

BOARD OF SELECTMEN  
MEETING MINUTES

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September 2, 2009

Approved on September 17, 2009

A meeting of the Orleans Board of Selectmen was held on Wednesday, September 2, 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, Selectman Marc E. Carron, Town Administrator John Kelly and Recording Secretary Kristen Holbrook.

Chairman Fuller called the meeting to order at 6:30 pm.

Public Comment: (00:00:15)

*Robert Donath*, a resident of East Orleans, spoke to the Board regarding the Comprehensive Wastewater Management Plan.

*Len Short*, a resident of Orleans and President of the Orleans Pond Coalition, spoke to the Board regarding an informational session the Coalition will be hosting at the Parrish Hall on Monument Road, on October 22, 2009 at 7:00 pm.

*Bernie Genoio*, a resident of Monument Road, spoke to the Board about the scheduled spraying of herbicides by NStar.

*Gary Clinton*, a resident of Nickerson Road, spoke to the Board regarding the citizen petition for a presentation on decentralized wastewater solutions.

Mrs. Fulcher thanked Mr. Clinton for his comments, and asked if it would be possible for the Wastewater Planning Workshops held by the Wastewater Management Steering Committee could be made available at the library for Orleans citizens.

Approval of Minutes: (00:22:39)

**On a motion by Mr. Dunford, and seconded by Mr. Carron, the Board voted to adopt the minutes of the August 5, 2009 meeting as amended.** The vote was 5-0-0.

**On a motion by Mrs. Fulcher, and seconded by Mr. Dunford, the Board voted to adopt the minutes of August 12, 2009 meeting as amended.** The vote was 5-0-0.

Discuss Status of renewable Energy and Wind Committee: (00:25:20)

Mr. Dunford stated he would be in favor of extending the Renewable Energy and Wind Committee for one year, but after that it might work better as a task force on a project-by-project basis.

Mr. McGrath stated that the field of renewable energy is rapidly changing and he felt it is important for the Town of Orleans to have a standing committee in this field for many years to come.

Mrs. Fulcher stated that it is important for the Town of Orleans to have a standing committee for renewable energy.

Mr. Carron stated that due to the fact that the Board continuously has problems filling committee vacancies, he recommended reducing the number of committee members by eliminating the associate members from the committee charge.

Mr. Fuller stated that he preferred to see the current committee sunsetted and a new committee formed. He also thinks the committee needs associate members.

Mr. Alan Kolchinsky Chairman of the current Renewable Energy and Wind Committee spoke to the board regarding the time line for transitioning of the current committee to the new committee. Mr. Kolchinsky stated that September and October are extremely important for the current committee; he further stated that Mr. McGrath's suggestion for the commencement of a new committee on November 1<sup>st</sup> would be greatly appreciated.

Mr. McGrath suggested that the Board might have a discussion on the transition phase of the committee at a future meeting.

**On a motion by Mr. McGrath, and seconded by Mrs. Fulcher, the Board voted to adopt the charge to the Renewable Energy Committee as presented and institute a new committee on or about November 1<sup>st</sup> 2009. The vote was 4-1-0. Mr. Dunford voted nay.**

**On a motion by Mr. McGrath, and seconded by Mrs. Fulcher, the Board voted to extend the term of the current Renewable Energy and Wind Committee members until October 31<sup>st</sup> 2009. The vote was 5-0-0.**

Mr. Kelly recommended that the Board appoint assistant Town Planner John Jannell as Orleans representative to the Board of Directors for the Cape and Vineyard Electric Cooperative.

**On a motion by Mrs. Fulcher, and seconded by Mr. Carron, the Board voted to elect John Jannell as a Director to the Cape and Vineyard Electric Cooperative. The vote was 5-0-0.**

Wastewater Planning Issues: (00:43:15)

The Board met with members of the Wastewater Management Validation and Design Committee to discuss questions arising from the committee's majority and minority final reports.

Chairman of the Wastewater Management Validation and Design Committee, Paul Amman, spoke to the Board and asked if there were any questions on the final report submitted to the Board of Selectmen by the committee.

Mr. Dunford asked what the Woods Hole Group's view was of the MEP process. Ed Daly stated that in general the committee agrees with the process. He further stated that the issues and questions that the Wastewater Management Validation and Design Committee has, revolve around the implementation of the process.

Jeff Eagles summarized the Woods Hole Groups findings in their review of the MEP reports. Mr. Eagles explained that there is an overstatement of the benthic flux in Pleasant Bay. Additionally the Woods Hole Group found that there was no nitrogen balance in the SMAST report. The third issue found by the Woods Hole Group within the SMAST model, in that the calibration of the SMAST model was atypical for the MEP process.

Mr. Fuller asked Mr. Eagles to clarify the statements on calibration of the SMAST model. Mr. Eagles explained that in all other Massachusetts Estuaries Project reports, the calculation of nitrogen levels was based on total nitrogen, in Pleasant Bay, however, the model was not able to calculate the total nitrogen correctly, therefore SMAST used bioactive nitrogen for the readings instead. Mr. Eagles further explained the calibration factors for the SMAST model and the difficulty that SMAST had in using total nitrogen data to calibrate the model.

Mr. McGrath stated that the trend analyses for nitrogen levels in Pleasant Bay hinge on a study in completed in 1987, he asked what study those figures were from and whether or not the protocols were similar to the more recent studies. Mr. Eagles replied that the information for the 1987 study were gathered retroactively, the MEP report states that the levels were 50% higher in 1986 than they are now. Mr. McGrath asked if the 1987 data point is a hypothetical. Mr. Eagles replied that it is an estimate based on the SMAST model and if the SMAST model is thought to have any validity, the estimated data should be valid as well.

Ms. Scanlon stated that because the 1987 data point is a correlation and she felt that it is difficult to correlate data over a twenty-year time span.

Mr. Dunford asked if the 1987 data was used as part of the trend line. Mr. Amman stated that the 1987 data was not used for the graph, and that it has been used only for illustrative purposes.

Mr. Dunford read an excerpt from the Woods Hole Group report on the MEP report, and asked if the missing water quality data was located and received what could the town do with that information. Mr. Daly stated that the data would allow for a stronger evidentiary trend. The more data used for a base line the better defensible the position for the town of Orleans. Mr. Daly also stated that when the remediation system is built, the town would then have to prove that it works. The only way to prove that would be to

have the data. Mr. Daly further stated that the Town of Orleans should have some say over the data collection, and have that data available in a timelier manner.

Ms. Scanlon stated that her concern in regards to the water quality data is who would have access to that, and what would they be doing with it, because the data is complicated and can be misinterpreted.

Mr. Eagles reviewed for the Board the protocol and evolution of the water quality sampling station in the ponds and estuaries in the Town of Orleans. Mr. Eagles stated that the decision to move the data points for Arey's and Meetinghouse ponds, were made by Drs. Duncanson and Howes. This information came from the WMSC meeting in July. Mr. Eagles feels that some one in the Town of Orleans should be looking at that data in order to better serve the Town of Orleans. Mr. Eagles stressed to the Board that part of the review of the Nauset and Town Cove reports should include the Water Quality Data, some of which seems to be missing.

Mrs. Fulcher asked if the Wastewater Management Validation and Design Committee had invited Sandra McFarland to a meeting because Ms McFarland has been a water quality advocate for an extended period of time.

Mr. Carron asked how the Committee proposed to negotiate the eelgrass factor with the Department of Environmental Protection.

Mr. Daly replied that it is extremely difficult to negotiate when there is no firm answer within the MEP report or the Comprehensive Wastewater Management Plan; he stated that the DEP considers remediation efforts to be successful when the eelgrass begins to re-grow.

Dr. Greg Horne, a member of the Wastewater Management Validation Committee, explained the difficulty in using eelgrass as a sentinel species, and he further stated that there is no correlation between nitrogen levels and eelgrass re-growth.

Mrs. Fulcher stated that she thinks very highly of the members of both wastewater committees. Mrs. Fulcher asked Mrs. Scanlon to point out the most important quotes that were overlooked in the final report of the committee.

Mrs. Scanlon felt that there were certain conclusions and quotations in the Woods Hole Group report had been omitted from the Wastewater Management Validation and Design Committee's final report. Ms. Scanlon felt that these quotations were important because they did in fact lend confidence to the MEP report.

Mrs. Fulcher thanked Mrs. Scanlon for her minority report.

Mr. Carron asked why it makes a difference whether nitrogen or bioactive nitrogen is used. Mr. Eagles replied that bioactive nitrogen is used for the setting of the thresholds

and calibration of the model. Mr. Eagles further stated that he is curious as to why the Pleasant Bay model does not respond to calibration on total nitrogen.

Mr. Carron asked if the committee felt that the town should seriously consider having an independent model made for the town.

Mr. McGrath asked if it was harder or easier to test for bioactive nitrogen and is it better or worse indicator of an appropriate nutrient balance. Dr. Horne replied that bioactive nitrogen is the combination of dissolved inorganic nitrogen and particulate nitrogen. Dr. Horne further stated that he did not know why they used this formula for the model, and does not believe it is an accurate indicator of nutrient balance.

Mr. Carron asked if it would be possible for the town to obtain an analysis of water samples in Pleasant Bay to determine what percentage of the nitrogen in the water is caused by septic waste. Mr. Eagles replied that there is research that indicates that it can be done. Dr. Horne stated that the town would need to use a mass spectrometer for the analysis and it would be very expensive for the comparison. Mr. Carron stated that he hoped the town would remain strong in finding the answers to these pertinent questions.

Mr. Daly spoke to the Board about how the committee can be brought to a close. Mr. Daly asked for the Boards support to meet with the members from the Department of Environmental Protection and scientists from SMAST who authored the MEP reports.

Mr. Fuller replied that he would not feel comfortable with that. Mr. Fuller asked if it is possible to measure all of the nitrogen going into the water. Mr. Eagles replied that it was only possible to estimate the amount of nitrogen entering the estuaries, but not to measure it precisely. Mr. Fuller asked where the committee had gotten the dollar value quoted within their final report. Mr. Daly replied that the committee had simply used the figure presented and voted upon at the Annual Town Meeting in 2009. Mr. Fuller also asked what would happen if the Department of Environmental Protection was firm in their estimate of the TMDLs for Pleasant Bay. Mr. Daly explained that DEP would change the TMDLs if the town could prove that the levels were overstated. The town would also have to pay for the model runs, an estimated cost of \$3,000. Mr. Fuller asked the committee what their position was on moving forward with the Comprehensive Wastewater Management Plan. Mr. Amman replied that the committee had not reviewed the Comprehensive Wastewater Management Plan, but that one appropriate response would be to prioritize the areas for remediation.

Mrs. Scanlon spoke to the issue of negotiating the TMDL levels with the Department of Environmental Protection. Mrs. Scanlon stated that she did not believe that the DEP would be thrilled with the idea of changing the TMDLs unless it could be proven that the levels were inaccurate.

Mr. Amman replied that he felt there had been significant changes since the TMDL levels were set and that it would be appropriate to approach DEP for modified TMDLs.

Mrs. Scanlon stated that it was her opinion that the town should proceed with phase one of the Comprehensive Wastewater Management Plan, because of the flexibility built into the plan.

Mr. Kelly presented the Board with a draft of the amended charge to the Wastewater Management Validation and Design Committee. Mr. Kelly explained that he has met with Mr. Collins and Mr. Mesurvey regarding the decision to place Mr. Collins in the position as project manager, and the decisions that will need to be made in the coming months.

Mr. Dunford asked what was going to happen to all of the tasks that were not completed from the original charge of the Wastewater Management Validation and Design Committee. Mr. Kelly replied that those things that were not addressed would be used for the formation of the new Building Committee when the Board is ready to go forward with that. Mr. Dunford also pointed out that the charge to the Wastewater Management Steering Committee had included a point to create a technical advisory group. Mr. Dunford felt that it is important to have that technical input.

Mr. McGrath pointed out that the Wastewater Management Steering Committee did have a technical advisory group, that they relied on even though the Board of Selectmen did not have an opportunity to rely on that group.

Mr. Fuller stated that the advisory group should be designated and or hired by the Board and answer to the Board for the best-unbiased results.

Mr. Dunford stated that he felt it would be beneficial to reduce the committee to five members. Mrs. Fulcher disagreed and asked that it be left at seven members.

**On a motion by Mr. McGrath, and seconded by Mr. Carron, the Board voted to adopt the revised draft charge to the Wastewater Management Validation and Design Committee as amended by adding the final report date of December 31<sup>st</sup> 2009 and the words "including Town Staff". The vote was 5-0-0.**

Chairman Fuller stated that the Board requests that any members of the Wastewater Management Validation and Design Committee, whose terms have expired and wish to continue, communicate their desires to the Board.

Mrs. Fulcher stated that she hoped that everyone on both the Board of Selectmen and the Wastewater Management Validation and Design Committee, realize that a minority report was made and should be respected.

Adopt FY10 Board of Selectmen Goals and Objectives: (02:56:16)

**On a motion by Mr. Carron and seconded by Mrs. Fulcher, the Board voted to adopt the Fiscal Year 2010 Board of Selectmen Goals and Objectives as presented. The vote was 5-0-0.**

Town Administrator's Report: (02:56:335)

Town Administrator John Kelly presented the Board with information on the newly implemented increase to the Massachusetts State Meals Tax.

Mr. Kelly provided the Board with the feedback that he had received from Highway Manager Mark Budnick to address and correct the storm water discharge at the Highway Garage.

Mr. Kelly presented the Board with the Flood Insurance Map from FEMA as the Board had previously requested. Mr. Meservey has reviewed the map and there are few significant changes to the town of Orleans.

Mr. Kelly also presented the Board with an update on the Yawkey Foundation Grant regarding the schedule for upcoming work that will begin this fall.

Mr. Kelly also informed the Board that there will be an agenda item next week for the Board to discuss the citizen's wastewater petition, and reminded the Board of the upcoming joint meeting with the Boards of Selectmen from Brewster and Eastham regarding the Tri-Town Facility. The meeting will be at 7:00 pm at the Orleans Council on Aging Thursday September 12.

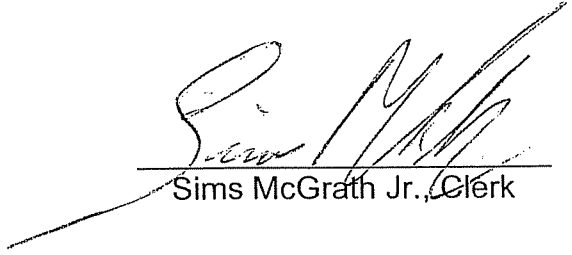
Liaison Reports: (03:29:27)

Mr. Carron reminded the Board of an upcoming public hearing for the Daniel's Recycling Facility.

Adjourn: (03:29:50)

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

Respectfully submitted,  
Kristen Holbrook



Sims McGrath Jr., Clerk

