



ORLEANS TOWN CLERK

*K. Dwyer, ASST*

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**ORLEANS PLANNING BOARD**  
**AUGUST 27, 2013 – Executive Session Minutes**

A meeting of the Orleans Planning Board was called to order at 7:00 p.m. in the Nauset Meeting Room at the Orleans Town Hall. **Present:** **Chairman:** Steve Bornemeier; **Vice-Chairman:** Charles Bechtold; **Clerk:** Chet Crabtree; Kenneth McKusick and John Fallender. **Associates:** Paul McNulty and Andrea Reed. **Planning Department Staff:** George Meservey; and **Secretary:** Karen Sharpless. **Also Present:** Board of Selectmen Liaison: Jon Fuller.

Steve Bornemeier called the meeting to order at 7:00 p.m.

After opening the Planning Board meeting the following motion was made to meet in Executive Session to discuss strategy with respect to litigation:

Chairman Bornemeier declared that an Open Meeting may have a detrimental effect on the litigating position of the body.

**EXECUTIVE SESSION - LITIGATION - SAMUELSON V. ORLEANS PLANNING BOARD, LAND COURT, 10 MISC 433554 (JCC)**

**MOTION:** On a motion by **John Fallender**, seconded by **Kenneth McKusick**, the Board voted to go into Executive Session at 7:00 p.m. for 20 minutes to discuss strategy with respect to litigation and noted that the Planning Board Chairman has declared that an open meeting may have a detrimental effect on the litigating position of the body and then to reconvene in Open Session. On a roll call vote John Fallender, Steve Bornemeier, Chip Bechtold, Chet Crabtree, and Kenneth McKusick all voted "aye".

**ROLL CALL VOTE: 5-0-0 The motion passed unanimously.**

Meservey read the following memorandum from Attorney Michael Ford, entitled, "Samuelson v. Orleans Planning Board, Land Court, 10 MISC 433554 (JCC), dated August 20, 2013:

*"The recent decision of the Land Court on the cross motions for summary judgment voids the Planning Board's 2010 decision approving the 2010 plan permitting the division of Lot 4 on Tom's Hollow Land into two (2) lots. As the board may recall, back in 2007 the Kennedy's sought to divide both Lots 4 and 5 on Tom's Hollow Lane into a total of four (4) building lots. That application was denied by the Planning Board and was appealed by the Kennedy's. This appeal is pending as Land Court case 07 MISC 363660 (the 2007 Appeal).*

*Subsequently, the Kennedy's conveyed Lot 5 to the Samuelson's, subject to a covenant running in favor with the Town of Orleans. The covenant language stipulated that the lot would not be further divided or subdivided. The covenant was further contingent upon the Kennedy's obtaining permission for the division of Lot 4 into two lots.*

*When the Planning Board approved the division of Lot 4 into two (2) lots, the new owner of Lot 5, the Samuelson's appealed that decision. The Town did not take an active role in defending the decision of dividing Lot 4 into two lots.*

*The effect of the court's decision is simply that the division at Lot 4 is voided. The Kennedy's have chosen to file an appeal of the court's decisions. Therefore, we need to wait for the outcome of the appeal. I see no reason for the Town to be actively involved in the appeal. Therefore, the Planning Board simply needs to await the outcome of the appeal before determining whether any further action is needed on behalf of the Town.*

*With respect to the pending 2007 appeal, which is still pending, I note that the Kennedy's have conveyed Lot 5, which was part of that appeal, and therefore they no longer have standing to proceed with that appeal. As a result, after the appeal of the 2010 case is finally decided, the Town should move to have the 2007 appeal dismissed."*

Meservy noted that no specific action of Planning Board is required at this time. Planning Board members discussed various issues involved in the various subdivision decisions and the resulting court cases and agreed to wait for the court decisions before proceeding.

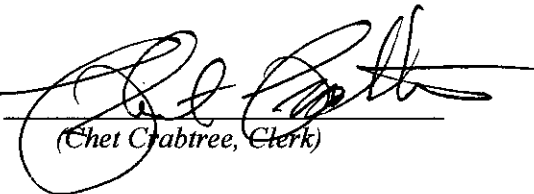
**MOTION:** On a motion by **John Fallender**, seconded by **Chet Crabtree**, the Board voted to come out of executive session at 7:20 p.m. On a roll call vote John Fallender, Steve Bornemeier, Chip Bechtold, Chet Crabtree, and Kenneth McKusick all voted "aye".

**VOTE:** 5-0-0 The motion passed unanimously.

**DATE APPROVED:** October 14, 2014

**DATE RELEASED:** October 14, 2014

**SIGNED:**



(Chet Crabtree, Clerk)

**DATE:** \_\_\_\_\_

**LIST OF HANDOUTS FOR AUGUST 27, 2013 PLANNING BOARD EXECUTIVE SESSION MEETING:**

**A. PENDING LITIGATION**

1. Memorandum from Attorney Michael D. Ford, entitled, "Samuelson v. Orleans Planning Board, Land Court, 10 MISC 433554 (JCC), dated August 20, 2013