

Board of Selectmen's Meeting Minutes

May 5, 2011

Harpswell Town Office

Approved on May 26, 2011

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The meeting was called to order at 5:30 p.m. with Chairman Multer and Selectmen James Henderson and Alison Hawkes present. Chairman Multer moved, seconded by Selectman Henderson to move into executive session pursuant to 1 M.R.S.A. Section (6)(A) regarding a personnel evaluation; motion passed 3-0.

The Board returned to open session at 6:00 p.m.

Staff Present: Kristi Eiane, Town Administrator; Terri Sawyer, Deputy Town Administrator; Marguerite Kelly, Treasurer; and Bill Wells, Code Enforcement Officer.

Call to Order and Pledge of Allegiance

The meeting was video recorded and broadcast live on Harpswell Community Television.

- 1. Adoption of the Agenda:** Chairman Multer moved, seconded by Selectman Henderson to adopt the agenda as printed; motion passed 3-0.
- 2. Public Comment:** Robert McIntyre stated the traffic is dangerous on Basin Point approaching the end of the Town way as the road narrows and he showed a diagram. Administrator Eiane responded that a "road narrows" sign and a blind spot ahead sign have been ordered and will soon be installed. Sue Rich, chair of Education Advisory Committee, invited the public to attend a meeting on Saturday at 10:00 a.m. at the Town Office with Jim Rier, from the Department of Education, regarding school withdrawal.
- 3. Town Administrator's Report:** Administrator Eiane announced there will be a work session regarding LD 69 (An Act to Restore the Historical Town Boundary Line between Harpswell and Brunswick) in Augusta tomorrow, May 6, at 9:30 a.m.
- 4. Selectmen's Announcements:** Selectman Henderson reported that he attended a Friends of Cedar Beach Coalition meeting, to hear a brief update, as a Town observer.
- 5. Consent Agenda: 1) Approval of the Minutes; 2) Authorization of the Warrant; 3) Fire Department Request for Use of Mitchell Field; and 4) Sale of backhoe bucket:** Chairman Multer moved, seconded by Selectman Henderson to approve the consent agenda; motion passed 3-0.
- 6. Acceptance of Gift:** Tom Jones, photographer, stated he has always had a special spot for Harpswell and he would like to donate an aerial photograph he took of Bailey Island to the Town. Chairman Multer moved, seconded by Selectman Hawkes to accept the gift; motion passed 3-0.

7. Wharf Applications

- **Herbert & Elizabeth Boerstling, 1292 Harpswell Islands Road, Map 35, Lot 174:** Bill Wells, Code Enforcement Officer, reviewed the application for a series of stairs and platforms. The hearing was opened and closed at 6:22 p.m. Selectman Hawkes asked about the permitting process; Joe Leblanc, applicant representative, responded that he provides copies of all approvals (e.g. Selectmen, Army Corp, Department of Environmental Protection) and then the Code Office issues the Town permit. Selectman Henderson moved, seconded by Selectman Hawkes to approve the Boerstling application as it does not interfere with navigation or cause injury to the rights of others to use the shore; motion passed 3-0.
- **Melinda Richter Et. Al., 11 Merritt House Road, Map 26, Lot 42:** Bill Wells, Code Enforcement Officer, reviewed the application to reconstruct a commercial wharf with a small 270 square foot expansion. The proposal has received Planning Board approval. The hearing was opened and closed

at 6:26 p.m. Chairman Multer moved, seconded by Selectman Henderson to approve the application as it does not cause an unreasonable hazard to navigation or injury to the rights of others; motion passed 3-0.

- **Michael Hamlyn and Debra Bodwell, 399 Long Point Road, Map 38, Lot 150:** Bill Wells, Code Enforcement Officer (CEO), reviewed the application for wharf system including a float that will remain over water at low tide. Mr. Wells stated a site visit was held and the proposal complies with the Shoreland Zoning Ordinance (SZO) and the Town Harbormaster determined there are no unreasonable issues with navigation. The hearing was opened at 6:28 p.m. C. Matthew Rich stated his family had not received a notice about the proposal and he disagrees with the CEO as the proposal contradicts the SZO. Mr. Rich stated the 170-foot long wharf is proposed to be built over an existing seawall into the channel and it will make the cove unusable for lobstering and recreational boating. Mr. Rich recommended not approving the application as it appears to be rushed, ignores the seawall, omits the lobsters and beach in the area, and there are alternatives, such as a haul off. Victor Mahoney stated they purchased their property in 2004 due to an unobstructed view of the cove and this proposal is a massive structure for the location and will cut the cove's entrance. The cove is filled with marine life and lobstermen and the proposal will diminish the enjoyment and value of his property and the area all for the enhancement of one family. Sue Rich stated she spoke with Diane Cowan, of the Lobster Conservancy, and Ms. Cowan confirms there is an important lobster nursery in this area and there is also eel grass. Selectman Hawkes asked for clarification on riparian rights; Mr. Wells responded riparian rights are an extension of property lines out into the water that gives a property owner the right to wharf out to navigable water and there are 5 ways to determine riparian rights that the State of Maine accepts. Mr. Wells stated that the Harbormaster and the Army Corps of Engineers determine navigation and the Department of Environmental Protection (DEP) determines issues with wildlife. Jim Hays, Harbormaster, stated he doesn't find the proposal to cause a hazard to navigation. Selectman Henderson asked if lobster boats will be able to pass and work in the area; Mr. Hays responded yes, if the water is deep enough for the boat, as the proposal would leave at least 100 feet in navigable area. Mr. Rich stated that deeds need to be researched in order to determine riparian rights. Administrator Eiane suggested riparian rights would be an issue for the Town Attorney. Ellen Toomey stated the application indicates there is no shellfish harvesting in the area and the Town and the State have spent a lot of money replacing overboard discharge systems in hopes of opening the flats soon and it is heavily lobstered. Ms. Toomey noted neighbors that couldn't attend did submit emails and that she spoke with a neighbor who has to avoid lobster traps when kayaking. Seagulls eat the mussels & clams and there are always plenty of ducks in the area. During foggy weather, Ms. Toomey believes boaters will not be able to see the massive structure and that the oversized structure will cause a blight in the neighborhood. Mr. Wells stated he doesn't dispute what has been said but that he can't consider the lobsters and aesthetics as DEP is responsible for that. Selectman Henderson questioned if the proposal is inconsistent with the area; Mr. Wells responded that wharves in a fishing community are not inconsistent. Sophia Gabriel stated it would be easy to establish how many lobster pots would be displaced by this proposal and that there should be a compromise to this immense project. Chairman Multer stated that discussing options is out the Board's league and that the neighborhood could meet with the owner and suggest alternatives. Ms. Rich stated that sailboats will be not be able to tack in and out and that this huge structure is not consistent and may be washed out by the rough winters and therefore should be a haulout. Ben Wallace, owner's representative, stated he can build a dock to remain intact all year and he knows the shore. Mr. Wallace spoke with lobstermen in the area and most agree that this will not hinder their work. There is eel grass but across the cove, not in the proposed location. There is ledge in the proposed site location and it is not used for harvesting clams or worms. Mr. Wallace stated that dragging a dinghy down the cove affects the intertidal zone more than building a wharf. Mr. Wallace said he spoke with Mr. Rich to cross the riparian right and if he receives written approval, he will suggest an alternative. Mr. Wallace stated that Leann Neil approved the application at the Dept. of Army Corp and he believes

DEP will as well. Selectman Hawkes asked for an estimate of turn around space for boats; Mr. Wallace responded 45 to 50-feet and that modern fishing vessels will turn on a dime. Selectman Hawkes stated the Board's decision can't be based on view based on a legal advice letter the Town previously received. Mr. Mahoney stated the proposal will have an economic impact, will close the cove down for lobstering. This is a pristine area, the owners have a mooring and it takes about 5-10 minutes to get to their boat now so the proposal should be denied. Ms. Rich noted there are multiple docks on the westside. Robert McIntyre asked if the proposal will prohibit anyone else from building a system. Amy Haible encouraged the Board to delay a decision and make a site visit. Selectman Hawkes stated Harpswell is a marine community and wharves are a part of that. The hearing was closed at 7:18 p.m. Chairman Multer moved, seconded by Selectman Hawkes to table the application to the next meeting and schedule a site visit; motion passed 3-0.

11. Liquor License Hearing: Morse's Lobster, Map 26, Lot 6, 1945 Harpswell Islands Road: Deputy Administrator Sawyer reported that the new application is seeking a State liquor license for spirituous, vinous and malt. The hearing was opened and closed at 7:22 p.m. Selectman Henderson moved, seconded by Selectman Hawkes to approve the application; motion passed 3-0.

8. Treasurer's Report: Marguerite Kelly, Treasurer, reviewed her Treasurer's report for March and April combined (attached as further review).

9. Selection of Banking Institution for Tax Anticipation Note Financing: Marguerite Kelly, Treasurer, reviewed the responses to the requests for proposals relating to Tax Anticipation Note financing for \$2,515,000. Ms. Kelly recommended the Board accept the low bid from TD Bank at the interest rate of .93% on a lump sum draw down. Chairman Multer moved, seconded by Selectman Hawkes to accept the TD Bank May 5 bid and adopt the borrowing Resolution (attached); motion passed 3-0.

10. Town Line Boundary Update: Administrator Eiane reported that as part of the Town's due diligence regarding LD 69, the Board contracted Brian Smith to investigate the 1738 description and determine where the upland historic line between Harpswell and Brunswick existed. Administrator Eiane provided each Selectman with a complete package of what will be presented at the legislative work session tomorrow in Augusta at 9:30 a.m. Brian Smith presented maps and his findings of where the historic boundary is along Harpswell Neck, which is near the existing 1998 Town line but does pick up about 4.5 acres of upland area for Harpswell, mostly wetlands. Selectman Henderson stated that the Harpswell team will present the professional survey at the work session showing that Harpswell has done its best job to identify the historic boundary. While Brian Smith's determination varies from the Carrying Place Assembly's (CPA) position that the historic line is more north at the upper carrying place, there wasn't sufficient evidence to support that position. Amy Haible stated she was speaking for herself and not as a member of the CPA. Ms Haible stated she appreciated the due diligence of Brian Smith and while she would prefer the line to be located more northerly, Harpswell has been honest and will therefore be able to present a strong case for restoring the line. Ms. Haible thanked Laddie Whidden and Gary Anderson for discovering the gore information and for their integrity. Selectman Henderson moved, seconded by Chairman Multer to support Brian Smith's finding and the package of documents for presentation at tomorrow's legislative work session. Selectman Henderson noted the package includes a proposed amendment to the bill to further address Brunswick's concerns regarding the management of the shellfish areas and he confirmed that Harpswell is not seeking any licenses for the area. Selectman Henderson noted the proposal has made it this far due to the dedicated work of the CPA, Laddie Whidden, Gary Anderson, Amy Haible, John Loyd and Sam Alexander. Selectman Hawkes asked what the CPA was asking for in the most recent letter. Selectman Henderson summarized that some of the members are disagreeing with the professional opinion and asked the Town to not proceed with the survey but if the Town doesn't, Selectman Henderson believes it will be the end of the bill at the

legislature. Chairman Multer noted she spoke with Sam Alexander and while he believes the historic boundary is more north, he doesn't want to be a road block in the progress. Motion passed 3-0.

14. Consider Issuing Request for Proposals for Fire Department Tanker: Administrator Eiane reported that several years ago, the Town began purchasing the emergency vehicles for the fire departments and then has leased them to the respective departments. The Orr's/Bailey Island Fire Department has worked hard in developing specifications for a tanker which were then presented to the Emergency Vehicles Committee where a few changes were made. Fire Chief Bill Beazley and Walter Johnson were present and Mr. Beazley stated the truck is a tanker that will haul water and has a minimal pump to off- and on- load. Chairman Multer asked certain questions regarding the specifications and Mr. Beazley addressed each one. Selectman Henderson moved, seconded by Chairman Multer to authorize the issuance of the RFP for a tanker as amended; motion passed 3-0.

12. Community Garden Guidelines: Deputy Administrator Sawyer stated the Community Garden Guidelines were amended to address the Board's concerns and to clarify that it is a Town program being administered by volunteers. Chairman Multer moved, seconded by Selectman Hawkes to adopt the Program Guidelines; motion passed 3-0.

13. Affordable Housing Committee Mission Statement: Deputy Administrator Sawyer reported the Committee is proposing to continue with its existing mission statement. Selectman Henderson asked staff to ask the Committee to consider incorporating senior housing into its mission and the item was tabled.

15. Consider Coastal Humane Society Contract: Deputy Administrator Sawyer noted there are no proposed changes to the contract from last year. Selectman Hawkes questioned the payment of medical costs and the item was tabled.

16. Consider Property Assessed Clean Energy (PACE) Contract: Chairman Multer moved, seconded by Selectman Henderson to approve the contract with Efficiency Maine Trust. Administrator Eiane explained municipalities were required to adopt an ordinance and enter into a contract to allow their residents to apply for low interest loans from Efficiency Maine for energy improvements through the PACE Program. Chairman Multer asked that before the end of the three year contract, the Board of Selectman at that time review the contract for any necessary changes before the automatic renewal occurs. Administrator Eiane will obtain a clarification of section 3.3 as the Town will not be handling any funds with this Program. The Board agreed to authorize the Administrator to sign the contract.

17. Consider Wage and Salary Adjustments: Administrator Eiane reported that the annual performance evaluations of employees has occurred and she recommends the Board consider endorsing the 2% increase in wages and salaries as approved by Town Meeting. Selectman Henderson moved, seconded by Chairman Multer to approve the 2% increase; motion passed 3-0. Chairman Multer asked to be reminded before next year's budget process to consider different payroll adjustments particularly for the lower end of the wage scale.

18. Schedule Public Hearing for June 14, 2011 Secret Ballot Items: Chairman Multer moved, seconded by Selectman Hawkes to set May 17 at 7:00 p.m. at Harpswell Islands School as a public hearing to consider the three items on the ballot (withdrawal, historic zone on Eagle Island and appropriation for an environmental assessment); motion passed 3-0.

19. Approval of the June 14, 2011 Town Meeting Warrant: Chairman Multer moved, seconded by Selectman Henderson to approve the municipal warrant as presented; motion passed 3-0.

20. Schedule Public Hearing to Consider Placing Local Closure on Shellfish Areas: Deputy Administrator Sawyer reported the Marine Resources is recommending placing local closures on certain coves and pursuant to the Shellfish Ordinance, the Board must hold a public hearing. Chairman Multer moved, seconded by Selectman Henderson to set May 26 at 7:00 p.m. as the hearing; motion passed 3-0.

21. Appointments to the Midcoast Economic Development District (MCEDD) General Assembly: Chairman Multer moved, seconded by Selectman Hawkes to appoint Selectman Henderson and Administrator Eiane to the MCEDD general assembly; motion passed 3-0.

22. Committee Appointments: Selectman Henderson moved, seconded by Selectman Hawkes to appoint David I Chipman as a full member to the Planning Board to 2013; Edward Perry to Town Lands to 2014; and Rick Daniels to the Budget Advisory Committee to 2014; motion passed 3-0.

23. Other Business: There was none.

24. Public Comment: C. Matthew Rich asked for a written response to his May 3 letter and commented on several issues associated with the Hamlyn/Bodwell wharf application, including the schedule of notices and the on-site hearing, definition of existing and new structures, the Code Enforcement Officer's (CEO) role, and the municipal officer's role in overseeing the CEO. Mr. Rich stated he disagrees with the CEO's expression that the application complies with the Shoreland Zoning Ordinance (SZO). Chairman Multer asked for clarification regarding the SZO role in this process and what authority the Board has regarding it. Administrator Eiane responded the SZO is the responsibility of the CEO and the Board's review is under the Wharves and Weirs Act. Rob McIntyre noted an injury to others regarding the Hamlyn/Bodwell proposal could be that no one else could build a wharf in that area; the Board responded there is no evidence of that point. Mr. McIntyre suggested that if the Board sends out requests for proposals for banking services to see if credit unions could participate. Mr. McIntyre read a letter that he and Lee Theberge are having printed in the Anchor regarding the alternative educational structures available through withdrawal.

25. Administrative Matters: The Board discussed possible fee reductions and/or process changes for land use permits on small structures; the Board scheduled a meeting with Jack Sylvester for May 23 at 4:00, a committee-wide meeting for June 2 at 7:00 p.m., a brief meeting to authorize the warrant before the public hearing on May 17 and the annual non-resident taxpayer meeting for July 6; the Board discussed creating a policy regarding use of the Town's website; 5 renewal leases at the Orr's Island Bridge property were signed; and purchase orders exceeding \$1,000 in value were reviewed and signed. A purchase order for improvements to the Bethel Point boat ramp were discussed and Chairman Multer moved, seconded by Selectman Henderson to send out requests for proposals for the project; motion passed 3-0.

26. Adjournment: The meeting was adjourned at 10:27 p.m.

Respectfully Submitted,

Terri-Lynn Sawyer

Attachments: Treasurer's Report
Borrowing Resolution
Community Garden Guidelines

[Attachments are available at the Town Clerk's Office or by email at harpwell@town.harpwell.me.us]