

BOARD OF SELECTMEN  
EXECUTIVE SESSION MINUTES

July 7, 2009

Approved on September 9, 2009

An executive session meeting of the Orleans Board of Selectmen was held on Tuesday, July 7, 2009 for the purpose of discussing strategy with respect to real property negotiations. Present were Chairman Jon R. Fuller, Vice-Chairwoman Margie Fulcher, Clerk Sims McGrath Jr., Selectman David M. Dunford, Selectman Mark E. Carron, Town Administrator John Kelly, Orleans Town Counsel Michael Ford, Town of Orleans Finance Director David Withrow and Wright-Pierce Consultant Michael Giggey.

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

Mr. Kelly began by asking the Board to reconsider their previous vote to request an appraisal of the Tri-Town Septic Treatment Facility. Mr. Kelly explained that the market appraisal approach might not be as beneficial as the previously thought. Ultimately, the Town of Orleans would like the Towns of Eastham and Brewster to turn over control of the property to Orleans and continue to allow Eastham and Brewster to use the facility at a discounted cost. Given the fact that the Board had previously voted to send a letter stating that Orleans wishes to initiate a market value appraisal of the property, this decision might not currently be in the best interest of the Town of Orleans.

Town Counsel Michael Ford explained that it might be in the best interest for the Town of Orleans to forego the request for an appraisal of the Tri-Town Septic Treatment Facility, and instead concentrate on the strength of Orleans' negotiating strategies in regard to gaining control of the property. Mr. Ford further explained that the best strategy for Orleans would be to go straight to negotiations and not discuss the possibility of an appraisal.

Mr. McGrath pointed out that at a previous joint meeting with the Board's of Eastham and Brewster, the other member towns had asked what Orleans needed in terms of the Tri-Town Facility, and Mr. McGrath favored the idea of simply putting forth Orleans needs in writing.

Mr. Kelly stated that at the previous joint meeting the Towns of Brewster and Eastham had in fact asked for a draft amendment to the inter-municipal agreement. The current discussion for the Town of Orleans is how best to get that amendment into writing and how much mitigation there would need to be. Prior to drafting the amendment the Town of Orleans needs to know exactly how they are going to use the facility.

Mr. Giggey stated that the habitat of the Eastern Box Turtle, is fairly significant, and needed to be taken into consideration.

Mr. Ford stated that if Orleans is not going to use the existing facility, then Orleans negotiating position is very strong, but if Orleans plans to use part of the existing facility at any point, then Orleans would need to compensate Brewster and Eastham for that use.

Mr. McGrath stated that the Board needed to keep in mind that the ultimate goal was to gain control of the site.

Mr. Kelly stated that he would not wish to write into the agreement that Orleans has no intention of reusing the existing Tri-Town facility, only to be placed in a position down the road, that part of the property is needed for the new facility.

Mr. Giggey stated that the Town of Orleans might suggest that the feedback from the MEPA process indicates the need to demolish the facility to demonstrate the

Mr. Carron stated that he was struggling with the financial aspects of the plan, as the budget for the new facility has not yet been developed for the operation and maintenance of the facility. Mr. Carron further stated that he would like to know what the Town of Orleans costs are going to be before offering to let Eastham and Brewster walk away with no financial responsibility for remediation.

Mr. Kelly stated that the preliminary design has not started yet, and is slated for the FY2010 budget.

Orleans Director of Finance, David Withrow, stated that the issue that is bothering him is the factor of separating from Brewster and Eastham, and should the Town of Orleans release Brewster and Eastham from responsibility will that eventually open the Town of Orleans up to sole responsibility for litigation for pollution concerns, should those issues be raised in the future. Mr. Withrow was also concerned that one of the other towns might in the future decide to open their own plant, thus lowering the income potential for the new wastewater facility.

Mr. Fuller stated that having the Department of Environmental Protection put pressure on the Town of Brewster would be beneficial because they are currently so far behind.

Mr. Giggey suggested that having the regional option offered to Brewster and Eastham would increase the Town of Orleans access to priority points in terms of access to loans more readily.

Mr. Ford stated that having a provision in the revised Inter-municipal Agreement for an annual discussion with Eastham and Brewster in regards to regionalized efforts would not bind the Town of Orleans to anything more than discussion.

Mr. Kelly outlined the provision for liability in the revised Inter-Municipal Agreement. Mr. Kelly stated that the draft of the amendment to the Inter-Municipal Agreement does not release the Towns of Brewster and Eastham from future liability from the plume generated by the current Tri-Town Facility.

Mr. Ford explained that the district was created in the original Inter-Municipal Agreement was to create an insurable entity for the Tri-Town Facility.

Mr. McGrath stated that he felt the drafted amendment to the inter-Municipal Agreement was well crafted.

Mr. Kelly stated that the business decision for the Town of Orleans is whether or not to continue to operate the Tri-Town Septic Treatment facility in the wake of a catastrophic breakdown of the plant's equipment.

Mr. Withrow asked if perhaps there should be a non-competitor clause in the Inter-Municipal Agreement, so that in the event that Brewster or Eastham decided in the future to build their own plant the agreement would lessen the impact on the Town of Orleans' facility.

Mr. Giggey felt it would be highly unlikely and not at all cost efficient for either the Town of Brewster or the Town of Eastham to build their own facility and try to compete with the Town of Orleans. Mr. Giggey also stated that it would benefit the Town of Orleans to point out the fact that the current discharge permit for the existing facility expires in 2012, and at that time the Department of Environmental Protection will review and revise the permit which may result in increased costs to the member towns.

Mr. Kelly asked the Board what further information they would require in order to make a decision on the drafted amendment.

Mr. Carron asked that Mr. Withrow be provided all of the financial data in regard to the scope of the amendment to the Inter-Municipal Agreement, so that Mr. Withrow might compose a list of questions based on the available data to be presented to the Board.

Mr. Dunford recommended that in the interim the Town of Orleans should continue negotiations with the other towns but not in a contractual sense, and then follow-up with a revised draft amendment to the Inter-Municipal Agreement.

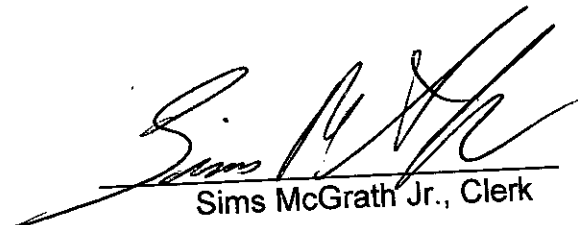
Mr. Kelly recommended holding another executive session for the discussion of the requested financial information prior to finalizing the draft amendment to the Inter-Municipal Agreement.

**On a motion by Mrs. Fulcher, and seconded by Mr. Dunford, the Board voted, by way of roll call, to hold an executive session on July 20, 2009 for the purpose of discussing strategy with respect to real property negotiations. The vote was 5-0-0, with Mr. McGrath, Mr. Dunford, Mr. Fuller, Mrs. Fulcher and Mr. Carron all voting aye.**

Mr. Giggey reminded the Board that there would be a meeting in the near future with the other Boards to discuss the draft report of the regionalization study.

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

Transcribed by:  
Kristen Holbrook



Sims McGrath Jr., Clerk

Released on: December 6, 2017