

BOARD OF SELECTMEN
MEETING MINUTES

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July 20, 2009

Approved on October 14, 2009

A meeting of the Orleans Board of Selectmen was held on Monday, July 20, 2009 in the Nauset Room of the Town Hall. Present were Chairman Jon R. Fuller, Vice-Chairwoman Margie Fulcher, Clerk Sims McGrath Jr., Selectman David M. Dunford, and Selectman Mark E. Carron, Town Administrator John Kelly, Parks and Beaches Superintendent Paul Fulcher and Orleans Town Counsel Michael Ford.

Chairman Fuller called the meeting to order at 4:00 pm.

On a motion by Mrs. Fulcher, and seconded by Mr. Dunford, the Board voted to meet as Park Commissioners. The vote was 5-0-0.

On a motion by Mr. Dunford and seconded by Mrs. Fulcher, the Board voted by way of roll call to enter into executive session for the purpose of discussing litigation. The vote was 5-0-0, with Mr. McGrath, Mr. Dunford, Mr. Fuller, Mrs. Fulcher and Mr. Carron all voting aye.

On a motion by Mr. Fuller, and seconded by Mrs. Fulcher, the Board voted to return to open session. The vote was 5-0-0, with Mr. McGrath, Mr. Dunford, Mr. Fuller, Mrs. Fulcher and Mr. Carron all voting aye.

The Board returned to open session at 4:55 pm.

Parks Commission Chairman Mark E. Carron read a portion of the letter the Board had received from Dr. French of the Massachusetts Department of Fisheries and Wildlife. The letter dated July 20, 2009 was addressed to Parks and Beaches Superintendent Paul Fulcher:

"Dear Paul,

This letter is in follow-up to our conversations of July 17th and this morning as to how the heavy crane can be best driven off Nauset Beach. The intent of Scott Melvin's email to you, of July 14th was to set parameters under which this could be done without causing the death of any nesting Least Terns or their eggs in the Pochet Washover. It was not intended to create a barrier to the completion of this task. It is my understanding that the Chatham Conservation Commission approved an emergency action allowing this crane to travel to the Chatham portion of Nauset Beach to remove several cottages threatened by storm erosion. This agency recognized this as an emergency need. We also agreed that it is reasonable to allow the crane to be removed. As you are well aware both the Piping Plover and Least Tern are State listed rare species protected under the provisions of the State Endangered Species Act,

M.G.L 131A and its implementing regulations 321 C.M.R 10.00. The Piping Plover is also protected by the Federal Endangered Species Act. These laws prohibit activities that would cause the death of these birds or their eggs, which disrupt their nesting or breeding behavior to the point that would cause them harm, or would cause harm to their habitat. It is this agencies position that the crane can be escorted off Nauset Beach without harming the birds or without creating an unreasonable burden on those involved. As we discussed on the phone, there is high probability that if the Least Terns are forced off their nests during the rain, their eggs will die, therefore the crane should not be moved near Least Tern nests if it is raining. Strong winds and long exposures to hot sun can also cause risk of mortality but since I have personal knowledge of your experience with these birds I am comfortable in trusting your judgment on these two factors. However we will need for you and your staff to report to us how close the crane comes to the Least Tern nests and approximately how long the adults were kept away before they resumed incubation. Under these conditions it is our position that you and your staff escort the crane through the Pochet Overwash area in dry weather, you can be certain that no nest will be run over and the risk of any harm caused by other factors will be at an acceptable low level in light of this recognized emergency. Since we have agreed to these protocols if they are followed and a nest is later abandoned we would consider this an unpredicted outcome and no particular person or groups fault. If you wish to further discuss this you are welcome to give me a call.

Sincerely,

Thomas W. French Ph.D

Assistant Director "

On a motion by Mrs. Fulcher, and seconded by Mr. Dunford, the Board voted to reconsider the vote of July 15, 2009 regarding the removal of the Winkler Crane Company Inc. crane from Nauset Beach. The vote was 5-0-0.

On a motion by Mrs. Fulcher, and seconded by Mr. McGrath, the Board voted to authorize the crane to be removed from Nauset Beach in accordance with the protocol set forth in the July 20, 2009 letter from Dr. French of the State Division of Fisheries and Wildlife, provided that the following conditions are met. 1.) Winkler Crane Company Inc. provides a certificate of insurance as evidence that the vehicle is insured. 2.) Winkler Crane Company Inc. pay reasonable costs incurred by the Town in providing necessary staff to escort the crane off of Nauset Beach. 3.) Winkler Crane Company Inc. agrees to indemnify and hold harmless the Town of Orleans, its agents, employees and elected officials from claims or damages that may arise from the crane being escorted from the beach. 4.) Winkler Crane Company Inc. agrees through counsel to execute a stipulation of dismissal with prejudice of pending litigation. The vote was 5-0-0.

On a motion by Mr. Dunford, and seconded by Mrs. Fulcher the Board voted to reconsider the vote of July 15, 2009 concerning communication with the Town of Chatham. The vote was 5-0-0.

On a motion by Mr. Dunford, and seconded by Mr. McGrath, the Board voted to take no further action at this time. The vote was 5-0-0.

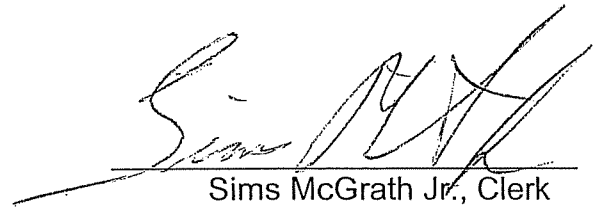
Mr. Carron called for public comment.

William Riley, attorney for Winkler Crane Company Inc., spoke to the Board and thanked Mr. Fulcher for his hard work and the Board for their willingness to reconsider their previous decision.

On a motion by Mrs. Fulcher, and seconded by Mr. Dunford, the Board voted to adjourn the Parks Commission session. The vote was 5-0-0.

On a motion by Mrs. Fulcher, and seconded by Mr. Carron, the Board voted to adjourn.

Respectfully transcribed by,
Kristen Holbrook



Sims McGrath Jr., Clerk

