The Board of Selectmen met in Executive Session on February 9, 2010, in the Tisbury Town Hall.

Call to order: 5:30 p.m. by Chairman Tristan Israel, who reported that the Board must convene in an Executive Session at the beginning of this meeting for an urgent matter, adding that those in attendance may remain in the room as the Executive Session will be held in the downstairs meeting room, and that the Board will reconvene in Open Session upon completion of the Executive Session, which Mr. Israel stated will be as brief as possible.

Motion: That the Board of Selectmen go into Executive Session for the purpose of discussing strategy with respect to collective bargaining, to reconvene in Open Session. Seconded.

Voting: Mr. Coogan: Yes; Mr. Israel: Yes; Mr. Kristal: Yes.

Convened in Executive Session: 5:35 p.m. M/s/c.

Present: Tristan R. Israel, Chairman; Jeffrey C. Kristal; and Geoghan E. Coogan, Clerk; John R. Bugbee, Town Administrator and Aase M. Jones, Assistant to the Town Administrator.

Also Present: Police Department Consultant Robert Wasserman.

Tisbury Police Department Update: was provided by Robert Wasserman who reported that something happened at the Tisbury Police Department that was reported to him earlier in the day, adding that this needs to be taken under consideration for a couple of weeks. Mr. Wasserman explained that Acting Interim Chief Dan Hanavan told him that he does not think that he wants to be Chief of Police. Mr. Wasserman explained further that Mr. Hanavan has done all the right things while serving as Interim Chief, called the officers when not doing the right things, practiced progressive discipline, but noted that the department has three problem officers pushing back, challenging Dan Hanavan’s decisions and authority and making threats.

Mr. Wasserman praised the steps Dan Hanavan has taken as Acting Chief, improving policies, and acting when he has found issues to address, one being officers disconnecting cameras when making stops. Mr. Wasserman noted that the Board of Selectmen approved the policy on cameras in vehicles, which described disconnection of cameras as a serious violation of the policy with equally serious consequences.

Mr. Wasserman stated further that Dan Hanavan is now feeling the pressure from these officers, is not sure he wants to take on the role of Chief and the accompanying challenges from the officers, with the expectation of another ten years of service in the department. Mr. Wasserman pointed out that former Chief Ted Saulnier did not clamp down on the problem officers and when Chief Cashin tried to do so he did not do it in a proper way so that the discipline did not hold up.

Mr. Wasserman continued by stating that there is no other officer in the department that is “suitable” to be Chief, adding that if Dan Hanavan decides that he does not want to take the position, a decision has to be made on how to proceed.
Mr. Wasserman stated further that a written reprimands lead to a grievance, and pointed out that when such actions were taken there were consequences. He reiterated that there are three officers whose behavior remains a problem and who are “testing” the Chief, who observes incidents and takes action. Mr. Wasserman stated that Mr. Hanavan is considering his options and that at this point he is 60-40 on whether to take the job, and added that those officers who are problems are taking actions and ganging up on him.

Mr. Wasserman stated further that this situation is changing some of what he had planned to do, and noted that he wants to talk to his labor attorney (Jack Collins) and also that he wants to flag these incidents, which he declared are serious enough to do that.

Mr. Wasserman alluded further to the MCAD complainant (Kelly Kershaw) having made a veiled threat following instructions from the Chief about the failure to file a report properly. Mr. Wasserman stated that this needs to be addressed with MCAD.

Mr. Wasserman then stated that none of this information must go back to anyone associated with the Tisbury Police Department.

At this point Mr. Israel inquired if Mr. Wasserman will make a report to the Board at the regular Selectmen’s Meeting.

Mr. Wasserman stated that he would present a general overview at the meeting and have a report within a few weeks, adding that in the interim Dan Hanavan needs to make a decision on his status as Chief. Mr. Wasserman then added that the Town needs someone in the position with credibility and no issues, like former Oak Bluffs Chief Joe Carter.

Mr. Israel then asked about Dan Hanavan filling the position of Lieutenant.

Mr. Wasserman responded that Dan Hanavan is “a wonderful guy”, who has done everything he asked him to do and that he believes in within the department. Mr. Wasserman stated further that he told Mr. Hanavan that if he is made Chief and the Towns of Oak Bluffs and Tisbury considers a merge of the departments, this would be too costly for Tisbury as Oak Bluffs pays its officers so much more over the short term.

Mr. Wasserman commented further that he finds it “ridiculous” to have six police department on Martha's Vineyard, but added that a merger is not happening in the foreseeable future.

Mr. Wasserman reported further that in his discussions with Dan Hanavan he expressed some concern about his future prospects, if for instance he were appointed Chief and after two years he no longer would hold that position, what position would he hold? Mr. Wasserman explained that Dan Hanavan is somewhat nervous about his future, is looking for stability, and if no longer Chief, he would rather go back to being a Sergeant (than a Lieutenant).

Mr. Wasserman assured the Selectmen that Officer Gately is not at all part of the problem(s) in the department.
Mr. Coogan asked if the Board should still advertise to fill the position of Chief.

Mr. Wasserman then stated that if Dan Hanavan wants to continue in the job, the Board should give him the position, adding that he has done the right thing and done a good job. He concluded his comments by asking the Selectmen to wait and take no action for a couple of weeks.

Mr. Kristal commented that at this time the State is offering a retirement buy-out program which would leave an opening if Sgt. Silvia retires. He then urged that the “Oak Bluffs option” not be thrown out, adding that it has been costing the Town a lot to go through Saulnier, Cashin and Dan Hanavan.

Mr. Wasserman cautioned that the Selectmen may not want an Oak Bluffs style of policing in Tisbury. Discussion followed on the three officers that remain a problem for management.

Mr. Wasserman reported that response to call and crimes is good, adding that the Town must not tolerate the use of excessive force by its officers.

Mr. Kristal suggested that the police “culture” must change.

Mr. Wasserman advised that progressive discipline must go forward, and pointed out that Dan Hanavan is the first chief to begin this practice (of progressive discipline), and noted that Dan Deserves kudos for that.

Mr. Wasserman noted further that only one officer, Kelly Kershaw, did not want Dan Hanavan as Acting Chief, and concluded his comments by stating that he will put some of this in his report.

There being no further business in Executive Session,

**Motion:** To reconvene in Open Session. Seconded.

**Voting:** Mr. Coogan: Yes; Mr. Israel Yes; Mr. Kristal: Yes.

Reconvened in Open Session: 5:52 p.m. M/s/c.

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Open Session Minutes from 5:55 p.m. - 8:05 p.m. are recorded separately.

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**Motion:** To go into to Executive Session to discuss strategy with respect to contract and real estate negotiations, not to reconvene in Open Session. Seconded.

**Voting:** Mr. Israel: Yes; Mr. Coogan: Yes; Mr. Kristal: Yes.

Convened in Executive Session: 8:05 p.m. M/s/c.

Tashmoo Overlook Willow Tree Issue: was taken up first.

Also Present: Scott McArthur.

Mr. McArthur presented a proposal with an estimate for removing two willow trees, one cherry tree and pruning others on the Payette property.
A discussion followed on severe pruning vs. removal of the willow trees.

Mr. McCarthy stated that the Payettes are now talking about removing two of the larger willow trees and pruning others, adding that this is what he recommended to the Payette family members who agreed to consider removal rather than pruning.

Mr. McArthur then asked about payment for his services, estimated to be $2,100, adding that Mr. Payette did not say that the cutting and removal would be done at his expense.

Mr. Israel spoke at length about the process of getting the trees trimmed or removed reporting that the Selectmen made several offers to the Payettes but were “blown off” at every turn.

Discussion followed on payment for the work of cutting the trees. Mr. Israel suggested not putting that on the table if Mr. Payette is not expecting the Town to pay for the removal of the trees.

Mr. McArthur noted that there is also a large oak tree near the left side willow tree. Discussion followed on what should be cut. Mr. McArthur stated that two large willow trees are being considered for removal by the Payettes.

Mr. Kristal stated that if Mr. Payette agrees to remove the trees, we should pay the bill.

Mr. McArthur pointed out that the Payettes have a sentimental attachment to the willow trees, and then recommended as a starting point that the Selectmen check out the adjacent oak tree.

Mr. Israel then stated that he would be happy if Mr. Payette would let the middle section be cleared out.

Mr. McArthur noted that in the Northwest corner of Mr. Payette’s property adjacent to the Water Works property, there is a nice buffer of trees which he hopes to retain.

Mr. Kristal stated that the Town should offer to pay the cost of the tree removal, adding that if Mr. Payette cute the large trees in the middle of the view, the Selectmen can work with the Water Works Department to make sure that the buffer remains intact. Mr. Kristal stated that if Conservation Commission concurrence for the cutting the trees is required the Selectmen can take care of the permitting process through the Tisbury Conservation Commission, and pay for everything.

Mr. McArthur cautioned that he is not absolutely certain that Mr. Payette is “good with this” yet, but agreed that Mr. Payette has been talking with him about the cutting of two trees and severe pruning of others.

Mr. Israel suggested a Memorandum of Understanding (MOU) that would allow the Town to prune the trees again in 5 years.

Mr. Kristal concurred, stating that he would like the agreement to allow the Town to prune the trees every couple of years.

Mr. Coogan expressed concern that the trees will not be cut if the Selectmen remove the Article(s) from the warrant before the trees
come down. Discussion followed on whether Mr. Payette would cut the tree if the Articles to move forward with funding surveys and taking were removed. Discussion followed on logistics of filing an Article to pay for the tree removal or whether existing could be amended to pay for the tree removal at Town Meeting.

Mr. McArthur then stated that he is willing to proceed and cut down the trees within one week, and expressed confidence that he would be paid by the Town after Town Meeting.

Mr. Israel then stated that if Mr. Payette goes along with this plan the Board can meet next Tuesday and pull the Articles now on the arrant to address the willow tree issue and replace with an Article to fund the cost of tree removal as discussed.

Mr. McArthur then stated that Mr. Payette has sent him to meet with the Selectmen to authorize the removal of the two trees.

Mr. Israel stated that he also wants “serious” pruning of the large oak tree and adjacent willow tree on the left side, and concluded by stating that if the trees are cute the Board will remove the Articles pertaining to further action by the Town and replace with an Article to pay the cost of removing and pruning as discussed. The Board agreed.

8:30 p.m.: Mr. Scott McArthur left the meeting.

GPCS Fiber Optic Cable Status: was taken up next.

Also Present: DPW Director and Cable Advisory Appointee Fred LaPiana.

A letter from County Manager Russell Smith dated February 2, 2010 was discussed and is hereby incorporated by reference. Mr. Smith’s letter proposes that the County represent all the Island Towns in negotiations with the newly registered public utility GPCS Fiber Communication, Inc. for use of public rights-of-way, to bring fiber optic cable to the Vineyard, with the County deriving some financial benefit from participation in this process.

Mr. LaPiana reported that under Federal law communities allowing utilities the use of public rights-of-way can receive up to 5% of a utility’s gross revenue. Mr. LaPiana speculated that with a package cost of about $105/month for combined cable, phone and internet service, the Island could be eligible to receive a monthly income of up to $69,000/month.

Mr. LaPiana pointed out that Conservation Commission permits will be required for the proposed landing site of the fiber optic cable at Tashmoo Beach. Mr. LaPiana explained that the DPW Commissioners are putting forward an Article for Town Meeting to allow an easement for the fiber optic cable to come to shore on the Town Beach at Lake Tashmoo.

Mr. LaPiana reported further that he has met with the United States Coast Guard and that everything appears to be falling into place for this fiber optic project to move forward, adding that he wants to work with the GPCS Company to generate the most income for the Island.
Mr. Israel then asked if the Town will be paid something by GPCS for the easement at Tashmoo Beach.

Mr. LaPiana responded that is why this issue is being discussed at this time.

Mr. Israel suggested that GPCS could cut a deal with each community for rights-of-way, but noted that if this is done through the County, the County would get some income and could reduce assessments to the Towns. Mr. Israel commented further that the issue would be if Edgartown would get 39% of the share of the 5% gross because that is how the County vote is weighted.

Mr. Israel spoke at length about whether the Island-wide approach vs. individual Towns negotiating with GPCS would be better. It was noted that the MEPA process with Environmental Notification Period is now underway for the project.

Further discussion followed on estimated revenue of about $69,000/month for the Island, derived from the 5% of gross income that could be generated from this project.

Mr. Coogan questioned whether the Island Board of Selectmen could negotiate with GPCS. Mr. LaPiana stated that this organization cannot, as it has no legal authority to do so, but added that each Town can, a special committee established for the purpose of negotiating with the company or the County could act on behalf of all the Towns.

Mr. LaPiana urged taking what he described as a “global view” of this process, noting that this must be done by October or it won’t happen. Mr. LaPiana stated further that there are lots of subscribers on the Cape and in Falmouth, and conceded that the Vineyard does not have much to offer in the way of number of potential subscribers, but there is a certain prestige for the company to include the Vineyard in its network. Mr. LaPiana suggested that he thinks the Town would want to partner with this company (GPCS) in this effort, especially in view of the potential easement for GPCS via Tashmoo Beach for landing the cable, which he stated will be submitted as an Article at the Special Town Meeting in April.

Mr. Kristal noted that the County Budget is about $825,000, and suggested that if the County gets a share of the “take” from the fiber optic cable deal, that could wipe out or reduce the county and Martha’s Vineyard Commission assessments to the Island Towns. Mr. Kristal continued by suggesting asking for 5% of gross revenue for the easement allowing the fiber optic cable to be landed at Tashmoo Beach. A discussion followed on how the percentage of gross revenues could be administered.

Mr. LaPiana acknowledged and agreed that this could open the door for additional utility income for the Town(s).

Mr. Israel suggested this be discussed with and through the County Advisory Board.

Mr. Kristal stated that the regional Island assessments should be taken care of first, and added that the Town of Tisbury may get an
additional 5% for the Tashmoo Beach fiber optic cable landing easement.

Mr. Coogan questioned how the Town can control this.

Mr. LaPiana responded that would be up to the Board of Selectmen.

Mr. Israel pointed out that the Town has the landing site for the cable at Tashmoo Beach.

Further discussion followed on the role of the County and the level of its involvement in future negotiations with GPCS and what percentage of gross income the Town could expect to be able to negotiate from GPCS for the easement to land the cable at Tashmoo Beach. Mr. LaPiana suggested as much as 3% of gross revenue could be gained for the Town.

Mr. Israel expressed some concern that if the County is part of the negotiations the percentage of revenue would have to be shared with for example Edgartown at the same ratio as the votes are weighted at the County level.

At this point Mr. Kristal asked Mr. LaPiana what he wants from the Board of Selectmen.

Mr. LaPiana responded that the Board needs to tell County Manager Russell Smith what the Board wants to do.

Mr. Coogan commented that charging for the easement would be “dumb”, adding that the easement should be granted with conditions that the Town will get something, perhaps 3%, off the top of revenues from the grantee.

Mr. LaPiana concurred, adding that the Town would be in control in that case.

Mr. Israel suggested that the Town ask for 1% on top of the 3% that might be negotiated through the County. Discussion followed on the Town’s position and what the Selectmen should ask for.

Mr. Israel concluded his comments by suggesting ½ % to the Town of Tisbury on top of the 3% to be negotiated through the County.

In conclusion, Mr. LaPiana suggested that this topic be discussed and presented to the Island Selectmen at the next meeting of the All Island Board of Selectmen.

There being no further business in Executive Session,

Motion for Adjournment: 8:55 p.m. M/s/c.

Respectfully submitted,

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Tristan R. Israel, Chairman  Aase M. Jones, Asst. to Town Adm.

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Jeffrey C. Kristal   Geoghan E. Coogan, Clerk