

C. May

**Orleans Board of Selectmen
Executive Session
July 28, 2009**

ORLEANS TOWN CLERK

Approved August 6, 2009

Present: Town Administrator John Kelly, Chairman Jon R. Fuller, Selectwoman Margie Fulcher, Selectman David M. Dunford, Selectman Mark E. Carron, Selectman Sims McGrath, Mike Giggey of Wright Pierce, Town Planner George Meservey, Assistant Town Administrator Myra Suchenicz, Town Counsel Michael Ford, Finance Director David Withrow.

Chairman Fuller called the meeting to order at 9:00 a.m.

John Kelly stated that he received a letter from the Conservation Law Foundation who is requesting a meeting with the Board of Selectmen and he asked Town Counsel Michael Ford to elaborate on what this group is charged with. Mr. Ford explained that the Conservation Law Foundation is an environmental advocacy group involved in a number of cutting edge projects in the Commonwealth. They were thinking of bringing a cause of action against the State or EPA to increase pressure regarding the enforcement of the Clean Water Act in the area of waste management. Cape Cod was specifically mentioned as being a focus. This group generally relies on taxpayer suits to create standing which can be done in the Commonwealth. Four towns have gotten the letters, Yarmouth, Barnstable, Sandwich and Orleans. The group's history is advocacy and he assumed that their interest is to find out where the town is heading with wastewater. Mr. Ford felt it should be a Board decision as to whether or not the Selectmen meet with the group. He did not see a down side to such a meeting.

Sims McGrath commented that given the group's mission, making an effort to be non-communicative, would spur them on even more. He would be in favor of having a meeting with them if only to show our willingness in conversing with them.

Mr. Ford felt we may be able to educate them on the difficulties that the towns are having in the area of moving ahead with waste management. David Dunford agreed with Mr. Ford.

Mike Giggey of Wright Pierce explained that he met with someone involved with the CLF and noted that they are gaining information and seeking to get people interested. They have filed a freedom of information act with SMAST and DEP. Their strategy may be in gaining more information to know what the next step should be. Mr. Giggey felt there is nothing wrong with meeting with the Conservation Law Foundation.

Chairman Fuller would like to see what SMAST says next week before the Board agrees to meet with them. He suggested possibly meeting with the Conservation Law Foundation toward the end of August.

Mr. Ford suggested that we not mention that we need to acquire more information because we have been working on this project for years. We just need to say that we have a full schedule to get through.

Mr. Kelly will put together a composite of emails he has been sending to DEP and the State reps of what we have been after and that we will schedule a meeting toward the end of August.

On a motion by Margie Fulcher and seconded by Mark Carron the Board moved to enter in Executive Session by way of roll call vote. Chairman Fuller, Margie Fulcher, Sims McGrath, David Dunford and Mark Carron all voted aye.

Mr. Kelly began by explaining that he, David Withrow, Mike Giggey and George Meservey took another look at cost issues dealing with Tri-Town. Mike Giggey put together a breakout pertaining to cost and a meeting was held to go through the Inter-Municipal Agreement. Many questions arose in reviewing the IMA that were not favorable for Orleans. One focus of discussion is the Box Turtle habitat issue relative to the construction situation. Mr. Kelly explained that he met with Michael Ford to discuss the IMA and the "termination provision". The original agreement signed by 3 towns gives Orleans control of that property but not before 2015. Three different approaches arose from that discussion. First, to take total control including all the costs associated with it. Secondly, to adhere to the original agreement and not do anything at this point. Thirdly, to control the property sooner and make it known that we are not willing to negotiate. The original draft of the agreement was not at all good and there seemed to be deliberate oversights.

Mr. Ford, gave the Board a follow up from the last meeting, when there were two issues on the table, one, was a letter to Tri-Town to get the appraisal going and the second, was to take the agreement that was drafted giving Orleans accelerated rights to take over the facility but in large part assume that some portion of the plant would be utilized. There were still questions that the Board had regarding what are the costs associated with those options. Mr. Ford stated that if we do nothing, Orleans could terminate the agreement in 2015, and go to town meeting to borrow money to design a plan. Bond Counsel could opine that the town could borrow for that as the Town will be taking over the land in 2015. But, the draft plan calls for things to happen prior to 2015. A third option would be to go to the two towns with an amendment telling them that we need to end the agreement sooner. Mr. Ford felt Orleans would be in a better position getting out of the agreement earlier.

Mr. Dunford commended everyone on the thorough work done to date. The latest and shorter amendment that Mr. Ford suggested now seems to be the way to go. We need to get back to the other towns as soon as possible.

Mr. Kelly also agreed that a new plan is the way to go. At some point, Tri-Town will be closed and Orleans has no intention of using that plant and that the appraisal issue

should be taken off the table. This new plan raises the question when would the plant be demolished and the district dissolved. Mr. Kelly explained that the town can borrow money to demolish a facility as it will be rolled into construction costs. Another huge consideration to go with a new plan is that if there is a malfunction within the plant in the next few years, we would not be able to put money into repairs.

Mr. Giggey asked Mr. Ford about the word "termination" of the agreement versus the term "expiration" of the agreement. Mr. Giggey stated that as the IMA is worded now, there is an ability for one or the other towns to avoid paying for the demolition costs. Mr. Ford agreed and confirmed that once the plant is closed, the Board of Managers "may" vote to demolish. The wording in the agreement is vague at best and Mr. Ford suggested striking the word "may" and inserting the word "shall".

On a motion by David Dunford, and seconded by Mark Carron, the Board voted by to ask that the proposed amendment be sent to Brewster and Eastham to convene a meeting to review the proposal, urging the parties to discuss regionalization solutions. All in favor by way of roll call vote. David Dunford, Mark Carron, Chairman Fuller, Margie Fulcher and Sims McGrath all voted aye.

In regard to taking the appraisal issue off the table, Mr. Dunford supported following the preferred option for Tri Town where the alternative would call for the complete demolition of the Tri-Town plant.

On a motion by David Dunford and seconded by Margie Fulcher, the Board voted to send a letter to Brewster and Eastham stating that the Orleans Board of Selectmen will proceed with going forward with the preferred option to demolish the Tri-Town facility so that a new facility can be built. All in favor by way of roll call vote. Chairman Jon Fuller, Margie Fulcher, Sims McGrath, Mark Carron and David Dunford all voted aye.

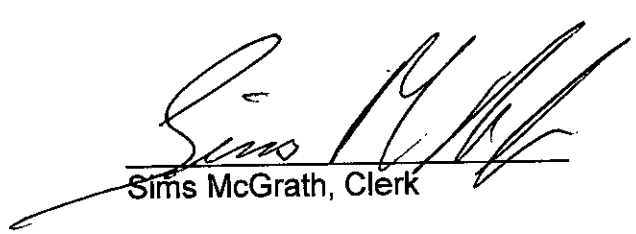
The letter to Brewster and Eastham is to be drafted by Mr. Kelly and read at the 7/29/09 Board of Selectmen's meeting and adopted in open session.

On a motion by Mark Carron, seconded by Margie Fulcher, the Board moved to rescind the Board of Selectmen vote to have the Tri-Town plant appraised. All in favor by way of roll call vote. Chairman Jon Fuller, Margie Fulcher, Sims McGrath, Mark Carron and David Dunford all voted aye.

On a motion by David Dunford and seconded by Mark Carron, the Board moved to adjourn from Executive Session to Regular Session for the purposes of adjournment only. All in favor by way of roll call vote. Chairman Jon Fuller, Margie Fulcher, Sims McGrath, Mark Carron, and David Dunford all voted aye.

On a motion by Sims McGrath and seconded by Margie Fulcher, the Board moved to adjourn from Regular Session. All in favor. Vote 5-0-0

Respectfully submitted,
Margaret M. Astles



Sims McGrath, Clerk

Released December 6, 2017