

ORLEANS BOARD OF SELECTMEN
EXECUTIVE SESSION MEETING MINUTES

November 18, 2009

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Approved on December 16, 2009

ORLEANS TOWN CLERK

An executive session meeting of the Orleans Board of Selectmen was held on Wednesday, November 18, 2009 in the Nauset Room of the Town Hall for the purpose of discussing property acquisition. Present were Chairman Jon R. Fuller, Clerk Sims McGrath Jr., Selectman David M. Dunford, Selectman Mark E. Carron, Town Administrator John Kelly, Recording Secretary Kristen Holbrook and Open Space Committee Chairman Alan McClennen Jr.

Chairman Fuller called the meeting to order at 5:42 pm.

On a motion by Mr. Carron, and seconded by Mr. Dunford, the Board voted to enter in to executive session for the purpose of discussing property acquisition. The vote was 4-0-0, with Mr. Carron, Mr. Dunford, Mr. McGrath and Mr. Fuller all voting aye.

Town Administrator John Kelly introduced Alan McClennen, Chairman of the Open Space Committee, with a presentation for the acquisition of the Putnam Property. Mrs. Fulcher joined the meeting at 5:43 pm.

Mr. McClennen presented the Board with documents outlining the property being discussed and showing the AC/EC boundaries in relation to the property. Mr. McClennen explained that the property is significant for the possible installation of renewable energy items. The Open Space Committee has discussed the possibility of a photovoltaic system or small wind turbines. The concept that is being discussed is to acquire the property for open space with the provision that it may be used for renewable energy or agricultural purposes.

Mr. McClennen further explained that there is no road frontage for the property, but a dirt road enters the property from the rear corner of the Orleans District Courthouse Parking Lot. If the Town acquired the property, there could be a negotiated agreement with Barnstable County to exchange energy for access to the property through the Orleans District Courthouse parking lot. Mr. McClennen also explained to the Board that this property was stripped of elemental soil when the rotary was built, and there is a possibility that the Town could use the materials being composted at the transfer station to replenish the elemental soil and return the property to agricultural use. Mr. McClennen also reported that the Open Space Committee hired Bennett Assoc. to perform due diligence for hazardous material and the results were clean.

Mr. McClennan explained that the property is assessed for \$692,000 dollars. The property owners have never contested the assessment. Mike Sutton, Town of Orleans Real Estate assessor, argued that the property is only worth \$285,000. The Open Space Committee is willing to pay up to \$330,000 for the property. Mr. McClennan recommends that the Town begin formal discussions and negotiations for acquisition of the property.

Mr. McClennan asked that the Board support the open space committee's vote to pursue the acquisition of the property.

Mr. Kelly stated that it would be helpful for Mr. Withrow to be present at the discussion for funding so that the Board has a better idea of where the money would be coming from and what impact it would have on the budget.

On a motion by Mr. Carron, and seconded by Mrs. Fulcher, the Board voted to authorize the Open Space Committee to spend up to \$330,000 for the purchase of the Putnam property. The vote was 5-0-0, with Mr. Carron, Mrs. Fulcher, Mr. Dunford, Mr. McGrath and Mr. Fuller all voting aye.

Mr. Kelly asked if the Board would like to discuss the pending Lost Dog litigation.

On a motion by Mr. McGrath, and seconded by Mrs. Fulcher, the Board voted to continue the executive session for the purpose of discussing strategy with respect to litigation. The vote was 4-0-1 with Mr. Carron, Mrs. Fulcher, Mr. McGrath and Mr. Fuller all voting aye. Mr. Dunford abstained from the vote. Mr. McClennan excused himself and Mr. Dunford recused himself from the meeting.

Mr. Kelly informed the Board that there is a question that the Town of Orleans' sign bylaw may not withstand litigation with respect to case law in grandfathered properties.

Orleans Town Counsel, Michael Ford, has informed the Planning Board that there is case law that suggests the decision may be over turned in litigation. Mr. Kelly stated that the Lost Dog wishes to change the sign and the owners had applied for the permit to change the sign, the Building Commissioner determined the sign to be non-conforming and therefore denied the permit request. The Lost Dog Owners then filed an appeal with the Zoning Board of Appeals and the Zoning Board of Appeals has overturned the Building Commissioner's decision.

There is some concern that the sign that is in place, may have lost its grandfather status. Mr. Ford feels that if the merit of the appeal falls on existing case law, the Town will not prevail, however if the sign is not grandfathered it might not be an issue.

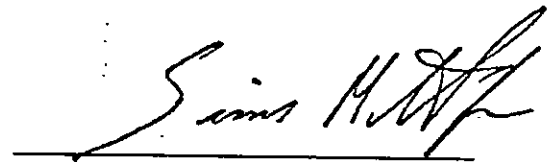
Mr. Ford recommends that the Board authorize the Town Administrator to authorize Town Counsel to file suit for a de novo hearing.

Mr. McGrath stated that the Board needs to preserve the Town's rights so that the new information can be incorporated in the review.

On a motion by Mr. McGrath, and seconded by Mrs. Fulcher, the Board voted to authorize the Town Administrator to instruct Town Counsel to proceed with filing the appeal in order to preserve the issue and to allow the town to gather all facts regarding the historical circumstances of the existing sign, and to have a more complete understanding of the Zoning Board of Appeal's decision, in regards to the matter of the Lost Dog existing exterior sign and report back to the Board accordingly. The vote was 3-0-1, with Mr. Carron, Mrs. Fulcher and Mr. McGrath voting aye. Mr. Fuller abstained from the vote.

On a motion by Mr. McGrath, and seconded by Mrs. Fulcher, the Board voted to return to open session. The vote was 4-0-0.

Respectfully submitted,
Kristen Holbrook


Sims McGrath, Clerk

Released by Town Counsel: 11/2/10
Released by Vote of Selectmen: 11/17/10

