**DRAFT** BOARD OF SELECTMEN

MEETING MINUTES

September 3, 2014

Approved on \_\_\_\_\_\_\_\_\_\_\_\_\_

A meeting of the Orleans Board of Selectmen was held on Wednesday September 3, 2014 in the Nauset Room of the Town Hall present were Vice-Chairman Jon R. Fuller, Clerk Sims McGrath Jr., Selectman Alan McClennen Jr., Selectman John Hodgson III, Town Administrator John Kelly and Recording Secretary Kristen Holbrook.

Chairman David Dunford was not present for the meeting.

Vice-Chairman Fuller called the meeting to order at 6:00 PM and announced that there would be two different public comment periods. He asked that all those speaking to Beach issues speak during the Park COmmission Session, all others will have an opportunity to speak during the regular portion of the meeting.

Meet as Park Commissioners: (00:00:33)

**On a motion by Mr. McGrath, and seconded by Mr. McClennen, the Board voted to meet as Park Commissioners.** The vote was 4-0-0.

Mr. Hodgson outlined the three issues facing the Commissioners regarding Nauset Spit.:

-ownership re: NPS

-Eastham bylaw prohibiting driving on the beach

-Eastham Conservation Commission and the lack of an order of conditions

Public Comment:

Kingsley Nelson, a resident of Orleans, spoke to the Board regarding the issue of complying with the Eastham bylaw prohibiting driving on the beach.

Carl Trevison, a resident of Doane Road, spoke to the Board regarding the Town of Orleans compliance with the Eastham ConsCom enforcement order.

Mark Mathison, a resident of Tanglewood Terrace, spoke to the Board regarding the issues and urged the Board to fight for the rights of Orleans citizens to continue to use the beach.

Helen Pluciennik, spoke to the Board regarding ORV access. Ms. Pluciennik stated that she is not in favor of the over sand vehicles as she believes the vehicles are contributing to erosion.

Michael Rosenthal, 45 West Road, spoke to the Board regarding the importance of continued access to Nauset Spit for residents.

David Currier, a resident of Orleans, stated that he felt the main reason beaches are being lost is due to global warming. Mr. Currier stated that he felt the Board should apply pressure to the Town of Eastham in order to preserve the access for residents.

Tom Michaels, a resident of Barley Neck Road, stated that he felt it was not the responsibility of the town of Orleans to enforce Eastham’s bylaw.

Scott Zenke, Doane Road, stated that he felt that there would be a negative economic impact if Orleans were to lose access to the outer beach

Jane Kucks, 8 Seacrest Lane, stated that the Board must first settle the issue of the land ownership. She stated that the Board should investigate the meandering boundaries of navigable waterways case law regarding the ownership of the spit.

David Lyttle, stated that the prior speaker is correct and the law of accretion is very clear. He stated that the Board should be aware that in 1991 Eastham was given an opportunity to weigh in on the outer beach and declined to participate.

Park Commission Chair read letters into the record from Bobbi Tyng (urged Board to fight to protect rights), Mark Nixon (urged Board not to give access to Eastham residents), George and Janet Lasher (urged to fight).

Leslie Pearson, 4 Center Place, asked who would be paying for monitoring if Eastham owns the property, police response, harbormaster etc.

Ed Kissel, 42 Chase Lane, noted that Eastham has never wanted any input for the Beach.

Mr. Hodgson noted that the Board has not voted at this time to revoke stickers. He also clarified that the $200 fine is for violation of the Eastham bylaw, $25,000 is for violation of the state Wetland’s Protection Act, $300 per day to the Town of Orleans is for violating the enforcement order.

David Lyttle stated that the Board should appeal the enforcement order. Mr. McClennen replied that the enforcement order is not appealable.

Mr. Kelly updated the Board with information on the proposed plan to bring the town of Orleans into compliance with the Eastham Conservation Commission’s enforcement order.

Mr. Fuller asked that the Natural Resource Manager speak to the issue.

Nate Sears, stated that the presented plan is the best way to be compliant with the enforcement order. He stated that without repercussion, there is no enforcement value.

Mr. McGrath stated that the Board/Park Commission and Conservation Commission has worked for years to keep the beaches open. He noted that the order of conditions is required by state law, it is not optional. He stated that there will be applcation for an order of conditions from Eastham, but at this time, the Town of Orleans must comply with the enforcement order.

Mr. McClennen stated that the Board has been working with Eastham regarding the bylaw and that meetings had taken place but the Board must protect all of the residents of Orleans regarding the fines. He noted that the Board must go through the process.

Mr. Hodgson stated that for the past 24 years, the Town of Orleans has been using that portion of the beach and that he feels that the Eastham ConsCom could have tabled the enforcement order. Mr. Hodgson stated that he was not in favor of revoking stickers or placing a fence prior to the meeting with Eastham.

Mr. McGrath stated that while he agrees with Mr. Hodgson regarding the revocation of stickers, but the disagreement has escalated and Eastham can begin issuing fines at any time, he further stated that he was not willing to subject the citizens of Orleans to the potential fines.

**On a motion by Mr. Fuller, and seconded by the Mr. McGrath, the Board voted to accept the recommendation items 1-3, as presented, item 4 will be held in abeyance pending further input.**

After a brief discussion, Mr. Fuller, withdrew his motion and Mr. McGrath withdrew his second.

**On a motion by Mr. McGrath, and seconded by Mr. McClennen, the Board voted to accept the recommendations as presented and encourage staff to use their discretion with regard to sticker revocations.** The vote was 3-1-0; Mr. Hodgson voted no.

Mr. Sears stated that it would be possible for the staff to bring violations back to the Board for a vote of the Park Commissioners as to the penalties.

Mr. McGrath recommend that staff reserve sticker revocations for 2nd or 3rd offenses.

**On a motion by Mr. McGrath, and seconded by Mr. Fuller, the Board voted to adjourn from Park Commission Session.** The vote was 4-0-0.

Public Comment: (01:09:57)

Helen Pluciennik, a resident of Chickadee Lane, spoke to the Board to thank the volunteers who planned the re-enactment of the Battle of Rock Harbor.

Noelle Pina, Executive Director of The Chamber of Commerce, announced upcoming events

-September 28th Clam B Que at the Oddfellows Hall.

She announced the vital statistics for the Chamber and the services provided.

Joe Carditio, Orleans Citizen’s Forum, announced upcoming informational forums

- Medical Marijuana Centers (understanding how they operate) 9/10 at 4PM COA

Dale Fuller, Orleans Taxpayers Associations, spoke to the Board regarding the non-participatory costs for the DOT intersection projects. Mr. Fuller stated that he felt there was much more to discuss regarding the streetscape additions to the project.

David Currier, asked if the joint meeting with Eastham will have a public comment session.

6:45 PM Show Cause Hearing - Hess Sale of Alcohol to minor: (01:22:15)

Vice-Chairman Fuller read the legal notice for the show cause hearing and called the hearing to order at 7:22 PM.

Lieutenant Kevin Higgins presented the Board with information and evidence of the violation.

Pete Frattarola, District Manager of Hess, presented the Board with information on the Company’s procedure for ensuring compliance with age restricted sales.

Mr. Hodgson asked for clarification on the POS procedures and asked for the status of the employment of the staff member.

No public comment was offered.

Lt. Higgins noted that there have been 3-4 violations at the adress under different companies. Chief MacDonald stated that he is pleased to hear that corrective action has been taken. He noted that accountability is imporatant and should be considered.

**On a motion by Mr. McGrath, and seconded by Mr. Hodgson, the Board voted to close the evidentiary portion of the public hearing.** The vote was 4-0-0.

**On a motion by Mr. McGrath, and seconded by Mr. Hodgson, the Board voted to find that an alcohol purchase violation did occur on 6/20/14 at Hess Mart, located at 399 South Orleans Road.** The vote was 4-0-0.

Mr. McClennen stated that the Board should take some action above and beyond a warning. Mr. McGrath stated that the Board needed to put the operators on notice that the compliance checks will continue and that the operators should take additional steps to ensure compliance. Mr. Fuller stated that the operators/managers were notified that a compliance check was going to be held. He recommended suspending the license for 1 or 2 days in order to ensure future compliance.

Mr. McGrath asked that the license holders be notified that the address has had multiple problems and that diligence should be used to ensure compliance.

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson,, the Board voted to suspend the Annual All Alcoholic Package Goods Store liquor license for Hess Mart of Massachusetts LLC d/b/a Hess Express #21247, located at 399 South Orleans Road, for 3 days, September 5, 2014, September 6, 2014 and September 7, 2014.** The vote was 4-0-0.

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson, the Board voted to adjourn the Show Cause Hearing**,The vote was 4-0-0.

Approval of Minutes:

**On a motion by Mr. McGrath, and seconded by Mr. McClennen, the Board voted to accept the minutes of the 7/2/14 ES meeting as presented.** The vote was 4-0-0**.**

**On motion by Mr. McGrath, and seconded by Mr. Hodgson, the Board voted to accept the minutes of the 7/2/14 meeting as amended. The vote was 4-0-0.**

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson, the Board voted to accept the minutes of July 9, 2014 meeting as amended. The vote was 4-0-0.**

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson, the Board voted to accept the minutes of the July 16, 2014 meeting as presented 3-0-1; Mr. McGrath abstained from the vote.**

Change of Corporation Name & New Officers - Hess Mart of Massachusetts, LLC, d/b/a Hess Express #21247, located at 401 South Orleans Road: (01:48:45)

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson, the Board voted to approve the request to change the corporate officers/directors to Steven Kemps, Patrick McAndrew, Kristy S. Cunningham, David Goodes, Andrew Bernstein and Stuart Steigerwald, and change the corporation name to Hess Retail Operations LLC, d/b/a Hess #21247 on their current annual All Alcoholic Package Good Store Liquor License for Hess Mart of Massachusetts LLC, d/b/a Hess Express #21247 , located at 401 South Orleans Road. Approval is subject to all local and state permits, licenses and approvals, laws and bylaws and in accordanc with the Town of Orleans Rules & Regulations of the Liquor Licensing Auhtority adopted December 21, 1994, amended August 9, 1995, February 10, 2010 and MGL Chapter 138 and will become final after approval from the Alcoholic Beverage Control Commission is received and a receipt of a favorable report from the Criminal History Systems Board. The approval is also subject to the condition that the new Board of Director’s receives a copy of the notice that the location has failed multiple compliance checks and additional measures should be taken to ensure compliance for age restricted products.. THe vote was 4-0-0.**

Committee Interviews and Appointments: (01:55:10)

**On a motion by Mr. McGrath, and seconded by Mr. McClennen, teh Board voted to accept the resignation of Margy Mead-McEnaney, from the Bike and Pedestrian Committee with regret and gratitude.** The vote was 4-0-0.

The Board met with and interviewed Jane Moroney and Mary Parker regardingt their interest in serving as members of the Bike and Pedestrian Committee.

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson, the Board voted to appoint Jane Moroney and May Parker to the Bike and Pedesstrian Committee with terms ending June 30, 2017.** The vote was 4-0-0.

Ray Castillo was not present to be interviewed.

**On a motion by Mr. McClennen. and seconded by Mr. McGrath, the Board voted to appoint Castillo, as an alternate as alternate representative to te Cape Light Compact with a term ending 6/30/17.** The vote was 4-0-0.

The Board met with and interviewed Betsy Argo regarding her interest in srving as a member of the Cultural Council.

**On a motion by Mr. McGrath, and seconded by Mr. Hodgson, the Board voted to appoint Betsy Argo to the Cultural Cuncil with a term ending date June 30, 2017.**

The Board interviewed Bruce Taub regarding his interest in serving as a member of the Zoning Board of Appeals.

The Board interviewed Peter Jablon regarding his interest in serving as a member of the Zoning Board of Appeals.

**On a motion by and seconded by the Board voted to appoint Bruce Taub with a term ending 6/30/16 and Peter Jablon with a term ending date of June 30, 2017, tot eh Zoning Board of Appeals.** The vote was 4-0-0.

Appeal of Harbormasters decision to terminate the F/V Ruth & Gail dockage agreement and order the removal of the boat from Rock Harbor by August 30, 2014: (02:03:22)

Natural Resources Manager Nate Sears stated that he had become aware that there is an inoperable boat docked in Rock Harbor. He stated that an inspection revealed that there are multiple concerns and Mr. Sears felt that with the approaching dredge date, the Town may need to remove the boat and assess the owner for the costs.

Vessel owner Aaron Nickerson informed the Board that he has made arrangements to remove and store the boat for repairs. He asked that the Board grant him the additional time for removal.

Mr. Sears stated that Mr. Nickerson had taken steps to remedy the environmental issues, he also noted that he will be moving forward with the plan to remove the boat at the expense of teh town as a backup plan, he stated that he would be comfortable allowing Mr. Nickerson until September 10th to remove the vessel.

**On a motion by Mr. McGrath, and seconded by Mr. Hodgson, the Board voted to grant the request and amend the removal date to September 10, 2014. The vote was 4-0-0**

**On a motion by Mr. McGrath, and seconded by AM, the Board voted to support the Harbormaster’ decision to revoke the 2014 dockage permit for the F/V Ruth and Gail, with the understanding that the revoked dockage permit will be available to Mr. Nickerson for the 2015 season for the privately maintained pier, if he can demonstrate that the vessel is in proper working order . The vote was 4-0-0.**

Meet with George Meservey to discuss draft scope for feasibility study of Depot Square:(02:27:47)

Town of Orleans Planner George Meservey presented the Board with an update on the draft scope for a feasibility study of Depot Square.

Mr. McGrath asked if there was any opportunity for the Basset House for a parallel effort.

**SM, AM, to approve as presented.** the vote was 4-0-0.

Meet with OCP update on CPC Phase II project to revitalize Old Firehouse:(02:32:12)

OCP representative Steve Bornemeier, gave the Board a brief update on the Old Firehouse project.

Mr. McClennen proposed that a portion of the first year’s funds be used for a peer review of the architect’s plans, then move forward to schedule appropriate items in the capital plan.

Mr. Bornemeier asked that the Board voted to authorize the request for an in depth feasibility study for adaptive re-use of the Old Firehouse. Mr. Hodgson stated that he felt it was important to have more information. He noted that it would be important to know what the public/private partnership will entail.

Mr. Fuller asked Mr. Hague to weigh in on the project.

Peter Hague, a resident of Orleans, stated that he felt there would be local architects willing to do the work for the funds available.

Mr. Kelly noted that due to procurement laws, it was extremely difficult to limit the bids to local designers.

Ron Collins stated that the earlier study was a report done by TLCR Architects and the upgrades recommended were not for improvements but for maintenance.

Mr. Bornemeier noted that the goal is to recreate the space for the benefit of the users.

**On a motion by Mr. McClennen, and seconded by Mr. McGrath, the Board voted to direct Town Administrator to take the information, comments and discussion under advisement and report back with a recommendation in 2 weeks.**

Motion and second withdrawn.

**On a motion by Mr. McClennen, and seconded by Mr. Hodgson, the Board voted to repost the discussion for 9/17/14.** The vote was 4-0-0.

Mr. Kelly stated that he would recommend that the Board ask the OCP to meet with the CPC and work to re-use the existing funds within the scope of the article. He also noted that the Board would need an opinion from Town Counsel.

Meet with Ron Collins for update on Skaket BEach Snack Bar replacement project: (03:17:14)

Facility Manager Ron Collins spoke to the Board regarding the Skaket Beach Snack Bar project. Mr. Collins stated that he had applied for a variance from the State Plumbing Board but had been denied due to the Snack Bar not having a rest room.

Mr. Kelly recommended that the Board authorize.

**On a motion by Mr. McGrath, and seconded by Mr. McClennen, the Board voted to**  AM to approve TAs recommendation. The vote was 4-0-0.

National Grid Gas Main Extension Requests:

DPW Director Tom Daley presented the Board with information on the request for Gas Main Extensions at Pilgrim Lake Terrace, River Road and Fox Ridge Drive.

**On a motion by Mr. McGrath, and seconded by Mr. McClennen, the Board voted to approve the request of National Grid for Gas Main extensions at Fox Ridge Drive, Pilgrim Lake Terrace and River Road with the conditions noted. The vote was 4-0-0.**

Review draft charge for Memorial and Veteran’s Day Committee:

The Board reviewed the draft charge for the Memorial Day and Vet

**On a motion by Mr. McGrath, and seconded by Mr. Hodgson, the Board voted to approve the draft chrge for the Memorial and Veteran’s Day Committee as presented.**  The vote was 4-0-0.

Town Administrator’s Report:

None.

Liaison Reports:

None.

Any Other Items for Future Agendas:

Adjourn:

**On a motion by Mr. McGrath, and seconded by Mr. Hodgson, the Board voted to adjourn.** The vote was 4-0-0.

The meeting adjourned at 9:46 PM.

Repsectfully submitted,

Kristen Holbook

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Sims McGrath Jr., Clerk