

BOARD OF SELECTMEN  
MEETING MINUTES

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*C. May*

July 19, 2011

Approved on January 18, 2012

A meeting of the Orleans Board of Selectmen was held on Tuesday, July 19, 2011 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 Administrative Assistant Marge Astles.

Chairwoman Fulcher called the meeting to order at 4:02 pm.

Meet as Park Commissioners with Town Counsel Regarding Aspinet Road Access to Nauset Spit: (00:00:35)

**On a motion by Mr. Fuller, and seconded by Mr. Dunford, the Board voted to meet as Park Commissioners.** The vote was 5-0-0.

Park Commission Chairman Sims McGrath Jr. called the session to order.

Town Administrator John Kelly outlined the reason for the special meeting of the Park Commissioners regarding the access to Nauset Beach from Aspinet Road and introduced Town Counsel Michael Ford.

Mr. Ford presented the Board with the results of his research into the Town of Orleans' options for the continued use of roads in the Nauset Heights development to access Nauset Spit.

Mr. Ford stated that he has looked into the issue a number of times over the years and his research has found that the Town has a legal right of record to use Callanan's Pass, but he has not found any other legal records for the use of other roads in the Nauset Heights area except in the case where Callanan's Pass were to become unusable. As per the Board's request, Mr. Ford presented the Board with their options for gaining additional access to Nauset Spit. Mr. Ford explained that there are three ways for a private road to become public: a taking of the road by eminent domain, a dedication of a road, or proof of prescriptive rights.

Mr. Ford also noted that there had been some questions as to whether the National Seashore might have deeded rights to the road that they might be willing to make available to the public.

In terms of the Board's options Mr. Ford explained that there is no record of dedication of rights, so that would not apply to the Nauset Heights development. Mr. Ford further explained that in Massachusetts, the courts have defined prescriptive rights as requiring "regular elements in adverse possession," such as use without permission over a 20 year period of time. In order to take the road by eminent domain the Board would need to initiate an order of taking to layout the road and would require Town Meeting action. The owners and abutters to the road would then be entitled to full and fair compensation.

Mrs. Fulcher asked for clarification as to the use of Cliff Road, which had been utilized by the town in the past.

Parks and Beaches Superintendent Paul Fulcher replied that the Town of Orleans had lost the right to use Cliff Road in 1973 when the property owners blocked access, thereby ending the prescriptive rights. He further explained that a taking of Cliff Road would not be prudent due to the proximity of wetlands and the restrictions that would be placed on widening and maintaining that area.

Mr. Fulcher recommended that the Board follow up on prescriptive rights inquiries by reaching out to the public in terms of the public's interest in securing prescriptive rights to the road, ask the National Seashore Superintendent Price if the town might be able to gain access to the road via the federal right of way, and continue to research the possibility of a town meeting article for a taking by eminent domain for limited use of the road.

**On a motion by Mr. Dunford, and seconded by Mrs. Fulcher, the Board voted to move forward on a parallel track with prescriptive rights research including public outreach, speak with National Seashore Administration regarding possibly using their easement, meet with all abutters of Aspinet Road to see if a compromise can be reached for accessing Nauset Spit, and finally prepare to possibly present an article at the Annual Town Meeting for a limited use easement.**

The vote was 5-0-0.

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

Meet with Town Counsel and Wright-Pierce Consultant for Review of Cape Cod Commission Draft DRI decision and Conditions: (01:03:15)

The Board met with Town of Orleans Director of Community Development and Planning George Meservey and Wright-Pierce Consultant Mike Giggey to review the Cape Cod Commission draft DRI decision.

The Board reviewed the draft of the decision issued by the Cape Cod Commission regarding the Town of Orleans Comprehensive Wastewater Management Plan.

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to delete Water Resource Condition 8 from the July 1, 2011 draft as it appears on page 27.** The vote was 5-0-0.

Mr. Giggey recommended that the Board consider deleting Water Resource Condition 11, as it is a carry-over from the DRI decision in the Town of Chatham, and there does not seem to be a need for this in Orleans.

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to delete the last portion of Water Resource Condition 11, highlighted in yellow on page 27, from the July 1, 2011 draft DRI decision.** The vote was 4-1-0, Mr. Dunford voted no.

Mr. Giggey recommended that the Board consider deleting or changing Water Resource Condition 15.

**On a motion by Mr. McGrath, and seconded by Mrs. Christie, the Board voted to amend Water Resource Condition 15 on page 28 of the draft DRI decision dated July 1, 2011 to**

delete "and approve" and insert "to review and comment". The vote was 5-0-0.

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to delete Water Resource Condition 18 of the draft DRI decision dated July 1, 2011 as outlined in yellow on page 28.** The vote was 4-0-1; Mr. McGrath abstained from the vote.

In regards to Water Resource Condition 23, Mr. Giggey suggested that the Board amend the condition to delete "approval" and insert comment.

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to amend Water Resource Condition 23 on page 29 of the draft DRI decision dated July 1, 2011, to delete "approval" and insert "comment".** The vote was 4-1-0; Mr. Dunford voted no.

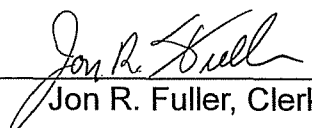
Mr. Giggey pointed out that there are some redundant conditions in the draft decision.

Mr. Meservey asked the Board for their support in working with the Cape Cod Commission to revise the DRI decision conditions and report back to the Board for final approval. Mr. Kelly recommended that the Board vote to authorize the staff to work with the commission as it would streamline the process.

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to authorize the town staff to meet with the Cape Cod Commission and work on revisions to the DRI decision dated July 1, 2011, and return to the Board for final approval.** The vote was 5-0-0.

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

Transcribed by:  
Kristen Holbrook

  
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Jon R. Fuller, Clerk

