

BOARD OF SELECTMEN
MEETING MINUTES

March 2, 2011

Approved on April 6, 2011

A meeting of the Orleans Board of Selectmen was held on Wednesday, March 2, 2011 at 6:30 P.M. in the Nauset Room of the Orleans Town Hall. Present were Chairwoman Margie Fulcher, Clerk Jon R. Fuller, Selectwoman Susan B. Christie, Selectman David Dunford, Town Administrator John Kelly and Recording Secretary (pro tem) Lynda Burwell.

Excused: Vice-Chairman Sims McGrath Jr.,

Also present: Attorney Michael Ford, Town Counsel; Laurence Haywood, Chairman of the Finance Committee; David Withrow, Director of Municipal Finance

Call to order: (00:00:10)

Chairwoman Fulcher called the meeting to order at 6:40 P.M. Mrs. Fulcher asked for a moment of silence to honor our troops who have died in service to our country and all those serving our country in the armed forces.

Public Comment: (00:35)

Carolyn Kennedy, president of the Orleans Pond Coalition, requested the opportunity to work again with the Parks and Beaches Department and Snow Library on this year's event. She asked for support from the Board of Selectmen for the second Celebrate Our Waters Weekend September 24-25, 2011. Ms. Kennedy reported that the OPC had an exhibit on groundwater entitled Water in the Ground Under Our Feet located at Snow Library for the month of March.

Mrs. Fulcher announced that nominations will close for the Citizen of the Year Award on March 7th. She also noted that the Board of Selectmen is seeking applicants for the Commission on Disabilities which has five vacancies.

Mrs. Christie announced that the Board of Health would be conducting a Public Hearing on March 3, 2011 at 2:00 P.M. for the purpose of taking comments on the Orleans Solid Waste Facility Regulations.

Approval of Minutes: (00:06:22)

On a motion by Mr. Fuller, and seconded by Mr. Dunford, the Board voted to approve the minutes of the February 2, 2011 meeting as presented. The vote was 4-0-0.

Town Administrator's Report: (00:07:00)

Committee Member Resignation

Mr. Kelly notified the Board of the resignation of Jamie Balliett from the Commission on Disabilities for business and personal commitments. Mr. Fuller noted that Mr. Balliett had been a very able chairman of that commission.

On a motion by Mr. Fuller and seconded by Mrs. Christie, the Board voted to accept the resignation of Jamie Balliett from the Commission on Disabilities with both regret and gratitude. The vote was 4-0-0.

NSTAR Pole Hearing: (00:08:33)

Mrs. Fulcher read the Public Notice of a Pole Hearing as it had been published.

Karen Corriveau of NSTAR explained the request from the homeowner to have underground electric service. Therefore, NSTAR has filed a petition to install approximately forty feet (40') of underground cable and conduit under Herring Brook Way to provide a new underground feed for 31 Herring Brook Way, Orleans, MA.

On a motion by Mr. Dunford and seconded by Mr. Fuller, the Board of Selectmen voted to approve NSTAR Electric Company's petition for permission to locate underground cables, conduits and manholes, including the necessary sustaining and protecting fixtures, in, under, along and across 31 Herring Brook Way in Orleans, MA, to be installed in accordance with the plan filed herewith marked Plan No. 103602, dated January 24, 2011. The motion was amended by Mr. Dunford and the amendment seconded by Mr. Fuller to approve the petition conditioned on the restrictions noted in the Water Department memorandum dated February 9, 2011 regarding the NSTAR Petition Plan No. 103602. It was also affirmed that the trench will be "bulleted" under the road and there will be no open cut in the road. The vote was 4-0-0.

Mrs. Christie noted the construction's close proximity to the herring run and was assured that it was not close enough to warrant concern.

Meet with Town Counsel: (00:13:55)

a. Route 6A Affordable Housing Project

The Board met with *Attorney Michael Ford*, Orleans' Town Counsel regarding the Route 6A Affordable Housing Project to discuss the reassignment of a developer. *Mr. Robert Murray*, President of Harwich Ecumenical Council for the Homeless, Inc. (HECH) was also present to affirm their interest in being named developer for the project.

Attorney Ford explained that when the project was put out to bid, the Town selected McShane Construction Company as developer; and in 2009 executed a Land Disposition Agreement with McShane. He further explained that the Town was bound to transfer the land to McShane if certain conditions were met. First, all permits were to be obtained and all appeal periods had to be expired. The project first went to the

Board of Appeals and then was appealed to Land Court. Eventually a Comprehensive Permit was modified to satisfy settlement of the appeal.

A second condition required that plans and specifications had to be approved by the Town.

The third condition required that the developer had to furnish proof of financing to carry the project to completion. Because McShane has had difficulties in obtaining financing and has agreed to assign his status as developer to HECH, HECH would be the developer, while McShane would continue as contractor.

Attorney Ford noted that the Board must consider reassignment of the Land Disposition Agreement to HECH. HECH has indicated a clear interest in being developer of this project with a few conditions and Attorney Ford recommended that the Board ensure that those conditions are met prior to approving the reassignment of the developer interest.

Mr. Robert Murray explained the function of HECH and how they have developed housing in nearby towns. He noted that he is comfortable with the numbers to proceed with the Orleans project and continue to have it qualify as affordable housing. He discussed certain dual deed restrictions by HUD and Take HOME; and the need to finance through the local banks. There is considerable concern whether the Town could maintain the houses as "affordable" in the case of a foreclosure. The HUD deed restriction would remain in effect for ten years.

Board members discussed that keeping the parcel as affordable housing is a key issue. They are concerned with funding the project. Mr. Murray stressed the need to create a pool of money in order to write down bank mortgages in the case of foreclosure, and that would be the only time Orleans' funds might be at risk.

Mr. Murray explained more of HECH's requirements, and Board members expressed concern about how HECH would be compensated.

Mr. Kelly explained that the RFP as well as the requirements in the RFP are set, including the sale price of the units, the fact that they must count toward the ten percent affordability for which the Town is striving. In order to have the houses qualify the Town would have to follow the DHCD requirements. An additional cost of \$12,500 had been approved to fund a change order for site changes as a result of the legal appeal and that cost is in the pro forma as previously agreed by the Board. Additional funds will be required only in the instance of a foreclosure.

Mr. Kelly explained further that \$12,500 is the maximum fee the developer could receive from Orleans as detailed in the pro forma; and HECH would be bound by that. He also explained that there is a contingency in the pro forma to cover the amount necessary to comply with the legal settlement at the Land Court. The need for a cushion for foreclosure is a new requirement.

Attorney Ford confirmed that he expects no further litigation regarding this project.

Mr. Murray affirmed that HECH has a \$200,000 line of credit with the bank to get started with construction, and noted that affordable housing has become very difficult to accomplish and close.

George Meservey, Town Planner indicated that the Town has enough in its funds to cover the \$12,500 project change. Mrs. Fulcher, as liaison to the Affordable Housing Committee, acknowledged that Mr. Meservey has done a great job in getting the Town through this process.

Attorney Ford summarized that the Town has a proposed substitute developer in HECH, and Mr. Murray has outlined contingencies necessary to fulfill the financing requirements. It would be prudent to wait to find out if HECH can negotiate with the bank; but in the meantime Orleans must determine if it has funds to contribute to the funding. It was determined that the Orleans Affordable Housing Trust has \$26,000 that could be appropriated by the Board of Selectmen.

Mr. Kelly outlined that there are contingencies that must be met before any financial commitment is made. The HOME funding has been a continuous delay for this project.

In response to a concern, Attorney Ford opined that there is no exposure to liability by not issuing a new RFP. The proposed project continues to meet the same pro forma requirements.

On a motion by Mr. Fuller and seconded by Mrs. Christie, the Board voted to support the concept to have Mr. Murray (HECH) take the steps he has outlined to see if he can satisfy the last contingencies and report back to the Board for formal consideration. The vote was 4-0-0.

Mrs. Fulcher expressed appreciation to Mr. Murray for his presentation and to the Affordable Housing Committee and Mr. Meservey for their support and attendance at this meeting.

b. Leasing Limitations of the Former Hubler and Putnam Properties

Attorney Michael Ford, Orleans' Town Counsel discussed the former Hubler and Putnam properties and leasing limitations. The Hubler property was purchased by the Town for future Nauset Beach parking, and the Putnam property for passive recreation and agriculture purposes.

Attorney Ford explained that Bond Counsel has indicated a prohibition on a long-term lease of the Hubler property that might prejudice the bond writer. A discussion of *Management Contracts* prepared by Edwards Angell Palmer & Dodge, LLP sets out guidelines that might affect the bond financing. Attorney Ford noted that the Town had considered leasing the property as a motel for the short-term future; and if the Town loses control of the property, and the lessee can make a profit from the lease, the Town may have gone beyond what the bond issue permits. The Board must determine if it would be financially feasible to lease the property to a for-profit firm. He also noted that there are septic and code issues with the property. If the Board determines that they want to move forward with a lease, a Warrant Article to authorize the Board to lease the property must be brought before Town Meeting. However, he suggested that because of the expenses of maintaining the property and for insurance on empty buildings, the Board may want to accelerate the property's use as overflow parking for Nauset Beach.

Mr. Kelly asked if the leasing option is not permissible because of an IRS ruling, and if the Town hired a company to manage it, might the Town need an act of the legislature to allow the Town to proceed. Attorney Ford opined that an Article in the Warrant might need special language to operate a motel under a management contract.

Mr. Kelly reviewed that based on the structural evaluation of the buildings \$40,000 would be needed to address the issues to be corrected. It is imperative that the Board understand the costs involved before proceeding with any use of the buildings. On the other hand, the Town would need to go through the permitting process to reopen the lower road to use the land for parking purposes. He noted that the Town is currently paying \$9,000 for seasonal insurance on the vacant buildings. He outlined the number of rooms on the property, and noted that although the main building has a Title 5 septic system, the decks and stairs do not meet the Building Code.

On a motion by Mr. Fuller and seconded by Mrs. Christie, the Board voted in the matter of the Hubler property, to place an Article on the Town Meeting Warrant to authorize the Board of Selectmen to have a lease option. The vote was 4-0-0.

Attorney Ford explained that the Putnam property has similar issues because of the tax-exempt bond issue. He noted that there is an Article by the Open Space Committee and Conservation Commission to lease part of the property for agricultural use. He anticipates that the Town will receive Land Grant funds, requiring the Town to execute a Land Grant agreement and use the property for the purposes for which it was obtained.

Meet with David Withrow (01:14:49)

- a. The Board met with *David Withrow*, Orleans' Director of Municipal Finance to discuss funding of the Affordable Housing account from the Community Preservation Act (CPA) account. He discussed the rules of funding the CPA and especially as they pertain to the Ten Percent Rule. The Community Preservation Committee is solely responsible for dispensing CPA funds. The Minimum Annual Commitment from the budget is ten percent of annual revenues for open space, historic resources, and community housing. He then reviewed a spreadsheet of the Community Preservation Fund, Estimated Surtax vs. Debt Amortization / Ten Percent Rule as of December 2010 and assured the Board that the Ten Percent Rule is being met. However, Mr. Withrow was concerned about what wastewater appropriations could do to the property tax base in future years and how it might restrict use of CPA funds for purposes other than those included in the Ten Percent Rule. Mr. Kelly noted that the potential surplus in 2026 may not exist and Mr. Withrow agreed that nothing is shown for administrative expenses or for closed-out projects. He noted that the surtax will continue to support the debt service for open space purchases and none of these funds will revert to the General Fund.

Jane Hinckley requested that Mr. Withrow indicate the amounts that went into housing in previous years and the amount of surtax in previous years. Mr. Withrow responded that he had reviewed the previous years and he would furnish that information to Mrs. Hinckley. Mrs. Hinckley also inquired about the amount of donations for

the Paul O'Connor memorial fund to which Mr. Withrow responded that there haven't been any to date.

Mr. Kelly discussed the use of Land Grant funds to preserve the Putnam farm. Board members discussed that grant money should be used for debt reimbursement before it is used for improvements on the property. Attorney Ford discussed that grant money received for a CPA purchase must be returned to the CPA toward debt retirement. However, the two expected grants for purchases that did not use CPA funds should be used to reduce the debt resulting from the purchase.

On a motion by Mrs. Christie and seconded by Mr. Fuller, the Board voted to support that grant reimbursements that do not involve CPC funding should be placed in a separate account and be used to retire debt. This direction is to be included in Article 2 for funding Debt Service. The vote was 4-0-0.

- b. Mr. Withrow discussed with the Board a possible Warrant Article addressing GASB 45 and unfunded liabilities for future retirees' health insurance costs. Mr. Kelly noted his concern that this liability might impact the future bond rating for the Town and discussed the possible need to establish an Article to establish funding for GASB 45. However, he recommended waiting for a guideline from Mass. DOR before establishing a fund for future retiree health insurance. Mr. Withrow cautioned that any account established for GASB 45 would be required to meet very strict criteria, and the funds would be untouchable for any other expense. Mr. Kelly explained further that a vote would be to create a fund as outlined by the state regulations, but once adopted, it would be difficult to change if the regulations change. It was suggested that the Board establish the fund under Home Rule but Mr. Withrow noted that it would be very difficult to meet the GASB standards. It was the consensus of the Board members that it is still too early to take any definitive action on this matter.
- c. Mr. Kelly also discussed with the Board a possible Warrant Article to fund the State's portion of reimbursement for the Quinn Bill which increases police officers' base pay up to 25 percent upon completion of higher education degrees. For FY11 and 12 the Town has funded 50 percent of the cost and not the State's reimbursement portion. While he is waiting for a decision from the SJC regarding the Town's responsibility to reimburse the State's share, he noted that Orleans would be responsible for approximately \$125,000 that is not in the budget. Mr. Kelly also cautioned the Board that there is nothing in the budget to fund the Quinn Bill in future years.

Board members discussed allocating a portion of free cash to cover the expense in FY12 if it is needed as suggested by Mr. Kelly. However, some members thought it would be inappropriate because the Town is currently in union contract negotiations.

Town Administrator's Report (Continued) (02:33:00)

Orleans Pond Coalition – Celebrate Our Waters

The Orleans Pond Coalition has asked Town to support its events for this September 24th. Mr. Kelly noted that there was some minimal cost to the town last year and there had been concern about the town's cost in participating last year. Mrs. Fulcher opined that an event like this could be approved by the Town Administrator; and that the Town

should show appreciation to the OPC and to those people that volunteered their time in this effort. Mrs. Christie noted that it is wonderful to have an event like this in Orleans.

On a motion by Mr. Dunford and seconded by Mr. Fuller, the Board voted to support the Orleans Pond Coalition – Celebrate Our Waters event on September 24th and 25th. The vote was 4-0-0.

Staff Recognition

Mr. Kelly informed the Board that Jacob Marshall, an employee of the Highway Department will be deployed for a year with the Massachusetts Army National Guard in support of Operation Enduring Freedom. This is SFC Marshall's second deployment to Afghanistan since he became an Orleans employee in 2008. He is taking a week's vacation before reporting for duty in March. SFC Marshall's wife works in the Water Department.

Board members wished the Marshall's well during SFC Marshall's deployment to Afghanistan.

Follow-Up Discussion on Fees and Possible Warrant Article: (02:36:25)

It was determined that this discussion would be better with a full Board present.

Any Other Business: (02:37:50)

In response to a request for an update on the National Academy of Science, Mr. Kelly informed the Board of a meeting on March 14th and that he has asked to meet with Congressman Keating's office, as well as have other legislators represented at the meeting.

Liaison Reports: (02:41:50)

Mr. Fuller reported on Finance Committee meetings held on February 17, 2011 and February 24, 2011.

Mrs. Fulcher reported on the Affordable Housing Committee.

Mr. Dunford reported on the Open Space Committee.

There was a discussion of an off-road vehicles and migratory birds policy with other towns and whether they would be interested in discussing it with the State DEP. Mr. Kelly described the differences between the State and Federal levels of regulatory requirements.

Adjourn: (02:50:24)

On a motion by Mr. Fuller and seconded by Mr. Dunford, the Board of Selectmen voted to adjourn this meeting at 9:21 P.M. The vote was 4-0-0.

Respectfully submitted,

Lynda M. Burwell

Jon R. Fuller, Clerk