

BOARD OF SELECTMEN  
MEETING MINUTES

July 28, 2010

Approved on August 25, 2010

A meeting of the Orleans Board of Selectmen was held on Wednesday, July 28, 2010 in the Nauset Room of the Town Hall. Present were Chairwoman Margie Fulcher, Vice-Chairman Sims McGrath Jr., Clerk Jon R. Fuller, Selectman David M. Dunford, Selectwoman Susan B. Christie, Town Administrator John Kelly and Recording Secretary Kristen Holbrook.

Chairwoman Fulcher called the meeting to order at 6:30 pm.

Public Comment: (00:00:39)

*Rick Wilson*, a resident of Orleans, and representative of the Nauset Rotary Club spoke to the Board regarding volunteering for community service projects in the Town of Orleans.

*Paul Amman*, a resident of Orleans and representative of the citizen peer review committee, spoke to the Board regarding updated information on nitrogen levels and water samples for Pleasant Bay. Mr. Amman also provided the Board with a 5-page outline of his report, including charts, to support the information provided and asked that these documents be entered into the record.

Approval of Minutes: (00:12:07)

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to adopt the minutes of the June 30, 2010 meeting as amended.** The vote was 5-0-0.

Committee Interview/Appointment: (00:14:51)

The Board met with and interviewed Patricia Crow, a resident of Richardson Lane, regarding her interest in serving on the Open Space Committee. Currently there is one vacancy on the Open Space Committee with a term ending date of June 30, 2013.

Mr. Dunford thanked Ms. Crow for her interest in serving on the Committee.

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to appoint Patricia Crow to the Open Space Committee with a term ending date of June 30, 2013.** The vote was 5-0-0.

6:45 p.m. Shellfish Grant Application Public Hearing: (00:17:15)

Mrs. Fulcher read the public hearing notice as published in the Cape Codder and invited the applicant, Dr. Benjamin Chung, to speak to his request. Dr. Chung stated that his family is interested in making the grant a family venture.

Town of Orleans Harbormaster Dawson Farber recommended that the application be approved as presented.

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to allow for the licensing of a new one-half acre Shellfish Grant License #72 in Cape Cod Bay to Benjamin Chung of 16 Beach Road, Orleans, MA per the application filed with the Shellfish Department on June 3, 2010 with said license to expire on June 30, 2015. The license does not grant any property rights. It does not authorize any injury to private property or invasion of property rights. The vote was 5-0-0.**

7:00 p.m. Summer Informational Meeting for Non-Resident Taxpayers: (00:24:55)

Mrs. Fulcher introduced Orleans Director of Finance David Withrow. Mr. Withrow presented the Board and audience members with his financial report for fiscal year 2010. Mr. Withrow explained the impact the wavering economy has had on the expected non-property tax revenue for the Town of Orleans.

Mrs. Fulcher read the public notice as published in the Cape Codder.

Town of Orleans Director of Assessing, Ken Hull presented information on the personal property taxes and criteria in the Town of Orleans. He also invited any citizen to visit the Town of Orleans website to view information on the Assessor's Department.

Town of Orleans Harbormaster Dawson Farber, presented the Board and audience information on the responsibilities of his department.

*Peter Fishburn*, a non-resident taxpayer, suggested that the Harbormaster consider making some small improvements to the launch/landing at Pochet Road to make easier use of the area.

Mr. McGrath asked if there could be a temporary and seasonal floating launch that could be used. Mr. Farber replied that due to state regulations it would be extremely difficult to place a new structure, temporary or otherwise, at that location. Mr. Farber stated that he would pursue a conversation with the Conservation Commission in the hopes of making the area more accessible and user friendly.

*Jim Nathanson*, a non-resident taxpayer, thanked Mr. Farber for his and his staff's hard work. Mr. Nathanson also asked if there was a way for a person to anchor a boat in the Orleans area for a short period of time without a permit.

Mr. Farber stated that at one time there was an exemption for anchor for less than 14 days. However due to abuse of the regulations, there is no longer any exemption, the options are to trailer the vessel or contact the private marinas.

*Fred Mayer*, a non-resident taxpayer, asked what the regulations are for powerboats in the tidal creek at Rock Harbor, as there have been an increased number of boats racing

in the creek. He asked if there could be signs posted indicating the regulations for the slow-no wake zone.

Mary Reuland, Snow Library Director, spoke to the Board and audience and presented information on Snow Library.

*Harold Bowess*, spoke to the Board regarding Snow Library and the success of the wireless Internet access.

Mrs. Fulcher thanked the Department Heads for their participation.

Meet with Harbormaster Dawson Farber: (01:02:10)

The Board met with Town of Orleans Harbormaster Dawson Farber regarding the possible creation of a new waiting list for 16 privately maintained piers at Rock Harbor as well as new consideration for criteria dockage agreement transfer requests. Mr. Kelly and Mr. Farber presented the Board with revised regulations for the Rock Harbor Slips. The revision dated July 28, 2010 now includes appropriate language for the consideration of transfers of dockage agreements for the 16-recreational/commercial vessels using public piers that are privately maintained. The revision also states that the Harbormaster will maintain 3 separate waiting lists for the separate areas in Rock Harbor.

**On a motion by Mr. McGrath, and seconded by Mrs. Christie, the Board voted to adopt the revised Board of Selectmen's Policy number K4 "Rock Harbor Slip Regulations" dated July 28, 2010.** The vote was 3-1-1; Mr. Fuller abstained from the vote, Mr. Dunford voted nay.

Mr. Dunford asked why the criteria for family history or historical maintenance of the pier were not in the revised policy. Mr. Farber replied that it is difficult to create criteria without turning the decisions into arbitrary or capricious decision. Mr. McGrath stated that his concern is that it is a community character issue. He asked if there was a way to transfer ownership of a boat without triggering the dockage agreement. Mr. Farber replied that no, any change in ownership would trigger the re-lease of the agreement.

Change of Hours: (01:20:33)

**On a motion by Mr. Fuller, and seconded by Mr. McGrath, the Board voted to approve the request of Cape Cod Lobster Claw, Inc. d/b/a Lobster Claw, located at 42 Route 6A, to change the hours on their current liquor license to 11:00 am Sundays – 1:00 AM Mondays.** The vote was 5-0-0.

**On a motion by Mrs. Christie, and seconded by Mr. Fuller, the Board vote to approve the request of Land Ho! Inc., d/b/a Land Ho! Located at 38 Main St. Orleans, MA and Jessica's Homeport, Inc. d/b/a Homeport Restaurant, located at 7 Brewster Cross Road, to change the hours on their current liquor licenses to 10:00 am Sundays – 1:00 AM Mondays.** The vote was 5-0-0.

Town Administrator's Report: (01:21:50)

Mr. Kelly presented the Board with a memo from Harbormaster Dawson Farber requesting the Board to reappoint Gardner Jamieson to the position of Assistant Harbormaster Deputy Shellfish Constable with a term ending date of June 30, 2013.

**On a motion by Mr. Fuller, and seconded by Mr. Dunford, the Board voted to reappoint Gardner Jamieson to the position of Assistant Harbormaster Deputy Shellfish Constable with a term ending date of June 30, 2013.** The vote was 5-0-0.

Mr. Kelly presented the Board with an update from the Mass Department of Transportation regarding the status of the design for the Route 6A/Route 28/Canal Road intersection. The hearing is scheduled to be advertised on September 30, 2011.

Mr. Kelly presented the Board with information on the receipt of a grant for funding water quality drainage projects. The town will be responsible for 25% of the project cost of \$377,000, which will be funded through the water quality article.

Mr. Kelly informed the Board of a letter that has been received regarding a dispute over advertising a business on town property.

Mr. McGrath stated that there is a difference between static use and dynamic use of the town landing.

Mr. Dunford stated that he would like to know more about what options the town might have for this situation. Mr. Dunford would like to have an opinion from Town Counsel.

Mr. Fuller stated that he agreed with Mr. Dunford and that he is aware of other businesses doing similar advertising.

Mrs. Fulcher stated that the economy is important and that the Board would be opening a can of worms if they try to regulate this at this time.

Mr. Kelly stated that he would find the information the Board had discussed previously.

Mr. Fuller stated that his concern was in making sure that everyone is treated fairly. Mr. Dunford stated that the issue is the advertising and that is what he wants Town Counsel to review.

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to ask Town Counsel to review the legality of advertising on the side of a boat moored at the Town Landing.** The vote was 1-4-0, and the motion failed. Mr. Fuller, Mrs. Fulcher, Mr. McGrath and Mrs. Christie voted nay.

Town Administrator John Kelly provided the Board with the back up information used in developing the Water Department's future cost projections. Mr. Dunford asked for the information going back over several years to compare.

The Board received a memo from Mary Jane Curran, Chair of the Renewable Energy Committee with an update regarding the requirement to receive a Green Community certification as part of the Green Communities Program. The Renewable Energy Committee has requested an opportunity to update the Board in the fall.

Also included in the Board's packet was an email from Orleans resident Carl Trevison complimenting the Parks and Beaches staff as well as the Summer Police Officers for their excellence in coordinating the vehicular traffic on Callanan's Pass.

Mr. Kelly informed the Board that he would be away next week and that Assistant Town Administrator Myra Suchenicz would be the designated acting Town Administrator.

Wastewater Planning Issues/Updates as Necessary: (01:58:45)

Mr. Kelly presented the Board with the proposed Scope of Services for the Engineering Review of the Orleans Comprehensive Wastewater Management Plan.

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to accept the Scope of Services from the Cape Cod Water Protection Collaborative for the Engineering Review of the Comprehensive Wastewater Management Plan as proposed in the document dated July 24, 2010.** The vote was 5-0-0.

The Board discussed making a decision on whether to continue to seek support of a peer review of the SMAST MEP reports and linked model through the National Academy of Sciences.

Mrs. Christie stated that the response letter from DEP, to the Town of Bourne was interesting, and she is also interested in the estimate for cost for the National of Academy of Sciences review.

Mr. Dunford stated that it has been an interesting experience. He is disappointed by the County's reaction to the request and feels that the response letter and its accompanying accusations were an affront to the Town of Orleans, but he is encouraged by the supportive responses from the seven other towns on the Cape, and the next step should be to solicit support from Congressmen Delahunt's office.

Mr. Fuller stated that he feels the Board should go straight to Senators Kerry and Senator Scott Brown.

Mr. McGrath stated that he supported the idea at the outset in order to see the attitude of the other towns. He also stated that if the National Academy of Science finds fatal flaws in the science, the work will still have to be done, but at that point there will be little direction.

Mrs. Fulcher stated that she had listened to one of the Finance Committee members explain what the National Academy of Sciences will be looking for in terms of support.

She tends to agree with the response from the Town of Harwich. She feels it is time to move on, and that the town does not have the money to spend on the peer review.

Mr. Fuller stated that he has supported the Comprehensive Wastewater Management Plan from the beginning, however he feels that the Board must do everything possible for due diligence purposes on the Comprehensive Wastewater Management Plan. If the National Academy of Sciences refuses to review the MEP science at least at that point the Town will have done everything possible

Mr. Dunford stated that while the review of the Comprehensive Wastewater Management Plan is great but it does not get at the science.

**On a motion by Mr. Dunford, and seconded by Mrs. Christie, the Board voted to ask the Town Administrator to compose a letter to all federal representatives and Senators, indicating the support that has been received and request support for a referral of the SMAST MEP report and linked model to the National Academy of Sciences for review as soon as possible.** The vote was 3-0-2, with Mr. McGrath and Mrs. Fulcher abstaining from the vote.

*Jim Bast*, a resident of Orleans, spoke to the Board regarding the Board's decision. He felt that the Board was not being decisive and instead suffering from "paralysis of the analysis".

#### Liaison Reports: (02:33:19)

Mrs. Christie presented the Board with an update on recent meetings of the Community Preservation Community, the Orleans Cultural Council, and the Snow Library Board of Trustees.

Mr. McGrath updated the Board on a meeting of the Renewable Energy Committee.

Mr. Fuller presented the Board with information from a recent meeting of the Planning Board.

Mr. Dunford updated the Board on recent meetings of the Water Quality Task Force and the Architectural Review Committee.

Mrs. Fulcher presented the Board with an update on the Fourth of July Committee.

#### Other Business: (02:45:01)

Mr. McGrath asked if the crosswalk on Main Street had been referred to the Traffic Study Committee.

Mr. McGrath asked if an appraisal had been completed on the Tri-Town Committee.

Mr. Kelly explained that the appraisal would be done at the termination of the agreement, as it does not make sense to conduct an appraisal this year when the agreement does not expire until 2015.

Mr. McGrath asked if an interim appraisal would foster the discussion for terminating the agreement. Mr. Kelly explained that there is a two-year notice built into the agreement, so there will be time to make the notice.

Adjourn: (02:54:55)

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

Respectfully submitted,

Kristen Holbrook

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Jon R. Fuller, Clerk