

BOARD OF SELECTMEN
SPECIAL SESSION MEETING MINUTES

May 22, 2012

Approved on July 11, 2012

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ORLEANS TOWN CLERK

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A special session meeting of the Orleans Board of Selectmen was held on Tuesday, May 22, 2012 in the Nauset Room of the Town Hall. Present were Chairman Jon Fuller, Vice-Chairman David M. Dunford, Clerk Susan B. Christie, Selectman Sims McGrath Jr., Selectman John Hodgson III, Town Administrator John Kelly, Town Counsel Michael Ford, and Recording Secretary Kristen Holbrook.

Chairman Fuller called the meeting to order at 10:30 AM.

Meet with Town Counsel Michael Ford and CVEC Representative John Jannell: (00:00:19)

The Board met with Town Counsel Michael Ford and Town of Orleans Representative to the Cape and Vineyard Electric Cooperative John Jannell to discuss the Cape and Vineyard Electric Cooperative contracts for the solar energy projects on the capped landfill.

Mr. Kelly presented the Board with the contract documents and pertinent information in the event Board were interested in issuing their own RFP for the projects. Also included in the Board's documents was a recommendation from the Renewable Energy and Wind Committee. Mr. Kelly updated the Board with information on the timing of issuing their own RFP, and the Article 97 relief application time line.

Mr. McGrath asked if additional Town Meeting approval would be needed, after the Article 97 relief is granted. Town Counsel Ford explained that it would depend on the legislation. Most of the time there is no further Town Meeting action necessary.

Mr. Dunford asked for clarification on why an RFP would require a subsequent Town Meeting. Mr. Kelly explained that the Town Meeting approved the Board to sign documents that are "substantially in accordance" with the contracts that are currently in place and on file with the Town Clerk's Office. If the Board were to proceed with their own RFP, the final details would need to be approved by town meeting as the Cape and Vineyard Electric Cooperative contracts are not interchangeable with other companies or organization.

Mr. Ford explained that the need for Town Meeting approval is triggered by both the long term contract and the lease of Town property.

Mr. McGrath asked if the previously granted Article 97 relief applied solely to Wind Turbines, or if it applied to all renewable energy use. Mr. Ford replied that he would re-read the legislation and supply an answer to the Board.

Mr. Hodgson asked if any investigation had been done into the legal issues surrounding Cape and Vineyard Electric Cooperative, and whether or not the Town of Orleans would be at risk of

anything entering into a contract with Cape and Vineyard Electric Cooperative. Mr. Ford replied that he has read the opinion by the special investigation committee of the Assembly of Delegates and their opinion and recommendation that an audit of Cape and Vineyard Electric Cooperative be performed. Mr. Ford also informed the Board that the contract does specifically note that there is no known matter that would prevent Cape and Vineyard Electric Cooperative from living up to the contract. Mr. Ford also recommended that the Board ask for a reciprocal default paragraph to be inserted in the contract. It is in the lease but not the other agreement.

Mr. McGrath asked Town Counsel to advise the Board regarding the lack of a signed contract between Cape and Vineyard Electric Cooperative and Broadway Electric. Mr. Ford recommended that the Board not take a final vote on the contract, unless that contract is signed. Mr. Jannell informed the Board that the final agreement is supposed to be signed May 23, 2012 at a posted meeting. Mr. Ford stated that he would recommend that the Board wait.

Mr. Hodgson asked for clarification of the time line and the urgency for the Board to sign. Mr. Ford stated that the time line is outlined by Broadway Electric. Mr. Kelly also stated that he had asked for confirmation of the dates and Maggie Downey had confirmed that the contracts must be signed by May 23, 2012.

Mr. Ford stated that the Board could make their vote to execute contingent on:

1. The agreement being reached between Cape and Vineyard Electric Cooperative and Broadway
2. That there are no substantial changes to the contracts and
3. That the reciprocal default clause be placed into the agreement.

Mr. Hodgson asked what the right of first refusal clause meant and should it remain. Mr. Ford stated that he is not an expert in this area of the law, and he would not be able to make a recommendation on that.

Mr. Jannell stated that Cape and Vineyard Electric Cooperative reserves the right of first refusal in years 7, 10, 12 and 15. Mr. Jannell offered to inquire of the Cape and Vineyard Electric Cooperative Board of Director's and report back to the Board.

Mr. Kelly explained that it is his understanding that the responsibility of maintenance and operation of the solar arrays rests solely with Cape and Vineyard Electric Cooperative and the Town of Orleans would not be able to replicate that operating system without incurring significant additional costs.

Mr. McGrath asked if the electric prices should decline over the next five years, what impact would it have on the savings. Mr. Jannell stated that as far as savings, he only refers to the savings that is known, \$45,000 in year one.

On a motion by Mr. Dunford, and seconded by Mr. McGrath, the Board voted to sign and execute the Cape and Vineyard Electric Cooperative agreements, subject to the Town Administrator, Town Counsel, and Orleans' Cape and Vineyard Electric

Cooperative Representative seeking an amendment to the purchase option as identified by Town Counsel for the right of first refusal, that the reciprocal "events of default clause" in the contract be placed into the agreement between the Town of Orleans and Cape and Vineyard Electric Cooperative, that a favorable agreement be reached between Cape and Vineyard Electric Cooperative and Broadway Electric, and that Town Counsel verifies that there are no substantial changes to the contracts between Cape and Vineyard Electric Cooperative and Broadway Electric. The vote was 5-0-0.

The Board discussed the application process for the survey of the solar array sites identified in the watershed area for the environmental report that is required prior to filing for relief from Article 97. Ron Collins informed the Board that Cape and Vineyard Electric Cooperative did not exactly disqualify the smaller sites, but it was more a lack of bidders due to the small area. Mr. Collins also stated that it would be possible to make the smaller site tied into the Water Treatment Plant. He reminded the Board that a right to purchase also includes the maintenance costs and with the landfill, there will be the post closure application and orders of conditions to deal with as well.

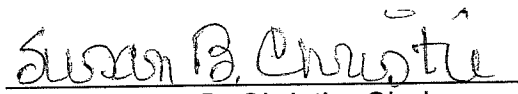
On a motion by Mr. McGrath, and seconded by Mr. Dunford, the Board voted to proceed with a survey and the required MEPA environmental impact study for the Watershed Sites B, both the 3.52 acre site adjacent to the landfill and the 1.25 acre site adjacent to the Water Treatment Plant, and that the Board will consider cost implications, review further information and hold a discussion with the Board of Water and Sewer Commissioners before making a final decision on the usage of the 1.25 acre site adjacent to the Water Treatment Plant. The vote was 5-0-0.

Adjourn: (01:26:380

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

Respectfully submitted,

Kristen Holbrook


Susan B. Christie, Clerk

