**BOARD OF SELECTMEN**

**MEETING MINUTES**

May 7, 2014

Approved on May 21, 2014

A meeting of the Orleans Board of Selectmen was held on Wednesday, May 7, 2014 in the Nauset Room of the Town Hall. Present were Chairman Sims McGrath Jr., Vice-Chairman David M. Dunford, Clerk Jon R. Fuller, Selectman John Hodgson III, Selectman Alan McClennen Jr., Town Administrator John Kelly and Recording Secretary Kristen Holbrook.

Chairman McGrath called the meeting to order at 5:00 PM.

Pre-Town Meeting with Moderator, Town Counsel and Town Clerk: (00:00:15)

Town Counsel Michael Ford, Town Moderator Duane Landreth and Town Clerk Cynthia May joined the Board for a review of the Annual and Special Town Meeting warrants.

Mr. Fuller noted that there may be an opposing viewpoint of the Community Preservation Act (CPA) funding article. Mr. Landreth indicated that it may be possible to amend the article from the floor if necessary.

The Board discussed restricting the Habitat Conservation Plan (HPC) article to public funding for the studies. The Board discussed the funding article for the HCP. Mr. Hodgson suggested that the Board needed to discuss whether they should indefinitely postpone the article or perhaps reduce the dollar amount within the article. Mr. Kelly recommended that the Board move forward with the full funding of $78,000 as it would be available if the permit process moves forward ahead of the 2015 beach season. Mr. McClennen stated that he did not feel that the $25 surcharge was appropriate for all vehicles as it is a much larger increase for the smaller vehicles. Mr. Dunford stated that he is not comfortable going forward with the full funding for the article. He suggested using between 10 and 20 thousand dollars to gain more support for the program. Mr. McGrath noted that the HCP plan application specifically asks if the funding is in place.

**On a motion by Mr. Dunford, and seconded by Mr. Hodgson, the Board voted to amend the requested funds for for article 41 “to Fund Habitat Conservation Management Plan, to $20,000 and exclude the ORV Permit surcharge, pending further Board discussion.** The vote was 4-0-1; Mr. Fuller abstained from the vote.

**Mr. Fuller moved the Board to amend the dollar amount to $40,000. There was no second and the motion failed.**

Mr. Kelly noted that the gymnasium will be set up as it was last year. Mr. Dunford asked if the staff was prepared for a written ballot in necessary. Ms. May indicated that she has over 200 ballots if necessary.

Meet with Independent Auditor Tony Roselli - FY14 Annual Audit: (01:08:20)

The Board met with independent auditor Tony Roselli for a review of the FY 14 annual audit. Mr. Roselli gave a brief presentation on the results of the annual audit. Mr. Roselli indicated that the town is performing well and that it is likely that, after the next bond rating, Orleans could have a rating of AAA.

Public Comment: (01:34:14)

Bill Weil, spoke to the Board regarding the Fire Department study. Mr. Weil presented the Board with his own research on the Fire Department’s staffing levels. Mr. Weil urged the Board to support the article to add 2 new Firefighters.

Konrad Schultz, a property owner of Aspinet Road, spoke to the Board regarding his concerns over the layout of Aspinet Road. Mr. Schulz urged the Board to move forward with restoration of the dunes and postpone the article for the layout of Aspinet Road.

Public Hearing - Shellfish Grant License Renewal - Stuart Miller: (01:45:13)

Chairman McGrath read the legal notice as published in the Cape Codder and called the public hearing to order at 6:45 PM.

Acting Natural Resources Director Nate Sears spoke to the Board and asked them to act favorably on the application.

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to close the public hearing.** The vote was 5-0-0.

**On a motion by Mr. Dunford, and seconded by Mr. Hodgson, the Board voted to allow for the renewal of one-half acre Shellfish Grant #70, to Stuart Miller of Orleans, MA, per the application renewal form filed with the Shellfish Department on March 31, 2014 with said renewal license to expire on March 31, 2024. This license does not grant any property rights. It does not authorize any injury to private property or invasion of private rights.** The vote was 5-0-0.

Approval of Minutes: (01:47:23)

1. 3/11/13

**On a motion by Mr. Fuller, and seconded by Mr. Hodgson, the Board voted to accept the minutes of the March 11, 2014 meeting as presented.** The vote was 5-0-0.

1. 3/11/13 ES

**On a motion by Mr. McClennen, and seconded by Mr. Fuller, the Board voted to accept the minutes of the March 31, 2014 meeting as presented.** The vote was 5-0-0.

1. 3/31/14

**On a motion by Mr. Fuller, and seconded by Mr. McClennen, the Board voted to accept the minutes of the March 31, 2014 meeting as presented.** The vote was 5-0-0.

1. 4/2/14

**On a motion by Mr. Fuller, and seconded by Mr. Hodgson, the Board voted to accept the minutes of the April 2, 2014 meeting as amended.** The vote was 5-0-0.

1. 4/7/14

**On a motion by Mr. Fuller, and seconded by Mr. McClennen, the Board voted to accept the minutes of the April 7, 2014 meeting as presented.** The vote was 4-0-1; Mr. McGrath abstained from the vote.

1. 4/16/14

**On a motion by Mr. Fuller, and seconded by Mr. McClennen, the Board voted to accept the minutes of the April 16, 2014 meeting as amended.** The vote was 4-0-1; Mr. Hodgson abstained from the vote.

Update on Habitat Conservation Plan and status of 2015 permit application: (01:56:10)

Mr. Hodgson updated the Board on the process for the HCP. He noted that the application will not be going forward for the 2014 season. He stated that the Order of Conditions from the Conservation Commission is necessary before moving forward. Mr. Hodgson also stated that the preliminary feedback is that the plan is a good one.

Mr. Dunford concurred that deferring the plan for one year is the correct decision. Mr. McClennen asked how the Board would communicate to the Town Meeting what has happened during the process.

Mr. Fuller expressed objection to the state and federal officials assertion that after Orleans is done, the process will be easier for others. Mr. McGrath asked how many vehicles participated in the escort test run. Mr. Morris of the Mass Beach Buggy Association stated that thirty vehicle had participated but they had paced the vehicles out to mimic 60 vehicle convoy.

Meet with Tom Daley and Nate Sears - Beach Management Issues: (02:07:15)

1. Review ORV operations on Nauset Spit, vehicle limits and guidelines to address Eastham’s bylaw prohibiting driving on the Beach.

The Board met with DPW Director Tom Daley and Natural Resources Manager Nate Sears regarding Beach Management Issues.

Mr. Kelly asked the Board to entertain a motion to direct Town staff to enforce the restrictions of the Town of Eastham beaches. Mr. Kelly stated that Town Counsel had advised the Board that Orleans needed to continue to manage their property that is located in the Town of Eastham. Mr. Kelly further clarified that staff needs clarification on what to do if Orleans sticker holders do not abide by the rules.

Mr. Hodgson stated that he is unclear as to whether or not the Orleans staff can cite violations in another town. Mr. Kelly did note that the town staff do not have the authority to enforce the town of Eastham’s bylaw. Mr. Fuller stated that he did not see that the Board would have any choice but to add the enforcement into the ORV rules as the Town of Orleans is responsible if something were to happen past the line.

Mr. Kelly also noted that driving in Eastham is a violation of the Wetland’s Protection Act as there is not an order of conditions from the Town of Eastham as well as an Eastham Bylaw. Mr. Hodgson expressed concern over the drain on staff time should the staff need to remove vehicles and their drivers from Eastham’s portion of the beach.

Mr. Kelly asked if the Board wished to direct staff to enforce the bylaw. Mr. Dunford argued that the Town has not seen anything in writing that puts them on notice. He asked for more time to consider and discuss the issue. Mr. Fuller stated that the Board should consider posting a notice of the violation and penalties for violating the Eastham Bylaw. He suggested adding a tiered warning system for violations rather than an automatic revocation of the ORV sticker.

Acting Natural Resources Manager Nate Sears asked for clarification as to how he should handle the obligation to manage the beach under the order of conditions.

Mr. Kelly asked that the Board affirm their support for staff’s enforcement of the Town of Orleans ORV Rules and Regulations regardless of the property line.

Mr. Dunford stated that the Board should not openly advocate the vehicle driving in Eastham. He further stated that Eastham should step up and have an order of conditions. He advocated involving Eastham in further discussion and stated that he was not in favor of sticker revocations for driving in the Town of Eastham. Mr. Hodgson stated that the problem he sees is that the parks staff has no authority to detain anyone. Mr. Kelly clarified that the patrols are necessary to protect boaters, pedestrians and manage the endangered species. Mr. Kelly further stated that his recommendation is to continue to act on vehicles operating in prohibited areas.

Margie Fulcher, a resident of Orleans, spoke to the Board regarding her belief that the Town of Eastham is responsible for enforcing the Eastham Bylaw, she further stated that there should be no sticker revocations as the beach has been used by ORV sticker holders historically.

Mr. McClennen suggested that staff only enforce actions that are in opposition to the current order of conditions. He also noted that the true issue is that there is no longer enough room for 200 vehicles on the beach.

Mr. Dunford stated that his interpretation is that the phrase at the bottom of the sign should be eliminated and to proceed with the enforcement of the beach management plan. Mr. Sears stated that it is a realistic number (200). He felt that 26 feet is adequate for parking the cars along the beach.

Mr. Hodgson stated that this will be a huge change, and might be a good idea to phase in the change as people are used to driving in Eastham. He suggested leaving the number restriction up to the Natural Resources Manager.

Mr. McClennen suggested that the Board direct Town staff to report back to the Board whether the number of vehicles allowed is adequate.

**On a motion by Mr. Dunford, and seconded by Mr. Hodgson , the Board voted to direct town staff to continue to enforce the Town of Orleans ORV Rules and Regulations in so far as they affect the Endangered Species Act, for the beach located in the Town of Eastham, from April 1, 2014 through the end of fledge season.**

The motion and second were withdrawn.

**On a motion by Mr. Dunford, and seconded by Mr. Hodgson, the Board voted to direct staff to:**

1. **Remove the sticker revocation notice from the sign placed at the Orleans/Eastham line on Nauset spit and add the notice of fine for Eastham Bylaw violations;**
2. **Retain the 200 maximum vehicle limit, which is subject to daily review at the discretion of the Natural Resources Manager;**
3. **Continue to manage the portion of the beach located in Eastham, as they have historically, under the same rules and regulations for wildlife issues;**
4. **Separate and distinct signage will be used to differentiate between beach closures necessitated by regulatory management compliance and the prohibition of vehicles due to Eastham bylaw;**
5. **Direct the Town Administrator to contact the Eastham Board of Selectmen regarding the enforcement of the bylaw;**
6. **To continue to apply the Town of Orleans ORV Rules and Regulations for the entire length of the beach.**

The vote was 5-0-0.

Mr. McGrath stated that he felt it would be important for the Town to inform the ORV beach users of the reasons for the closures and signs.

Discussion on possible Aspinet Road License Agreement: (03:30:47)

Town Administrator John Kelly updated the Board on a revised draft license agreement for the use of Aspinet Road.

Mr. Fuller stated that he felt the one revision is a reasonable compromise and that the Town should be prepared to honor their request to replenish the dunes.

Mr. Dunford noted that there were two discussion points not included in the draft such as the resident’s request that the Town would not act on a road taking during the length of the agreement. Mr. Dunford stated that he felt the noon-6 time period was important to keep, and that the draft lacks the firm commitment of a long term agreement.

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson, the Board voted to accept draft license agreement for the use of Aspinet Road and transmit the draft to the abutters.** The vote was 3-2-0; Mr. McGrath and Mr. Dunford voted no.

Meet with Tom Daley - Review Rock Harbor Dredging Project and Funding Required: (03:49:20)

The Board met with DPW Director Tom Daley regarding the Rock Harbor Dredging Project.

**On a motion by Mr. Fuller, and seconded by Mr. Dunford, the Board voted to use the minimum necessary funds from Building Facilities Fund to complete permitting work with the understanding that the balance will be paid from the bond.**  The vote was 5-0-0.

Vote on Remaining Town Meeting Article recommendations: (03:54:15)

Article 8 - Fund Rock Harbor Maintenance Dredging Project

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to set the funding for the warrant article “to Fund Rock Harbor Management Dredging at $900,000.”** The vote was 5-0-0

Article 28 - Approve NRSD borrowing for Middle School Roof MSBA

**On a motion by Mr. Dunford, and seconded by Mr. McClennen, the Board voted to recommend approval of the ATM warrant article “to fund borrowing for NRMS Roof MSBA Funding.”** The vote was 5-0-0.

Article 24 - Fund 2 additional Firefighter/Paramedics

**On a motion by Mr. Fuller, and seconded by Mr. McClennen, the Board voted recommend approval of the Annual Town Meeting warrant article “to fund 2 additional Firefighter/Paramedics.”** The vote was 4-1-0; Mr. Dunford voted no.

Article 40 - Aspinet Road layout

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to recommend approval of the ATM Article for the layout of Aspinet Road, in the amount of $1500.** The vote was 4-1-0; Mr. Hodgson voted no.

Konrad Schultz, asked if an engineered plan had been filed. Mr. Kelly stated that the requirement of an engineered plan is for residents who petition the town to take their road.

Article 47 - Electronic Control Devices

**On a motion by Mr. Fuller, and seconded by Mr. Hodgson, the Board voted to recommend approval of the petition article for Electronic Control Weapons.** The vote was 0-5-0.

STM Article 5 - 20 year Net Metering Power Sales Agreement with CVEC

**On a motion by Mr. Fuller, and seconded by Mr. McClennen, the Board voted to recommend approval of the Special Town Meeting Warrant Article for 20 Year Net Metering Power Sales Agreement with CVEC.** The vote was 5-0-0**.**

Further Discussion on Formation of Stakeholder’s Group: (04:10:15)

The Board reviewed information provided from Paul Niedzwiecki and Mike Domenica regarding the stakeholder group formation and the Consensus Building Institute (CBI.) Mr. Dunford suggested that the Board move forward with the stakeholder’s group as soon as possible. Mr. Kelly stated that, if the Board wished to move forward, he would draft a committee charge and asked what the Board wished to list in the charge. Mr. Dunford suggested putting the group together to begin the discussion and engage the facilitator and ask her to review the list of names and give the Board a recommendation. He also suggested that the group could have discussions on their own charge. Mr. McClennen concurred with Mr. Dunford, Mr. Hodgson urged that the group is well balanced and has full involvement and input.

**On a motion by Mr. Dunford, and seconded by Mr. Hodgson, the Board voted to authorize the Town Administrator to work with CBI and the Cape Cod Commission to continue with the seating the stakeholder group.** The vote was 5-0-0.

Appointment of new Fire Chief: (04:23:47)

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to appoint Anthony Pike as Town of Orleans Fire Chief, effective May 16, 2014, subject to successful contract negotiations.** The vote was 5-0-0.

Appointment of Registrars: (04:26:15)

**On a motion by Mr. Fuller, and seconded by Mr. McClennen, the Board voted to appoint the following registrars as listed in the memo dated 5/7/2014;**

1. **Ann Weimer with a term ending date of 3/31/2015**
2. **Joan Barnard with a term ending date of 3/31/2016**
3. **Sidney Dockser with a term ending date of 3/31/2017.**

The vote was 5-0-0.

Annual performance Evaluation of Town Administrator:

The Board deferred the discussion pending the resolution of technological issues.

Town Administrator’s Report: (04:35:20)

1. Citizen’s Petition under Orleans Home Rule Charter

The Board reviewed a citizen’s petition regarding the filing of the minutes.

**On a motion by** **Mr. Hodgson, and seconded by Mr. Dunford, the Board voted to direct Town Counsel to opine on the petition for Charter Enforcement.** The vote was 4-0-1; Mr. Fuller abstained from the vote.

1. Vote to sign BAN Rollover for the Twining Property

**On a motion by Mr. McClennen, and seconded by Mr. Dunford, the Board voted to sign the BAN rollovers for the Twining’s Property in the amount of $108,000, issued to Cape Cod Five Cents Savings Bank at a rate of .50% with an issue date of 5/15/2014 and a maturity date of 5/15/2015.**  The vote was 5-0-0.

1. Vote to Sign Lease for Skaket Beach Snack Bar for 2014 summer season

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to sign and execute lease for Skaket Beach Snack Shack as presented.** The vote was 5-0-0.

1. Water Department MassDEP Award

**On a motion by Mr. Dunford, and seconded by Mr. Fuller, the Board voted to send a letter of congratulations to Water Department Staff.** The vote was 5-0-0.

1. Bond Counsel Opinion on ATM Articles 18 and 44

The Board reviewed an opinion from Bond Counsel regarding quantum of vote necessary for articles 18 and 44.

Any Other items for Future Agendas: (04:40:15)

Chairman McGrath reviewed the Board’s upcoming agenda items.

Mr. McClennen suggested that the Board entertain a presentation on the Fire House.

Liaison Reports: (04:42:57)

Mr. Fuller reported on a meeting of the Planning Board.

Mr. Dunford reported on a meeting of the Conservation Commission and the Cultural Council.

Adjourn: (04:45:56)

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

The meeting adjourned at 9:46 PM.

Respectfully submitted,

Kristen Holbrook

Jon R. Fuller, Clerk

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