanaga, 9 Vine Street –
Urged the Board to continue review of the project
Said she and her brother collected signatures for a petition
Said her brother received a phone call threatening that their houses will be burned down
Expressed disappointment that Tabor Academy did not reach out to the Town with this project.

Mr. Henry said it's regrettable that someone would stoop to that depth to intimidate people who have taken this position but he would not imply that it had anything to do with the Tabor staff.

Barbara Sanderson, 416 Front Street –
Described a study that was quite favorable to crumb rubber.
Said she was at the first Conservation Commission meeting and had some concerns but was told that her concerns were outside the purview of the Conservation Commission.
Thought another review would be done at another Board where she could bring up her issues and that never happened.
Brought concerns to CLE & Will Saltonstall and was not reassured by their answers.
Described a study that does not deny the pollutants from crumb rubber but states they are within acceptable limits.
Said this could be an opportunity to request that Tabor Academy review the material used and look into the possibility of an environmental impact study.
Described how stormwater will overflow directly into the harbor.

Richard Barnes, 296 Front Street –

Stated he was notified of the Conservation Commission meeting but did not attend because he was confident that the Commission would look out for his interests and he felt confident that the process would be reviewed and Tabor Academy would do something that would be a first class project.

Said that after reviewing the commission minutes discovered that the total review of the project took 30 minutes prior to approving it. An amendment was filed 60 days later that dramatically increased the scope of the project and that review took 10 minutes prior to approving it.

Said the Conservation Commission did not look out for his interests in this case as it relates to the wetlands impact but what is in their purview in the stormwater and hurricane impacts.

Stated that the Conservation Commission absolutely dropped the ball and he is tremendously upset about that.

Asked Mr. Stroud if the project will continue tomorrow; Mr. Stroud said he could not answer the question.

Asked the Board to follow the judicial process and stop the project to allow proper review.

Thomas Magauran, 66 Main Street, Planning Board Vice-Chairman

Said Mr. Stroud invited him to discuss the project last week and explained that August 24 is the completion date, leaving no margin for error. Mr. Stroud was told the project needed to go through site plan review and the Planning Board would do everything possible to expedite the process and minimize delay but had to go through peer review and due diligence.

Said he does not think the Board has any other choice but to seek a remedy for this process to stop.

Said once the materials are down they are not coming up.

William Washburn, 45 Rocky Knook Lane-

Described the process the Recreation Committee had to follow when they wanted to construct a small ball field at Washburn Park and it was reviewed by the Conservation Commission.

Jay Stroud –

Acknowledged that Tabor Academy could have heard the opinions of the residents earlier and thought the school was doing everything it needed to do.

Said the permitting process began in January.

Described the review done by the school staff regarding the project and materials.

Said when the approval was received from the Conservation Commission the school believed they had done everything they were required to do based on prior experience and on legal counsel advice.

Said the fields are a gift to the school and told the donors the permitting process was complete.

Said once the construction is started it needs to continue.

Said he would compromise on anything else, he did not care if the school puts up lights, bleachers, or dugouts, he would take the backstop out; but the field needs to be completed.

Katrina Wanaga –

Asked Mr. Stroud if he was aware of any other schools that had ripped out their fields and was told no.

Janet Barnes –

Asked Mr. Stroud if any other schools using similar fields were located in a velocity zone and was told no.

Asked Mr. Stroud if the company used by the school was Field Turf USA and was told the school is using Northeast Turf.

Read excerpts from studies regarding potential damages.

Questioned whether the amendment should have been filed as a Notice of Intent

Dorothy Heath – 20 South Street

Described the benefits the Town has received regarding use of Tabor facilities and asked what is the public advantage of the field. Mr. Stroud said he was not prepared to answer the question but will try to be cooperative.

Winnie Sylvia – Spring Street

Said different points of view can be found in different studies

Said Tabor Academy has been a good neighbor

Does not want to drive by the field a year and a half from now and see it looking like it does today

Said the Board of Selectmen can probably help the process along in achieving what is right for the town

Mr. Blanchette voiced disappointment in the fact that the Conservation Commission was able to approve the application in less than one hour at one meeting and the second application for a huge amendment was approved in 15 minutes, especially since the entire project is located in a flood plain. He reviewed the report submitted by Tabor Academy and noted that in each of the applications only three Commission members signed off on the approvals. Mr. Blanchette said the Board is the appointing authority and in the future needs to do a better job because the Commission did not do more investigative work. He noted that some applicants with simple projects are “hung out to dry”, with the process taking many weeks, and a project of this size was decided in 40 minutes with the amendment decided in 12 minutes. He said this would never have gone this far had the Conservation Commission done due diligence.

Mr. Henry said he went to the meeting for the amendment and looked at the cross sections; he noted that the complexity of the proposal could not be grasped in minutes, especially by people who don't do it for a living. Mr. Henry agreed with Mr. Blanchette that the ball was dropped at the Conservation Commission and that this mess wouldn't exist now if some diligence had been applied and some questions asked about the scope of the work. He agreed with Mrs. Sylvia that the project needs to get done but needed to

be reviewed. He asked Mr. Stroud if the school would be willing to undertake a value engineering process and suggested that a large engineering company could probably review the project expeditiously. Mr. Stroud said he would be happy to cooperate in any way he could.

Mr. Cushing said it was obvious that a lot of things that should have happened did not happen. He understood the need for Tabor Academy to continue but voiced concern with the failure to comply with the cease and desist order. He said he was not sure based on what occurred tonight that they are going to comply at all with it. Mr. Cushing said he was willing at this point to make a motion to authorize Town Counsel to seek injunction through the Court to tell Tabor to comply with the cease and desist order issued on July 11, 2011. Mr. Blanchette said he agreed with Mr. Cushing as all of the issues need to be resolved.

The previous motion was amended as follows:

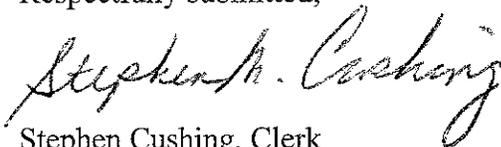
Moved by Mr. Cushing and seconded by Mr. Blanchette to authorize Town Counsel to seek injunction through the Court to tell Tabor to comply with the cease and desist order issued on July 12, 2011. VOTE: 3-0-0

Prior to the vote being taken, Attorney Witten explained that the Board could pursue a "short term" temporary restraining order or a "long term" preliminary injunction which would be for a longer period of time. Mr. Blanchette asked if the Board would be allowed to work with Tabor while the injunction was in place and was told yes. Attorney Witten explained the process associated with obtaining a temporary restraining order and a preliminary injunction.

Subsequent to the vote Mr. Henry said he still was hopeful of working out a compromise with all possible dispatch that would get everyone to the table and get it done.

Moved by Mr. Cushing and seconded by Mr. Blanchette at 8:46 p.m. to adjourn. VOTE: 3-0-0

Respectfully submitted,



Stephen Cushing, Clerk
Date approved:

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DOCUMENTS REVIEWED AT MEETING

Disclosure of Appearance of Conflict of Interest (7/11/11)
Petition to Review Tabor Athletic Field Project (6/29/11)
Written statement of Building Commissioner (7/12/11)
Building permit application and letter of denial (4/20/11)
Building permit application approved (6/10/11)
Three building permit applications and letter of denial (6/30/11)
Building permit application approved (7/6/11)
Cease and desist order (7/11/11)
Cease and desist order (7/12/11)
Letter from Planning Board (7/12/11)
Information booklet submitted by Tabor Academy (undated)